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InterCall, Inc.

Review of USAC Administrator's Decision

June 9, 2008

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About InterCall

- Subsidiary Of West Corporation, a Leading Provider of Outsourced Communications Solutions Including Customer Acquisition, Customer Care, Emergency Communications and Conferencing Services
- Not a Telecommunications Carrier; Does Not Own Transmission Facilities
- Purchases Toll-free Services From IXCs as an End User of Telecom
  - Intercall paid over $20 million in carrier USF surcharges from 2005-2007

InterCall's Appeal and Petition for Stay

- In This Proceeding, InterCall Seeks:
  - **Reversal** of USAC Conclusion that InterCall provides "Toll Teleconferencing"
    - USAC's decision violates 54.702(c)
    - The 499A Revision cannot add new filers
    - Audio bridging is not a telecom service
    - Stand alone audio bridging providers contribute indirectly as end users
  - **Stay** of the USAC Instruction to File 499s
    - Cannot single out InterCall in the industry
    - Retroactive application would harm InterCall
  - A Stay will Preserve the Status Quo

Commenters

- Stand Alone Audio Bridging Providers
  - Premiere, Genesys, Canopco, Telespan Publishing Corporation
- Integrated Audio Bridging Providers (IXCs)
  - AT&T, Qwest, Verizon

The Comments Validate InterCall's Factual Claims

- **All Commenters Agreed**
  - Stand alone providers have operated as end users for decades
  - IXCs treat stand alone providers as end users today
  - An industry-wide solution is appropriate
- **No commenter supports retroactive USF assessments on stand alone providers**
  - Verizon "takes no position" on retroactivity but argues only for prospective changes
  - All others oppose retroactive application of USF

All But One Commenter Agree That Audio Bridging Is Not A Telecom Service

- Stand Alone Providers Agree with InterCall that Audio Bridging is not a Telecom Service
- AT&T Distinguishes the Transmission from the "Audio Bridging Service" (Though it Pays on Both)
- Only Verizon Contends that Audio Bridging is Telecom
  - *But Verizon Ignores:*
    - *Qwest v. Farmers* (conferencing providers are end users under tariffs)
    - Enforcement Bureau's 2004-05 Reseller Survey
    - The absence of transfer of control, CPNI certifications, etc. regarding audio bridging services

Verizon's Cases Are Inapposite

- AT&T "Picture Messaging Service" (1982)
  - Service was a rudimentary point-to-point video transmission service; it did not involve bridging
  - "Conferencing" component was classified as customer equipment, not a telecom service
- CALEA Order (1999)
  - Switch-based three-way calling is not equivalent to bridging
- E-Rate Eligible Services List
  - Classifications are for priority of reimbursement only; Other non-telecom services can be reimbursed as "telecommunications services"
  - In any event, only the telecommunications component of a conferencing service is eligible

USAC's Decision Is Not The Correct Vehicle To Address The Policy And Legal Issues

- The FCC, Not USAC, Must Decide if Audio Bridging is a Telecom Service
  - Classification as a telecom service imposes many regulatory burdens wholly unrelated to USF (entry/exit regulation, tariffing, CPNI, etc.)
- The FCC, Not USAC, Must Provide Guidance to Stand Alone and Integrated Providers
  - Identification of the transmission and bridging components of the service for USF purposes
- Only a Rulemaking can Properly Provide an Industry Solution

Retroactive Assessment Would Devastate CSPs With No Corresponding USF Benefit

- Stand Alone CSPs Would Suffer Enormous Harm if USAC is Permitted to Assess Retroactively
  - They already paid USF surcharges to their IXCs in good faith, and IXCs will not voluntarily refund amounts paid
  - USAC contends that no statute of limitations applies, yet will not permit amendment of returns after more than one year
  - The accumulated assessments, penalties and interest far exceed the ability of nearly all stand alone CSPs to pay
  - Could indirectly extend the full panoply of federal and state common carrier regulation to a previously unregulated industry

Retroactive Assessment Would Devastate CSPs With No Corresponding USF Benefit (cont'd)

- The Harm Would Extend to IXC Suppliers as Well
  - Disrupt existing wholesale contracts and successful supplier-customer relationships
  - Endless litigation over the need to refund USF surcharge revenue
- USAC is Not Benefited by Retroactive Assessment
  - USF amounts due have already been paid, albeit indirectly
  - Only benefit would be an undeserved and unintended "double payment" windfall

A Stay Is Appropriate While The Bureau Considers The Policy Issues

- Until the FCC Provides Additional Guidance, USAC Should Not Upset Decades of Industry Practice
  - The FCC, not USAC, must set the policy
- Retroactive Application of the USAC Decision Would Cause Irreparable Harm
- Protracted Litigation with IXCs Over Refunds is not in the Public Interest
- Stand Alone and Integrated Providers Can Pay the Same Amount Under Current Rules, so the Balance of Harms Favors a Stay