

August 3, 2015

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*, WCB Docket No. 06-122

Dear Ms. Dortch:

On July 30, 2015, on behalf of Cisco WebEx LLC (“WebEx”), Jeffrey Campbell of Cisco, along with the undersigned of this firm, met with Stephanie Weiner, Associate General Counsel, Marcus Maher, Assistant General Counsel, and Rick Mallen, Office of General Counsel, to discuss WebEx’s Petition for Review of a Decision of the Universal Service Administrator.

WebEx offers a suite of online collaboration services. WebEx services allow customers to engage in online video meetings, exchange documents, share desktop contents, share applications, and edit documents in real time. WebEx also includes audio capabilities, including the option to connect to a WebEx session using the PSTN. Customers are not required to purchase this additional capability, but may do so if it suits their needs. Notably, WebEx does not offer a stand-alone audio conferencing service.

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 noted that the uncertainty arising from USAC’s decision concerning WebEx’s 2009 revenues imposes ongoing costs on WebEx, and urged the Commission to address WebEx’s Petition.

WebEx explained that it is an information service under the reasoning of the *Open Internet Order*, just as it was under the Commission’s prior decisions.¹ The *Open Internet Order* engaged in a detailed and fact-specific review of broadband Internet access service (“BIAS”) and concluded on that basis that BIAS is a telecommunications service because its “indispensable function” is “the connection link” to the Internet.² This conclusion was grounded in a careful

¹See Reply Comments of Cisco WebEx LLC at 6-10, WCB Docket No. 06-122 (filed May 30, 2013).

² *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 330 (2015) (“*Open Internet Order*”).

examination of the marketing, consumer conduct, and technical characteristics of BIAS, and an application of the Commission's existing precedents to these facts.

A similar examination of WebEx shows that WebEx is an information service. As an initial matter, there is no dispute that WebEx's collaboration capabilities – screen sharing, application sharing, remote desktop control, video conferencing, and the like – are information services. Even USAC agrees on this point.³ USAC, however, incorrectly asserted that WebEx offers not a single information service, WebEx, but rather two services, WebEx and WebEx audio, pointing to WebEx's decision to charge separately for certain audio capabilities.

This business decision to offer varied pricing for an optional add-on capability does not transform WebEx from an information service into two separate services. Critically, the audio capabilities for which WebEx charges separately *cannot be used without WebEx*. WebEx audio is not, therefore, a separate or distinct offering. By contrast, the Commission in the *Open Internet Order* found that the connection link to the Internet included in BIAS could be used without the additional information services typically included with BIAS, and that technical severability was critical to the determination that the transmission element of BIAS is a distinct offering.⁴

WebEx's marketing demonstrates that WebEx is a single, integrated service. WebEx markets its service as a collaboration service; the WebEx home page, for example, shows users taking advantage of WebEx's screen sharing, mobile applications, and video and collaboration capabilities, not making old-fashioned phone calls.⁵ WebEx's audio pricing, which is nearly double that of traditional audio conferencing,⁶ confirms that WebEx offers and markets something more than telecommunications; by the same token, any customer that chooses to pay WebEx audio rates must expect to receive more than simple audio conferencing.

The technical integration of audio into WebEx likewise shows that WebEx is a single information service. WebEx converts information from WebEx audio streams (whether the audio end point is a phone, mobile application, or computer) into visual information that is shared as part of the collaboration screen. During the meeting, WebEx reviewed screenshots provided as part of its Dec. 13, 2013 ex parte filing, and detailed how audio information is translated into visual information and integrated into the WebEx collaboration session.⁷ WebEx explained, for example, that WebEx recognizes which participant in a collaboration session is speaking most loudly, and brings that participant's webcam image to the fore – and that WebEx constantly

³ *Cisco WebEx LLC Request for Review of a Decision of the Universal Service Administrator*, WCB Docket No. 06-122, Request for Review [hereinafter "WebEx Request"], Exhibit A at 12 (filed Apr. 8, 2013) ("USAC Audit Report").

