

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	File No.: EB-TCD-12-00000416 <sup>1</sup>
	)	
Telseven, LLC	)	NAL/Acct. No.: 201332170005
Calling 10, LLC	)	
Patrick Hines a/k/a P. Brian Hines	)	FRNs: 0009834466; 0018070938;
	)	0016963712; 0021816459
Apparent Liability for Forfeiture	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: November 29, 2012**

**Released: November 30, 2012**

By the Commission:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Telseven, LLC and Calling 10, LLC (collectively Calling 10),<sup>2</sup> as well as Patrick Hines, have apparently willfully and repeatedly violated Section 201(b) of the Communications Act of 1934, as amended (Communications Act or Act),<sup>3</sup> by deceptively marketing their “Enhanced Number Assistance and Directory Assistance” (ENADA) service and by “cramming” charges for that service on consumers’ local telephone bills without authorization.<sup>4</sup> Calling 10, through its Responsible Organization (RespOrg) affiliates,<sup>5</sup> obtained

<sup>1</sup> This case was formerly assigned the file number EB-11-TC-061. In January 2012, the Telecommunications Consumers Division assigned the case a new file number.

<sup>2</sup> Telseven, LLC asserts that it has operated under the trade name Calling 10, and refers to Telseven, LLC and Calling 10, LLC collectively as “Calling 10.” See Letter from Steven A. Augustino, Counsel to Telseven, to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau at 1, 7 (Dec. 5, 2011) (on file in EB-TCD-12-00000416) (LOI Response). Consequently, this NAL refers to the collective enterprise as Calling 10 and uses the formal names “Calling 10, LLC” and “Telseven, LLC” only when necessary.

<sup>3</sup> 47 U.S.C. § 201(b).

<sup>4</sup> On June 14, 2012, the Commission took enforcement action against Telseven, LLC for, among other things, failing to contribute fully to the Universal Service Fund, to the administration of the North American Numbering Plan and the administration of local number portability, and for failing to pay regulatory fees when due. *Telseven, LLC, Notice of Apparent Liability for Forfeiture*, 27 FCC Rcd 6636 (2012). Calling 10 is also the subject of an investigation by the California Public Utilities Commission (California PUC). See *Order Instituting Investigation Into the Operations of Telseven, LLC, Calling 10, LLC, and Patrick Hines*, California PUC (Dec. 16, 2010) (CAPUC Order); *Post-Hearing Brief of Consumer Protection & Safety Division*, California PUC (Apr. 6, 2012) (concluding that the evidence showed Calling 10 and Patrick Hines are responsible for placing more than \$21 million in unauthorized charges on the telephone bills of approximately three million California consumers from 2004 through June 2011, and “for thus perpetrating one of the largest and longest running ‘cramming’ schemes in the annals of Commission enforcement.”) (CAPUC Post-Hearing Brief).

approximately one million toll-free numbers, many of which were likely to be called by consumers by mistake because of their substantial similarity to existing working numbers or because they were formerly used by well-known entities. Calling 10 then deceptively marketed its service to consumers who called the toll-free numbers by mistake and charged them approximately seven dollars (an amount small enough to avoid detection by many consumers) without their authorization.<sup>6</sup> As discussed in more detail below, over a twelve-month period Calling 10 appears to have billed thousands of consumers, charging them in the aggregate over \$ [REDACTED] through their local telephone bills.<sup>7</sup> Based upon the record before us, including complaints from numerous consumers, we find that Calling 10 and Patrick Hines are apparently jointly and severally liable for a proposed forfeiture in the amount of one million six hundred eighty thousand dollars (\$1,680,000).

## II. BACKGROUND

2. In response to numerous consumer complaints about the business practices of Calling 10, LLC and/or Telseven, LLC, the Enforcement Bureau (Bureau) initiated an investigation, and on October 13, 2011, issued a letter of inquiry to Telseven, LLC, requiring the company to provide certain information and documents.<sup>8</sup> On December 5, 2011, Telseven, LLC responded to the LOI on behalf of both itself and Calling 10, LLC<sup>9</sup> and represented that both companies are telecommunications carriers that provide the same telecommunications services and share common ownership, control, and management.<sup>10</sup>

(Continued from previous page) \_\_\_\_\_

<sup>5</sup> A RespOrg is responsible for managing a toll-free subscriber's record in the Service Management System database, the database that controls routing on all toll-free telephone numbers and coordinates with the subscriber's toll-free service providers. See 47 C.F.R. § 52.101(b), (d). Three Calling 10 affiliates, Signal One Resp Org, LLC; [REDACTED]; and ESignal Holdings, LLC, are or have been the RespOrgs for Calling 10. See Letter from Steven A. Augustino, Counsel to Telseven, to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, Attachment 1 (Jan. 9, 2012) (on file in EB-TCD-12-00000416) (Supplemental LOI Response). See also *infra* discussion in para. 3 and note 18.

<sup>6</sup> Calling 10 apparently contracted with Wholesale Carrier Services, Inc. (WCS) to transport these calls to Calling 10's ENADA platform in Nevada. See Testimony of Rudy Sastra, Docket I.10-12-010, Consumer Protection and Safety Division, California PUC at 18 & n.38 (July 12, 2011) (Sastra Testimony). WCS and ILD Teleservices, Inc. (ILD) provided the purported directory assistance services. See Testimony of Patrick Hines, Docket 1.10-12-010, Consumer Protection and Safety Division, California PUC at 260 (Nov. 16 and 17, 2011) (Hines Testimony). Additionally, the platform, servers, and equipment used to answer calls to the toll-free numbers were provided by Cybernetic Systems, Inc. See Hines Testimony at 275-276.

<sup>7</sup> See *infra* para. 6.

<sup>8</sup> See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Telseven, LLC (Oct. 13, 2011) (on file in EB-TCD-12-00000416) (LOI).

<sup>9</sup> See LOI Response *supra* note 2.

<sup>10</sup> LOI Response at 5-6 and Attachment 1; Supplemental LOI Response, Attachment 1. The Commission granted Telseven, LLC international Section 214 authority on December 1, 2005, ITC-214-20040209-00047. See Public Notice, "International Authorizations Granted: Section 214 Applications (47 C.F.R. § 63.18); Section 310(B)(4) Requests" (Dec. 1, 2005); see also *Implementation of Sections 255 and 251(A)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6448-49 (1999) (stating that telecommunications services includes services such as call waiting, speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller identification, call tracing, and repeat dialing).

