

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
InterCall, Inc.'s Request for Review of a) CC Docket No. 96-45
Decision of the Universal Service)
Administrative Company and)
Petition for Stay)

**COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.
IN SUPPORT OF INTERCALL'S REQUEST FOR REVIEW
AND PETITION FOR STAY**

Qwest Communications International Inc. ("Qwest") submits these comments in support of InterCall, Inc.'s ("InterCall") Request for Review and Petition for Stay.¹ Qwest supports InterCall's request that the Federal Communications Commission ("Commission") address these issues in a manner that will apply across the industry. Contrary to the Universal Service Administrative Company's ("USAC") determination, whether an audio conferencing provider must contribute directly to the Federal Universal Service Fund ("FUSF" or "Fund") is not clear in the Commission's rules. Given this lack of clarity, Qwest also supports InterCall's request that the Commission bar any retroactive application of the USAC's determination that InterCall should be a direct contributor to the FUSF, at least to the extent that it would result in payments that duplicate payments already made by underlying carriers. Finally, Qwest also supports InterCall's Petition for Stay in order to preserve the status quo pending the Commission's review

¹ See In the Matter of Request for Review by InterCall, Inc. of Decision of Universal Service Administrator, CC Docket No. 96-45, filed Feb. 1, 2008 and Petition for Stay Pending Commission Review, CC Docket No. 96-45, filed Feb. 5, 2008. See also Public Notice, DA 08-371 (Feb. 14, 2008).

of these issues and to avoid the harmful effects of a USAC mandate that will impose inappropriate double contributions into the fund.

InterCall seeks review of the USAC's determination that InterCall's provision of audio conferencing services require that InterCall be a direct contributor to the federal universal service fund. Included with that decision was a direction that InterCall file "any and all previous FCC Form 499s that have come due since InterCall started providing interstate telecommunications."² Additionally, it is the USAC's recommendation that to the extent InterCall has already paid into the FUSF indirectly by paying FUSF charges assessed by underlying service providers, it should look to recover those payments from the underlying service providers.

Qwest takes no position on whether the conferencing services provided by InterCall should or should not require InterCall to be a direct contributor to the Fund.³ Currently, InterCall does not hold itself out as a direct contributor, and purchases services from Qwest through retail agreements. Qwest assesses FUSF charges on the interstate telecommunications services that InterCall purchases from Qwest. Qwest contributes to the FUSF on the revenues from those purchased services, as it is required to do.

Qwest supports InterCall's position that the Commission should address this issue such that any decision is made only on a prospective basis and applies across the industry. InterCall's petition raises doubts regarding the extent to which the Commission's current rules require an audio-bridging provider to be a direct contributor to the FUSF. Consequently, any

² See Administrator's Decision on Contributor Issue, letter from USAC to Steven A. Augustino, Counsel for InterCall, dated Jan. 15, 2008 at 3.

³ Qwest's position that long distance calls to conference bridges were not terminated for purposes of assessing switched access charges has been rejected on one set of facts. *In the Matter of Qwest Communications Corporation, Complainant, v. Farmers and Merchants Mutual Telephone Company, Defendant.*, File No. EB-07-MD-001, Memorandum Opinion and Order, 22 FCC Rcd 17973, 17986-87 ¶¶ 33-35 (2007) (subsequent proceeding history omitted).

“clarification” by the Commission to effect such an interpretation warrants application to the entire industry. InterCall has stated that across the industry, stand-alone audio bridging providers have not been subject to common carrier regulations and typically purchase the telecommunications inputs into their services as end users.⁴ InterCall has pointed out that audio conferencing providers are not identified in the list in the Commission’s rules identifying 19 types of contributors to the FUSF.⁵ While the list is illustrative and not exhaustive, the absence from such a long list raises questions as to whether audio conferencing providers are intended to be included, or at least whether they can be included without action by the Commission. Similarly, in the Form 499-A instructions, a contributor must identify the categories of its telecommunication activities.⁶ Again, the specifically identified categories do not include audio conferencing providers. On both lists, interconnected Voice over Internet Protocol (“VoIP”) services and providers were only recently added to the list after a Commission rulemaking that explicitly brought those services and providers within the FUSF contribution base.⁷ A similar rulemaking could be instituted to address audio conferencing services and providers.

Additionally, Qwest supports InterCall’s request that the Commission prohibit retroactive application of the USAC determination. The Commission should not impose retroactive

⁴ InterCall Request for Review at 8.

⁵ *Id.* at 14.

⁶ See current Form 499-A Instructions (revised 2007) at 13-15. The specific categories are the following: CAP/CLEC; Cellular/PCS/SMR (wireless telephony); Coaxial Cable; Incumbent LEC; Interexchange Carrier (IXC); Interconnected VoIP Provider; Local Reseller; Operator Service Provider (OSP); Paging and Messaging; Payphone Service Provider; Prepaid Card; Private Service Provider; Satellite Service Provider; Shared-Tenant Service Provider/Building LEC; SMR (dispatch); Toll Reseller; Wireless Data. Additionally there are three referenced residual categories of “Other Local”, “Other Mobile” and “Other Toll.”

⁷ See *In the Matter of Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7520 ¶ 2 (2006), 47 C.F.R. § 54.706(a); Form 499-A (revised 2007) at 13-15.

payment obligations on audio conferencing providers to the extent they have already contributed indirectly to the Fund through the payment of FUSF charges to their underlying carriers. Such obligations could disrupt existing customer relationships and cause protracted disputes between audio conference providers and their underlying carriers, all for the unnecessary “benefit” of double payments to the FUSF.⁸

For the same reasons, Qwest also supports InterCall’s Petition for Stay of the USAC decision pending the Commission’s review of this matter.

Respectfully submitted,

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⁸ USAC has instructed InterCall to now remit direct contributions for the same period of time that it has been contributing indirectly to some extent and suggested that InterCall can recover the FUSF assessments it previously paid to its underlying carriers. But, an underlying carrier can only submit revised annual Form 499-As for overpayments to the Fund for one year after submission of the original form. *In the Matter of Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 1012, 1015 ¶ 7 (2004). Thus, USAC has, in effect, required that duplicate payments be made for all contribution periods prior to the limited revised submission window. The Commission should not uphold this result.

CERTIFICATE OF SERVICE

I, Eileen Kraus, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. IN SUPPORT OF INTERCALL'S REQUEST FOR REVIEW AND PETITION FOR STAY** to be: 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 96-45; 2) served via e-mail on Greg Guice, Telecommunications Access Policy Division, Wireline Competition Bureau at Greg.Guice@fcc.gov; 3) served via e-mail on David Duarte, Telecommunications Access Policy Division, Wireline Competition Bureau, at David.Duarte@fcc.gov; 4) served via First Class United States mail, postage prepaid, on the parties listed below; and 5) served via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc. at (fcc@bcpiweb.com).

/s/ Eileen Kraus

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February 25, 2008

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