

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

In the Matter of )  
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Request for Review by InterCall, Inc. of Decision ) CC Docket No. 96-45  
of Universal Service Administrator )  
 )

ORDER

Adopted: June 27, 2008

Released: June 30, 2008

By the Commission:

I. INTRODUCTION

1. In this order, we deny in part and grant in part a request for review filed by InterCall, Inc. (InterCall) of a Universal Service Administrative Company (USAC) decision finding that the audio bridging services offered by InterCall are “toll teleconferencing” services and that InterCall must contribute directly to the universal service fund (USF) based on revenues from these services.<sup>1</sup> As discussed more fully below, the audio bridging services InterCall provides are equivalent to teleconferencing services and are “telecommunications” under the Telecommunications Act of 1996 (1996 Act) and the *Universal Service First Report and Order*.<sup>2</sup> Providers of these services must contribute directly to the USF based on revenues from these services; therefore, we deny InterCall’s request to reverse USAC’s decision in this respect. We, however, grant InterCall’s request and reverse USAC’s decision requiring InterCall to contribute based on past revenues. Instead, InterCall must contribute directly to the USF beginning as of the calendar quarter immediately following the next scheduled FCC Form 499-Q filing after the release date of this order. We further direct USAC to ensure that all similarly situated audio bridging service providers contribute directly to the USF beginning as of this same time frame.

II. BACKGROUND

2. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that “[e]very 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.”<sup>3</sup> Section 254(d) further

<sup>1</sup> Request for Review by InterCall, Inc. of Decision of the Universal Service Administrator, CC Docket No. 96-45, (filed Feb. 1, 2008) (InterCall Request for Review).

<sup>2</sup> See 47 U.S.C. § 153(43); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service First Report and Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *aff’d in part, rev’d in part, remanded in part sub nom, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000).

<sup>3</sup> 47 U.S.C. § 254(d).

provides that “[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”<sup>4</sup> To this end, the Commission has determined that private service providers that provide interstate telecommunications to others for a fee must contribute, based on interstate and international end-user telecommunications revenues, to the USF.<sup>5</sup> The Commission also recognized that “[b]asing contributions on end-user revenues . . . will relieve wholesale carriers from contributing directly to the support mechanisms” because these carrier’s carriers do not earn revenues directly from end-users.<sup>6</sup> Instead, the reseller that provides the service to the end user and thereby earns end-user revenues must contribute directly to the USF.<sup>7</sup>

3. In the *Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to use to compute their USF contributions.<sup>8</sup> In instructions to the FCC Form 499-A and 499-Q contribution forms adopted in that order, the Commission provided additional details to contributors to promote compliance with the program’s requirements.<sup>9</sup> Over the years, as the Commission has made changes and further clarified contribution obligations, the form instructions have been revised to reflect those decisions,<sup>10</sup> as well as other administratively necessary changes.<sup>11</sup>

4. Consistent with its periodic updates, the Common Carrier Bureau (Bureau), in 2002, revised the FCC Form 499-A and 499-Q instructions.<sup>12</sup> As part of that process, the Bureau specifically included toll teleconferencing as one of the illustrative examples of telecommunications that were subject to direct USF contributions.<sup>13</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9183-84, para. 795. The Commission also requires certain other providers of interstate telecommunications to contribute to the USF. *See, e.g., 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, 21 FCC Rcd 7518 (2006) (requiring interconnected voice over Internet protocol providers to contribute to the USF) (*2006 Interim Contribution Methodology Order*).

<sup>6</sup> *Id.* at 9207, paras. 846-47.

<sup>7</sup> *Id.*

<sup>8</sup> *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) (*Second Order on Reconsideration*).

<sup>9</sup> *Id.* at 18498-513, Appendix A. The FCC Form 499 is the worksheet on which entities report their revenues for USF contribution purposes. The FCC Form 499-A is filed annually, and the FCC Form 499-Q is filed quarterly.

<sup>10</sup> 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); *see also* 2003 FCC Form 499-A, Telecommunications Reporting Worksheet at 18 (*2003 Telecommunications Reporting Worksheet Instructions*).

<sup>11</sup> *See 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 universal service programs, the 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.”).

<sup>12</sup> The Common Carrier Bureau is now the Wireline Competition Bureau. The term “Bureau” in this order refers to the Common Carrier Bureau prior to the change, and to the Wireline Competition Bureau after the change.

