

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF VERIZON AND VERIZON WIRELESS<sup>1</sup>**

The Universal Service Administrative Company (USAC) erred by applying the wrong standards in its decision to reclassify revenues associated with certain audio minutes of the Cisco WebEx LLC (“Cisco”) service (“WebEx”) as subject to contribution to the Universal Service Fund.<sup>2</sup>

**DISCUSSION**

WebEx is an online collaboration service that, as Cisco explains, “allows participants to experience the benefits of an in-person meeting without having to be in a single physical location.”<sup>3</sup> WebEx utilizes video, desktop sharing, document sharing, written chat features and

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (“Verizon”).

<sup>2</sup> See Request, *Cisco WebEx LLC Request for Review of a Decision of the Universal Service Administrator*, WC Docket No. 06-122 (April 8, 2013) (“Request for Review”). While Cisco lists the USAC decision (“*USAC Audit Report*”) as Exhibit A to the Request for Review, Cisco initially filed the document as fully-protected proprietary material. A redacted version was filed after the Bureau solicited public comment, and is available under separate cover. See Letter from Brita D. Sandberg, counsel for Cisco WebEx LLC, to Marlene H. Dortch, FCC, *Cisco WebEx, LLC, Request for Review of a Decision by the Universal Service Administrator*, WC Docket No. 06-122 (May 9, 2013) (the *USAC Audit Report* is attached).

<sup>3</sup> Request for Review at 1.

audio features to allow participants to see and speak to each other, create, edit and share documents, and control one another's keyboard and mouse, as if they were in the same room.<sup>4</sup>

The appropriate regulatory treatment of the WebEx service turns on whether the offering to customers is an "information service," which would not be subject to USF contribution requirements, or a "telecommunications service," which would be. Pursuant to the Telecommunications Act, an information service is "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...."<sup>5</sup>

USAC's audit determined that certain aspects of the WebEx service – *i.e.*, the desktop and document sharing, active talker, and active speaker features – are information services.<sup>6</sup> At the same time, USAC concluded that the audio features of the WebEx service are "separable" from the rest of the service's features and, therefore, that WebEx is less an integrated information service and more a "bundle of telecommunications services and non-telecommunications services," such that revenues would have to be apportioned "between telecommunications and non-telecommunications sources."<sup>7</sup> However, in reaching this conclusion, USAC applied the wrong standard.

1. ***USAC Improperly Looked to Customers' Post-Purchase Conduct, Rather than to the Capabilities Cisco Offered.*** USAC maintained that WebEx is not integrated and that its audio features are separable from the remainder of its features because participants could use third-party audio services with WebEx (instead of the WebEx audio features) and could use the

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<sup>4</sup> *See id.* at 2-3.

<sup>5</sup> 47 U.S.C. § 153(24).

<sup>6</sup> *See* Request for Review at 6 (citing *USAC Audit Report*).

<sup>7</sup> Request for Review at 6-7 (citing *USAC Audit Report* at 30).

WebEx audio features without using the service’s other features.<sup>8</sup> In other words, USAC rested its decision on a determination of what a WebEx user could do with the offering *after* purchase.<sup>9</sup> But that is not the proper standard for determining whether an offering is an information service or a telecommunications service.<sup>10</sup>

To the contrary, the Telecommunications Act makes clear that the determinative factor is the *capabilities offered* by the provider, not what a customer ultimately might do with the service after purchasing it:

The term “information service” means the *offering* of a *capability* for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications....<sup>11</sup>

Accordingly, the proper touchstone is what the provider offers, and USAC erred in looking to customers’ post-purchase options.

2. ***The Question of Whether WebEx’s Audio Features can be used “with or without” the Service’s Other Features is Not and Cannot be Dispositive of the Appropriate Service Classification.*** USAC concluded that the WebEx service is not integrated for classification purposes because the audio features could be used “with or without accessing” the service’s other features (and vice-versa).<sup>12</sup> USAC relied on the Commission’s *InterCall Order*<sup>13</sup>

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<sup>8</sup> See *id.* (citing *USAC Audit Report* at 13, 37).

<sup>9</sup> See Request for Review at 7.

<sup>10</sup> See *id.* at 8-12.

<sup>11</sup> *Supra*, § 153(24) (emphasis added).

<sup>12</sup> See Request for Review at 7 (citing *USAC Audit Report* at 37).

<sup>13</sup> See *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator, Order*, 23 FCC Rcd 10731 (2008) (“*InterCall Order*”), *petition for review pending, Conference Group v FCC*, No. 12-1124 (D.C. Cir.).

for this proposition. But the *InterCall Order* did not change – and, in any event, could not have changed – the statutory definition of an information service.

