

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 GENERIC CONFERENCING, LLC

Generic Conferencing, LLC (“Generic Conferencing”) submits its Comments in response to the April 15, 2013 Public Notice released by the Federal Communications Commission (“Commission”).¹ These comments support the request by Cisco WebEx LLC (“Cisco”) for review of a decision by the Universal Service Administrative Company (“USAC”). Generic Conferencing agrees that USAC’s decision is inconsistent with FCC rules and precedent and should be overturned.

I. Generic Conferencing and Its Services

Since 2006, Generic Conferencing has provided web-based and audio conferencing services in the United States and over 20 other countries using Voice over Internet Protocol (“VoIP”) and open source software. In addition, Generic Conferencing provides distance learning services by providing hosting services for BigBlueButton open source software. This service enables schools to deliver a high-quality learning experience to students in remote locations and is easy to use as it requires only a web browser with Flash support and an Internet connection.

¹ See *Wireline Competition Bureau Seeks Comment on Cisco WebEx LLC Request for Review of a Decision by the Universal Service Administrative Company*, Public Notice, DA 13-717, WC Docket No. 06-122 (rel. April 15, 2013).

Generic Conferencing's distance learning service currently uses real-time voice conferencing, video conferencing, document sharing, group chat, desktop sharing, audio archiving, and plug-ins for integration with popular learning management systems and other content management systems. Most classes are offered remotely using one of two formats: (1) online classes where all participants are remote, and (2) hybrid classes where some participants are remote and some participants are physically co-located together, typically in a classroom with the course instructor.

Generic Conferencing's distance learning services provide a cost-effective means for teachers and students to expand the opportunities for learning a diverse number of subjects and provide new and challenging experiences for students that would otherwise be unavailable in their local community.

II. USAC Ignored FCC Precedent and Improperly Reclassified a Portion of Cisco's Service as Telecommunications

A. Cisco's WebEx product is a fully integrated service and not merely a price bundle of separate services.

Contrary to Commission rules and precedent, USAC concluded that the WebEx audio features are "separable" from the data services and thus could be separated like different services provided together in a price bundle.² This is a fundamental misunderstanding and incorrect application of the Commission's decisions on both integrated services and audio bridging. The Commission repeatedly has held that when the transmission portion of the service is combined with the information processing to form a "functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission,"³ the

² Cisco WebEx LLC Request for Review of a Decision of the Universal Service Administrator, WC Docket No. 06-122 (filed April 8, 2013) ("Cisco Request").

³ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 16 (2005) ("Wireline Broadband Order").

resulting product is classified as an information service not subject to USF contribution. In offering these services, Cisco is not “bundling” multiple services for a single price, but instead is functionally integrating undifferentiated components into a single seamless service. WebEx is a single product that includes desktop and document sharing, video integration, remote keyboard control, host control, chat features and audio integration among other things, all of which is transmitted over the Internet.⁴ According to Cisco, the audio functions are “integrated into WebEx sessions to effectively simulate an in-person meeting. Thus, as part of its video capability, WebEx will automatically identify who is speaking and will focus all participants’ video displays on that person.”⁵ In addition, the host of the meeting has the ability to control the participants’ use of the audio features by muting, unmuting or “even eject[ing] participants from the WebEx session.”⁶ The WebEx audio function cannot be used separately from a subscription for the entire WebEx product⁷ and thus cannot be viewed as a stand-alone service. Therefore, contrary to USAC’s assertions, WebEx is not offering a combination of stand-alone services that are marketed and sold together (*i.e.*, bundled) for one price, but instead is using different elements and components to form a single integrated information service offering.⁸

Generic Conferencing acknowledges that the Commission declined to reconsider its InterCall decision on the basis of Global Conference Partnership’s (“GCP”) description of audio bridging packages that also offer computer functions such as whiteboarding.⁹ Cisco has challenged that finding on appeal and Generic Conferencing agrees with Cisco’s argument that

⁴ Cisco Request at 2.

⁵ *Id.* at 4.

⁶ *Id.* at 6.

⁷ *Id.* at 4.

⁸ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Report and Order, 16 FCC Rcd 7418, ¶ 10 (2001) (describing “bundled” services as comprised of separate products offered by the provider together at a lower price in order to “encourage them to subscribe to new, advanced, or specialized services by reducing costs...”).

⁹ *See Petitions for Reconsideration and Clarification of the InterCall Order*, Order on Reconsideration, 55 FCC Rcd 898, ¶ 13 (2012) (“InterCall Reconsideration”).

the finding should be reversed.¹⁰ The Intercall Reconsideration is a prime example of how USF contribution policy should not be made. It appears that the finding was based in part on GCP's brief description of providing audio bridge functions "in addition to" computer functions.¹¹

According to Cisco, the revenue that USAC reclassified in this case was audio bridging minutes used in a WebEx session that was initiated using a computer.¹² Not only was the computer an integral part of the meeting, as explained above, but information about the audio participants is functionally integrated with the computing capabilities during the meeting. Generic Conferencing believes that most web conferencing software provides such functional integration and that if the Commission had classified web conferencing through a rulemaking process during which all interested parties could comment, the record would have supported classification of such web and audio conferencing services as information services.

