

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Cisco WebEx LLC Request for	)	WC Docket No. 06-122
Review of a Decision of the	)	
Universal Service Administrator	)	

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (“TIA”)¹ submits these comments in support of the Request for Review filed by Cisco WebEx (“WebEx”)² of the Universal Service Administrative Company (“USAC”) decision (“Decision”)³ misclassifying WebEx service as including a severable “telecommunications” component. The USAC Decision, if not reversed, would threaten investment and innovation in broadband services. That Decision is also inconsistent with the Communications Act of 1934, as amended (the “Communications Act”),⁴ and governing Federal Communications Commission (“Commission”) precedent. The Wireline

¹ TIA represents the global information and communications technology (“ICT”) industry through standards development, advocacy, trade shows, business opportunities, market intelligence and world-wide environmental regulatory analysis. For over 80 years, TIA has worked to expand access to information and communications technologies, including broadband, mobile wireless, cable, satellite, and unified communications networks. TIA members manufacture the equipment used for the deployment of broadband services, as well as the devices used by consumers to access these services.

² See Cisco WebEx, LLC, Request For Review of a Decision of the Universal Service Administrator (filed Apr. 8, 2013) (“Petition”); Public Notice, *Wireline Competition Bureau Seeks Comment on Cisco WebEx LLC Request for Review of a Decision by the Universal Service Administrative Company*, WC Docket No. 06-122, DA 13-717 (rel. Apr. 15, 2013) (“Notice”).

³ Letter from Dennis Fischer, Senior Internal Auditor, USAC, to Bill Hodowski, Cisco WebEx LLC (Feb 7, 2013), attached to Petition.

⁴ 47 U.S.C. § 151 *et seq.*

Competition Bureau should therefore reverse USAC's decision and conclude that the WebEx revenues at issue should have been classified as unassessable "information service" revenues.

BACKGROUND

WebEx offers an online collaboration tool that allows users in different locations to simulate an in-person meeting, jointly creating, and modifying documents and/or visual presentations. In order to create an effective simulation of a face-to-face meeting, WebEx offers a wide array of information service capabilities. These include document sharing, allowing participants to jointly view and modify documents; videoconferencing; remote keyboard and mouse control; "chat" functions; and audio integration, which identifies the person speaking. WebEx also offers integration with instant messaging programs. Due to WebEx's seamless integration of these features into a single, fully integrated offering, which users can access through a telephone, computer, smartphone, tablet, or other device, users perceive each meeting as a single online collaborative event, not as a disjointed combination of features.⁵

These capabilities enable users in different locations to collaborate on work product by allowing them to discuss a document while viewing proposed edits to it in real time. The WebEx audio features thus are integral to and necessary for the document sharing and editing purposes of the service. WebEx accordingly is an integrated information service. Although WebEx customers *can* use the service to facilitate ordinary conference calls, it would be pointless for them to do so separate from the document collaboration functions, especially given that WebEx costs nearly twice as much as a pure teleconferencing service on a per-minute basis.⁶

⁵ See Petition at 1-3.

⁶ See *id.* at 6.

In the Decision on review, however, USAC concluded that WebEx is not an integrated information service. USAC instead found that WebEx’s audio features were “separable” from the document sharing and other features because participants can use third-party audio services with WebEx’s other features and can use the WebEx audio features without using the other features. USAC found that WebEx’s document-sharing and other advanced features did not alter the nature of participants’ voice communications using the audio features, which constitute a distinct and severable “telecommunications” offering. USAC also found that WebEx’s service was not integrated because customers are not required to utilize telecommunications to access the document sharing and other information service components.⁷ As discussed below, this conclusion threatens the development of broadband services and the ICT industry and contradicts the governing statute and the relevant precedent.

DISCUSSION

I. THE DECISION IGNORES CONGRESS’S DECISION TO DIFFERENTIATE BETWEEN “TELECOMMUNICATIONS” AND “INFORMATION SERVICES.”

Nearly 20 years ago, Congress recognized the foundational distinction between “telecommunications services” and “information services.” The Telecommunications Act of 1996 (“1996 Act”) defined “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,”⁸ and “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used.”⁹ In contrast, the

⁷ *Id.* at 6-7.

⁸ 47 U.S.C. § 153(43).

⁹ *Id.* at § 153(46).

1996 Act defined the term “information service” -- a class of services generally exempt from regulation -- to mean “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information *via telecommunications*.”¹⁰ Thus, all information services incorporate “telecommunications,” by definition. The statutory distinction lies not in the presence or absence of telecommunications components, but in the information-processing “capabilit[ies]” offered “via telecommunications.”