In the *InterCall Order* (which Verizon is supporting on appeal),<sup>14</sup> the Commission concluded that InterCall’s audio bridging services were telecommunications services and, accordingly, subject to USF contribution requirements. The Commission rejected InterCall’s claim that, by adding certain common features – such as muting, recording and the like – to its audio conferencing service, InterCall changed that audio service into an information service.<sup>15</sup> In concluding that the “fundamental character” of InterCall’s audio bridging service was a telecommunications service offering, the Commission observed that customers could conduct their conference calls “with or without” accessing the muting or other features.<sup>16</sup> But, in making that reference, the Commission was *not* adopting some sort of “with or without” standard to determine whether an offering is an integrated information service. While the ability to use a particular service with or without information service components may be relevant to the classification analysis, this cannot be a bright-line test. Indeed, that would contravene the statutory definition of an information service (“ . . . offering of a *capability* for generating, acquiring, storing, transforming, processing, retrieving, utilizing”<sup>17</sup> information) and could significantly undercut established precedent addressing service classifications.<sup>18</sup>

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<sup>14</sup> *See id.*

<sup>15</sup> *InterCall Order*, ¶ 13.

<sup>16</sup> *Id.*

<sup>17</sup> 47 U.S.C. § 153(24) (emphasis added) [Or you could *supra*, § 153(24)].

<sup>18</sup> *See, e.g., Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (“*Brand X*”); *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006) (“*Prepaid Calling Card Order*”), *vacated, in unrelated part, Qwest Servs. Corp. v. FCC*, 509 F.3d 531 (2007); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed

Every information service by definition utilizes telecommunications.<sup>19</sup> And, in many cases, the telecommunications service component of an information service hypothetically could be accessed “with or without” accessing the service’s other features (and vice-versa). For example, many real-time video games have an audio component. And it may be possible for gamers to communicate with one another in that environment without actively playing the game. But that potential does not turn a video game into a telecommunications service. The test hinges on sufficient integration, not the mere possibility of using a service “with or without” information service features.

The classification analysis historically has focused on the end-user experience as a whole and whether – in practice – the telecommunications component is “an inseparable part”<sup>20</sup> or “part and parcel”<sup>21</sup> of the information service. Or, as the Supreme Court has found, a service is considered an information service under the statute if the provider offers information service capabilities that are “inextricably intertwined” with telecommunications.<sup>22</sup> These are practical standards that take into account how services are marketed to the consumers<sup>23</sup> and whether the offering constitutes a single service from the end user’s standpoint, even if that offering

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Rulemaking, 20 FCC Rcd 14,853 (2005), *petition for review denied*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (2007).

<sup>19</sup> *See supra*, § 153(24) (emphasis added).

<sup>20</sup> *In re Federal-Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11,501, ¶ 56 (1998) (“*Stevens Report*”).

<sup>21</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 39 (2002) (“*Cable Modem Order*”), *affirmed in part, reversed in part*, *Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (2003); *reversed and remanded*, *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *affirmed on remand*, *Brand X Internet Servs. v. FCC*, 435 F.3d 1053 (2006).

<sup>22</sup> *See Brand X*, at 978.

<sup>23</sup> *See Prepaid Calling Card Order*, ¶ 13.

“involves telecommunications components” and even if those components theoretically could be separated.<sup>24</sup> What matters is “what the consumer perceives to be the integrated finished product, even to the exclusion of discrete components that compose the product.”<sup>25</sup> Or, stated differently, the Commission has made clear that the information services classification can apply “regardless of whether subscribers use all of the functions provided as part of the service.”<sup>26</sup>

USAC therefore erred in applying a bright-line “with or without” test to determine the appropriate classification of the WebEx offering.

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<sup>24</sup> *Stevens Report*, ¶ 58. In this respect, Verizon agrees with Cisco that USAC misinterpreted the *Cable Modem Order* when it suggested that – in order to be integrated – a service must require users to utilize telecommunications features *only* to access information services. As Cisco explains, that reading is simply too narrow and inconsistent with Commission precedent. *See* Request for Review at 11-12.

<sup>25</sup> *Brand X* at 990.

<sup>26</sup> *Cable Modem Order*, ¶ 38.

**CONCLUSION**

For the reasons set forth above, the Commission should find that USAC applied the wrong standards to determine whether the WebEx service is an integrated information service subject to USF contribution requirements.

Respectfully submitted,

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