B. Cisco's customers perceive and treat the service as an integrated whole and options to use only a portion of the service after purchase are irrelevant.

Cisco's marketing of the WebEx service and how it is offered to customers, along with the customers' perception of the service, are key factors in determining its proper classification. In finding that cable modem service is an information service, the FCC relied, in part, on how the customer perceived the service and concluded that, like all information service providers, cable companies use "telecommunications" to provide consumers with Internet services.¹³ Just as the end users of cable modem service did not perceive the service they received as consisting of both a data processing component and a transmission component, the WebEx customers do not

¹⁰ Cisco Request, Exhibit G at 2.

¹¹ See GCP Petition for Reconsideration at 23 (explaining that the "bridge functionality is *in addition to* the functionalities provided by the GCP computer servers (the stored information, e-mail, voice mail, whiteboarding, and other computer capabilities) that are also available to and used by the conference participant") (emphasis added).

¹² See Cisco Request at n.9 ("WebEx reported as telecommunications all sessions initiated through a telephone. However, WebEx reported as non-assessable all revenues associated with sessions initiated through a computer.").

¹³ See *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4813 (2002).

perceive the service as consisting of an audio service component and data processing component. Based on the information provided, the customers perceive WebEx as an integrated service, not multiple services offered together for a bundled price.

USAC's focus on the mere fact that customers may, after the purchase and use of the services, use the audio option or substitute other providers for audio services, does not alter how Cisco offers WebEx, how it is perceived by the customer, or its classification as an information service. While USAC claims that "WebEx offers a separable telecommunications component because customers can use the audio features 'with or without accessing' the service's other features,"¹⁴ such non-use of the information features does not alter the classification of the service that offers telecommunications and information features as part of a single, integrated service. As the Commission has ruled "[t]he information service classification applies regardless of whether the subscribers use all of the functions and capabilities provided as part of the service (e.g., e-mail or web-hosting), and whether every wireline broadband Internet service provider offers each function and capability that could be included in that service."¹⁵ The simple fact is the audio features were not offered separately, the customers did not perceive it as a separate service but instead as integrated into the whole product offering, and, even if the customer chose not to use the audio function (or use only the audio function) that does not alter its classification as an information service.

USAC's classification also ignores the fact that customers using the audio portion of WebEx that was subject to reclassification are engaged in PSTN-to-computer communications.¹⁶ If, for example, all WebEx meeting participants except one have joined the meeting via computer, then all communications are computer-to-computer or PSTN-to-computer. In its

¹⁴ Cisco Request at 7.

¹⁵ Wireline Broadband Order at ¶ 15.

¹⁶ See Cisco Request at n.9.

MeetingOne.com decision, the FCC determined that MeetingOne’s product was functionally identical to InterCall because “[e]nd users of both services access the provider’s platform by dialing a toll free number that allows the end user to participate in a conference call.”¹⁷ The FCC refused to distinguish MeetingOne’s service based on its use of IP technology “in the middle.”¹⁸ The FCC was not presented with, and therefore did not address, the question of how to classify computer-to-computer audio conferencing.¹⁹ Neither the InterCall nor the MeetingOne decision addressed the classification of computer-to-phone audio bridging. To date, the Commission has refused to classify computer-to-phone services as telecommunications or information services.²⁰ Although the Commission has imposed USF contribution obligations on interconnected VoIP services, conferencing calling services are one-way and do not satisfy the definition of interconnected VoIP.²¹ Because WebEx is not “functionally identical” to InterCall or MeetingOne, USAC’s classification decision is not supported by the Commission’s audio bridging precedent either.

III. USAC Has No Authority to Create Policy

A. USAC should refer questions about service classification to the Commission for resolution.

USAC is prohibited from creating or modifying policy: “[t]he Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission’s rules are unclear, or do not address a particular

¹⁷ *Universal Contribution Methodology Request for Review of a Decision of the Universal Service Administrator by MeetingOne.com Corp.*, Opinion, 26 FCC Rcd 15464, ¶ 11 (2011).

¹⁸ *Id.* at ¶ 12.

¹⁹ *Id.* at ¶ 13.

²⁰ *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, ¶ 35 (2006).

²¹ 47 C.F.R. § 54.5 (referring to rule 9.3 to define an interconnected VoIP service); *See also Universal Service Contribution Methodology*, Further Notice of Proposed Rulemaking, FCC 12-46, WC Docket No. 06-122, GN Docket No. 09-51, ¶ 58 (2012) (noting that one-way VoIP is not currently subject to USF contributions and requesting comments on its inclusion into the contribution base). USAC admits that a participant accessing the bridge via a computer is engaged in one-way VoIP. Cisco Request, Exhibit A at 12.

situation, the Administrator shall seek guidance from the Commission.”²² Where the Commission has not evaluated a computer-to-phone service that a contributor has classified as an information service, the Commission, not USAC, should determine whether such service should be reclassified as telecommunications. When USAC was confronted with other new technologies that raised concerns about classification for USF contribution purposes, such as VPN and text messaging services, it referred those questions to the Commission as required by the FCC’s rules.²³ Yet when faced with the need to evaluate another new product, web conferencing, USAC impermissibly reclassified a portion of the revenue as telecommunications. USAC should have followed the rule, and its past practice, and instead referred the question of classification to the Commission. USAC should seek FCC guidance on all ambiguous issues rather than automatically default to the so-called “conservative position” that it believes best protects the Fund.

