

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
InterCall, Inc.)	CC Docket No. 96-45
)	
Appeal of Decision of the Universal Service)	
Administrative Company and Request for)	
Waiver)	

COMMENTS OF AT&T INC.

AT&T Inc. (AT&T) on behalf of its affiliates hereby comments on InterCall Inc.’s appeal of a Universal Service Administrative Company (USAC) decision finding that InterCall’s teleconferencing services are telecommunications services.¹ The purpose of AT&T’s comments are twofold: to explain how AT&T is reporting its teleconferencing service revenues in the revenue reporting worksheets that it files with USAC and to request that any Commission decision be competitively neutral and applicable to the entire teleconferencing service industry. If the Commission agrees with InterCall that its “audio bridging services” are information services, in order for the Commission’s decision to be competitively neutral, the Commission must permit AT&T and other similarly situated carriers, which have contributed to the universal service fund based on these revenues, to obtain refunds for their prior year over-contributions. Conversely, if the Commission disagrees with InterCall, it should recognize that InterCall has already contributed indirectly to some extent via wholesale providers like AT&T, which assessed InterCall universal service fees on toll-free numbers purchased from them.

¹ InterCall, Inc.’s Request for Review of Decision of Universal Service Administrator, CC Docket No. 96-45 (filed Feb. 1, 2008) (InterCall Appeal).

Like InterCall, AT&T offers customers audio teleconferencing services, a service that consists of “audio bridging services” and toll-free numbers necessary for customers to participate on conference calls (also referred to as transport or transmission). AT&T self-provisions toll-free numbers whereas so-called “stand-alone audio bridging service” providers like InterCall purchase this transport from carriers like AT&T. In addition to being a customer of AT&T, InterCall is also one of AT&T’s biggest competitors in the audio teleconferencing industry.

Based on AT&T’s understanding of Commission orders, rules, and the Instructions to the Commission’s Telecommunications Reporting Worksheet, FCC Form 499-A (499-A Instructions), AT&T treats audio teleconferencing service as a telecommunications service and thus contributes to the universal service fund based on *both* the underlying transport and its “audio bridging service” revenue.² In section 54.706 of the Commission’s rules, the Commission provides a non-exhaustive list of assessable services.³ While InterCall correctly notes that “audio teleconferencing services” are not listed among the 19 services, because the rule states that “[i]nterstate telecommunications include, *but are not limited to*” those 19 enumerated services, AT&T does not interpret this rule to exclude audio teleconferencing services from the assessable base. Moreover, this list does include “video services,”⁴ which AT&T believes the Commission intended to encompass video conferencing services. In its *Universal Service First Report and Order*, the Commission stated, “entities providing, on a

² AT&T does offer web- and IP-based teleconferencing services, which are enhanced services. Based on AT&T’s understanding of InterCall’s filing and USAC’s decision, those services are *not* at issue in the instant appeal.

³ 47 C.F.R. § 54.706(a).

⁴ 47 C.F.R. § 54.706(a)(14).

common carrier basis, video conferencing services . . . would contribute to universal service.”⁵ In AT&T’s view, it seemed unlikely that the Commission would include video conferencing services but exclude audio teleconferencing services from assessment. Further supporting AT&T’s understanding that audio teleconferencing services are assessable telecommunications services is language contained in the 499-A Instructions, which InterCall notes in its appeal.⁶ In these instructions, the Commission directs contributors to report toll teleconferencing revenues on lines 314 and 417 of the 499-A Form.⁷ In accordance with Commission requirements, AT&T reports the interstate “audio bridging service” revenue generated by its end-user customers on Line 417 of the form.

As noted above, AT&T, among other carriers, sells InterCall transport that InterCall then resells with its audio bridging services to its teleconferencing customers. While AT&T views InterCall and other non-web- or IP-based teleconferencing service providers as telecommunications carriers, AT&T has treated InterCall as an end user and, like other end users, AT&T has assessed universal service fees on InterCall’s purchase of interstate transport. AT&T correctly reports these revenues in its 499-A forms. AT&T’s treatment of InterCall as an end user is consistent with Commission requirements. That is, AT&T is *obligated* to treat InterCall as an end user since it has no reasonable basis to conclude that InterCall contributes directly to the universal service fund. Specifically, InterCall has not provided AT&T with a reseller certification stating that it is contributing directly to the universal service fund and

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, para. 781 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

⁶ InterCall Appeal at 11.

⁷ 499-A Instructions at 28. As stated in InterCall’s appeal, the Commission provided greater detail in 2002 about what revenues are to be reported on Line 417, expressly mentioning “toll teleconferencing.”

InterCall does not appear as a current contributor on the Commission's web site.⁸ Based on this information, AT&T must treat InterCall as an end user. Failure to do so might have left AT&T financially responsible for InterCall's contributions.⁹

If the Commission agrees with InterCall that teleconferencing services (or the audio bridging service component) are information services not subject to universal service assessment, it must overturn the Wireline Competition Bureau's (Bureau) *499-A Form Modification Order* so that AT&T can revise its prior year 499-A forms to reclassify its teleconferencing revenues from interstate telecommunications services to information services.¹⁰ As the Commission is aware, pursuant to this Bureau decision, contributors are only permitted to revise their telecommunications reporting worksheets within one year of the filing date if that revision would result in a lower contribution.¹¹ Three years ago, SBC appealed this decision to the Commission but, to date, the Commission has not acted.¹² Absent such a Commission order, which is long overdue, AT&T respectfully requests that the Commission grant it a waiver of this Bureau order to permit it to file revised 499-A forms in order to reclassify this revenue and direct USAC to give AT&T a refund or credit for its over-contributions. Failure to do so would penalize AT&T

⁸ See <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm>.

