

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF CISCO WEBEX LLC**

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**I. Introduction and Summary**

The record confirms that the Bureau should grant Cisco WebEx LLC’s (“WebEx”) request<sup>1</sup> and reject the Universal Service Administrative Company’s (“USAC”) audit of WebEx’s 2009 Form 499-A.<sup>2</sup> Commenters that supported WebEx’s arguments comprise a broad array of viewpoints, ranging from incumbent LECs to small-business trade associations. This diverse set of supporters demonstrates USAC wrongly and unlawfully concluded that WebEx’s audio is a “separable” component of WebEx’s service. In addition, the record shows that, if left standing, the USAC Audit Report sets a dangerous precedent that will sow deep uncertainty across—and divert investment from—Internet-based information services. The lone dissenter—InterCall—self-servingly attempts to equate WebEx’s robust collaboration service with InterCall’s basic audio bridging service by incorrectly describing WebEx’s collaboration service, then parroting USAC’s thoroughly discredited analysis of WebEx’s service. Accordingly, the record firmly establishes that USAC exceeded its authority. The Bureau should reject the USAC Audit Report and direct USAC to accept WebEx’s 2009 Form 499-A as filed.

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<sup>1</sup> *Cisco WebEx LLC Request for Review of a Decision of the Universal Service Administrator*, WCB Docket No. 06-122, Request for Review (filed Apr. 8, 2013) (“Request”).

<sup>2</sup> *Id.* at Exhibit A (“USAC Audit Report”).

## **II. The Record Demonstrates that USAC Exceeded Its Authority by Abandoning Established Classification Standards When it Labeled WebEx as a “Bundled” Service**

Commenters agree that USAC could not apply a telecommunications classification to WebEx’s audio component without abandoning the standards established by Congress, the Supreme Court, and the Commission. Indeed, the record confirms that classification decisions turn on end users’ perceptions of the capabilities a provider offers, and *not* whether a user takes advantage of every capability. For example, Verizon confirms that “the proper touchstone is what the provider offers.”<sup>3</sup> Citrix states that “services are appropriately classified as ‘information services’ if the provider offers information-service capabilities.”<sup>4</sup> Generic Conferencing states that classifications depend on how a service “is offered to consumers, along with consumers’ perception of the service.”<sup>5</sup> Sprint identified “how an end user perceives a service” as “the primary classification criteria.”<sup>6</sup> Thus, the record confirms that, if end users perceive a single product that offers information-service capabilities, that product is an information service, even if it incorporates a communications component.

Commenters further agree that the established standards require USAC to classify WebEx’s offering as a single information service. WebEx’s Request details the vast number of features that combine to allow consumers to share information and collaborate on work product through the integration of audio, video, and computing capabilities. The record here

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<sup>3</sup> Comments of Verizon and Verizon Wireless at 3, WCB Docket No. 06-122 (filed May 15, 2013) (“Verizon”).

<sup>4</sup> Comments of Citrix Online LLC at 3, WCB Docket No. 06-122 (filed May 15, 2013) (“Citrix”).

<sup>5</sup> Comments of Generic Conferencing, LLC at 4, WCB Docket No. 06-122 (filed May 15, 2013) (“Generic Conferencing”).

<sup>6</sup> Comments of Sprint Nextel Corporation at 10, WCB Docket No. 06-122 (filed May 15, 2013) (“Sprint”).

demonstrates that audio is merely one component of WebEx’s integrated service, which end users perceive as a single information service. For example, Generic Conferencing explains that “WebEx is . . . using different elements and components to form a single integrated information-service offering.”<sup>7</sup> In addition, Sprint states that, “WebEx is a quintessential information service . . . . No one disputes that a collaboration service that integrates audio, video, and computing features, including voice, is a single service from the consumer’s perspective.”<sup>8</sup> TechNet explains that “WebEx’s transmission capabilities can only be used by a customer who has purchased access to the service’s advanced functionalities, belying any claim that those functions are not integrated with the related telecommunications.”<sup>9</sup> Finally, TIA states that, “WebEx is ‘offered’ to ‘the end user’ as a single service, ‘regardless of whether subscribers use all of the [non-audio] functions provided as part of the service.’”<sup>10</sup>