In distinguishing regulated telecommunications offerings from largely unregulated information services, Congress affirmatively opted to promote dynamism and innovation in the development of next-generation offerings. This distinction has ensured that new services combining transmission and processing are left free to develop in an environment driven entirely by customer preferences. The result has been a flourishing ICT sector that has driven employment and growth for decades.

The Commission has played a central role in effectuating Congress’s policy objectives. In the *Stevens Report*,¹¹ the Commission declined to identify distinct “telecommunications components” when transmission was provisioned as part of an information service offering “that constitutes a single service from the end user’s standpoint.”¹² Such a separation, the Commission recognized, would cause a portion of every information service to be classified as a telecommunications service, thereby collapsing the distinction erected in the 1996 Act.¹³ Rather,

¹⁰ *Id.* at § 153(24) (emphasis added).

¹¹ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) (“*Stevens Report*”).

¹² *Id.* at 11529-30 ¶ 58.

¹³ *Id.* at 11529 ¶ 57.

it made clear, the distinction turns on whether a customer receives “a single information service,” or whether “the customer is receiving two separate and distinct services.”¹⁴

The Commission elaborated on this analysis further when it considered the classification of cable modem broadband Internet access services. There, the Commission found that the classification “turns on the nature of the functions that the end user is offered,” “regardless of whether subscribers use all of the functions provided as part of the service. . . .”¹⁵ The Commission rejected suggestions that cable modem service be broken into distinct telecommunications and information service components, stating that “[a]s provided to the end user the telecommunications is part and parcel of cable modem service and is integral to its other capabilities.”¹⁶ The Supreme Court affirmed the Commission’s decision, holding that a service is an information service if the provider “offers” customers information service “capabilities” that are “inextricably intertwined” with telecommunications.¹⁷

By attempting to break the audio functions out from the rest of the WebEx service offering, USAC flouts this consistent line of precedent rejecting such disaggregation of telecommunications components from integrated information service offerings. WebEx is

¹⁴ *Id.* at 11530 ¶ 60.

¹⁵ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, 4822, 4823 ¶¶ 38, 39 (2002) (“*Cable Modem Order*”). See also *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, 14911 ¶ 105 (2005) (citing fact that customers “receive and pay for a single, functionally integrated service, not two distinct services”); *Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, 22 FCC Rcd 5901, 5912 ¶ 30 (2007) (transmission component not distinct when it is “not being offered as a stand-alone offering of transmission for a fee directly to the public”).

¹⁶ *Cable Modem Order*, 17 FCC Rcd at 4823 ¶ 39.

¹⁷ *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 978 (2005) (“*Brand X*”).

undeniably an information service -- *i.e.*, it relies on telecommunications, but only to facilitate the generation, acquisition, storage, transformation, processing, retrieval, utilization, and making available of information. The audio component and the other aspects of WebEx are not “separate and distinct services,”¹⁸ as demonstrated by the fact that the audio feature is not available except through a subscription to the overall WebEx service.¹⁹ Moreover, WebEx is “offered” to “the end user” as a single service, “regardless of whether subscribers use all of the [non-audio] functions provided as part of the service. . . .”²⁰ Finally, it would be almost impossible for users to try to edit a document jointly without being able to converse while editing the document.

Thus, WebEx’s audio features are as “inextricably intertwined” with, and “integral to,” the document sharing functions of WebEx as transmission is with respect to the information processing functions of cable modem service.²¹ USAC’s focus on the possibility of using the audio feature separately from the WebEx document sharing functions misunderstands the Commission’s precedent: A cable modem customer *could* use the service’s transmission function without any information processing capabilities,²² but that transmission is still “is part and parcel of” the overall service because it enables use of the information processing

¹⁸ *Stevens Report*, 13 FCC Rcd at 11530 ¶ 60.

¹⁹ Petition at 4.

²⁰ *Cable Modem Order*, 17 FCC Rcd at 4822, 4823 ¶¶ 38, 39.

²¹ *Brand X*, 545 U.S. at 978.

²² *Cable Modem Order*, 17 FCC Rcd at 4823 ¶ 39 & n.154.

functions.²³ Similarly, WebEx’s audio feature “is part and parcel of” WebEx because it enables the full use of the document sharing and other advanced features.