Patrick Hines appears to be the sole and direct or indirect owner of Calling 10,<sup>11</sup> and to have filled most of the officer and director positions.<sup>12</sup> Calling 10 identifies Patrick Hines as the President and Manager of Telseven, LLC and Calling 10, LLC.<sup>13</sup>

3. Calling 10 has offered ENADA service since late 2003.<sup>14</sup> Calling 10 describes the service as one that offers consumers the ability to get information about recently disconnected or out of service toll-free numbers.<sup>15</sup> It contends that “[w]ithout this service, some thousands of consumers would receive an ‘out of service’ message when calling toll-free numbers but would not receive additional information about how to reach their intended toll-free subscriber.”<sup>16</sup> Calling 10 says that its service is accessed after a consumer attempts to reach a toll-free number discarded by a previous subscriber (e.g., Chase Bank, Toto USA)<sup>17</sup> that Calling 10 has obtained from another entity owned by Patrick Hines, a RespOrg operating under the name Signal One.<sup>18</sup> Calling 10 apparently controls (or controlled)<sup>19</sup> approximately one million toll-free numbers that had been discarded.<sup>20</sup>

4. According to Calling 10, after the consumer dials one of these discarded toll-free numbers, the consumer hears a “network message” that a new “national directory assistance service” is available to assist the caller in finding the right number.<sup>21</sup> Calling 10 contends that callers are not charged for this initial call to the toll-free number,<sup>22</sup> although, as discussed below, the record reflects otherwise.<sup>23</sup>

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<sup>11</sup> According to public records, Telseven, LLC is a Florida limited liability company with its principal place of business at 200 Executive Way, Ponte Vedra Beach, Florida 32082. Telseven, LLC has conducted business under many names, including Calling 10 10 275, Calling 10 15 15 800, Calling 10, and Calling 10 10 141. Calling 10, LLC is a Delaware limited liability company with its headquarters listed as 1000 N. West Street, Wilmington, Delaware 19801. Calling 10, LLC has operated under such trade names as California Calling 10, LLC; Calling 10; Calling 101515800; and Calling 1010275. *See also* LOI Response at 7.

<sup>12</sup> LOI Response at 7, 9.

<sup>13</sup> LOI Response at 7, 9. *See* discussion *infra* paras. 26-31 on the personal liability of Mr. Hines.

<sup>14</sup> It appears that Mr. Hines initially formed Telseven, LLC to provide the service and sometime in 2006 formed a separate company, Calling 10, LLC, to provide the same “ENADA” service that Telseven, LLC provided. *See* LOI Response at 3, 8. The terms “Enhanced Number Assistance and Directory Assistance” and “ENADA” appear to have been created by Patrick Hines. *See* Hines Testimony at 243.

<sup>15</sup> LOI Response at 6.

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

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

<sup>18</sup> *See* CAPUC Order at 10. Calling 10 identified Signal One as a RespOrg with common ownership or management at one time with Calling 10; Calling 10 also identified [REDACTED] as its RespOrg. LOI Response, Attachment 1; *see also supra* note 5.

<sup>19</sup> These toll-free numbers, and other aspects of the Calling 10 business, are apparently currently used by another “directory assistance” provider.

<sup>20</sup> *See* CAPUC Order at 7; CAPUC Post-Hearing Brief at 28; Hines Testimony at 389.

<sup>21</sup> LOI Response at 6.

<sup>22</sup> *Id.*

<sup>23</sup> *See infra* para. 13.

Calling 10 claims the following message is played for consumers who reach one of Calling 10's toll-free numbers.<sup>24</sup>

For a charge of [\$]4.99, please have a pen ready to write down our phone number. You can hang up and dial 10 15 15 8000. That number again is 10 15 15 8000. The number you have dialed has a new directory assistance service. Please dial 10 15 15 8000 for more information on the number you have dialed and be connected to a new national directory assistance service. Brought to you by Calling 10. Rates exclude universal service fee and administrative recovery fee. The charge on your phone bill will appear as a call to directory assistance to Nevada. You can also dial 10 15 15 8000 702 555 1212. Subject to terms and conditions of service available at [www.Calling10.com](http://www.Calling10.com). For trouble reporting, you can email [service@Calling10.com](mailto:service@Calling10.com).<sup>25</sup>

5. Calling 10 does not advertise its services and does not post its toll-free numbers or dial-around numbers<sup>26</sup> on its websites.<sup>27</sup> Calling 10's service is marketed solely through the messages played for consumers who dial a discarded toll-free number or dial by mistake a toll-free number that Calling 10 controls.<sup>28</sup> These consumers are attempting to reach another party and unknowingly reach Calling 10 by mistake. Calling 10 contends that its marketing messages "voluntarily disclose" the price for the directory assistance call and the fact that there is an administrative fee.<sup>29</sup> It maintains that its disclosures are consistent with or in excess of industry practice and are not misleading.<sup>30</sup> Calling 10 asserts that 95 percent of callers hang up upon hearing this message and do not place a call to its ENADA service.<sup>31</sup>

6. According to Calling 10, consumers who hang up after dialing one of the toll-free numbers and then dial Calling 10's access code (10 15 15 8000)<sup>32</sup> will hear a greeting message and a list of menu options. Calling 10 acknowledges that even if a consumer hangs up upon hearing the greeting

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<sup>24</sup> *Id.* at 6, Attachment 7. Calling 10 provided scripts for two pre-recorded messages. The second script is substantially similar to the script quoted above but the stated amount of the charge is \$5.49, not \$4.99. *See* LOI Response, Attachment 7.

<sup>25</sup> *See* script provided with LOI Response, Attachment 7.

<sup>26</sup> "Dial-around" numbers, such as 10 15 15 8000, allow a telephone subscriber to bypass (i.e., dial around) the subscriber's presubscribed long distance telephone carrier, if any, and instead use the dial-around carrier's service for a particular telephone call. Any toll charges for such calls are assessed by the dial-around carrier or its agent, and not the consumer's presubscribed long distance carrier. The Calling 10 recording only provides a dial-around number for the directory assistance platform, not a number a consumer could dial using his or her own presubscribed long distance carrier. The charges assessed by Calling 10 may be, at least in part, the toll charges for the alleged dial-around calls to its directory assistance platform in Nevada.

<sup>27</sup> *See* LOI Response at 8.

<sup>28</sup> *See id.*

<sup>29</sup> *Id.* at 2.

<sup>30</sup> *Id.* at 16.

<sup>31</sup> *Id.* at 2. Calling 10 did not provide any evidence to support this assertion.

