

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Universal Service Contribution Methodology
Request for Review of a Decision of the
Universal Service Administrator by:
MeetingOne.com Corp.
WC Docket No. 06-122

ORDER

Adopted: November 3, 2011

Released: November 3, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a request filed by MeetingOne.com Corp. (MeetingOne). MeetingOne seeks review of a decision by the Universal Service Administrative Company (USAC) finding that the Internet Protocol (IP) audio bridging services offered by MeetingOne are subject to federal universal service fund (USF or the Fund) reporting and contribution obligations. As discussed more fully below, we find that the services that MeetingOne provides are substantially equivalent to the audio bridging services described in the InterCall Order and MeetingOne's use of IP technology in the provision of that service does not alter our determination that MeetingOne's service is telecommunications subject to direct USF reporting and contribution obligations. We also find that prospective-only application of MeetingOne's direct USF contribution obligations in connection with its provision of audio bridging services is not warranted because such services have been on notice since the InterCall Order that they are, at minimum, providers of telecommunications for purposes of contributing to the USF.

II. BACKGROUND

A. The Act and the Commission's Rules and Requirements

2. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. Section 254(d) further provides that any other provider of interstate telecommunications may be required to contribute "to the

1 MeetingOne.com Corp. Request for Review of Universal Service Administrator Decision, WC Docket No. 06-122 (filed May 3, 2010) (Request for Review). We dismiss as moot MeetingOne's Petition for Stay. MeetingOne.com Corp. Petition to Stay Decision Pending Commission Review, WC Docket No. 06-122 (filed Aug. 19, 2010) (Petition to Stay).

2 Request for Review at 3.

3 See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator, CC Docket No. 96-45, Order, 23 FCC Rcd 10731 (2008) (InterCall Order).

4 47 U.S.C. § 254(d).

preservation and advancement of universal service.”⁵ To this end, the Commission has determined that any entity that provides interstate telecommunications to the public for a fee must contribute to the Fund.⁶ The Commission further directed that contributions should be based on contributors’ interstate and international end-user telecommunications revenues.⁷

3. Although the Commission has declined to exempt from contribution any broad classes of telecommunications providers, not all providers of interstate telecommunications contribute directly to the Fund under the current end-user system.⁸ The Commission generally does not require wholesale carriers to contribute directly to the Fund because these carriers do not earn revenues directly from end users.⁹ Instead, the reseller that provides the service to the end user, and thereby earns end-user revenues, contributes directly to the USF.¹⁰

4. In the *Universal Service Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to use to compute their USF contributions.¹¹ In the instructions to the Telecommunications Reporting Worksheet adopted in that order, the Commission provided additional details to contributors to promote compliance with the USF contribution requirements.¹² Over the years, as the Commission has made changes and further clarified contribution obligations, the Form 499 instructions have been revised to reflect those decisions,¹³ as well as other administratively necessary changes.¹⁴ Consistent with these periodic updates, in 2002 the FCC Form 499-A and 499-Q instructions

⁵ *Id.* Pursuant to section 254(d) of the Act, the Commission has determined that the public interest requires certain other providers of interstate telecommunications to contribute to the USF. 47 U.S.C. § 254(d); *see, e.g., Universal Service Contribution Methodology et al.*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Contribution Methodology Order*) (requiring interconnected voice over Internet Protocol (VoIP) providers to contribute to the universal service fund because they are providers of interstate telecommunications).

⁶ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9179, para. 787 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

⁷ *Id.* at 9171, para. 772; 47 C.F.R. § 54.706.

⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 9179, para. 787.

⁹ *Id.* at 9207, para. 846.

¹⁰ *Id.*

¹¹ *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Universal Service Second Order on Reconsideration*).

¹² *Id.* at 18498-513 (Appendix A, Universal Service Worksheet FCC Form 457). The FCC Form 457 was the precursor to the FCC Form 499. *See 1998 Biennial Regulatory Review--Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602 (1999) (consolidating the requirements of the FCC Form 457 with other regulatory forms and creating the Telecommunications Reporting Worksheet, FCC Form 499). Entities report their revenues for USF contribution purposes using the Telecommunications Reporting Worksheets (FCC Form 499-A and Form 499-Q). The FCC Form 499-A is filed annually, and the FCC Form 499-Q is filed quarterly.

¹³ For example, in 2002, the Commission revised the interim wireless safe harbor to increase the contribution requirement from 15 to 28.5 percent of a wireless carrier’s end-user telecommunications services revenues and amended the instructions to reflect this increase. *See Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24965, para. 21 (2002); 2003 FCC Form 499-A Instructions at 18.

