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Audio Bridging = Telecommunications

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The FCC has upheld a ruling by the Universal Service Administrative Company (USAC) that (a) audio bridging services are the equivalent of toll teleconferencing and (b) providers of those services must therefore contribute to the Universal Service Fund (USF). However, the FCC reversed USAC's attempt to collect USF contributions retroactively and held that the payment obligation will be prospective only.

The service provider in this case was InterCall, Inc., which provides an audio bridging service that allows customers to dial into a bridge and be connected to one another. InterCall argued that it provides an "information service" rather than a "telecommunications service," because its service includes: validation; collect billing; participant information; recording, erasing, and playback; mute and unmute; and access to operator assistance. Information service providers do not have to pay into the USF fund. The FCC held that all these features are separable from the basic service of routing ordinary voice telephone calls to connect participants, and bridging can be provided without any of the other features. Since the basic service of transmitting a phone call was included in the package, the service was deemed to be "telecommunications" rather than "information."

The Commission distinguished this situation from that of "chat-line" providers who also provide a kind of call bridging service by randomly pairing callers with each other. These chat-lines had previously been held *not* to be telecommunications services because chat-line callers do not choose with whom they will be connected, while audio bridging customers do make that choice. In other words, a chat-line includes the service of choosing participants in a conversation, while audio bridging involves only routing calls to the destination chosen by callers.

The FCC did not resolve the question of whether bridging is a common carrier or a private carrier service, as both constitute telecommunications provided for a fee, which brings them within the class of entities subject to the USF contribution obligation. InterCall's claim to be exempt from USF obligations because it is an "end user" of

telecommunications service rather than a telecommunications service provider was rejected on the ground that the fact that an entity may be an end user purchaser of services from another carrier does not preclude that entity from itself providing telecommunications services to the public.

We doubt that we have heard the last of this dispute, as audio bridging providers have previously escaped most FCC regulation and are not likely to take kindly to their new contribution obligation. The FCC also specifically declined to address whether carriers which provide services to audio bridging providers may assess access charges or insist on other types of intercarrier compensation. Further disputes are likely when these issues come to the forefront. In the meantime, carriers providing underlying transmission services to audio bridging providers should treat those providers as resellers and consider whether revenues from the transmission services should be deemed wholesale revenues rather than end user revenues for their own reporting purposes.

In view of its decision, the FCC directed USAC to undertake outreach efforts within 30 days to inform all audio bridging or teleconferencing providers, whether stand-alone or integrated, that they must now obtain FCC Filer IDs, file quarterly Forms 499Q and 499A, and make USF contributions based on their end user revenues after June 30, 2008.