⁴ *Open Internet Order* ¶ 371.

⁵ CISCO WEBEX WEB CONFERENCING, ONLINE MEETINGS, DESKTOP SHARING, VIDEO CONFERENCING, <http://www.webex.com/> (last visited Aug. 3, 2015).

⁶ See USAC Audit Report at 31; see also WebEx Request, Exhibit F (filed Apr. 8, 2013) ("Pricing Research Report").

⁷ See Letter from Brita Strandberg, Counsel to Cisco WebEx LLC, to Marlene H. Dortch, Secretary, FCC, WCB Docket No. 06-122 (filed Dec. 13, 2013).

adjusts which screen is in the forefront as various participants speak. WebEx also translates audio information into graphical information about participants, including their name, method of audio connection, whether they are speaking, whether their microphone is muted, and the like. By doing so, WebEx is “transforming, processing, retrieving, utilizing [and] making available information”⁸ and is an information service as that term is defined in the Communications Act.

WebEx noted that the transformation of audio information into elements of the on-screen collaboration session does not fall within the telecommunications management exception to the definition of an information service. The information that is extracted from WebEx audio streams is integrated into the WebEx collaboration screen; as noted above, even USAC concedes that this part of WebEx is an information service. Using and transforming information for use in an information service may conceivably be *information service* management, but it is certainly not telecommunications management.

Because WebEx audio is not separate from WebEx as either a technical or a marketing matter, it is not “sufficiently independent” of WebEx to be viewed as a separate service under the reasoning of the *Open Internet Order*.⁹ As noted above, WebEx is marketed as a single collaboration service, and its audio capabilities cannot be purchased or used without purchasing the core collaboration service. Similarly, WebEx audio inputs, whether from the PSTN, mobile applications, or the desktop, are transformed into visual information and incorporated into the collaboration screen, rendering audio inseparable as a technical matter from the core WebEx service. The only way in which audio is arguably separate from WebEx is pricing. That separate pricing, however, reflects WebEx’s commitment to provide customers with as much flexibility as possible in structuring their WebEx service. Separate pricing alone should not be enough to conclude that a service is separate, particularly when paired with the extensive factual record supporting treatment of WebEx as a single, integrated information service.

Returning to the Commission’s “indispensable function” test, the indispensable function of WebEx is collaboration. It is possible to buy and use WebEx without purchasing WebEx audio. Indeed, WebEx offers a variety of options for users to purchase audio, including from WebEx partners and unaffiliated third parties.¹⁰ Because WebEx audio is an optional feature, it cannot be WebEx’s “indispensable” function; instead, the core collaboration service that all WebEx purchasers obtain when they buy WebEx is WebEx’s “indispensable function.”¹¹

⁸ 47 U.S.C. § 153(24).

⁹ *Open Internet Order* ¶ 356.

¹⁰ See Letter from Brita Strandberg, Counsel to Cisco WebEx LLC, to Marlene H. Dortch, Secretary, FCC, at 2, WCB Docket No. 06-122 (filed Sept. 23, 2013) (“Sept. 23 Ex Parte”). Notably, users do not enjoy the same degree of audio integration when they purchase audio from entities other than WebEx.

¹¹ *Open Internet Order* ¶¶ 330, 350. In addition, customers can and do use WebEx without using audio; for example, WebEx permits users to enable technical support personnel to remotely control their computer without using an audio connection. WebEx also includes texting capabilities, so users may communicate by typing rather than speaking.

Finally, WebEx noted that because it views itself as an information service provider, it pays USF pass-through charges imposed by its underlying providers. Requiring WebEx to pay USF directly instead would likely have little impact on the Fund.¹²

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,

/s/ Brita D. Strandberg

Brita D. Strandberg
Counsel to Cisco WebEx LLC

cc: Meeting attendees

¹² See Letter from Brita Strandberg, Counsel to Cisco WebEx LLC, to Marlene H. Dortch, Secretary, FCC, at 2, WCB Docket No. 06-122 (filed Aug. 5, 2013); see also Sept. 23 Ex Parte at 3.