¹⁴ The Wireline Competition Bureau, formerly the Common Carrier Bureau (Bureau), has delegated authority to revise the Forms 499 and accompanying instructions to ensure “sound and efficient administration of the universal service programs.” *See Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18442, para. 81 (“Because it is difficult to determine in advance precisely the information that will be needed to administer the new

were updated to, among other things, specifically include toll teleconferencing as one of the illustrative examples of telecommunications that are subject to direct USF contributions.¹⁵

5. *InterCall Order*. In June 2008, the Commission released the *InterCall Order*, which clarified that audio bridging services are equivalent to toll teleconferencing services, and providers of such services must contribute directly to the USF based on their end-user revenues from these services.¹⁶ The Commission, however, found a lack of clarity regarding the direct USF contribution obligation of stand-alone audio bridging service providers, and determined that any direct contribution requirement for stand-alone audio bridging providers should apply prospectively only, beginning in the fourth quarter of 2008.¹⁷ The Commission also directed USAC to conduct targeted outreach efforts to all providers of audio bridging services (stand-alone and integrated) in order to assist such providers with coming into compliance with USF reporting and contribution obligations.¹⁸ Shortly after release of the *InterCall Order*, the Wireline Competition Bureau also issued a public notice to raise public awareness that stand-alone and integrated audio bridging service providers must directly report their revenues beginning with the 2008 August FCC Form 499-Q.¹⁹

B. Petition for Review

6. MeetingOne provides stand-alone audio conferencing services to its customers. A MeetingOne customer initiates a conference call by dialing a toll free number that MeetingOne obtains from a wholesale telecommunications carrier. The call is transmitted to the underlying carrier's IP gateway, converted into IP format and sent to MeetingOne's facilities to complete the conference call and permit the end user to access the conference bridge. Return communications from the conference bridge are sent in IP format to the underlying carrier's IP gateway, which converts the packets to analog and terminates the call to the customer.²⁰

7. In October 2009, MeetingOne sought confirmation from USAC that MeetingOne did not have a direct USF contribution obligation and was thus not required to file FCC Forms 499.²¹ MeetingOne argued, inter alia, that its IP audio bridging service is technologically different than the audio bridging services provided by *InterCall*, and that MeetingOne is therefore not a similarly situated audio bridging service provider subject to the *InterCall Order*.²² On March 3, 2010, USAC rejected

universal service programs, the [Common Carrier] Bureau will have delegated authority to waive, reduce, or eliminate contributor reporting requirements that may prove unnecessary. The Bureau also will have delegated authority to require any additional contributor reporting requirements necessary to the sound and efficient administration of the universal service programs.”). Consistent with this authority, the Bureau revises the Telecommunications Reporting Worksheet Instructions to provide guidance for complying with existing rules and requirements.

¹⁵ See 2002 FCC Form 499-A Instructions at 20.

¹⁶ *InterCall Order*, 23 FCC Rcd at 10731, para. 1.

¹⁷ *Id.* at 10738, para. 24. As noted in the *InterCall Order*, integrated audio-bridging providers were already contributing directly to the USF because “they are local exchange carriers, interexchange carriers, or interconnected voice over Internet protocol providers, all of which have been found by the Commission to have direct USF contribution obligations.” *Id.* at para. 23, n62. Conversely, “stand alone” providers (prior to the *InterCall Order*) viewed themselves and end uses of the transmission services they purchased from the underlying facilities-based carriers. *Id.*

¹⁸ *Id.* at para. 26.

¹⁹ See *Audio Bridging Service Providers to Begin Filing FCC Form 499-Q on Aug. 1, 2008*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 11043 (Wireline Comp. Bur. 2008) (*Audio Bridging Service Public Notice*).

²⁰ Request for Review at 3-4, Attach. 2-3.

²¹ *Id.* at Attach. 1.

²² *Id.*

MeetingOne's arguments and concluded that MeetingOne's audio bridging service was subject to direct USF contribution requirements.²³ USAC directed MeetingOne to file FCC Forms 499-A and 499-Q, and to directly contribute to the USF retroactively beginning with fourth quarter 2008 revenues.²⁴

8. MeetingOne requests that the Commission review USAC's decision, and declare that MeetingOne's audio bridging service is not subject to direct USF contribution obligations.²⁵ Alternatively, MeetingOne argues that there was significant uncertainty surrounding its service and requests that any direct USF reporting and contribution obligations apply prospectively only.²⁶

III. DISCUSSION

9. As discussed in detail below, we deny MeetingOne's request for review. In so doing, we find the audio bridging services provided by MeetingOne are telecommunications subject to direct USF contribution obligations as clarified in the *InterCall Order*. We also find that prospective-only application of MeetingOne's direct USF reporting and contribution obligations in connection with its provision of audio bridging services is not warranted.

