

September 13, 2016

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Cisco WebEx LLC Request for Review of a Decision of the Universal Service Administrator*, WC Docket No. 06-122

Dear Ms. Dortch:

On September 9, 2016, on behalf of Cisco WebEx LLC (“WebEx”), Jeffrey Campbell of Cisco, Yuxi Tian, and the undersigned of this firm, met with Howard Symons, William Dever, and Marcus Maher of the Office of General Counsel, in connection with WebEx’s Petition for Review of a Decision of the Universal Service Administrator.

WebEx is a collaboration service. WebEx allows users to engage in online meetings that seamlessly integrate video, audio, document and application sharing, editing, remote computer control, and other features to create an online meeting that duplicates the experience of an in-person meeting. WebEx explained that its service is a single, integrated information service, but that USAC nonetheless incorrectly viewed WebEx as offering two services: an information service and a separate audio conferencing service.

WebEx does not offer an audio conferencing service. WebEx, of course, does incorporate audio into its collaboration sessions, including allowing audio access to those sessions by dialing a traditional PSTN number. But WebEx does not sell a stand-alone audio conferencing service, and the audio services that customers buy from WebEx *cannot be used except as a part of a WebEx collaboration session*. WebEx cannot be said, therefore, to offer a separate audio service.

WebEx’s audio capabilities are likewise technically inseparable from its collaboration service. Critically, WebEx integrates *all* audio inputs—whether they come into the WebEx platform using a PSTN connection or a broadband connection—into the online meeting experience. A key feature of WebEx is its graphical user interface, which lists, by name, the participants in a session, and provides real-time information that includes who is speaking, available by video, and in control of the desktop.¹ WebEx derives information about who is speaking from all of the audio streams that come into the WebEx platform, regardless of origin,

¹ See Letter from Brita D. Strandberg, Counsel to Cisco WebEx LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-122 (filed Dec. 13, 2013).

and transforms that information into visual information for meeting participants. Similarly, information derived from the audio streams is used to detect, in real-time, the video image of the individual who is speaking, allowing that video to be highlighted in the online display. In other words, whether audio arrives at the WebEx platform through a PSTN or a data connection, WebEx transforms and integrates that audio *in the same way* into the collaboration session for the benefit of all participants. In addition, WebEx takes data from all sources—audio, video, desktop—and mixes that data to create a seamless collaboration session.

During the meeting, staff noted that it is possible for a participant to participate in a WebEx session only by telephone. WebEx explained that such functionality responds to customer demand, as this allows meetings to be accessible to the widest number of users in the widest number of circumstances. WebEx is nonetheless a single, integrated information service because, in the event that a user joins by phone only, WebEx incorporates information from that participant into the collaboration session where it becomes part of the visual display showing meeting attendees, who is speaking, and other meeting data. In addition, WebEx noted that users joining by smartphone or tablet frequently join the session using the WebEx app, reducing the incidence of “phone-only” participation.

In addition, such “phone-only” use is indistinguishable, as a technical and billing matter, from other minutes of audio use. When WebEx sells minutes of PSTN audio access (which it typically sells in fixed monthly buckets) it cannot know how those minutes will be used. Some minutes may be used by participants who call into the WebEx platform over the PSTN and join the collaboration session on their desktop, others may be used by participants that have the WebEx platform dial out to them, yet others may be used through the WebEx app, and still others may be used by participants that dial in using the PSTN without accessing the online portion of the meeting. Complicating matters, any one of these users could log into or out of the online portion of the meeting at any time. WebEx does not track (and has no reason to track) “phone-only” participation, and doing so would be technically difficult, as the WebEx platform incorporates audio information into the integrated session even for those participants that are “phone-only.” Similarly, WebEx’s rates for access minutes (which are significantly higher than rates for traditional audio conferencing) demonstrate that WebEx audio access minutes offer more than simple “phone-only” access—rather, the premium price paid for those minutes reflects the additional flexibility and functionality WebEx offers as part of its collaboration service.

USAC erred by ignoring both what WebEx offers its customers and the technical integration of its service. Instead, USAC incorrectly concluded that because WebEx prices its PSTN audio add-ons differently from its other audio options, those PSTN audio add-ons somehow constitute a separate service. But this is not the test under the statute or FCC precedent. The Commission’s analysis in the *Open Internet Order*² confirms this, as does the D.C. Circuit’s opinion in *United States Telecom Ass’n v. FCC*.³

² *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, 30 FCC Rcd. 5601 (2015) (“*Open Internet Order*”).

³ 825 F.3d 674 (D.C. Cir. 2016).

In the *Open Internet Order*, the Commission engaged in a detailed and fact-specific review of broadband Internet access service (“BIAS”) and concluded that BIAS is a telecommunications service because its “indispensable function” is “the connection link” to the Internet.⁴ A similar analysis of WebEx confirms that WebEx is a single, integrated information service.

First, the “indispensable function” of WebEx is to provide consumers with the ability to engage in collaboration sessions that integrate video, audio, screen sharing, application sharing, editing, remote computer control, document exchange and the like. WebEx does offer PSTN audio access as a feature of its collaboration service, but that feature is optional, and consumers are even free to use third-party services in place of WebEx’s optional audio access. In short, WebEx’s PSTN audio capabilities cannot be the “indispensable function” of WebEx because those capabilities are, in fact, *dispensable*.

Second, unlike BIAS, WebEx audio access does not provide users with a separate “connection link” that may be used independently of WebEx’s information service capabilities.⁵ The audio access at issue does not function without the underlying WebEx service and, in all cases, WebEx takes information from WebEx audio inputs—whether those inputs come in through the PSTN or otherwise—and integrates that information into the collaboration session.

The D.C. Circuit’s opinion in *United States Telecom Ass’n* again confirms that WebEx is an information service. There the Court affirmed the Commission’s *Open Internet Order* analysis, and, in particular, found that the Commission was correct to focus on evidence of “consumer perception” to reclassify BIAS as an information service, including whether there is a “stand-alone offering of telecommunications” and “offered service that, from the user’s perspective, transmits messages unadulterated by computer processing.”⁶

Applying this test, WebEx is plainly an information service. Its marketing focuses on its rich and varied information service capabilities, it does not offer a stand-alone telecommunications capability, and the messages transmitted by the user are, through computer processing, transformed and integrated into the collaboration session.

It is WebEx’s view, furthermore, that it would be useful for the industry to understand that it is possible, post-*Open Internet Order*, to offer information services, and that the inclusion of a telecommunications component in an integrated product does not always transform that component into a separate service. WebEx believes that it serves the public interest for

⁴ *Open Internet Order* ¶¶ 330, 371.

⁵ *Id.* ¶ 371.

⁶ *United States Telecom Ass’n*, at 697, 709 (“[I]n the present order, the Commission cited ample record evidence supporting its current view that consumers perceive a standalone offering of transmission [for BIAS].”).

Marlene H. Dortch
September 13, 2016
Page 4

information services like WebEx to be backwards compatible with the PSTN and to provide customers with flexibility to choose the options they prefer.

Finally, WebEx noted that because it views itself as an information service provider, it pays USF pass-through charges imposed by its underlying providers. WebEx does not now have the ability to divide the wholesale services it purchases into the two buckets (information service and resold telecommunications) into which USAC attempted to force WebEx's service. As a result, if WebEx were to have to pay USF directly, it would, as a practical matter, have to pay USF twice.

Please do not hesitate to contact me at (202) 730-1346, or bstrandberg@hwglaw.com, if you have questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'BDS', with a long horizontal line extending to the right.

Brita D. Strandberg
Counsel to Cisco WebEx LLC

cc: Meeting attendees