<sup>13</sup> *See* 2002 FCC Form 499-A, Telecommunications Reporting Worksheet at 18 (*2002 Telecommunications Reporting Worksheet Instructions*).

5. In 2007, USAC initiated an audit of InterCall. As part of this audit, InterCall entered into discussions with USAC concerning the proper treatment of revenues from audio bridging services.<sup>14</sup> On January 15, 2008, USAC issued a decision finding, among other things, that the audio bridging services provided by InterCall are toll teleconferencing services, and are, therefore, subject to direct USF contribution obligations.<sup>15</sup> As a result, USAC required InterCall to file past FCC Form 499s as well as Forms 499-Q and 499-A on a going forward basis.<sup>16</sup>

6. On February 1, 2008, InterCall filed a request for review of the InterCall USAC Decision, asserting that stand-alone audio bridging service providers are not required to contribute directly to the USF, and on February 5, 2008, InterCall requested a stay of the InterCall USAC Decision.<sup>17</sup> InterCall contends that USAC acted outside the scope of its authority in violation of section 54.702(c) of the Commission's rules, which requires USAC to seek guidance from the Commission where the Act or the Commission's rules are not clear or do not address a particular situation.<sup>18</sup> InterCall also asserts that its audio bridging service is an information service and it is not obligated to directly contribute to the USF.<sup>19</sup> InterCall argues that, even if audio bridging services are considered telecommunications, InterCall and other stand-alone audio bridging service providers are not subject to common carrier regulations and are thus not subject to the mandatory contribution obligations contained in section 254(d) of the Act.<sup>20</sup> Rather, InterCall asserts, they fall into the category of "other providers of telecommunications," which can only be subject to a direct USF contribution obligation upon a showing that their inclusion is in the public interest.<sup>21</sup> InterCall relies on the Commission's *Qwest v. Farmers Order* to argue that providers of conferencing services are end users of telecommunications and are not liable for direct USF contributions.<sup>22</sup>

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<sup>14</sup> See InterCall Request for Review at 5-6.

<sup>15</sup> See Letter from USAC to Steven A. Augustino, Esq., Kelley, Drye and Warren LLP, at 1 (dated Jan. 15, 2008) (InterCall USAC Decision).

<sup>16</sup> See *id.*

<sup>17</sup> See InterCall Request for Review at 2-4, 16; InterCall, Inc.'s Petition for Stay of the Decision of the Universal Service Administrative Company, CC Docket No. 96-45, at 12 (filed Feb. 5, 2008) (InterCall Petition for Stay). The Bureau sought comment on InterCall's request for review of USAC's decision and its request for a stay of the decision. *Comment Sought on InterCall Inc.'s Request for Review of a Decision by the Universal Service Administrative Company and Petition for Stay*, CC Docket No. 96-45, Public Notice, DA 08-371 (Wireline Comp. Bur., Feb. 14, 2008). Seven parties filed comments and five parties filed replies. A list of commenters and replies are attached in the Appendix. On March 19, 2008, the Bureau issued a letter to USAC directing it to hold in abeyance for 90 days its decision concerning the USF contribution obligations of InterCall. Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, to Scott Barash, Universal Service Administrative Company, DA 08-602 (Mar. 19, 2008). On June 19, 2008, the Bureau extended the temporary abeyance until July 1, 2008, pending further Commission action. Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, to Scott Barash, Universal Service Administrative Company, DA 08-1447 (June 19, 2008). The temporary abeyance was based on the unique circumstances presented, and did not announce any shift in policy regarding the general USAC principle of "pay and dispute," which requires appellants to pay disputed universal service contributions while their appeal is pending. See <http://www.universalservice.org/fund-administration/contributors/file-appeal/> (retrieved March 12, 2008). USAC's "pay and dispute" policy is critical to the stability and sufficiency of the USF because it ensures that contributors pay invoices even when they are in dispute.

<sup>18</sup> 47 C.F.R. § 54.702(c).

<sup>19</sup> InterCall Request for Review at 16-17.

<sup>20</sup> See InterCall Request for Review at 12; 47 U.S.C. § 254(d).

<sup>21</sup> 47 U.S.C. § 254(d).