10. The *InterCall Order* clarified that both stand-alone and integrated audio bridging service providers have a direct USF contribution obligation.²⁷ The Commission determined that a uniform application of USF contribution obligations to all audio bridging service providers will promote the public interest by establishing a level playing field and encouraging open competition among providers of audio bridging services.²⁸ Like *InterCall*, MeetingOne's service allows end users to transmit a call (using telephone lines), to a point specified by the user (the conference bridge), without change in form or content of the information as sent and received (voice transmission).²⁹ Like the audio bridging services at issue in the *InterCall Order*, MeetingOne's services enable end users to access the bridge by dialing a toll-free number, allows the end user to interact with the conference bridge and to participate in a conference call with other callers.³⁰ As discussed below, we conclude that MeetingOne's IP audio conference services are assessable telecommunications for USF contribution purposes.

11. MeetingOne attempts to distinguish its services from those in the *InterCall Order* because it states that its services are provided exclusively over the Internet and do not directly touch or use telephone lines or the public switched telephone network (PSTN).³¹ MeetingOne argues that because its services use IP technology to transmit calls, its services are materially different than other audio bridging services, and are in fact information services under the Act and Commission precedent.³² We find that MeetingOne's audio conferencing services are telecommunications subject to direct USF reporting and contribution obligations. First, MeetingOne's audio bridging service is functionally identical to the service at issue in the *InterCall Order*. End users of both services access the provider's platform by dialing a toll free number that allows the end user to participate in a conference call.

²³ *Id.*

²⁴ *Id.*

²⁵ Request for Review at 9.

²⁶ *Id.*

²⁷ *InterCall Order*, 23 FCC Rcd at 10739, para. 25.

²⁸ *Id.*

²⁹ *InterCall Order*, 23 FCC Rcd at 10733-35, para. 11.

³⁰ Request for Review at 3.

³¹ *Id.* at 2-5.

³² *Id.* at 9-11 (citing, 47 USC § 153(2); *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd. 7290 (2006) (*Prepaid Calling Card Order*)).

MeetingOne would have us distinguish its service from the assessable service in the *InterCall Order* because MeetingOne employs IP technology to provide part of its service to the end user.

12. We conclude that MeetingOne's use of IP technology in the provision of the audio conferencing services does not alter our determination that MeetingOne's service is telecommunications subject to direct USF reporting and contribution obligations. The Commission seven years ago addressed the issue of the use of IP technology for transmitting a voice call in the *IP-in-the-Middle Order*, finding that AT&T's phone-to-phone telephony services were properly classified as telecommunications services even though AT&T employed IP technology in the middle of the call path.³³ As described in the *IP-in-the-Middle Order*, AT&T's services were initiated and terminated in the same manner as a traditional interexchange call.³⁴ Only the use of IP technology to transport the call over AT&T's Internet backbone differentiated AT&T's technology from a traditional circuit-switched call.³⁵ As a result, the Commission found that AT&T's use of IP technology resulted in no net protocol conversion and provided no enhanced functionality to the end user, and therefore the services were properly classified as telecommunications.³⁶ Similarly, MeetingOne's callers place a call from a traditional phone to a toll-free number; the calls are converted into IP format by MeetingOne's underlying carrier for interaction with MeetingOne's conference bridges, and the calls are converted out of IP and delivered to the other participants on the conference call over the PSTN.³⁷ MeetingOne's offerings, just like AT&T's service, use IP technology only in the middle of its service, and though routed using different technology than that of a traditional telephone conferencing call, are functionally identical to the services at issue in the *InterCall Order*. We therefore conclude that MeetingOne's use of IP technology warrants the same result – the underlying services constitute assessable telecommunications.³⁸

13. MeetingOne also tries to distinguish its services from those at issue in the *InterCall Order* by arguing that the PSTN is not a necessary component of its audio conferencing technology, stating that its audio bridging services also have the capability of supporting direct session initiation protocol-based (computer-to-computer) connections.³⁹ MeetingOne, however, admits that it does not yet offer this service.⁴⁰ Because MeetingOne does not actually offer computer-to-computer audio conferencing, we decline to address whether this service offering is subject to USF obligations.

14. Finally, MeetingOne argues that its audio bridging service is an information service — and not a telecommunications service — because it provides customers the ability to record their conference calls and retrieve them for review at a future time.⁴¹ As the Commission found in the

³³ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, 19 FCC Rcd 7457 (2004) (*IP-in-the-Middle Order*).

³⁴ *Id.* at 7457, para. 1.

³⁵ *Id.* at 7465, para. 12.