<sup>32</sup> Calling 10's network message for consumers refers to the dial-around access code as 10 15 15 8000, although in its LOI Response, Calling 10 refers to its access code as 10 15 15 800. *See* LOI Response at 6. Complainants similarly describe the dial around code as ending in 800 and 8000. For consistency, we refer to the access code in this NAL as 10 15 15 8000.

and before making any menu selections or receiving the purported directory assistance offered, Calling 10 charges the consumer for service.<sup>33</sup> Similarly, Calling 10 charges those consumers who press 1 for “status history” or 0 for a live operator.<sup>34</sup> According to Calling 10, only those consumers who press 5 for rate information and then hang up will avoid being charged by Calling 10.<sup>35</sup> From December 2010 through November 2011, Calling 10 states that it billed for [REDACTED] directory assistance calls, charging consumers \$ [REDACTED] through their local telephone bills, or an average of \$ [REDACTED] for each call to its platform.<sup>36</sup>

7. Calling 10’s conduct has generated a large number of calls from consumers to its billing aggregators<sup>37</sup> and local telephone companies to contest the charges. Calling 10 reports over [REDACTED] such calls during the 12 months prior to November 2011, resulting in refunds totaling as much as \$ [REDACTED].<sup>38</sup> Consumers also filed written complaints with the Commission, state regulatory authorities, the Better Business Bureau, and directly with Calling 10. Consumers reported finding charges on their bills, typically around \$7, for a service identified as “DIR ASST” that they denied authorizing or using.<sup>39</sup> Many identified Calling 10’s billing aggregators as the party listed on the bill.<sup>40</sup> Some consumers referred to the charges as “fraudulent”<sup>41</sup> or “outrageous,”<sup>42</sup> and asked the Commission to stop this behavior.<sup>43</sup>

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<sup>33</sup> See LOI Response at Attachment 6. See also Rebuttal Testimony of Rudy Sastra, Docket I.10-12-010, Consumer Protection and Safety Division, California PUC at 15 (Nov. 3, 2011) (Sastra Rebuttal Testimony) (citing Patrick Hines testimony that if the consumer hangs up during the greeting, the consumer will be charged).

<sup>34</sup> See LOI Response at 7.

<sup>35</sup> See LOI Response at 7 and Attachment 6.

<sup>36</sup> LOI Response, Attachment 5.

<sup>37</sup> Calling 10’s process for billing consumers involves three parties: Calling 10, one of its billing aggregators, and the local exchange carrier (LEC) that issues the bill to the consumers. The LEC is compensated for placing the charges on the consumers’ bills; the billing aggregators are paid by Calling 10 to manage billing requests and payments between the LEC and Calling 10; and Calling 10 ultimately receives the money collected from the consumers who pay the charges. See “Unauthorized Charges on Telephone Bills,” United States Senate Committee on Commerce, Science, and Transportation, Staff Report for Chairman Rockefeller at 8 (July 12, 2011) (Rockefeller Report) (describing the third party billing process). This report can be found online at [http://commerce.senate.gov/public/?a=Files.Serve&File\\_id=9d4113ed-7e9f-40be-9e57-e65016d370de](http://commerce.senate.gov/public/?a=Files.Serve&File_id=9d4113ed-7e9f-40be-9e57-e65016d370de).

Calling 10 identified its billing aggregators as ILD and Billing Services Group (BSG). LOI Response at 20. The Federal Trade Commission (FTC) recently announced that it is seeking a civil contempt ruling against BSG for allegedly placing more than \$70 million in cramming charges on consumers’ telephone bills in violation of a previous court order. See *Federal Trade Comm’n v. Hold Billing Services, et al.*, Case No. 5:98-cv-00629-FB (W.D. Tex. filed Apr. 4, 2012); <http://www.ftc.gov/opa/2012/05/bsg.shtm> (FTC Motion).

<sup>38</sup> See LOI Response, Attachment 5. Calling 10 described this figure as “adjustments and bad debts.” It failed to provide the total number of refunds and credits issued as requested by the LOI.

<sup>39</sup> See *infra* paras. 13-14, 18.

<sup>40</sup> See, e.g., Complaint from [REDACTED]; Complaint from L. Parker.

<sup>41</sup> See Complaint from M. Wagner.

<sup>42</sup> See Complaint from M. Hamilton.

<sup>43</sup> See Complaint from C. Jacob.

8. As part of its investigation, the Bureau examined more than 80 complaints regarding allegedly unauthorized charges by Calling 10.<sup>44</sup> Bureau staff also contacted numerous consumers whom Calling 10 indicated sought refunds of the charges by the company.<sup>45</sup> Most complainants indicated they had not called Calling 10's 10 15 15 8000 number and all stated they did not authorize charges for its service.<sup>46</sup>

9. On April 20, 2012, Telseven, LLC and Calling 10, LLC filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division.<sup>47</sup> Telseven, LLC and Calling 10, LLC informed the Bureau of these Chapter 7 bankruptcy filings on April 23, 2012.<sup>48</sup> By April 26, 2012, the companies stated that they were "no longer providing services."<sup>49</sup>

### III. DISCUSSION

10. Under Section 503(b) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any of the provisions of the Act, or any rule or order issued by the Commission under the Act, shall be liable for a forfeiture penalty.<sup>50</sup> Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>51</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>52</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>53</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>54</sup> "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.<sup>55</sup> In order to impose a forfeiture penalty under

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<sup>44</sup> While the Bureau examined more than 80 complaints, only 14 of the complaints are within the one-year statute of limitations and form the basis for the proposed forfeiture. These 14 complaints are identified in the Appendix.

<sup>45</sup> Based on statements from those consumers the Bureau interviewed, for purposes of this NAL, all references herein to "complaints" and "complainants" include the interviewed consumers.

<sup>46</sup> See *infra* paras. 13-14, 18.

<sup>47</sup> Notification from Jason B. Burnett and Paige A. Wagner, GrayRobinson, P.A., Counsel for Calling 10, Notice of Filing Chapter 7 Bankruptcy, U.S. Bankr. Ct., Mid. Dist. Fla., Jacksonville Div., Case No.: 3:11-bk-2682-PMG (Apr. 23, 2012) (on file in EB-TCD-12-00000416) (stating that on April 20, 2012 Telseven, LLC and Calling 10, LLC had filed for Chapter 7 bankruptcy).

<sup>48</sup> *Id.*

<sup>49</sup> See, e.g., Telseven, LLC Homepage, available at <http://telseven.com/> (last visited September 20, 2012) ("Telseven has filed a Chapter 7 Bankruptcy proceeding in Jacksonville, Florida, Case No. 3:12-bk-02683. The company is no longer providing services.").

<sup>50</sup> 47 U.S.C. § 503(b); see also 47 C.F.R. § 1.80(a).

<sup>51</sup> 47 U.S.C. § 312(f)(1).

<sup>52</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>53</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California Broadcasting Co.*), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>54</sup> See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, paras. 9-10 (2001) (*Callais Cablevision*) (issuing a notice of apparent liability for, *inter alia*, a cable television operator's repeated signal leakage).

<sup>55</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision*, 16 FCC Rcd at 1362, para. 9.

Section 503(b)(4), the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>56</sup> As described in greater detail below, we find that Calling 10 and Patrick Hines are apparently jointly and severally liable for a total forfeiture in the amount of \$1,680,000 for their apparent willful and repeated violations of Section 201(b) of the Act.