<sup>22</sup> InterCall Request for Review at 14-15 (citing *Qwest Communications Corp. v. Farmers and Merchants Mutual Telephone*, File No. EB-07-MD-001, Memorandum Opinion and Order, 22 FCC Rcd 17973 (2007) (*Qwest v. Farmers Order*); *modified on recon.*, 23 FCC Rcd 1615 (2008) (*Qwest Order on Reconsideration*)).

### III. DISCUSSION

7. In this order, we deny in part and grant in part the InterCall Request for Review, as detailed below. We find that the audio bridging services provided by InterCall are telecommunications. Although the record does not permit a clear determination of whether InterCall provides telecommunications on a common carrier or private carrier basis, we find that in either case InterCall must contribute directly to the USF. To the extent that InterCall provides telecommunications on a non-common carrier basis, we find that InterCall is operating as a private service provider, which the Commission required under its permissive authority to contribute directly to the USF in the *Universal Service First Report and Order*.<sup>23</sup> To the extent that InterCall provides telecommunications on a common carrier basis, we find that InterCall is providing a telecommunications service and must, therefore, directly contribute to the USF pursuant to the mandatory contribution requirement of section 254(d) of the Act.<sup>24</sup> Consequently, as a provider of telecommunications, InterCall has a direct contribution obligation and is required to file FCC Forms 499-A and 499-Q.<sup>25</sup>

8. We find, however, that it was unclear to InterCall and to the industry that stand-alone audio bridging providers have a direct USF contribution obligation. Based on the record before us, we require that InterCall report its revenues and directly contribute to the USF based on these telecommunications revenues on a going-forward basis. The record in this proceeding demonstrates an industry-wide understanding and practice of stand-alone audio bridging providers indirectly contributing to the USF through universal service contributions assessed on them by their underlying providers.<sup>26</sup> Due to this lack of clarity regarding stand-alone audio bridging providers' direct contribution obligation, we reverse USAC's decision requiring InterCall to file FCC Forms 499-A and 499-Q for past periods. Given the unique circumstances, we grant InterCall's request that USAC's decision be applied on a going-forward basis.<sup>27</sup>

9. Finally, we direct USAC to conduct outreach to both stand-alone audio bridging providers and integrated teleconferencing service providers within thirty (30) calendar days of the effective date of this order, to ensure that such providers properly contribute directly to the USF based on their interstate and international end user revenues derived from providing these services.

#### A. InterCall as a Provider of Telecommunications is Required to Contribute to USF

10. *Telecommunications*. The Act defines telecommunications as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."<sup>28</sup> As InterCall explains in its request for review, it markets audio, web, and video conferencing services that allow multiple end users to communicate and collaborate with each other using telephone lines through an audio bridge, which links multiple callers together.<sup>29</sup>

11. We find that the service described by InterCall is telecommunications. As the Commission has recognized, "the heart of 'telecommunications' is transmission."<sup>30</sup> InterCall's service allows end

<sup>23</sup> See *id.*; *Universal Service First Report and Order*, 12 FCC Rcd at 9183-84, para. 795.

<sup>24</sup> See 47 U.S.C. § 254(d).

<sup>25</sup> Due to the temporary abeyance of the USAC decision, and the decision reached in this order, we dismiss as moot the InterCall Petition for Stay. See *supra* n.17.

<sup>26</sup> See Canopco Comments at 3; Genesys Comments at 4-5; Premiere Comments at 2, 5; Qwest Comments at 2; TeleSpan Comments at 5; InterCall Reply Comments at 3-4, 12.

<sup>27</sup> We also do not require other stand-alone audio bridging service providers to file past FCC Form 499-As.

<sup>28</sup> 47 U.S.C. § 153(43).

<sup>29</sup> See InterCall Request for Review at 4.

<sup>30</sup> *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7539, para. 41.

users to transmit a call (using telephone lines), to a point specified by the user (the conference bridge), without change in the form or content of the information as sent and received (voice transmission).<sup>31</sup> The existence of a bridge that users dial into does not alter this classification. Rather, the purpose and function of the bridge is simply to facilitate the routing of ordinary telephone calls. As the Commission has previously determined in performing similar analysis, this results in “no more than the creation of the transmission channel chosen by the customer.”<sup>32</sup>