³⁶ *Id.* See also *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21958, para. 106 (1997) ("no net" protocol conversion services constitute telecommunications services, rather than information services); *Prepaid Calling Card Order*, 21 FCC Rcd. at 7297, para. 20 (the use of IP transport in the provision of a prepaid calling card service does not convert that service from a telecommunications service to an information service).

³⁷ Request for Review at 3-4, Attach. 2-3.

³⁸ *IP-in-the-Middle Order*, 19 FCC Rcd at 7465, para. 12. See *Federal-State Joint Board on Universal Service, Appeal of Administrator's Decision, Radiant Telecom, Inc.*, Order, 22 FCC Rcd 11811, 11813, para. 8 (Wireline Comp. Bureau 2007).

³⁹ Request for Review at 14.

⁴⁰ *Id.* at 15.

⁴¹ *Id.* at 10.

InterCall Order, such additional features are not sufficient to convert the offering into an information service.⁴² In summary, MeetingOne's service is functionally identical to the service at issue in the *InterCall Order* and, consistent with Commission precedent, its use of IP technology in the middle of its offering does not alter our finding that MeetingOne must make direct contributions to the USF based on revenues derived from this service.

15. If we find that the audio bridging services provided by the company are telecommunications, MeetingOne asserts that it should not be subject to retroactive USF contributions because "MeetingOne reasonably determined in good faith" that it was not providing a stand-alone audio bridging service, as defined in the *InterCall Order*.⁴³ We conclude that prospective-only application of MeetingOne's direct USF reporting and contribution obligations in connection with its provision of audio bridging services is not warranted in this case. Although adjudicatory decisions are generally applied retroactively,⁴⁴ prospective-only application may be appropriate if retroactive application would result in manifest injustice.⁴⁵ We conclude that nothing in the record supports a finding of manifest injustice in the instant matter. The industry has been on notice since at least the *IP-In-The-Middle Order* that the use of IP technology to transport a call does not transform the call into an information service. Similarly, the industry has been on notice at least since the *InterCall Order* that audio bridging service providers have a direct USF contribution obligation.⁴⁶ Further, as noted previously, shortly after the *InterCall Order* was released, the Bureau issued a public notice to raise awareness in the industry that audio bridging carriers were required to file directly with USAC as of August 1, 2008.⁴⁷ In the *InterCall Order*, due to perceived lack of clarity by the industry, the Commission granted prospective application, beginning with fourth quarter 2008 revenues, of the requirement for stand-alone audio bridging service providers to directly contribute to USF, and declined to apply the requirement retroactively.⁴⁸ Here, we find no such lack of clarity. In fact, we find that MeetingOne's universal service obligations were clear under the precedent set by the *InterCall* and *IP-in-the-Middle Orders* and, as such, MeetingOne is required to contribute to the Fund beginning with its fourth quarter 2008 revenues. MeetingOne does not identify any unique circumstances that would support a finding of manifest injustice in the absence of prospective-only application of our findings in this case.

IV. CONCLUSION

16. For the reasons discussed above, we find that that the audio bridging services provided by MeetingOne are telecommunications subject to direct USF contribution obligations. We also find that prospective-only application of MeetingOne's direct USF reporting and contribution obligations in connection with its provision of audio bridging services is not warranted. We therefore deny MeetingOne's Request for Review.

⁴² *InterCall Order*, 23 FCC Rcd at 10735, paras. 12-13. See *Prepaid Calling Card Order*, 21 FCC Rcd at 7295, para. 15.

⁴³ Request for Review at 18.

⁴⁴ *Verizon Telephone Cos. v. FCC*, 269 F.3d 1098, 1109 (D.C. Cir. 2001) (*Verizon*). See *PSC of Colo. v. FERC*, 91 F.3d 1478, 1488 (D.C. Cir. 1996); *Health Ins. Ass'n of America v. Shalala*, 23 F.3d 412, 424 (D.C. Cir. 1994); *Williams Natural Gas Co. v. FERC*, 3 F.3d 1544, 1554 (D.C. Cir. 1993).

⁴⁵ *Verizon*, 269 F.3d at 1109. See *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1081 (D.C. Cir. 1987) (en banc); *Consolidated Freightways v. NLRB*, 892 F.2d 1052, 1058 (D.C. Cir. 1989).

⁴⁶ *InterCall Order*, 23 FCC Rcd at 10739, para. 26.

⁴⁷ *Audio Bridging Service Public Notice*.

⁴⁸ *InterCall Order*, 23 FCC Rcd at 10738, para. 24

V. ORDERING CLAUSES

17. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and delegated under sections 0.91, 0.291 and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722, the request for review filed by MeetingOne, Inc. IS DENIED.

18. IT IS FURTHER ORDERED that the petition to stay filed by MeetingOne, Inc. IS DISMISSED AS MOOT.

19. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau