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October 9, 2009

***Via Electronic Delivery***

Ms. Marlene H. Dortch  
Federal Communications Commission  
The Portals, TW-A325  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation  
WC Dkt. 07-135, *In the Matter of Establishing Just and Reasonable  
Rates for Local Exchange Carriers*; CC Dkt. 96-45, *In the Matter of  
Request for Review by InterCall, Inc. of Decision of Universal Service  
Administrator*

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Dear Ms. Dortch:

On Thursday, October 8, 2009, the following meetings were held to discuss the attached presentation:

- Ken Ford, President and CEO of Global Conference Partners, Michael Placido, CFO of Global Conference Partners and Donna Lampert, Mark O'Connor and Jennifer Bagg of Lampert, O'Connor & Johnston, P.C., met with Christine Kurth, Wireline Legal Advisor to Commissioner McDowell;
- Ken Ford, Michael Placido, Donna Lampert, Mark O'Connor and Jennifer Bagg met with Sharon Gillett, Marcus Maher, Irene Flannery, Alexander Minard and Jennifer Prime, of the Office of the Bureau Chief, Wireline Competition Bureau, and Albert Lewis, and John Hunter, of the Pricing Policy Division, Wireline Competition Bureau;
- Ken Ford, Michael Placido, Mark O'Connor and Jennifer Bagg met with Jennifer Schneider, Broadband, Wireline and Universal Service Legal Advisor to Commissioner Copps;
- Ken Ford, Michael Placido, Mark O'Connor and Jennifer Bagg met with Carol Simpson, Acting Legal Advisor to Commissioner Clyburn; and

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- Ken Ford, Mark O'Connor and Jennifer Bagg met with Christi Shewman, Wireline, Universal Service, and Consumer Issues Acting Legal Advisor to Commissioner Baker.

In addition to the attached slide presentation, Global Conference Partners discussed in these meetings its opposition to the November 25, 2008, AT&T-RICA proposed rule, which proposes excessive regulation and is overly restrictive of legitimate business arrangements, and discussed its arrangements with competitive LECs.

Pursuant to the Commission's rules, one copy of this notice is being filed electronically in the above-referenced dockets for inclusion in the public record. Please contact me directly should you have any questions.

Respectfully submitted,



Jennifer P. Bagg  
*Counsel for Global Conference Partners*

### Attachment

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# Resolving Regulatory Issues to Ensure the Public Benefits of Competitive Conferencing Services



FCC Ex Parte Presentation  
WC Dkt. 07-135 & CC Dkt. 96-45  
October 8, 2009

## Overview

### **The FCC should adopt policies that allow consumers to benefit fully from the network and enable utilization of competitive conferencing services:**

- Resolve the access stimulation proceeding by setting a prospective below-NECA cap on CLEC terminating access rates;
- Resolve the reconsideration of *InterCall Order* by keeping stand-alone conference services unregulated; and
- Stop the IXC practice of refusing to pay on interstate LEC access charges.

## Uses and Users of Competitive Conferencing Services

### **Competitive services have made conferencing accessible and innovative.**

- User-Managed competitive conferencing has successfully improved users ability to communicate by maximizing productivity, increasing efficiency and reducing travel time/cost.
  - Enhanced functionality and features include user groups, recordings, on-line “white board,” desktop sharing functions, reminder services, email, stored information, and other innovative features.
  - Many uses including business meetings, product marketing, training, web-collaboration, seminars, distance learning, coaching, reunions and other group conversations.
- Competitive conferencing services exert pressure on traditional and VoIP conference call providers to lower rates, improve services, increase reliability and introduce innovative features.

### **A variety of users benefit from competitive conferencing services.**

- Services are easier to use, less expensive, and more reliable, putting conferencing within the reach of many more users:
  - Businesses: from start-ups to large enterprises, and home-based businesses.
  - Non-traditional Users: community organizations, government agencies, universities and educational institutions, grassroots organizations, friends and families.

## Regulatory Issues of Competitive Conferencing Services

**Public policy should encourage network usage that enables the public to benefit fully from the network it pays for.**

- IXCs promote and benefit from “all-you-can eat” plans, driving consumers to buy calling plans that stimulate network traffic.
- Conferencing services create long-distance demand that generates new and incremental revenues for IXCs.

**IXCs have engaged in “self-help” to stop competitive conferencing services, including refusal to pay interstate access charges, exclusionary tariff treatment and excessive litigation. This ongoing situation:**

- Maintains IXC entrenched position in higher-margin legacy conferencing services (*i.e.*, bundled long-distance with conferencing functions);
- Weakens the ability of rural CLECs to compete regionally with IXCs’ national wireless and video services; and
- Drains public and private resources that should be better focused on bringing consumers more and better services.