12. In addition, the Commission has previously found that the features offered in conjunction with InterCall’s service are not “integrated” and thus do not change a service from telecommunications to an information service.<sup>33</sup> These features perform validation functions, collect billing and participant information, and enable the participants to record, delete playback, mute and unmute, and access operator assistance.<sup>34</sup> Providers that offer their services for a fee must collect billing and other information to properly invoice their customers for the services they have provided. Such information is commonly gathered in the form of minutes of use. The Commission has determined that “data concerning a customer’s usage may be gathered, stored, processed and provided to a customer in the form of an itemized bill or a traffic management study as part of basic service” and this does not convert the service to an information service.<sup>35</sup>

13. Similarly, the other features offered in conjunction with InterCall’s conferencing service, such as muting, recording, erasing, and accessing operator services, do not alter the fundamental character of InterCall’s telecommunications offering so that the entire offering becomes an information service.<sup>36</sup> Consistent with the decision in the *Prepaid Calling Card Order*, these separate capabilities are part of a package in which the customer can still conduct its conference call with or without accessing these features.<sup>37</sup> These features, therefore, are not sufficiently integrated into the offering to convert the offering into an information service.<sup>38</sup> For these reasons, we find that, in providing is audio bridging service, InterCall is providing telecommunications, and the service is not an information service.

14. *Provider of telecommunications.* Contrary to InterCall’s assertions, as a provider of telecommunications, Commission precedent requires InterCall and similarly-situated stand-alone audio bridging service providers to contribute directly to the USF.

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<sup>31</sup> As AT&T states in its comments, AT&T and other carriers “sell InterCall transport that InterCall then resells with its audio bridging service to its teleconferencing customers.” See AT&T Comments at 3; see also Canopco Comments at 4; Genesys Comments at 2; Premiere Global Comments at 1-2; TeleSpan Comments at 4.

<sup>32</sup> See *North American Telecommunications Association Petition for Declaratory Ruling Under §64.702 of the Commission’s Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, ENF 84-2, Memorandum Opinion and Order, 101 FCC 2d 349, 363, para. 31 (1985) (*NATA Order*) (describing services that are adjuncts to basic service and determining that Automatic Route Selection is an adjunct to basic service because it simply creates the transmission channel chosen by the customer).

<sup>33</sup> See *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7295-96, paras. 14-15 (2006) (*Prepaid Calling Card Order*) (finding that there must be functional integration between the information service features and the telecommunications service).

<sup>34</sup> *Id.*

<sup>35</sup> See *NATA Order*, 101 FCC 2d at 360, para. 26.

<sup>36</sup> *Prepaid Calling Card Order*, 21 FCC Rcd at 7295, para. 15.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* We do not make a finding here regarding whether the ancillary features enumerated by InterCall are information services. There is no need to make this determination, because, as stated above, these services are not integrated into InterCall’s underlying provision of telecommunications.

15. InterCall argues that stand-alone audio bridging service providers are not, and have never been, treated as common carriers by the Commission.<sup>39</sup> Instead, InterCall contends that, if the Commission finds that InterCall is providing telecommunications, it would only have an obligation to contribute under the Commission's permissive authority in section 254(d) of the Act as an "other provider of telecommunications."<sup>40</sup> InterCall asserts that, before a direct contribution obligation can be imposed on InterCall under the Commission's permissive authority, the Commission would have to initiate a proceeding to determine whether the public interest would be served by requiring stand-alone audio bridging service providers to contribute directly.<sup>41</sup> InterCall is incorrect.

16. In the *Universal Service First Report and Order*, the Commission addressed under what authority entities would be required to contribute directly to the USF.<sup>42</sup> In concurring with the Federal-State Joint Board on Universal Service's (Joint Board) recommendation, the Commission found that only common carriers would be required to contribute under the mandatory contribution obligation of section 254(d) of the Act.<sup>43</sup>

17. The Commission, however, exercised its permissive authority to subject to direct USF contribution requirements providers that offer telecommunications to others for a fee on a private contractual or private carriage basis.<sup>44</sup> The Commission reasoned that, having all entities that provide telecommunications to others for a fee contribute would ensure that the mechanism operated in a competitively-neutral manner, a requirement adopted by the Commission in the *Universal Service First Report and Order*.<sup>45</sup> InterCall does not dispute that its services are provided for a fee,<sup>46</sup> and, because InterCall is offering telecommunications, InterCall is required to directly contribute to the USF pursuant to the Commission's decision in the *Universal Service First Report and Order*.<sup>47</sup> Indeed, all similarly situated stand-alone audio bridging service providers that offer their services to others for a fee are also providers of telecommunications and subject to a direct USF contribution obligation.

18. Although we base our finding on the Commission's prior exercise of its section 254(d) permissive authority with respect to private service providers, we do so, in part, because the record does not clearly indicate whether InterCall provides telecommunications on a private carriage or common carriage basis. If InterCall provides telecommunications on a common carrier basis, InterCall is providing a telecommunications service and, therefore, would be required to directly contribute to the USF pursuant to the mandatory contribution requirement of section 254(d) of the Act.<sup>48</sup>

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<sup>39</sup> InterCall Request for Review at 12-13.

<sup>40</sup> *Id.* at 24.

<sup>41</sup> *Id.* at 24-25.

<sup>42</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9183-84, para. 795.

<sup>43</sup> *Id.* at 9178-79, para. 786. In reviewing what it meant to be a common carrier, the Commission found that common carriers hold themselves out to serve the public indiscriminately, noting that "precedent further holds that a carrier will not be a common carrier 'where its practice is to make individualized decisions in particular cases whether and on what terms to serve.'" *See id.* at 9178, para. 785.

<sup>44</sup> *See id.* at 9183 para. 795 ("Whether a business decides to sell telecommunications services to others on a common carrier or private contractual basis or through a separate corporate entity should not determine contribution obligations, because in either event the entity offers telecommunications to others for a fee").

<sup>45</sup> *Id.*

<sup>46</sup> *See* <http://www.platinumn.com/raindance.html> (last visited on May 5, 2008) (listing a sample of the fees charged to use InterCall's conferencing services based on per minute usage and number of participants. The website also notes that "there is virtually no additional cost to add web interface to conference call for visual presentations").

<sup>47</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9183-84, para. 795.

<sup>48</sup> *See* 47 U.S.C. § 254(d).

19. We disagree with InterCall's claims that the Commission has found that conference calling providers are end users for purposes of USF contribution obligations.<sup>49</sup> In *Jefferson Telephone Company*, the Commission stated that a service provider constituted an end user when it provided a free "chat-line" service that randomly paired callers with one another.<sup>50</sup> Specifically, the Commission found that International Audiotext Networks (IAN) was not a provider of telecommunications, but an "information provider" and an end user customer of Jefferson Telephone Company based on the chat-line service it provided.<sup>51</sup> Unlike IAN's service, InterCall describes its service as one that brings together specific participants to talk with one another through the use of its audio bridge.<sup>52</sup> InterCall's service, therefore, does not randomly pair callers in a free chat-line environment. As we stated above, the service provided by InterCall meets the definition of telecommunications, which requires that the transmission be routed "between or among points specified by the user."<sup>53</sup>

20. Additionally, contrary to InterCall's assertion, the *Call Blocking Decision* did not conclude that conference calling providers are end users.<sup>54</sup> Rather, in that decision the Bureau was reciting the underlying facts "as alleged by the carriers,"<sup>55</sup> and, in the passage cited by InterCall, the Bureau did not make a finding that these providers were end users.

21. Similarly, InterCall's attempts to cast the decision in the *Qwest v. Farmers Order* as evidence that the Commission has determined that conference calling companies are end users is misplaced. As in the *Call Blocking Decision*, the Commission was assuming certain facts in the case as the parties presented them. Specifically, the Commission's statement that conference calling companies are end users was premised on Farmer's assertion that this was how they were defined in Farmer's tariff.<sup>56</sup> Moreover, as Verizon notes, the holding in the *Qwest v. Farmers Order* is subject to reconsideration on the factual issue of whether the conference calling companies were end users under Farmer's tariffs.<sup>57</sup> We, therefore, conclude that the prior precedent cited by InterCall does not support a finding that InterCall is an end user for purposes of direct USF contribution obligations. Rather, InterCall and other similarly-situated audio bridging service providers are providers of telecommunications, and, as such, have an obligation to directly contribute to USF.<sup>58</sup>

22. We note that a company may be classified as an end user due to its role in obtaining telecommunications services.<sup>59</sup> However, that classification in the context of purchasing

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<sup>49</sup> See InterCall Request for Review at 14-16 (citing *AT&T v. Jefferson Telephone Company*, 16 FCC Rcd 16130, 16131 (2001) (*Jefferson Telephone Company*); *Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd 11629 (Wireline Comp. Bur. 2007) (*Call Blocking Decision*); *Qwest v. Farmers Order*, 22 FCC Rcd 17973). We note that the cases cited by InterCall arise in the access charge, rather than universal service, context. This order pertains solely to universal service contribution obligations. Nothing in this order is intended to address issues relating to access charge tariffs or other types of intercarrier compensation.