**A. Apparent Violations of Section 201(b) of the Act**

11. Section 201(b) of the Act states in pertinent part that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”<sup>57</sup> The Commission has found that the inclusion of unauthorized charges and fees on consumers’ telephone bills is an “unjust and unreasonable” practice under Section 201(b).<sup>58</sup> The Commission has also found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices under Section 201(b).<sup>59</sup>

12. We find that Calling 10 and Patrick Hines have apparently willfully and repeatedly marketed their services in a misleading and deceptive manner to consumers and also apparently willfully and repeatedly placed, or caused to be placed, charges on consumers’ telephone bills for services the consumers did not request or authorize. As indicated above, the complainants contend that Calling 10 charged them for service without their authorization. Most complainants state that Calling 10 charged them for calls they either did not make or they made only after being given misleading information regarding Calling 10’s service.<sup>60</sup>

<sup>56</sup> 47 U.S.C. § 503(b)(4); *see also* 47 C.F.R. § 1.80(f).

<sup>57</sup> 47 U.S.C. § 201(b).

<sup>58</sup> *See, e.g., Long Distance Direct, Inc.*, Apparent Liability for Forfeiture, Memorandum Opinion and Order, 15 FCC Rcd 3297 (2000) (*LDDI MO&O*) (finding that the company’s practices of cramming membership and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services); *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863 (2011) (*Cheap2Dial NAL*) (finding that the placement of unauthorized monthly charges for dial-around long distance service on consumers’ local telephone bills violates Section 201(b)); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874 (2011) (*VoiceNet NAL*) (same); *Norristown Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844 (2011) (*Norristown NAL*) (same); *Main Street Telephone Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853 (2011) (*Main Street NAL*) (same).

<sup>59</sup> *See, e.g., STi Telecom Inc. (formerly Epana Networks, Inc.)*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12808, 12810, para. 6 (2011) (*Epana NAL*) (finding that the marketing materials used to sell prepaid calling cards were misleading and deceptive regarding the rates and charges applicable to the service and therefore violated Section 201(b)); *see also Locus Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12818, 12820–21, para. 7 (2011) (*Locus NAL*) (same); *Lyca Tel, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12827, 12829, para. 6 (2011) (*Lyca Tel NAL*) (same), *Touch-Tel USA, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12836, 12838, para. 6 (2011) (*Touch-Tel NAL*) (same); *Simple Network, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16669, 16671, para. 6 (2011) (*Simple Network NAL*) (same); *NobelTel, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11760, 11762, para. 6 (2012) (*NobelTel NAL*) (same).

<sup>60</sup> Fourteen of the complaints fall within our one-year statute of limitations and form the basis of our proposed forfeiture amount. *See* Appendix.

### 1. Charges for Misdialed Calls to Toll-Free Numbers

13. According to many consumer complainants, Calling 10, or a billing agent on its behalf such as “ILD,”<sup>61</sup> charged them typically between \$7 and \$8 simply because they called—often by mistake—a toll-free number that Calling 10 controls. The complainants are adamant that they did not call the dial-around number for Calling 10’s ENADA service. For example, consumers have alleged that:

- “ILD Teleservices Inc. billed me on behalf of Telseven LLC for a call I never made. ILD has said they would issue a refund but it will take 2-3 billing cycles. I wasn’t even in town that day. My phone bill is automatically charged to my credit card so I didn’t open it until it had already been paid. I have to spend time on the phone to dispute the charge & then wait 2-3 months for a refund? I want cramming stopped!”<sup>62</sup>
- “The Directory Assistance call was originally billed by CALLING 10 15 15 800 to ILD, which apparently then passed it on to my local carrier, CenturyLink. The charge is entirely bogus; I never made it. Time spent calling CenturyLink and ILD: about 30 minutes. Time spent looking up and writing this complaint: about another 15 minutes. Total: 45 minutes LOST from my morning over a charge that should not have happened.”<sup>63</sup>
- “Calling 10 exists only to cheat telephone consumers (cramming). I was billed for a directory assistance call (1 call @ \$7.14 on a \$4.03 bill) to Calling 10’s 10-15-15-8000 [number] . . . no one called 10-15-anything. \*No one\* may call from this line for directory assistance—the phone book is next to the only phone (corded and plugged into the only jack) in a house in which I live alone. Anyone that slipped in (a burglar?) would have dialed 4-1-1, not some 10-10 nonsense.”<sup>64</sup>
- “I d[id] not recognize the number [10 15 15 8000, and for which consumer was billed \$5.49 for a 3-minute call] and therefore looked it up on the internet and found complaints going back as far as 2009. I am not even sure what a 10 15 15 800 call is! If I need a number, I look it up online.”<sup>65</sup>
- “This company said I called 10 15 15 800 [w]hich I did not call . . . and I live alone so no one called from this number. I am a senior and do not appreciate this company trying to scam[] myself or anyone else!! . . . I don’t even call my local directory assistance. [W]hy would I call long distance directory [assistance] especially when they charge \$7.56 for talking to them for 1 minute.”<sup>66</sup>
- “This was a [\$7.58] charge for some bogus directory service never used. I understand this company buys defunct 800 numbers and sets up scams to trick people into calling them. I never

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<sup>61</sup> ILD provided billing services for Calling 10. *See supra* note 37.

<sup>62</sup> Complaint from L. Umstead.

<sup>63</sup> Complaint from R. Chester.

<sup>64</sup> Complaint from T. Martin.

<sup>65</sup> Complaint from A. Miller.

<sup>66</sup> Complaint from L. Metzler.

made such a call, so obviously fraudulent billing is part of the easy money methodology employed by this company.”<sup>67</sup>

Many other complainants offered similar stories.<sup>68</sup>

14. Consumers also recounted conversations with ILD, Calling 10’s billing agent, that corroborate their complaints. For example, one consumer explained that when he contacted ILD about a \$7.50 charge for directory assistance, the ILD representative told him “the charge was from a company by the name of ‘Calling 10’ and that when anyone calls a toll-free number that has been discontinued, the call automatically goes to ‘Calling 10’ which then charges the caller’s phone for a directory assistance call without their consent or knowledge.”<sup>69</sup> Another complainant reports that he called ILD’s customer service number and “was informed that if a call was placed to a disconnected number [he] would have been automatically forwarded to Directory Assistance at 10 15 15 800 . . . [t]hat this was an ‘automatic’ service if [one does] not hang up immediately after being prompted that the number was no longer in service . . . I stated we do not use directory assistance and would not have called this number.”<sup>70</sup>

15. Calling 10 maintains that it does not charge consumers for the initial call to the discarded toll-free number, but assesses charges only after the consumer hears its marketing message, hangs up, and dials Calling 10’s 10 15 15 8000 access number.<sup>71</sup> As support, Calling 10 produced what is described as “call detail records,” which it claims show that consumers called its 10 15 15 8000 number and therefore authorized the charges.<sup>72</sup> The records, however, are simply spreadsheets that show telephone numbers billed by Calling 10, along with the date, time, and duration of the alleged call (apparently rounded up to the nearest minute) and the amount billed to the consumer and do not include the originating and terminating numbers for each call. We conclude that these records do not refute consumer claims that Calling 10 billed consumers simply for having called a toll-free number that Calling 10 controls. For example, because the records furnished by Calling 10 do not show the originating and terminating numbers for each call, as conventional call detail records do, the records do not refute the consumers’ assertion that Calling 10 automatically connected a call to its ENADA platform and billed the consumer for that call. Calling 10 has failed to produce actual call detail records or other documentation to show that it did not, in fact, bill consumers for calling toll-free numbers that it controls. In the absence of such information, we give greater weight to evidence provided by consumers that Calling 10 charged them without their authorization,<sup>73</sup> than to Calling 10’s spreadsheet and self-serving assertion that each and

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<sup>67</sup> Complaint from M. Wagner.

<sup>68</sup> The Appendix hereto lists the 14 consumers who filed complaints or otherwise alleged similar instances of unauthorized billing and alleged that such instances occurred within the year preceding the issuance of this NAL. The Appendix does not identify the complainants’ telephone numbers to protect their privacy. To the extent Calling 10 does not already have this information, we will provide it upon request.

<sup>69</sup> Complaint from P. Kefauver.

<sup>70</sup> Complaint from T. Huser to Indiana Attorney General.

<sup>71</sup> See *supra* para. 4.

<sup>72</sup> See Supplemental LOI Response, Attachment 12.

<sup>73</sup> High complaint volume, consumers’ claims that they did not authorize the “service,” and almost nonexistent usage of the “service” are telltale signs of cramming. See *FTC Motion*.

every consumer it billed called its dial-around number and authorized a charge for its directory assistance service.<sup>74</sup>

16. Accordingly, we find that Calling 10 and Patrick Hines apparently violated Section 201(b) of the Act by engaging in the unjust and unreasonable practice of charging consumers for their ENADA service for calls mistakenly placed to a toll-free number controlled by Calling 10.

## 2. Marketing Practices

17. Even if we were to credit Calling 10's assertion that consumers purposely called Calling 10's dial-around number, we find that they did so only as a consequence of Calling 10's deceptive marketing practices. The message that Calling 10 plays for consumers who accidentally call a number controlled by it is deceptive for at least three reasons. *First*, Calling 10's message is deceptive because the company bills callers to its ENADA service whether or not they receive directory assistance, and at least in some instances, does not in fact provide directory assistance. At best, a consumer hearing Calling 10's message might interpret it to mean that by calling 10 15 15 8000, Calling 10, would, for a charge of \$4.99 and perhaps two other fees, provide some type of directory assistance. As noted above, however, Calling 10 admits that it assesses its fee *just for calling its dial-around number*, regardless of whether it actually provides directory assistance service.<sup>75</sup> There is no clear indication in the message that the fee is assessed merely for calling the dial-around number, even if directory assistance is not used. The only time the \$4.99 charge is not assessed on a consumer dialing 10 15 15 8000, according to Calling 10, is when the consumer selects a menu option that purports to provide more information about cost, and then hangs up.<sup>76</sup>

18. In fact, consumers who called 10 15 15 8000 did not receive the "directory assistance" service advertised. For example, Complainant Chang said that by calling the dial-around number, she thought she would receive the new toll-free number for the entity she was trying to reach, but instead "got a recording of something totally useless."<sup>77</sup> Likewise, Complainant [REDACTED], whom Calling 10 charged over \$13, explained his experience in misdialing the toll-free number of a manufacturer of a defective product thus:

When I dialed this number I was given a message explaining that the "800" number was no longer in service and that I should call another number—10 15 15 800. A person at this second number offered still another number that was likewise out of service. I called the 10 15 15 800 number again to report the out of service status and was told that there was no further contact number on file.

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<sup>74</sup> In the state of California's investigation, Calling 10 repeatedly resisted producing any call detail records, despite an order requiring such production (on Dec. 16, 2010) and repeated demand letters by the California PUC staff. *See* CAPUC Post-Hearing Brief, *supra* note 4 at 37–38. On Sept. 22, 2011, the California PUC filed a motion to compel. Calling 10 finally produced incomplete CDRs on Oct. 5, 2011. *Id.* at 37. When the California PUC finally did receive the actual call detail records from Calling 10, such records showed that more than one third of consumers who reached the directory assistance platform did not remain connected to it long enough to use the service in any way, and roughly 80 percent of callers took no affirmative action to request any service. *Id.* at 38–39.

<sup>75</sup> *See supra* para. 6.

<sup>76</sup> *Id.* Given that very few callers apparently remain connected to Calling 10's platform long enough to find their way to more specific cost information, CAPUC Post-Hearing Brief, *supra* note 4, at 27–29, any such cost information is not likely to be conveyed to consumers.

<sup>77</sup> Complaint from J. Chang.

At no time was I informed of any additional charges for these calls or [was] the information given.<sup>78</sup>

Similarly, Complainant Jacob explained that when he called Calling 10's dial-around number to attempt to contact the service center for his overdue pension check, he was informed by an operator that the number was changed, and then just heard a ring "without being answered after supposedly being connected."<sup>79</sup> Although he never received any directory assistance, Mr. Jacob was still charged \$7.14 by Calling 10. Mr. Jacob stated that "[i]f I were obliged to pay the \$7.14 amount claimed by this 'communications company,' . . . that would be an outrageous and insulting amount to pay for non-service."<sup>80</sup>

19. Thus, according to the California PUC Consumer Protection and Safety Division, the best a consumer who attempted to activate Calling 10's "national directory assistance" might generally hope to receive was: "(1) advice that the toll-free number erroneously called was 'on our network now,'—i.e., in the roughly one million toll-free numbers which [Calling 10, LLC and Telseven, LLC] control or 'lease' in order to market their DA service; or (2) advice that the number was 'not operating' on [their] network."<sup>81</sup> In either case, complainants did not receive what is commonly understood to be "directory assistance service" or anything meaningful or useful at all. As Mr. Hines himself explained to California investigators, the value of his ENADA service is that it reveals to consumers "that the number that they are dialing is not the number they are trying to reach, because it is not the number."<sup>82</sup>

20. *Second*, Calling 10 fails to disclose that the toll-free number called by the consumer is out of service except for the purpose of driving traffic to Calling 10's ENADA service. Calling 10's message states: "The number you have dialed has a new national directory assistance service. Please call 10 15 15 8000 for more information on the number you have dialed and be connected to a new national directory assistance service. Brought to you by Calling 10."<sup>83</sup> Because consumers are connected to Calling 10's message only after thinking that they had dialed a toll-free number to reach a particular party, the explicit statement in the message that Calling 10 offers a service for the toll-free *number* the consumer dialed suggests—without any additional disclosure—that Calling 10 and/or its service is associated with the *party* the caller is attempting to reach. If Calling 10 clearly informed consumers that the numbers they are trying to call are out of service except for Calling 10 to market its ENADA service, many consumers would not likely use any part of Calling 10's service. As some consumers explained to the Commission,

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<sup>78</sup> Complaint from ██████████ to California PUC.

<sup>79</sup> Complaint from C. Jacob.

<sup>80</sup> *Id.*

<sup>81</sup> CAPUC Post-Hearing Brief, *supra* note 4, at 28–29 (citations omitted).

<sup>82</sup> *Id.* at 30 (quoting testimony of Mr. Hines).

<sup>83</sup> *See supra* para. 4. Staff made test calls to 800 numbers identified in Calling 10's response to the Bureau's LOI and verified that this message was played on some of these numbers. However, in several calls to Calling 10's 800 numbers in January and February 2012, a different message began with "Please have a pen ready. Your number has a new directory assistance number." It then provided a 900 number to call and indicated there would be a \$1.99 charge for each call. When staff called the same toll-free numbers a second or third time, a different message, such as an advertisement for another product or service, was often played. The California PUC similarly made test calls to some of Calling 10's 800 numbers and verified that the message recited in the text above played on at least some of the numbers. *See* CAPUC Order at 14.

if they need to find a telephone number, they look it up online and would not use Calling 10's ENADA service, especially for a fee of more than \$7.<sup>84</sup>

21. *Third*, Calling 10's cost disclosures are not clear and conspicuous enough to inform consumers about the actual cost of its ENADA service.<sup>85</sup> The two cost disclosures are: "For a charge of 4.99, please have a pen ready to write down our phone number" and "Rates exclude universal service fee and administrative recovery fee." That Calling 10 charges these fees regardless of whether a consumer actually uses the service is not made clear whatsoever and these disclosures do not convey to the caller the basis for assessing the charges. What is more, Calling 10 never discloses that it actually charges consumers over \$7 for its service, which is more than 40 percent higher than the \$4.99 referenced.

22. Calling 10 suggests that its practices are not deceptive because it "provide[s] more information regarding [its] directory assistance service than the industry standard and practice,"<sup>86</sup> and makes "full disclosure of the nature and cost of the companies' services" that are "compliant with all requests of billing ILECs and billing agents."<sup>87</sup> As discussed above, however, Calling 10's cost disclosures are incomplete and misleading, and it has not, at least on some occasions, provided the directory assistance service it represented. Accordingly, we find that Calling 10 and Patrick Hines have apparently violated Section 201(b) of the Act by engaging in the unjust and unreasonable practice of deceptively marketing their directory assistance service.

#### B. Proposed Forfeiture

23. Section 503(b)(1) of the Act states that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.<sup>88</sup> Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act by common carriers.<sup>89</sup>

<sup>84</sup> See *supra* para. 13.

<sup>85</sup> The Commission has explained that a disclosure is "clear and conspicuous" when it is "effectively communicated," i.e., "displayed in a manner than is readily noticeable, readable and/or audible, and understandable to the audience to whom it is disseminated. *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, 15 FCC Rcd 8654, 8663 (2000). The Commission has found that carriers have apparently violated Section 201(b) of the Act because their disclosures of fees and surcharges were "not clear and conspicuous to the average consumer." See *Epana NAL*, 26 FCC Rcd at 12812, para. 9; *Locus NAL*, 26 FCC Rcd at 12822, para. 10; *Lyca Tel NAL*, 26 FCC Rcd at 12830, para. 9; *Touch-Tel NAL*, 26 FCC Rcd at 12840, para. 9; *Simple Network NAL*, 26 FCC Rcd at 16672-73, para. 9; *NobelTel NAL*, 27 FCC Rcd at 11764-65, para. 9.

<sup>86</sup> Supplemental LOI Response at 2. Calling 10 contends that Verizon and AT&T do not provide any price disclosure for calls to their 411 or 555-1212 directory assistance platforms, but does not suggest that consumers are directed to 411 or 555-1212 after first dialing another company's discarded toll-free number or that Verizon and AT&T charge \$7 for directory assistance. *Id.*

<sup>87</sup> LOI Response at 2, 16.

<sup>88</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(2).

<sup>89</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). In 2008, the Commission amended Section 1.80(b)(2) of the rules, 47 C.F.R. § 1.80(b)(2), to increase the maximum forfeiture amounts in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers to \$150,000/\$1,500,000).

In determining the appropriate forfeiture amount, we consider the factors enumerated in Section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>90</sup> Pursuant to Section 503(b)(6), the Commission may impose a forfeiture penalty only for violations that occurred one year or less before the date of the issuance of a notice of apparent liability.<sup>91</sup>

24. Based on the record in this investigation, we find that a significant forfeiture penalty is warranted against Calling 10 for its willful and repeated deceptive marketing and cramming violations of Section 201(b) of the Act. Further, based on the criteria in Section 503(b)(2)(E) of the Act and the upward adjustment criteria in the *Forfeiture Policy Statement*,<sup>92</sup> we find that an upward adjustment is justified because the violations appear to be egregious and repeated, Calling 10 appears to have realized substantial economic gain from its practices,<sup>93</sup> and substantial consumer harm appears to have resulted from Calling 10’s pattern of misconduct. The evidence before us indicates that Calling 10 willfully and repeatedly engaged in this activity as part of an apparent deliberate plan to cram and mislead consumers. The consumers were charged for services they did not authorize, did not receive, and then were required to spend time and effort to have the charges refunded. In this instance, the culpability of Calling 10 in this fraudulent scheme warrants a significant forfeiture.<sup>94</sup>

25. We find that the extent and gravity of this egregious conduct warrants a total proposed forfeiture amount of \$1,680,000. This proposed amount is based on 14 instances<sup>95</sup> of cramming that occurred within one year of the date of this NAL.<sup>96</sup> While we do not have a base forfeiture amount for cramming, the Commission has previously assessed a \$40,000 forfeiture for cramming violations.<sup>97</sup> In

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<sup>90</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>91</sup> 47 U.S.C. § 503(b)(6).

<sup>92</sup> 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(6); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01.

<sup>93</sup> *See* Calling 10’s 2011 and 2010 Forms 499-A (Telecommunications Reporting Worksheets) (reporting Calendar 2010 Revenues and Calendar 2009 Revenues).

<sup>94</sup> Calling 10 states that it charged over [REDACTED] consumers for calls to its 10 15 15 8000 number, at least [REDACTED] of whom it charged within one year of the date of this NAL.

<sup>95</sup> While we must base our proposed forfeiture on violations that occurred within the 12-month statute of limitations, we need not base the proposed forfeiture on specific consumer complaints. *See* 47 U.S.C. § 503(b)(4). In the future, the Commission can and will use its discretion to calculate proposed forfeitures on other bases within the limits of our statutory authority and as justice requires. *See also infra* note 96.

<sup>96</sup> As indicated, Section 503(b)(6) of the Act does not empower the Commission to impose a forfeiture for violations that are the subject of an NAL and that occurred more than one year prior to the issuance of an NAL. For that reason, the forfeiture proposed in this NAL is based on the 14 specific apparent “cramming” violations referenced in the Appendix that occurred within the last year. Older complaints, however, are relevant to determining the *amount* of the forfeiture to impose for violations that occurred within the last year, as these older violations establish the “extent and gravity of the violations” and the “history of prior offenses” of Calling 10. *See, e.g., Sandhill Communications*, Notice of Apparent Liability, 25 FCC Rcd 17762, 17769, n.45 (Enf. Bur. 2010) (noting that Section 503(b)(6) does not bar the Commission from assessing whether a company’s conduct prior to the statute of limitations period violated the Act and Commission rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period).

<sup>97</sup> *See LDDI MO&O*, 15 FCC Rcd at 3304, para. 19 (affirming the \$40,000 penalty for cramming imposed by the Commission in the forfeiture order).

this case, applying a \$40,000 forfeiture for each of the 14 cramming complaints within the 12-month statute of limitations would result in a forfeiture of \$560,000. In addition, we are proposing a substantial upward adjustment of \$1,120,000 in light of the scope and egregiousness of the violations.<sup>98</sup> This results in a total forfeiture penalty of \$1,680,000. We find, as we have in other recent cases, that a penalty of this magnitude is appropriate when the entire business of a violator appears to be premised on consumer deception.<sup>99</sup>

### C. Personal Liability of Patrick Hines a/k/a P. Brian Hines

26. As we did in another recent enforcement proceeding against Telseven, LLC,<sup>100</sup> we find that Patrick Hines a/k/a P. Brian Hines is jointly and severally liable for the proposed forfeiture here against the Calling 10 enterprise. Mr. Hines appears to have complete control of Calling 10, and appears to organize and dismantle businesses as necessary to attempt to shield himself from liability.

27. It is well established that the Commission may “pierce the corporate veil” and hold one entity or individual liable for the acts or omissions of a different, related entity, even when the strict standards of common law alter ego would not apply: 1) where there is a common identity of officers, directors, or shareholders; 2) where there is common control between the entities; and 3) when it is necessary to preserve the integrity of the Communications Act and to prevent the entities from defeating the purpose and provisions of statutory provisions.<sup>101</sup> In *Capital Telephone*, for example, the United States Court of Appeals for the D.C. Circuit upheld the Commission’s decision to pierce the corporate veil of an applicant for a paging frequency license after stating that “a corporation will be looked upon as

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<sup>98</sup> This is the equivalent of an additional \$80,000 per violation. While we are assessing an upward adjustment in light of the deceptive marketing practices in this NAL, we could have found a separate violation of Section 201(b) for each instance of deceptive marketing. In this case, we are not imposing penalties for the additional violations, but we do consider them to be aggravating factors that also warrant upward adjustments of our base forfeiture amounts. See *Tim Gibbons*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11432 (2012).

<sup>99</sup> In the cases of other companies that we found were apparently cramming operations, the Commission has determined the forfeiture amount by taking into account the extent and gravity of the company’s egregious conduct, as well as its culpability and its revenues. See *Cheap2Dial NAL*; *VoiceNet NAL*; *Norristown NAL*; *Main Street NAL*.

<sup>100</sup> See *supra* note 4.

<sup>101</sup> The Commission and the courts have long stated that “[w]here the statutory purpose could . . . be easily frustrated through the use of separate . . . entities, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purpose of regulation.” *Improving Public Safety Communications in the 800 MHz Band*, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd 13874, 13887–88 (2010) (citing *Gen. Tel. Co. of the S.W. v. United States*, 449 F.2d 846, 854 (5th Cir. 1971)); see also *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734 (D.C. Cir. 1974) (*Capital Telephone*) (finding that the Commission correctly treated the individual and the corporation he controlled as the same entity and granted only one license); *Transcontinental Gas Pipe Line Corp. v. FERC*, 998 F.2d 1313, 1321-22 (5th Cir. 1993) (finding that FERC correctly looked behind corporate forms and treated the parent and subsidiaries as a single entity where the parent pipeline set up subsidiaries to sell gas at prices at which the parent could not legally sell); *Mansfield Journal Co. (FM) v. FCC*, 180 F.2d 28, 37 (D.C. Cir. 1950) (concluding that although two newspapers were separate corporations, with separate editorial staffs, and located in communities over fifty miles apart, the Commission correctly denied applications of both corporations when the record showed that one family owned all of the stock in both corporations and that the owners took active part in the control and policy formulation of the newspapers); *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946) (“The fact that several corporations are used in carrying on the business does not relieve them of their several statutory obligations more than it relieves them of the taxes severally laid upon them.”).

a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of a legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.”<sup>102</sup>

28. Here, Calling 10 appears to be an enterprise designed to carry out the activities of just one person, Patrick Hines a/k/a P. Brian Hines.<sup>103</sup> As noted above, Patrick Hines appears to be the sole, direct or indirect owner of Telseven, LLC and Calling 10, LLC<sup>104</sup> and to have himself filled most of the officer and director positions.<sup>105</sup> Calling 10, LLC states that Patrick Hines is the only officer for Telseven, LLC and Calling 10, LLC and identifies Mr. Hines as the President and Manager of each company.<sup>106</sup>

29. Mr. Hines appears to have had complete control of Telseven, LLC and Calling 10, LLC and their many affiliates, and participated directly in the practices discussed in this NAL. He has executed and signed all transactional documents on behalf of Telseven, LLC and Calling 10, LLC, including Telseven, LLC’s Articles of Organization<sup>107</sup> and its billing and collection contracts with ILD, BSG, and the LECs.<sup>108</sup> Mr. Hines also signed the declarations attesting to the truth and accuracy of his companies’ responses to the Commission.<sup>109</sup>

30. It also appears that Mr. Hines used Telseven, LLC and Calling 10, LLC as conduits for his personal interests.<sup>110</sup> Telseven, LLC and Calling 10, LLC are both ultimately controlled and owned by the Patrick Hines Revocable Trust, the trustee and beneficiary of which is Patrick Hines.<sup>111</sup> Moreover, Calling 10, LLC’s Operating Agreement filed with the State of Delaware provided that 100 percent of net cash from operations was to be paid out for the benefit of its one member, Tarajara Properties—later Red

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<sup>102</sup> *Capital Telephone*, 498 F.2d at 738.