# How Can the FCC Resolve Pending Regulatory Issues?

## (1) Define Just and Reasonable CLEC Terminating Access Rates

### **Benchmarked rates are just and reasonable:**

- Rural CLECs' rates today are just and reasonable, benchmarked to rural ILEC or NECA rates.
- "The Commission has specifically disclaimed reliance on cost to set competitive LEC access rates."  
*PrairieWave Order*, 23 FCC Rcd. 2556 (2008).

### **Proposal: New FCC rate cap for high volume customers.**

- Cap all CLEC tariffed terminating access rates at specific rate (e.g., 2 cents per minute) AND
- Insert a new subsection (g) to 47 CFR § 61.26 :

"Beginning [120 days after *Federal Register* publication], and notwithstanding any other provision of this rule, a CLEC's tariffed interstate terminating switched exchange access rate may not exceed 2.0 cents per minute on any CLEC working loop, or loops associated with a single CLEC subscriber, that receives more than 1500 terminating access minutes in a month."

## (1) Define Just and Reasonable CLEC Terminating Access Rates (con't.)

### **Proposal is a good faith attempt to reach a compromise among competing interests.**

- Proposal is consistent with understanding of privately negotiated agreements (e.g., Omnitel/Verizon settlement for 1.4 cpm).
- 2 cpm is a substantial cut from the NECA rate and reflects traffic patterns/demand and associated cost changes.
- Rate is consistent with the lowest competitive conferencing services costs and balances public interest benefits of “free” model.
- Proposal reduces likelihood of unintended impact on unforeseen network uses and is consistent with FCC precedent (e.g., ISP-bound, TRS).

### **Benefits of new FCC rate cap:**

- Avoids other regulations such as revenue sharing prohibitions, complex “triggers,” etc. which are stifling, unnecessary and will lead to more litigation/disputes.
- By adjusting down “outlier” rates significantly, no other regulation of CLECs is needed or productive.
- Avoids unintended consequences such as stifling growth of rural businesses and traffic.

### **“Profits” (revenues earned above incremental costs) on terminating access charges take different forms:**

- Company investment in new products or services (e.g., AT&T U-verse, Verizon FiOS).
- Increased employee compensation, benefits and dividend payouts.
- Marketing fee/revenue sharing arrangements.

## How Can the FCC Resolve Pending Regulatory Issues? (2) Reconsider and Clarify the *InterCall Order*

### ***InterCall Order* is inconsistent with FCC information services precedent.**

- The offering of “conference bridging capabilities to members” is an “information service” under the Act. *Pulver.com Order*, 19 FCC Rcd. 3307 (2004).
- The finished conferencing service should be examined from the consumer’s perspective, taking into account all of the integrated features and functions of the service. *Universal Service Report to Congress*, 13 FCC Rcd. 11501 (1998).

### **Clarification is critically important to assist all providers of unified communications services, their investors, and most importantly, their users.**

- The *InterCall Order* imposes significant regulatory uncertainty and costs for the competitive conferencing industry and threatens to undermine public benefits of competitive conferencing services.
- At a minimum, the FCC should clarify that conferencing services that do not bundle long-distance with conferencing functions are not “telecommunications” or “telecommunications services.”
- Since stand-alone conferencing services are not “similarly situated” with the bundled long-distance conferencing offered by InterCall, the FCC should clarify the scope of its decision.

## How Can the FCC Resolve Pending Regulatory Issues? (3) Enforce Current Law to Stop “Self-Help” Measures

### Pay And Dispute Must Be Enforced

- Although ALL parties agree current access charge and intercarrier compensation system needs major overhaul, the FCC needs to re-iterate that billing disputes over conferencing traffic – like all traffic – are to be handled by “pay and dispute” mechanisms that govern carriers.
- Tariffs cannot be interpreted to exclude certain classes of end-users, including conferencing services.

### The FCC is the Proper Forum for Disputes... Not “Self-Help”

- Allowing “self-help” – such as the refusal by IXCs to pay terminating access charges on LEC interstate tariffed services – undermines the integrity of the system, reducing its efficacy and creating unnecessary burdens on public and private resources.
- IXCs have been compensated by consumers for payment of terminating access, and yet have for years failed to remit those terminating access fees.
- IXC refusal to pay has emboldened industry to engage in other illegal practices, including call blocking.

### We Look Forward to Working with the FCC to Resolve Pending Regulatory Issues