<sup>50</sup> *Jefferson Telephone Company*, 16 FCC Rcd at 16131, para. 3.

<sup>51</sup> *Id.*

<sup>52</sup> InterCall Request for Review at 5.

<sup>53</sup> 47 U.S.C. § 153(43).

<sup>54</sup> InterCall Request for Review at 16; *Call Blocking Decision*, 22 FCC Rcd 11629.

<sup>55</sup> See *Call Blocking Decision*, 22 FCC Rcd at 11629, para. 2.

<sup>56</sup> *Qwest v. Farmers Order*, 22 FCC Rcd at 17987, para. 35.

<sup>57</sup> Verizon Comments at 5; see *Qwest Order on Reconsideration*, 23 FCC Rcd 1615.

<sup>58</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9183, para. 795.

<sup>59</sup> See e.g., 2008 FCC Form 499-A, Telecommunications Reporting Worksheet at 8 (government and broadcast treated as end users because they do not contribute directly). *De minimis* carriers/providers are end users that would otherwise be subject to direct contribution if their revenues were higher.

telecommunications does not, in turn, preclude the provider from also being a telecommunications provider in terms of its USF contribution obligations.<sup>60</sup> We therefore find that stand-alone audio bridging service providers are providers of telecommunications that are required to contribute directly to the USF.<sup>61</sup>

## B. Implementation

23. The record before us indicates that it was unclear to InterCall, as well as to the industry, that stand-alone providers of audio bridging services have a direct USF contribution obligation. InterCall's practice of contributing indirectly rather than directly to the USF has been consistent with other similarly-situated stand-alone audio bridging providers.<sup>62</sup> The record, moreover, reflects that wholesale providers of services to stand-alone audio bridging service providers have treated these providers as end users and have assessed universal service contribution fees on them on this basis.<sup>63</sup> Further, as InterCall notes, actions (or the lack thereof) in certain Commission proceedings may have contributed to the industry's unclear understanding of stand-alone audio bridging providers' direct contribution obligation.<sup>64</sup> For instance, InterCall notes that the Commission engaged in enforcement investigations without issuing concrete findings on the USF contribution obligation of similarly-situated conference calling providers, and issued orders that assumed as fact the terms of underlying carriers' tariffs regarding the end user status of stand-alone audio bridging providers.<sup>65</sup>

24. In part because of the lack of clarity regarding the direct contribution obligations of stand-alone audio bridging service providers that these actions may have created, we find that prospective application of our decision is warranted. We note that there is consensus among the commenters on InterCall's petition that any direct contribution requirement for stand-alone audio bringing providers should apply to future filings.<sup>66</sup> We agree with the consensus of the commenters that, in this unique

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<sup>60</sup> See *Second Order on Reconsideration*, 12 FCC Rcd at 18507, App. A; see also *2002 Telecommunications Reporting Worksheet Instructions* at 18.

<sup>61</sup> See AT&T Comments at 2; Verizon Comments at 2-5. Verizon asserts that, as a provider of telecommunications services, InterCall has an obligation to directly contribute to the fund, like any other reseller. Verizon Comments at 8.

<sup>62</sup> See Canopco Comments at 3 (arguing that audio bridging service providers have never been required to file FCC Form 499s as direct contributors to the fund); see also Genesys Comments at 4-5; Premiere Comments at 2, 5; TeleSpan Comments at 5; InterCall Reply Comments at 3-4, 12. As InterCall notes in its reply comments, according to a survey conducted by Wainhouse Research, LLC, of the 40 conference calling providers it surveyed, 29 did not contribute directly to the fund. The eleven that do contribute directly do so because they have an independent basis for contributing, i.e., 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. See InterCall Reply Comments at 5-6; see also *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7636, para. 34. Wainhouse Research is an independent market research firm focusing on the conference calling industry. See <http://www.wainhouse.com/about.html> (visited Mar. 12, 2008). Additionally, as noted in their comments, a number of the "stand-alone" providers view themselves as end users of the toll free 8XX services they purchase from the underlying facilities-based carriers. See Canopco Comments at 3; see also Genesys at 4; Premiere Comments at 2, 4; TeleSpan Comments at 5-6 (asserting that audio bridging providers are end users.) Alternatively, these teleconferencing providers assert that they are not common carriers and have never been regulated as such, and are therefore not "mandatory contributors" to the fund. See *id.*

<sup>63</sup> See AT&T Comments at 1, 3-4.

