

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Cisco WebEx LLC Request for
Review of a Decision of the
Universal Service Administrator

WC Docket No. 06-122

COMMENTS OF CITRIX ONLINE LLC

Citrix Online LLC (“Citrix Online”) is pleased to submit these comments in support of Cisco WebEx LLC (“WebEx”) in its Request for Review of a Decision of the Universal Service Administrator.

I. Introduction

Citrix Online offers GoToMeeting, an innovative cloud service that seamlessly integrates web conferencing with audio and video features to enable virtual face-to-face meetings that deliver substantial consumer and public interest benefits. GoToMeeting is accessible via any desktop computer or browser, as well as smartphones and tablets, enabling mobile workstyles and empowering people to work and collaborate from anywhere, simply and securely. GoToMeeting enables organizations of all sizes to achieve the kind of speed and agility necessary to succeed in an increasingly mobile and dynamic world.

II. Long-Standing FCC Precedent Provides a Clear Distinction Between Information Services and Telecommunications Services

Information service providers rely on a clear and predictable distinction between information services, which are not subject to certain regulatory obligations like USF

contribution requirements, and telecommunications services, which are.¹ The Commission's governing statute and decisions have long provided just such a distinction, and the predictability and certainty that this distinction offers information service providers in turn encourages investment and innovation in new services. Under the Commission's precedent, decisions about whether to classify a service as a telecommunications or information service turn on the capabilities that the provider offers to the user and not on the decisions a user makes about how to use the offering after purchase. This classification regime offers service providers the stability and predictability they need in order to design and build innovative new service offerings. Changing the classification regime "mid-stream" would upset nearly fifteen years of Commission precedent and create tremendous regulatory uncertainty for information services providers, which, in turn, would hinder innovation.²

The plain language of the statute supports the Commission's long-standing classification regime. A "telecommunications service" is simply "the offering of 'telecommunications' for a fee directly to the public,"³ specifically a "transparent transmission path" for a communication.⁴ When "telecommunications" is used to offer not mere transmission but rather "a capability for

¹ See, e.g., *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling & Notice of Proposed Rulemaking, 17 FCC Rcd. 4798 (2002) ("Cable Modem Order"), *aff'd* by *NCTA v. Brand X Internet Servs., Inc.*, 545 U.S. 967 (2005) ("Brand X"); see also *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd. 7290, 7295 ¶ 14 (2006) ("Prepaid Calling Card Order"); *Broadband Classification Order*, 20 FCC Rcd. 14,853, 14,860-61 ¶ 9 (2005).

² See, e.g., *In re Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11,501, 11,529 ¶ 56 (1998) ("Stevens Report").

³ 47 U.S.C. § 153(53).

⁴ *Stevens Report*, 13 FCC Rcd. at 11,521 ¶ 41.

generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,” the offering is an information service.⁵

The statutory distinction between telecommunications and information services is clear. Even if it were not, the Commission’s decisions have provided a reasonable interpretation,⁶ confirming that services are appropriately classified as “information services” if the provider offers information-service capabilities. Having provided a reasonable interpretation, the Commission cannot vary it except through notice-and-comment rulemaking, which has not occurred.

For classification purposes, the Commission has repeatedly declined to separate the information-service and transmission components of an information-service offering, finding that such an approach would (1) cause every information service—which by definition utilizes “telecommunications”—also to be classified as a telecommunications service, and thus (2) conflict with Congress’s clear intent to separate telecommunications services and information services into separate categories.⁷ The Commission has instead focused on the end-user’s perceptions, stating that “[a]n offering that constitutes a single service from the end user’s standpoint is not subject to carrier regulation simply by virtue of the fact that it involves telecommunications components.”⁸

The Commission additionally has emphasized that appropriate classification of information services “turns on the nature of the functions that the end user *is offered*,”⁹ and

⁵ 47 U.S.C. § 153(24).

⁶ See *Chevron, U.S.A., Inc. v. Nat’l Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984).

⁷ *Stevens Report*, 13 FCC Rcd. At 11,529 ¶ 57.

⁸ *Id.* at 11,529-11,530 ¶¶ 58, 60.

⁹ See generally *Cable Modem Order*, 17 FCC Rcd. at 4822 ¶ 38 (emphasis added).

rejected suggestions that services should be broken into telecommunications- and information-service components. Moreover, an offering can be an information service “regardless of whether subscribers use all of the functions provided as part of the service.”¹⁰ These decisions have served as the foundation for subsequent information service classifications, such as wireline and wireless broadband Internet access.¹¹ And their clear articulation of the Commission’s classification regime has provided industry with much-needed regulatory certainty that has encouraged and supported the development of innovative new products and services.

The Commission’s *Intercall Orders* upset this regulatory predictability and suggest that integrated services should be separated into component parts for classification purposes, no matter how the services were offered to or perceived by the consumer. These orders cannot be reconciled with the Commission’s own long-standing classification regime.¹² And even if they could, the *Intercall Orders* acknowledge that where telecommunications service is sufficiently integrated with information services capabilities, the entire integrated service should be classified as an information service.¹³

¹⁰ *Id.*

¹¹ See *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd. 5901, 5909 ¶¶ 20- 21 (2007) (citing *Cable Modem Order* in classifying wireless broadband Internet access as an information service) (“*Wireless Broadband Order*”); *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 14853, 14862 ¶ 12 (2005) (citing *Cable Modem Order* in classifying wireline broadband Internet access as an information service) (“*Wireline Broadband Order*”).

¹² See, e.g., Initial Br. Of Intervenor for Pet’r Cisco WebEx, LLC, The Conference Grp, LLC v. Fed. Comm’n Comm’n, No. 12-1124 (D.C. Cir. Nov. 6, 2012) (detailed discussion).

¹³ *Petitions for Reconsideration and Clarification of the InterCall Order*, Order on Reconsideration, 27 FCC Rcd. 898, 904 ¶ 12 (2012); *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, Order, 23 FCC Rcd. 10731, 10735 ¶ 13 (2008)

III. The FCC Should Affirm Its Long-Standing Precedent and Avoid Regulatory Uncertainty that Would Hinder Innovation and Consumer Choices

The wide variety of innovative information services in the marketplace vindicate the Commission's visionary policy choice, allowing innovators to harness communications to fuel commerce, deliver flexibility, and allow consumers to use communications tools to serve their evolving needs. The Commission must be mindful of the risks of contradicting its precedent or of exceeding its authority and chilling innovation as it considers WebEx's appeal, and should clearly and carefully apply its precedents so that they reach only telecommunications services. Information service providers should be able to reasonably rely on Commission and Supreme Court decisions holding that certain information services do not have separately regulable components when building and marketing their products.¹⁴ The USAC audit decision regarding how WebEx should classify its services for USF contribution purposes directly contravenes the Communications Act, Supreme Court decisions, and Commission precedent. The FCC should take this opportunity to reaffirm its longstanding policy decisions regarding classification of services and underscore its commitment to supporting the development of innovative products and services that provide consumers and businesses with flexible and novel ways to work.

¹⁴ See, e.g., *Brand X*, 545 U.S. 967; *Cable Modem Order*, 17 FCC Rcd. 4798.

IV. Conclusion

For the reasons stated herein, Citrix Online urges the Commission to find that USAC's audit decision regarding WebEx's services contradicted legal and policy precedent, exceeded USAC's limited delegated authority, and should be invalidated.

Respectfully submitted,



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