USAC’s misclassification of WebEx as a telecommunications offering offered alongside a distinct information service could seriously dampen innovation and investment in the ICT sector. If WebEx can be disaggregated and viewed as separate “telecommunications” and “information service” offerings, there is a substantial danger that other advanced offerings could easily be treated similarly, since they are all provided “via telecommunications.” This result would upset the framework set out by Congress, pushing still more offerings clearly not meant for Title II regulation into the “telecommunications” (and perhaps “telecommunications service”) categories. Such classification could stymie investment and innovation throughout the ICT sector, undermining the many advances made under the auspices of the 1996 Act. The Bureau should therefore reject USAC’s conclusions. It should, rather, promote continued progress within the sector by making clear that WebEx and similarly advanced offerings are integrated information services.

II. THE PRECEDENTS CITED BY USAC DO NOT SUPPORT ITS POSITION.

WebEx’s integrated information service contrasts sharply with the telephone calling services at issue in the prepaid calling card orders and *InterCall*, on which USAC heavily relies. The *Prepaid Calling Card Order* addressed a service that provided callers access to a menu with several options, including the placement of telephone calls and the accessing of stored information.²⁴ The Commission concluded that calls placed using prepaid cards were

²³ *Cable Modem Order*, 17 FCC Rcd at 4823 ¶ 39.

²⁴ *Regulation of Prepaid Calling Card Services*, 21 FCC Rcd 7290 (2006) (“*Prepaid Calling Card Order*”).

telecommunications services, notwithstanding the menu of choices.²⁵ The Commission found there that the other offerings were not integrated with the underlying calling capabilities, even if they were themselves “information services,” because “the customer *may use only one capability at a time* and the use of the telecommunications transmission capability is completely independent of the various other capabilities that the card makes available.”²⁶ Moreover, the cards were marketed primarily as telecommunications services.²⁷

WebEx could not be more different from the prepaid card precedent. The WebEx audio feature primarily serves the document collaboration function through simultaneous use of both the audio and document sharing features. The audio feature is “part and parcel of”²⁸ the collaboration service because simultaneous audio and document sharing functions are essential to effective collaboration. Indeed, data related to the audio feature, such as indicators noting who is speaking at any given moment, are integrated into the core offering through the “active talker” and “active speaker” on-screen interface functions, which USAC concedes are information services.²⁹

In the case of prepaid cards, the information services offered on the menu could not be used simultaneously with the calling services and thus were entirely separate from the cards’ telephone calling capability. As the Commission noted in a prior calling card order, “subscribers

²⁵ *Id.* at 7296 ¶ 15.

²⁶ *Id.* (emphasis added).

²⁷ *Id.*

²⁸ *Cable Modem Order*, 17 FCC Rcd at 4823 ¶ 39.

²⁹ Petition at 6, 15.

buy . . . calling cards to make telephone calls, not to listen to advertisements.”³⁰ In contrast, WebEx subscribers use the service to collaborate on document editing, not to hold conference calls. Indeed, WebEx’s pricing confirms that it is not offering a stand-alone audio bridging service, since a customer who uses WebEx purely for call bridging will pay nearly twice as much as he or she would pay using a service designed for bridging.

Similarly, *InterCall* involved a standard audio bridging service with related features designed “simply to facilitate the routing of ordinary telephone calls.”³¹ The Commission held that the additional functionalities -- including features enabling users to plan, manage, delete, mute and record telephone calls -- could not transform the audio bridging service into an information service.³² As discussed above, WebEx provides a service vastly different from an “ordinary telephone call[.]” Whereas *InterCall*’s service used additional features to promote its core “audio bridging” telecommunications functionalities, WebEx uses its audio feature to serve and enable the processing, storage, retrieval, and sharing of information provided by its fully integrated multimedia document collaboration tool, relying on a host of platforms and technologies. In other words, *InterCall* provided a telecommunications service with bells and whistles, while WebEx provides an information service with a telecommunications component. *InterCall* thus has no bearing here.

CONCLUSION

For the reasons stated herein, USAC’s classification of WebEx’s service contradicts long-standing Commission and judicial precedent. If applied to its logical conclusion, USAC’s

³⁰ *Regulation of Prepaid Calling Card Services*, 20 FCC Rcd 4826, 4833 ¶ 20 (2005).

³¹ *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, 23 FCC Rcd 10731, 10735 ¶ 11 (2008) (“*InterCall*”).

³² *Id.* at 10734-35 ¶¶ 11-13.

approach would eviscerate the statutory distinction between telecommunications and information services and ultimately lead to the classification of virtually all communications services as telecommunications, in whole or in part. Accordingly, the Bureau should reject USAC's findings and rationale and invalidate the Decision. Reversal of the Decision will promote further innovation and investment in broadband and other advanced services and will ensure that the treatment of information services implements Congressional intent and Commission precedent.

Respectfully submitted,

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