



1 **I. BACKGROUND**

2 According to the Complaint, Plaintiffs operate telecommunications networks which, *inter*  
3 *alia*, “give other long-distance telecommunications providers access to their networks so that the  
4 other long-distance telecommunications providers’ customers can initiate calls.” (*Compl.* [Doc.  
5 1] ¶ 1.) In return, Plaintiffs are entitled to payment of “switched access charges” pursuant to  
6 federal tariffs. (*Id.* ¶ 13.) Plaintiffs allege that Defendant is liable to them for its failure to pay  
7 these “switched access charges” on calls that originated on Plaintiffs’ networks using  
8 Defendant’s prepaid calling cards. (*Id.* ¶ 36.)

9 The Complaint contains only one cause of action, for violation of federal tariffs. (*Compl.*  
10 ¶¶ 33-42.) In their prayer for relief, Plaintiffs seek (1) declaratory relief; (2) injunctive relief; (3)  
11 an accounting “of interexchange minutes improperly disguised as local traffic that should have  
12 been treated as long-distance access traffic, and for which 88 [] should have paid international  
13 and/or interstate switched access service charged but evaded payment”; and (4) monetary  
14 damages or restitution “in the amount of the international and/or interstate switched access  
15 service charges (including interest and late payment fees) that the [Plaintiffs] are entitled to  
16 pursuant to their lawful federal tariffs and which 88 [] has failed to pay.” (*Id.* 13-14.) On  
17 December 6, 2013, Plaintiffs moved for default judgment and a permanent injunction.

18 On January 3, 2013, the Court granted in part and denied in part Plaintiffs motion for  
19 default judgment and a permanent injunction. (*January 3, 2014 Order* [Doc. 15].) The Court  
20 granted the motion, to the extent that it sought a default judgment for monetary damages of  
21 \$4,013,459. (*Id.* 6-7.) The motion was denied and held in abeyance, however, to the extent it  
22 sought injunctive relief, because the moving party failed to address the proper standard for a  
23 permanent injunction. (*Id.* 7-8.) Plaintiff was granted leave to file supplemental briefing with  
24 respect to their claims for injunctive relief, and did so on January 30, 2014. (*Id.*; *Supplemental*  
25 *Brief* [Doc. 16].) Defendant has not responded or appeared in this matter.

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27 **II. LEGAL STANDARD**

28 Under to Rule 55(b), a court may order default judgment following the entry of default by

1 the Clerk of the Court. After default has been entered, the factual allegations of the complaint  
2 are taken as true, except for those allegations relating to damages. *TeleVideo Sys., Inc. v.*  
3 *Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). An entry of default does not automatically entitle  
4 a plaintiff to a court-ordered judgment. *See Draper v. Coombs*, 792 F.2d 915, 924-25 (9th Cir.  
5 1986). Rather, granting or denying relief is within the court’s discretion. *See id.*

6 When default judgment is granted, the scope of relief is limited by Federal Rule of Civil  
7 Procedure 54(c): “A default judgment must not differ in kind from, or exceed in amount, what is  
8 demanded in the pleadings.”

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10 **III. DISCUSSION**

11 Having already determined that default judgment was appropriate, the Court must now  
12 turn to whether the plaintiffs have established their entitlement to a preliminary injunction. A  
13 party is entitled to permanent injunctive relief if it can show (1) an irreparable injury; (2) an  
14 inadequate remedy at law to compensate the injury; (3) that an injunction is warranted after  
15 balancing the hardships between the parties; and (4) the public interest would not be harmed by  
16 granting the injunction. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006).<sup>1</sup>

17 **A. Plaintiffs Have Established Irreparable Injury**

18 In the previous order, the Court detailed how Defendants are using Plaintiffs networks  
19 without providing compensation, in direct violation of federal law. Because Plaintiffs have  
20 presented undisputed evidence that Defendants violations are ongoing, Plaintiff has and is  
21 suffering irreparable harm, because Defendants conduct has caused Plaintiff to provide network  
22 services without being properly compensated. Moreover, given the nature of this dispute,  
23 Plaintiff would be forced to repeatedly file suit to recover the future originating switched access  
24 charges (“OSACs”) owed. *See, e.g., Continental Airlines, Inc. V. Intra Brokers, Inc.*, 24 F.3d  
25 1099, 1104-05 (9th Cir. 1994).

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27 <sup>1</sup> To establish standing, Plaintiffs must also show that there is a very significant possibility of  
28 future harm; it is insufficient for them to demonstrate only a past injury. *Bras v. California Pub. Util.*  
*Comm'n*, 59 F.3d 869, 873 (9th Cir.1995), cert. denied, 516 U.S. 1084 (1996). As detailed in paragraphs  
A and B below, it is clear that Plaintiffs injury is ongoing.

1           B.     Plaintiffs Have Inadequate Legal Remedy

2           Plaintiffs present unopposed evidence that Defendants actions make it impossible for  
3 Plaintiffs to determine the local access numbers (“LANs”) that Defendants are using, and  
4 therefore, the amount of OSACs that they are owed. The amount of monetary damages that  
5 Plaintiff is entitled to is not forward facing, and cannot compensate them for Defendants  
6 continued legal violations. The only realistic method for remedying such future harm is a  
7 permanent injunction. Therefore, this factor weights in favor of a permanent injunction.

8           C.     Balance of Hardships

9           Plaintiffs unopposed evidence that Defendants will continue to violate federal law  
10 because their actions are essentially undetectable by anyone, except themselves, shows that the  
11 balance of hardships favors an injunctive remedy. Defendants might have suggested that the  
12 terms of the injunction impose an unfair burden on them, but the Court is not convinced that the  
13 terms of this injunction are so burdensome as to tip the balance of hardships in Defendants’  
14 favor.

15          D.     Public Interest

16          The public has a strong interest compliance and enforcement of federal law and  
17 regulation, which an injunction will promote here. There is no public interest served by letting  
18 Defendants flout federal law and avoid paying OSACs to Plaintiffs. Therefore, an injunction  
19 will promote public interest.

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1 **IV. CONCLUSION**

2 Accordingly, Plaintiffs' motion for a permanent injunction is **GRANTED**. In light of  
3 this, the Court **ORDERS** Defendant 88 Connection to:

- 4 1. Provide Plaintiffs with a complete list of LANs that is has utilized in its prepaid  
5 calling card business since August 30, 2013, within the Plaintiffs' 21 states<sup>2</sup>, as well as a  
6 notarized statement certifying that the list is complete, true, and accurate. This list shall  
7 be provided on or before September 30, 2014.
- 8 2. Provide Plaintiffs a list of LANs that it has used within the previous quarter, on  
9 December 31, March 31, June 30, and September 30 of each year. Again, these lists will  
10 be limited to the Plaintiffs' 21 states and will be accompanied by a notarized statement  
11 certifying that they are complete, true, and accurate.
- 12 3. Provide Plaintiffs with all billing information reasonably requested, including but not  
13 limited to Defendant's contact information (including e-mail addresses and telephone  
14 numbers), billing address information, state and/or federal tax exempt forms, billing  
15 account information, and similar information in order for Plaintiffs to bill Defendant for  
16 OSACs.
- 17 4. Provide updates for all billing information within ten days of any such information  
18 becoming inaccurate.
- 19 5. Pay the bills that Plaintiffs properly render to Defendant for OSACs no later than the  
20 due date set forth on each bill.

21 **IT IS SO ORDERED.**

22 DATED: August 14, 2014

23   
24 M. James Lorenz  
25 United States District Court Judge  
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28 <sup>2</sup> These states are California, Alabama, Florida, Georgia, Kentucky, Louisiana,  
Mississippi, North Carolina, South Carolina, Tennessee, Arkansas, Kansas, Missouri, Oklahoma,  
Texas, Illinois, Indiana, Nevada, Ohio, Connecticut, and Wisconsin.