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**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

To: The Commission

**REPLY COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY  
ASSOCIATION**

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The Telecommunications Industry Association (“TIA”) hereby submits its reply comments in response to the Commission’s public notice regarding two petitions seeking reconsideration and/or clarification<sup>1</sup> of its order in the above-captioned proceeding (the “InterCall Order”).<sup>2</sup> For the reasons outlined below, the Commission should clarify that it did not, within the context of an individual adjudicative proceeding, intend to modify long-standing FCC and court precedent on the tests used for classification of telecommunications and information services.

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<sup>1</sup> Comment Sought on Petitions for Reconsideration and Clarification of the Commission’s InterCall Order Filed by Global Conference Partners, A+ Conferencing Ltd., FreeConferencing Corporation, and The Conference Group, Public Notice, CC Docket No. 96-45, DA 08-1875 (rel. Aug. 8, 2008); Petition for Partial Reconsideration and Clarification of the InterCall Order of Global Conference Partners, CC Docket No. 96-45 (filed July 30, 2008); Petition for Reconsideration of A+ Conferencing, Ltd., Free Conferencing Corporation, and The Conference Group, CC Docket No. 96-45 (filed July 30, 2008) (collectively “Reconsideration Petitions”).

<sup>2</sup> *In the Matter of Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, FCC 08-160, Adopted: June 27, 2008, Rel: June 30, 2008 (the “InterCall Order”).

## **INTRODUCTION**

The Telecommunications Industry Association (TIA) represents the global information and communications technology (ICT) industry through standards development, advocacy, tradeshow, business opportunities, market intelligence and world-wide environmental regulatory analysis. With roots dating back to 1924, TIA enhances the business environment for broadband, mobile wireless, information technology, networks, cable, satellite and unified communications. Members' products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, government, the military, the environment and entertainment.

As companies that manufacture innovative information and communications technology equipment, TIA's members are greatly impacted by the regulatory distinctions correlated with telecommunications and information services. TIA is concerned that the broad language of the *InterCall Order* will be read to extend beyond the audio bridging services at issue in this proceeding to the entire information services and Internet voice service industry.

TIA requests that the Commission clarify that it did not intend to reclassify which services are regulated as information services and did not intend to adopt a new test for what constitutes an integrated information service. The Commission should not modify existing law and precedent used for such classifications, the regulatory certainty stemming from the Commission's decisions on these issues has resulted in a competitive market essential to broadband deployment.

## **DISCUSSION**

**I. THE COMMISSION SHOULD CLARIFY THAT WITHIN THE CONTEXT OF AN INDIVIDUAL ADJUDICATION IT DID NOT INTEND TO RE-WRITE LONG-STANDING TEST GOVERNING THE CLASSIFICATION OF INFORMATION SERVICES**

Classifying a communication service as “telecommunications”<sup>3</sup> or an “information service”<sup>4</sup> is not only important but necessary due to the regulatory distinctions associated with each service. These differences range from pricing and interconnection rules to reporting requirements to Universal Service Fund (USF) contribution and distribution amounts. As a result, classification as “telecommunications” versus “information” affects a company’s entire business plan.

Although both terms are defined in the Telecommunications Act of 1996 (the “Act”), it can be difficult to determine which definition applies to any particular service or technology. The classification becomes even more complicated when evaluating “bundled” services, which offer integrated telecommunications and information service capabilities. With the growing popularity of Internet-based communications, such services are becoming increasingly prevalent in today’s communications marketplace.

However, both the Commission and the Supreme Court have addressed this issue, and, as a result, tests exist that allow the FCC to make the appropriate determination. The FCC has observed the relevant question in classifying a bundled service is whether an entity is providing a “single information service with communications and computing components” or “two distinct services, one of which is a telecommunications service.”<sup>5</sup>

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<sup>3</sup> Telecommunications is defined 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,” 47 U.S.C. §153(43).

<sup>4</sup> Information service is defined as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...” 47 U.S.C. §153(20).

<sup>5</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, Report to Congress, CC Docket No. 96-45 13 FCC Rcd 11530 Rel.: April 10, 1998 (“Universal Service Report to Congress”).

