

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

In the matter of)	
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Request for Review by)	WC Docket No. 06-122
MeetingOne.com Corp. of Decision of)	
Universal Service Administrator)	
)	
)	

REPLY COMMENTS OF MEETINGONE.COM CORP.

The comments submitted by both InterCall, Inc. (“InterCall”)¹ and Qwest Communication International Inc. (“Qwest”)² in this proceeding serve to confirm the crux of MeetingOne’s Request for Review: the Commission’s precedents do not clearly establish whether MeetingOne’s IP-based conferencing service is subject to Universal Service Fund (“USF”) contributions.

In particular, Qwest not only agrees on this lack of clarity, but also supports the merits of MeetingOne’s position, arguing that the *InterCall Order* “seems to preclude application of its holding to MeetingOne’s audio conferencing services.”³ InterCall, for its part, disagrees on the merits based on a mistaken reading of the “similarly situated” standard (if “the interchangeable nature of the services offered” were the sole dispositive

¹ Comments of InterCall, Inc., *filed in* WC Docket No. 06-122 (Jun. 7, 2010) (“*InterCall Comments*”).

² Comments of Qwest Communications International Inc., *filed in* WC Docket No. 06-122 (Jun. 7, 2010) (“*Qwest Comments*”).

³ *Id.* at 3.

criterion, there would be no need for the multi-pronged criteria deployed by the Commission to determine the extent to which IP services should be regulated).⁴ At the same time, the lack of clarity and the need for guidance can be readily inferred from – are, indeed, spelled out in – InterCall’s pleading.⁵

MeetingOne submits that its service is not subject to the *InterCall Order*. But if the Commission disagrees, no plausible argument has been articulated for enforcing the *InterCall Order* retroactively. In the face of uncertainty, MeetingOne has stepped forward of its own accord to ascertain the scope of its obligations. In light of the broad agreement on the need for guidance, it should not have its business obliterated by the imposition of retroactive payment obligations. Rather, any such obligations should apply prospectively from the date of the Commission’s order.

I. The InterCall Order Is Not Clear

Qwest speaks persuasively to the question of clarity, or rather the lack of it: “the *InterCall Order* did not address whether audio conferencing services or other conferencing services provided from an IP platform constitute telecommunications services” and “the plain language of the *InterCall Order* is at most silent regarding USF contribution obligations for IP-based audio conferencing services.”⁶ As for InterCall, while it argues that the Order does apply to MeetingOne’s service, it does not display any conviction in the clarity of that proposition. To the contrary, InterCall states that “it is critical that the Bureau provide clear guidance on what services are – and are not –

⁴ *InterCall Comments* at 7.

⁵ *Id.* at 1-2.

⁶ *Qwest Comments* at 2-3.

subject to USF contributions” and “urges the Bureau swiftly to clarify providers’ contribution obligations.”⁷ These pleas for guidance are in effect admissions that guidance is necessary. Moreover, the *InterCall Order*’s lack of clarity on the issue is illustrated by InterCall’s attempt to marshal other precedent – the *AT&T IP-in-the-Middle Order*,⁸ in aid of the proposition that MeetingOne is subject to USF obligations.

II. The InterCall Order Does Not Apply to MeetingOne’s Service

Notably, InterCall recognizes that MeetingOne’s architecture is different from its own.⁹ First, InterCall discounts the import of the Commission’s clear statement that the order applies only to those “similarly situated” to InterCall. InterCall cites selectively a snippet from the Order – the phrase “with respect to all audio bridging service providers, regardless of whether the service is provided on a stand-alone or an integrated basis.”¹⁰ But the question of a stand-alone service versus an integrated service is not at issue here. As to that issue, MeetingOne does not dispute (and does not need to dispute) that the stand-alone status of a conferencing service is not enough by itself to extricate a service from the ambit of *InterCall*. InterCall’s time division multiplexing service is doubtless subject to *InterCall* whether it is provided on a stand-alone or vertically integrated basis. But to be subject to *InterCall* the service still needs to be similarly situated to that provided by InterCall. The Commission brings together both of these concepts – that the

⁷ *InterCall Comments* at 1-2.

⁸ *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97, 19 FCC Rcd. 7457 (2004) (“*AT&T IP-in-the-Middle Order*”)

⁹ *InterCall Comments* at 4 (“Other than the use of IP technology, however, MeetingOne’s services mirror that of traditional audio bridging services.”).

¹⁰ *Id.* at 2 (citing *InterCall Order* at ¶25).

service needs to be similarly situated and that all similarly situated services are included, no matter if they are integrated or stand-alone, in the very next paragraph: “all similarly-situated providers, i.e., stand-alone teleconferencing providers as well as integrated teleconferencing providers, are, at a minimum, providers of telecommunications for the purposes of contributing to the universal service fund.”¹¹

Second, InterCall appears to focus exclusively on the end use of the service. As InterCall puts it,

[L]ike traditional audio bridging services, MeetingOne’s services enable end users to access the bridge from ordinary telephones by dialing an ordinary PSTN toll-free number. The end user then interacts with a conference bridge, which enables the user to communicate with other participants and to obtain additional services such as call recording, in a similar fashion as other audio bridging services.¹²