The rule requiring referrals to the FCC is necessary to ensure uniform application of USF contribution rules. If USAC resolves ambiguous classification questions through contribution audits, similarly situated service providers may not have the opportunity to comment on revenue classifications decisions that could impact an entire industry. In addition, should the audited company not appeal such a determination to the FCC, thereby making it public and subject to comment, then the audited company is potentially disadvantaged, vis-à-vis its competitors, if its revenues are “secretly” treated differently.

²² 47 C.F.R. § 54.702(c).

²³ See Letter to Sharon Gillett, Chief, Wireline Competition Bureau, FCC from Richard A. Belden, OCC, USAC, Request for Guidance on Universal Service Fund Contribution Matter, WC Docket No. 06-122 (April 22, 2011) (“2011 USAC Guidance Request”); Letter to Julie Veach, Acting Chief, Wireline Competition Bureau, FCC from Richard A. Belden, COO, USAC, Re: Policy Guidance Regarding Universal Service Fund Matters Previously Submitted to Commission Staff, WC Docket No. 06-122 (Aug. 19, 2009) (“2009 USAC Guidance Request”).

Although USAC denies having done so, it appears that USAC may have seized on a label (“audio”) as a primary justification for its classification decision. USAC cannot avoid limitations on its authority by relying on a revenue or product naming convention in order to justify its classification of a service as telecommunications. For example, even if customers’ invoices list audio minutes as a separate line item, such a designation on the bill does not change the nature of the product offered by the service provider and perceived by the customer. Providers of information services and even carriers do not name their revenue accounts or services in a manner consistent with regulatory classifications. Contributors should not be penalized for their choice in naming convention by USAC’s so-called conservative default to telecommunications when words such as “audio conferencing” appear in an account or feature name. Just as the Wireline Competition Bureau rejected USAC’s attempt to classify all T-1 services as telecommunications, merely because they were delivered over a T-1 line without regarding to the actual nature of the services,²⁴ so too should the Commission overturn USAC’s decision to classify this revenue as telecommunications because of the name used on the invoice or accounting records.

B. The Commission should adopt a process to provide USAC and service providers with timely answers to questions about application of USF contribution obligations to specific services.

Currently, there are two outstanding public requests for guidance filed by USAC that are awaiting a response from the Commission,²⁵ the oldest of which has been pending for almost four years. In addition to the dozens of comments filed by service providers and interested parties in response to those requests, there are also numerous pending petitions seeking review of

²⁴ *Request for Review of Decision of the Universal Service Administrator and Emergency Request for Stay by U.S. TelePacific d/b/a TelePacific Telecommunications*, Order, DA 10-752, CC Docket No. 06-122 (WCB 2010).

²⁵ *See* 2009 USAC Guidance Request and 2001 USAC Guidance Request.

USAC decisions relating to the proper classification of revenue and related documentation and recordkeeping issues.²⁶

As evidenced by these requests and petitions, it is virtually impossible for the Commission or USAC to foresee every possible permutation and application of the contribution rules to different and new services. Given the speed of technological innovations and development of new technologies, new questions will continue to arise just as quickly as new technologies are developed. At the same time, service providers and their customer are harmed while they wait years for clarification from the FCC as to the proper treatment of revenue from services that they continue to provide to customers.

The FCC should adopt a process that allows USAC or service providers to request clarification on the application of USF contribution obligations to specific services. This process should be streamlined and specific staff delegated to handle all such requests in a timely manner. By providing USAC and contributors with clear, timely guidance, the Commission will improve the stability of the Fund and ensure that all providers can compete on an even playing field.

IV. Conclusion

For the foregoing reasons, Generic Conferencing requests that the Commission overturn USAC's finding that the audio features of the WebEx service are "separable" and thus subject to USF contributions as a telecommunications services and to adopt a process for the efficient and timely resolution of future contribution issues.

²⁶ See e.g., Request for Review by Madison River Communications, LLC of Decision of Universal Service Administrator, WC Docket No. 06-122 (filed Dec. 12, 2008) and McLeodUSA Telecommunications Services, Inc. Request for Review of Universal Service Administrator Decision, CC Docket Nos. 96-45 and 97-21 (filed Oct. 1, 2007).

Respectfully submitted,

/s/ Tamar E. Finn

Tamar E. Finn
Kimberly A. Lacey
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20006
(202) 373-6000
(202) 373-6001 (Fax)
tamar.finn@bingham.com
kimberly.lacey@bingham.com

Counsel for Generic Conferencing, LLC

Dated: May 15, 2013