In the *Brand X* decision, the Supreme Court made a similar distinction, stating that the key question is whether the transmission capability is “sufficiently integrated” with the information service component “to make it reasonable to describe the two as a single, integrated offering.”<sup>6</sup>

While TIA will not comment on whether the particular service in this case – an audio bridging service offered by InterCall – is a telecommunications or information service, the Commission’s analysis of InterCall’s service has important regulatory, policy, and business implications. In the Order the FCC finds, as it has in past proceedings, that “the heart of ‘telecommunications’ is transmission,” and explains that “InterCall’s service allows 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>7</sup> Therefore, the Order finds InterCall’s audio bridging service to be “telecommunications.”<sup>8</sup> Further, the Order finds that other features, such as collection of billing and participant information, record, delete playback, mute and unmute, and access to operator assistance, are not “integrated” with InterCall’s service and do not change it to an information service. The determination these features are not “integrated” is based on the fact that the customer can conduct a conference call “with or without accessing these features.”<sup>9</sup>

## **II. DUE TO THE BROAD LANGUAGE, THE ORDER COULD BE INTERPRETED TO EXTEND BEYOND THE SERVICES PROVIDED BY INTERCALL, REGARDLESS OF WHETHER THIS WAS THE COMMISSION’S INTENT.**

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<sup>6</sup> *National Cable & Telecomm. Ass’n. v. Brand X Internet Services*, 125 S. Ct. 2688, 2704 (2005) (“Brand X”).

<sup>7</sup> *InterCall Order* at ¶11.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at ¶13.

As already stated, TIA does not address here the proper classification of InterCall’s audio bridging service. However, the language used by the Commission in its interpretation potentially implicates the entire Internet communications industry: The Order’s broad language could be read to modify the long-standing tests, summarized earlier in these comments, by concluding that the ability to access information service features that accompany a telecommunications service is irrelevant. This conclusion would be inconsistent with FCC and Supreme Court precedent, and TIA asks the Commission to clarify that it did not intend to supplant this body of law.

In its *Cable Modem Order* the Commission found that a “cable modem service...is an information service...regardless of whether subscribers use all of the functions provided as part of the service, such as email or web-hosting, and regardless of whether every cable modem service provider offers each function that could be included in the service.”<sup>10</sup> These services are not offered individually and should not be deemed to have separate legal status.<sup>11</sup> Each of these applications encompasses the capability for “generating acquiring, storing, transforming, processing, retrieving, or making available information via telecommunications,” and taken together they constitute an information service, as defined in the Act.<sup>12</sup>

In contrast, as stated earlier, the FCC classifies InterCall’s service as a telecommunications service regardless of whether a customer accesses features riding over the telecommunications transmission. Users often choose to use a service without taking advantage of additional features. For example, an Internet access subscriber may

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<sup>10</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, GN Docket No. 00-185, CS Docket No. 02-52, Adopted: March 14, 2002, Rel.: March 15, 2002, 17 FCC Rcd 4798, 4821 ¶38 (the “Cable Modem Order”).

<sup>11</sup> *Universal Service Report* at ¶75.

<sup>12</sup> Cable Modem Order at ¶38, *citing* 47 U.S.C. §153(20).

not utilize email, newsgroups, or webpage create functions, but this does not alter the classification of such as service as an information service. Further, the provider of such service has no control over which features a customer may or may not use.

The Order also does not apply solely to InterCall; the FCC applies USF requirements to “all similarly situated providers” including “private carriers” and “common carriers.” By extending a Title II requirement<sup>13</sup> to such providers, the FCC appears to be making the determination that they are providers of a telecommunications offering, a decision that impacts other providers of integrated services.<sup>14</sup> Due to the broad implications of such a decision, TIA asks that the FCC clarify that it did not intend create a new test for functional integration.

## **CONCLUSION**

As the Commission is well aware, the regulatory environment is a major factor in business and investment decisions and altering the method used to classify communications services will have a great impact on companies in this field. These tests are not only used by regulatory bodies and courts, but also provide regulatory certainty to providers and manufacturers of communications services and technologies. The Commission has recognized this impact in prior proceedings.

In the process of classifying wireline broadband Internet, the Commission stated that “broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market.”<sup>15</sup> The Commission’s decisions

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<sup>13</sup> 47 U.S.C. 254(d)

<sup>14</sup> In the InterCall Order the Commission for the first time explicitly states that stand-alone audio bridging service providers are providers of telecommunications that are required to contribute directly to USF, *InterCall Order* at ¶22.

<sup>15</sup> *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and NPRM, CC Docket No.02-33, Adopted: August 5, 2005, Rel.: Sept. 23, 2005.

classifying broadband Internet access as an integrated information service (whether it travels over cable, wireline, powerline, or wireless facilities) has allowed next-generation services to flourish in a deregulatory environment. The Commission has continually created a regulatory framework that has resulted in a variety of technologies, platforms, services, and applications. TIA urges the Commission to continue doing so by maintaining the current tests used for classification of information services that have been successfully used by companies to develop a vibrant, competitive communications marketplace.