USAC, however, abandoned these long-standing classification standards. Commenters agree that, instead of examining end-users’ perceptions of the capabilities of WebEx’s service, USAC improperly relied upon factors such as what consumers do after they purchase WebEx’s integrated service, as well as WebEx’s pricing and accounting decisions. In addition, USAC failed to acknowledge that WebEx’s collaboration service allows PSTN-to-computer communications, which the Commission has never classified, and which USAC lacks authority to classify.

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<sup>7</sup> Generic Conferencing at 3.

<sup>8</sup> Sprint at 6.

<sup>9</sup> Comments of TechNet at 7, WCB Docket No. 06-122 (filed May 15, 2013) (“TechNet”).

<sup>10</sup> Comments of the Telecommunications Industry Association at 6, WCB Docket No. 06-122 (filed May 15, 2013) (citing *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd. 4798, 4822-23 ¶¶ 38-39 (2002)) (“TIA”).

Regarding consumer behavior, Verizon confirms that “USAC erred in looking to customers’ post-purchase options.”<sup>11</sup> Sprint objects to USAC’s reliance on “end-user choices to parse out the telecommunications element inherent in the information service.”<sup>12</sup> Citrix states that classification decisions do not turn on “the decisions a user makes about how to use the offering after purchase.”<sup>13</sup> Generic Conferencing explains that “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.”<sup>14</sup> TechNet states that it does not matter “whether an individual customer chooses to use [a service’s] features.”<sup>15</sup> Finally, TIA explains that “USAC’s focus on the possibility of using the audio feature separately from the WebEx document sharing functions misunderstands the Commission’s precedent.”<sup>16</sup> In sum, based on the Commission’s long-standing approach to service classification, commenters agree that USAC cannot separate a telecommunications component from an integrated service based on consumers’ post-purchase behavior.<sup>17</sup>

Furthermore, commenters confirm that it does not matter how a provider labels, prices, or bills various components of its integrated service—these are marketing and accounting decisions

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<sup>11</sup> Verizon at 3.

<sup>12</sup> Sprint at 8.

<sup>13</sup> Citrix at 2.

<sup>14</sup> Generic Conferencing at 5.

<sup>15</sup> TechNet at 7.

<sup>16</sup> TIA at 6.

<sup>17</sup> *See, e.g.*, TIA at 5 (“By attempting to break the audio functions out from the rest of the WebEx service offering, USAC flouts this consistent line of precedent rejecting such disaggregation of telecommunications components from integrated information service offerings.”).

that can be made in any number of ways and, critically, do not alter the nature of the service offered to consumers. For example, Generic Conferencing asserts that “[c]ontributors 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.”<sup>18</sup> In addition, Sprint states that “[r]egardless of how WebEx chooses to price its service, what matters is that Cisco WebEx holds the service out to customers as a single, integrated collaboration service.”<sup>19</sup>

Finally, as Generic Conferencing discusses, in addition to sweeping collaboration services into the USF contribution base, the USAC Audit Report also by extension classifies PSTN-to-computer communications as telecommunications.<sup>20</sup> In every WebEx session, participants can use a computer to join via non-interconnected VoIP. Instead of considering that WebEx always “offers” the “capability” for a user to participate via non-interconnected VoIP in every session, USAC pulled apart the capabilities WebEx offers in order to make it appear—artificially—that WebEx offers assessable telecommunications. But, as Generic Conferencing points out, USAC’s approach inherently subjects PSTN-to-computer communications to USF contributions, which exceeds USAC’s authority.