<sup>103</sup> See Hines Testimony at 226–27 (In response to being asked by the administrative law judge to state his name for the record, Mr. Hines responded, “Patrick Hines, Patrick Brian Hines, H-i-n-e-s”); see also Consumer Protection & Safety Division, California PUC, Response to Respondent Patrick Hines’ Motion to Stay or Dismiss for Lack of Jurisdiction at 11 (noting that Patrick B. Hines and P. Brian Hines are the same person, but that Hines is using the “P. Brian Hines” presentation of his name for purposes of the Bankruptcy Court litigation) (May 4, 2012).

<sup>104</sup> See *supra* para. 2.

<sup>105</sup> The CAPUC Post-Hearing Brief also recommends that personal liability should be assessed against Patrick Hines in the California proceeding for the unauthorized charges imposed on California consumers’ telephone bills by Calling 10. See CAPUC Post-Hearing Brief at 91–95.

<sup>106</sup> LOI Response at 7, 9.

<sup>107</sup> See LOI Response at Attachment 2.

<sup>108</sup> LOI Response at Attachment 10.

<sup>109</sup> See Declarations by Patrick Hines, executed Dec. 5, 2011, submitted with LOI Response; and Jan. 9, 2012, submitted with Supplemental LOI Response.

<sup>110</sup> See *Post-Hearing Reply Brief of Consumer Protection & Safety Division*, California PUC at 24 (May 4, 2012) (CAPUC Post-Hearing Reply Brief).

<sup>111</sup> Calling 10’s LOI Response states that Telseven is owned by the Patrick Hines Revocable Trust, and it appears that Calling 10, through a number of intervening entities, is also owned by this trust. Calling 10 is owned by Red Resources, Ltd., a company in the British Virgin Islands at Palm Grove House, P.O. Box 438, Road Town, Tortola, British Virgin Islands. Red Resources, Ltd. is apparently owned by Blue Consulting, which in turn is owned by the Patrick Hines Revocable Trust as well. See LOI Response at 7 and Attachment 1; see also Hines Testimony at 430–31; CAPUC Post-Hearing Brief at 46–47.

Resources—which was ultimately owned 100 percent by Blue Consulting, which was owned by the Patrick Hines Revocable Trust.<sup>112</sup> Apparently, Mr. Hines established a number of different entities that he would use and terminate at will in the furtherance of his business, including Levendo, LLC (which had the actual contracts with BSG for billing Calling 10, LLC services and with WCS for the delivery of the Calling 10 directory assistance service); Signal One (which secured the toll-free numbers on behalf of Calling 10); and Tarajara Properties, Red Resources, and Blue Consulting (all apparent conduits to the Patrick Hines Revocable Trust).

31. Given that Patrick Hines is the sole owner and officer of Calling 10, that Calling 10 has recently declared bankruptcy,<sup>113</sup> and that it appears that Mr. Hines may have used the Calling 10 assets to create a similar business,<sup>114</sup> it is necessary for the Commission to look beyond the Calling 10 corporate name and hold Mr. Hines personally liable for the unjust and unreasonable practices discussed herein. Accordingly, we find Patrick Hines jointly and severally liable with Calling 10 for the apparent Section 201(b) violations discussed herein and for payment of the proposed forfeiture amount.

#### IV. CONCLUSION

32. We have determined that Calling 10, under the direction and control of Patrick Hines a/k/a P. Brian Hines, apparently violated Section 201(b) of the Act, as discussed above. We have further determined that Calling 10 and Patrick Hines a/k/a P. Brian Hines are apparently jointly and severally liable for a forfeiture in the amount of one million six hundred eighty thousand dollars (\$1,680,000).

#### V. ORDERING CLAUSES

33. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b)(2)(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(2)(B), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Patrick Hines a/k/a P. Brian Hines, Telseven, LLC, and Calling 10, LLC are hereby **NOTIFIED** of this **APPARENT JOINT AND SEVERAL LIABILITY FOR A FORFEITURE** in the amount of one million six hundred eighty thousand dollars (\$1,680,000), for willful and repeated violations of Section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 201(b).

34. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,<sup>115</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Patrick Hines a/k/a P. Brian Hines **SHALL PAY** the full amount of the proposed forfeiture, for which he, together with Telseven, LLC and Calling 10, LLC are jointly and severally liable, or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

35. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,<sup>116</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for

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<sup>112</sup> See CAPUC Post-Hearing Reply Brief at 24.

<sup>113</sup> See *supra* para. 9.

<sup>114</sup> Another entity, Assist 123, LLC, whose officers include individuals who served as consultants to Calling 10, as well as a Hines family member, appears to be using the same toll-free numbers that Calling 10 used. This company is also listed as one of Calling 10's creditors in Calling 10's bankruptcy filings. When Bureau staff made test calls to Calling 10's toll-free numbers prior to the bankruptcy filings, they often reached a recording from Assist 123 directing consumers to call a 900 number for a charge of \$1.99 to receive "directory assistance" service.

<sup>115</sup> 47 C.F.R. § 1.80.

<sup>116</sup> *Id.*

Forfeiture, Telseven, LLC and Calling 10, LLC either **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture or, together, with Patrick Hines a/k/a P. Brian Hines, shall be jointly and severally liable for the full amount of the proposed forfeiture. For collection, the Commission will file proofs of claim in the Telseven, LLC and Calling 10, LLC bankruptcy cases.

36. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Patrick Hines a/k/a P. Brian Hines, Telseven, LLC, and/or Calling 10, LLC shall send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>117</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

37. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.<sup>118</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

38. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes,

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<sup>117</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>118</sup> See 47 C.F.R. § 1.1914.

to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See [www.fcc.gov/osec/guidelines.html](http://www.fcc.gov/osec/guidelines.html) for further instructions on FCC filing addresses.

39. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

40. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class mail to Telseven, LLC, 200 Executive Way, Ponte Vedra Beach, FL 32082; Calling 10, LLC, 1000 N. West Street, Wilmington, DE 19801; Patrick Hines, 350 Ponte Vedra Blvd., Ponte Vedra Beach, FL 32082; and Jacob Brown, Ackerman Senterfitt, LLP, 50 North Laura Street, Suite 3100, Jacksonville, FL 32202.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

<u>Complainant</u>	<u>Date of Violation</u>
1. Weeks, O.	12/2/11
2. Casey, B.	12/2/11
3. Erickson, C.	12/5/11
4. Gray, R.	12/5/11
5. DeShane, L.	12/6/11
6. Hoff, J.	12/7/11
7. Jacob, C.	12/12/11
8. Matson, T.	12/14/11
9. West Chester Medical Group	1/23/12
10. Wieland, S.	2/6/12
11. Meyer, F.	4/13/12
12. Umstead, L.	4/25/12
13. Pettit, D.	5/8/12
14. Metzler, L.	5/18/12