<sup>64</sup> See InterCall Request for Review at 22.

<sup>65</sup> *Id.* at 22-23, 14-16 (citing *Qwest v. Farmers Order*).

<sup>66</sup> See Genesys Comments at 14-16; Premiere Comments at 6; Qwest Comments at 2; TeleSpan Comments at 6 (arguing that the Commission should act only prospectively with regards to stand-alone audio bridging service providers' contribution obligations).



instance, requiring direct contributions on a going-forward basis will best serve the interests of all parties to this proceeding.<sup>67</sup> Therefore, we reverse USAC's decision requiring InterCall to file FCC Forms 499-A and 499-Q for past periods, and instead require InterCall to directly contribute to the USF as of the calendar quarter immediately following the next regularly scheduled FCC Form 499-Q filing after the release date of this order. To this end, InterCall must properly include its end-user telecommunications revenues on all future FCC Form 499-Q and FCC Form 499-A filings for the corresponding time period.

25. Today we make clear that providers of these services have a direct contribution obligation. We further find 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.<sup>68</sup> We therefore direct USAC to implement the findings in this order with respect to all audio bridging service providers, regardless of whether the service is provided on a stand-alone or an integrated basis. We find that, to the extent audio bridging and teleconferencing service providers have end user revenues sufficient for direct contribution obligations, USAC should instruct the providers to register for an FCC Filer ID, and begin submitting quarterly and annual FCC Form 499s consistent with this decision.

26. We reiterate that 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, and we direct USAC to ensure that such providers properly reflect the revenues from these telecommunications in all future FCC Form 499-Q and FCC Form 499-A filings. Finally, we direct USAC to conduct targeted outreach efforts to all providers of audio bridging services (stand-alone and integrated) within thirty (30) calendar days of this order to assist such providers in obtaining FCC Filer IDs and filing FCC Forms 499-Q and FCC Forms 499-A, consistent with the Commission's requirements.

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<sup>67</sup> See Qwest Comment at 2 (arguing in support of InterCall's position that the Commission should address the issue such that any decision is made only on a prospective basis and applies across the industry); see also InterCall Reply Comments at 3; Premiere Reply Comments at 1 (noting the broad consensus among commenters that the Commission has never classified providers of audio bridging services as "telecommunications carriers").

<sup>68</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9183, para. 795; see also InterCall Request for Review at 25 (stating that the uniform application of rules to all providers would maintain the competitive environment in which audio bridging providers operate); AT&T Comments at 7 (advocating for equal application of the rules to eliminate competitive disadvantage to certain providers of audio bridging services); Letter from Kathleen Grillo, Vice President Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, Att. at 3 (filed Apr. 25, 2008) (arguing that a level playing field going forward is the most important outcome).

**IV. ORDERING CLAUSES**

27. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 54.719 and 54.722 of the Commission's rules, 47 C.F.R. §§ 54.719 and 54.722, that InterCall's Request for Review IS DENIED IN PART, and GRANTED IN PART.

28. IT IS FURTHER ORDERED that InterCall's Petition for Stay is DISMISSED.

29. IT IS FURTHER ORDERED, pursuant to sections 1.103(a) and 1.4(b)(2) of the Commission's rules, 47 C.F.R. §§ 1.103(a), 1.4(b)(2), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX****Comments Filed:**

AT&T Inc. (AT&T)  
Canopco, Inc. (U.S.) (Canopco)  
Genesys SA (Genesys)  
Premiere Global Services, Inc. (Premiere)  
Qwest Communications International Inc. (Qwest)  
TeleSpan Publishing Corporation (TeleSpan)  
Verizon

**Reply Comments Filed:**

Genesys SA (Genesys)  
Global Conference Partners (GCP)  
InterCall, Inc. (InterCall)  
Premiere Global Services, Inc. (Premiere)  
Verizon