⁹ See, e.g., 499-A Instructions at 18-19. Such a concern is not theoretical. In its contributor audit of legacy AT&T Corp., USAC reclassified approximately \$17 million of AT&T's carrier's carrier revenue to end-user revenue because several of AT&T's resellers failed to contribute directly to the fund. In making this reclassification, USAC ignored the fact that AT&T obtained reseller certifications from these resellers. While AT&T has appealed this erroneous USAC audit finding, it demonstrates that AT&T's actions with respect to carriers like InterCall are warranted. See Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, CC Docket No. 96-45 (filed Oct. 10, 2006).

¹⁰ See *Federal-State Joint Board on Universal Service, et al.*, CC Docket Nos. 96-45 *et al.*, Order, 20 FCC Rcd 1012 (2004) (*Form 499-A Modification Order*), applications for review pending.

¹¹ See *Form 499-A Modification Order*; 499-A Instructions at 17. Contributors are, of course, always permitted to file revisions if their revision would result in an increased contribution. *Id.*

¹² SBC Communications Inc. Application for Review of Action Taken Pursuant to Delegated Authority, CC Docket No. 96-45, *et al.* (filed Jan. 10, 2005).

for relying on the Commission's rules, orders, and 499-A Instructions when it contributed to the universal service fund based on all of its audio teleconferencing service revenues and would not be competitively neutral.

If the Commission determines that InterCall is a provider of interstate telecommunications service that should have been contributing directly to the universal service fund based on the transport that it is purchasing from wholesale providers and its audio bridging service revenue, in the interest of equity, the Commission should make any finding with respect to transport contributions *prospective only*. As explained above, in accordance with its obligations, AT&T has treated InterCall as an end user and remitted to USAC universal service fees that it collected from InterCall.¹³ If the Commission directs InterCall to contribute directly to the universal service fund based on its transport revenues from prior years, AT&T will be unable to revise its previously filed 499-A forms, going back more than one year, to reclassify the transport revenues associated with InterCall from end user to carrier's carrier revenue in order to refund InterCall the associated universal service fees so that InterCall could make those contributions directly to the fund. Unless InterCall marked up the price of its transport when it resold AT&T's service with its audio bridging service to its customers, requiring InterCall to contribute directly to the universal service fund based on transport revenues from prior years when AT&T already has will have no net impact to the fund.¹⁴ AT&T has no knowledge about whether InterCall marks up the price of its resold transport when combining it with its audio

¹³ If requested, AT&T will provide affidavits supporting its assertion that it has correctly reported all revenues, including universal service fees, associated with selling transport to InterCall. Pursuant to a request for confidential treatment, AT&T could also provide copies of invoices demonstrating that it has imposed universal service fees on InterCall.

¹⁴ This assumes, of course, that the Commission is not advocating for a double contribution in this instance. To do so would overturn years of universal service contribution precedent going back to the *Universal Service First Report and Order*.

bridging service but that is a fact that either USAC or the Commission could obtain from InterCall without any involvement from AT&T or any other wholesale provider.

While AT&T believes that, for reasons of administrative ease, any finding adverse to InterCall with respect to transport contributions should be made prospective only, AT&T has no objection to requiring InterCall to contribute based on its audio bridging service revenues for prior years *and* any incremental increase in revenue associated with the transport that it purchased from AT&T and other wholesale providers. AT&T would strongly object, however, to a Commission order requiring InterCall to contribute directly to the fund based on *all* prior year transport revenues, without any acknowledgement that AT&T has already contributed directly to the fund based on *its* revenues associated with InterCall. Thus, the Commission should either limit any prior year contribution for transport to any incremental increase in InterCall's revenues associated with transport *or* overturn the Bureau's wrongly decided *Form 499-A Modification Order* so that carriers like AT&T can revise prior year 499-A filings to reclassify end-user revenue to carrier's carrier revenue in order to refund to InterCall the universal service fees that they have previously collected. Furthermore, the Commission should recognize that AT&T acted appropriately in assessing universal service fees on InterCall because, for reasons provided above, AT&T had no reasonable basis to conclude that InterCall was contributing directly to the fund. It would be irresponsible for the Commission simply to state that preventing any ensuing double collection is a private matter between the parties and the "appropriate forum for private litigation is the courts"¹⁵ particularly since the Commission has ample tools available, described above, to eliminate any potential double collection.

¹⁵ See *Federal-State Joint Board on Universal Service, American Telecommunication Systems, Inc., Equivoice, Inc., Eureka Broadband Corporation, TON Services, Inc., Value-Added Communications, Inc.*, CC Docket No. 96-45, Order, DA 07-1306, 22 FCC Rcd 5009, para. 14 (2007), applications for review and reconsideration pending.

Finally, AT&T agrees with InterCall that any Commission decision must apply to all audio teleconferencing service providers. AT&T and other teleconferencing providers that contribute to the universal service fund based on all of their audio teleconferencing service revenue have been competing at a disadvantage against those carriers that contribute (indirectly) on transport only. This competitive disadvantage must end. Either everyone must pay based on all of their non-web- or IP-based audio bridging service revenue or no one should pay. AT&T would support the Commission declaring all audio bridging services to be information services but, again, AT&T would expect the Commission to permit it to obtain a refund for those prior year contributions that it made in good faith and in reliance of prior Commission precedent.

Respectfully Submitted,

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