While the end use is relevant to the analyses the Commission has applied, it is not dispositive under any of the relevant formulations. In the *AT&T IP-in-the-Middle Order*, the Commission established a standard that considered both functional and technological aspects of the service under consideration. Specifically, the order applied to an interexchange service that “(1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology.”¹³ End use is only

¹¹ *InterCall Order* at ¶26. MeetingOne also notes that in its comments InterCall implies that MeetingOne’s letter to USAC was related to USAC’s mandated outreach efforts, *see InterCall Comments* at 3; however, MeetingOne was never contacted by USAC about the decision, and, upon learning of the decision in 2009, actually approached USAC for guidance on how the order should be interpreted, *see Ex Parte of MeetingOne.com Corp.*, *filed in WC Docket No. 06-122*, at 1 (filed Jun. 11, 2010).

¹² *InterCall Comments* at 4-5.

¹³ *AT&T IP-in-the-Middle Order* at ¶1.

part of this standard. Similarly, in the *Interconnected VoIP Services Order*, the Commission considered the end use of a particular service as well as the technology used to provide the service.¹⁴ In that order, the Commission applied USF obligations only to VoIP services that “(1) enable real-time, two-way voice communications; (2) require a broadband connection from the user’s location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from *and* terminate calls to the PSTN.”¹⁵ If the end use were the only criterion, all VoIP providers that enabled “real-time, two-way voice communications” and the ability “to receive calls from and terminate calls to the PSTN” would have been subjected to USF contributions.

MeetingOne’s service does not meet these standards because, among other things it does not touch the PSTN.¹⁶ Rather, an IP gateway, such as Qwest, receives calls from the PSTN, translates them into IP packets and deposits them on MeetingOne’s network.¹⁷ MeetingOne in turn reconfigures and processes the packets, carries them over its Ethernet network and combines them with other IP packets associated with the specific conference.¹⁸

Unable to demonstrate convincingly that MeetingOne’s architecture meets the criteria established in the *InterCall Order*, InterCall attempts to force MeetingOne’s

¹⁴ *Universal Service Contribution Methodology*, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, 21 FCC Rcd. 7518, at ¶36 (2006) (“*Interconnected VoIP Services Order*”).

¹⁵ *Id.* at ¶15.

¹⁶ *Request* at 3-5, 11.

¹⁷ *Id.* at 3-4.

¹⁸ *Id.*

technology into the fact pattern established in the *AT&T IP-in-the-Middle Order*.¹⁹ But, to state it simply, MeetingOne's service is not IP-in-the-middle; it is IP-only. Nor is it rendered IP-in-the-middle by virtue of the fact that it may be used in connection with non-IP services that it does not provide. Otherwise, every IP service could be viewed as a hybrid IP-telecommunications service because of its connection, however tenuous, with a telecommunications service provided by others.

III. MeetingOne's Circumstances Are Unusual

Holding that the *InterCall Order* does not apply to MeetingOne's service will not open the floodgates of contributors seeking to recharacterize their revenue as InterCall prophesies.²⁰ MeetingOne is not aware of other audio conference service providers that use the same IP-only architecture that MeetingOne uses. MeetingOne understands that most, if not all, audio conferencing systems rely on time division multiplexing ("TDM") based conferencing technology and are connected to the PSTN via standard circuits, such as T1 fiber optic circuits or digital signal level 3 cables ("DS3"). Unlike MeetingOne's system, the only way for a user on such a system to connect to the conference bridge is through the PSTN.²¹ Therefore, the Commission will not create a competitive imbalance amongst audio bridging service providers that are similarly situated to InterCall if it were to hold that MeetingOne is not subject to USF contributions.

¹⁹ *InterCall Comments* at 5-6.

²⁰ *Id.* at 7-8.

²¹ *See Request* at 4.

IV. At Most, the Commission’s Decision Should Be Applied Prospectively

While InterCall states that MeetingOne’s request “involves a more typical interpretation of a prior Commission order,” and therefore does not warrant the same prospective treatment applied in the *InterCall Order*,²² it finds itself having to rely on two different Commission precedents in support of the view, which does not in fact suggest straightforward interpretation of *InterCall*. Oddly, while acknowledging explicitly the “critical” need for clarity, InterCall also argues that MeetingOne’s obligations should be effective retroactively. But the lack of clarity is inconsistent with such a draconian penalty. The uncertainty surrounding the status of MeetingOne’s service, recognized by both Qwest (explicitly)²³ and InterCall (indirectly),²⁴ warrants prospective application of any USF contribution requirements.

V. Conclusion

For these reasons, MeetingOne respectfully requests prompt action on its *Request* reversing USAC’s decision requiring MeetingOne to directly contribute to the USF, or alternatively, reversing USAC’s decision to apply retroactive liability plus penalties and interest and applying any such liability prospectively from the date of the Commission’s order.

²² *InterCall Comments* at 9.

²³ *Qwest Comments* at 4 (noting that the Commission’s case-by-case approach combined with its varied approach to IP-enable services and other regulatory issues that remain before the Commission has created uncertainty in how IP-based services should be treated under the USF regime).

²⁴ *InterCall Comments* at 2 (urging “the Bureau swiftly to clarify providers’ contribution obligations”).