Because USAC cannot modify Commission precedents or issue new service classifications, and USAC certainly cannot act contrary to the will of Congress or the Supreme Court, the Bureau should reject USAC’s conclusions.

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<sup>18</sup> Generic Conferencing at 8.

<sup>19</sup> Sprint at 11.

<sup>20</sup> Generic Conferencing at 5-6.

### III. The Record Shows that USAC’s Audit Report, If Left Standing, Will Have Destructive Consequences for Investment and Innovation in Internet-Based Information Services

The record confirms that, beyond abdicating existing classification standards, USAC’s report threatens a destructive reversal of long-standing policies that relieve information services from burdensome regulation. As Sprint points out, the Commission has intentionally avoided regulating information services since its *Computer* proceedings.<sup>21</sup> Indeed, as early as 1970, the Commission recognized the potentially vast public-interest benefits of an advanced-services market unburdened by regulation. In the first *Computer Inquiry*, the Commission recognized that “data processing” services—as they were known at the time—operated in competitive markets, and it saw the importance of preserving “the free give-and-take of the market place without the need for, and possible burden of rules, regulations and licensing requirements.”<sup>22</sup>

The Commission, however, also recognized the difficulty that “hybrid services”—defined as services that combined “data processing” with communications elements—would present for regulatory classification purposes.<sup>23</sup> Nevertheless, the Commission decided that “the imposition of regulatory constraints over what is clearly a data processing hybrid offering, *even though it contains communications elements which are an integral part of an incidental feature thereof*, would tend to inhibit flexibility in the development and dissemination of such valuable offerings and thus would be contrary to the public interest.”<sup>24</sup>

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<sup>21</sup> Sprint at 7-8.

<sup>22</sup> *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Tentative Decision of the Commission, 28 F.C.C.2d 291, 298 (1970).

<sup>23</sup> *Id.* at 296-97.

<sup>24</sup> *Regulatory and Policy Problems Presented by the Independence of Computer and Communication Services and Facilities*, Final Decision and Order, 28 F.C.C.2d 267, 278 (1971) (“*Computer I*”) (emphasis added).

Thus, beginning with *Computer I* in 1970, the Commission refused to subject integrated information services—even if they had “incidental and peripheral communications elements”—to burdensome regulation. Ten years later, the Commission reaffirmed this policy in its *Computer II* proceeding, stating its goal to “remove unnecessary and inappropriate FCC regulation as an inhibiting barrier to the various combinations and permutations of enhanced services that may be offered over the nationwide telecommunications network.”<sup>25</sup> The Commission sought clear service-category definitions “in order to minimize uncertainties for those making business decisions related to the provision of new and innovative enhanced services.”<sup>26</sup> Thus, the Commission created two mutually exclusive service categories: “basic”—defined as pure “transmission capacity for the movement of information”<sup>27</sup>—and “enhanced”—defined as “any offering over the telecommunications network which is more than a basic transmission service.”<sup>28</sup> As the Commission later described in the 1998 *Stevens Report*:

The Commission stressed that the category of enhanced services covered a wide range of different services, each with communications and data processing components. Some might seem to be predominantly communications services; others might seem to be predominantly data processing services. *The Commission declined, however, to carve out any subset of enhanced services as regulated communications services.* It found that no regulatory scheme could “rationally distinguish and classify enhanced services as either communications or data processing,” and any dividing line the Commission drew would at best “result in an unpredictable or inconsistent scheme of regulation” as technology moved forward. Such an attempt would lead to distortions, as enhanced service providers either artificially structured their offerings so as to avoid regulation, or found themselves subjected to unwarranted regulation. The Commission therefore

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<sup>25</sup> *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 F.C.C.2d 384, 423 ¶ 102 (1980) (“*Computer II*”).

<sup>26</sup> *Id.* at 423 ¶ 103.

<sup>27</sup> *Id.* at 419 ¶ 93.

<sup>28</sup> *Id.* at 420 ¶ 97.

determined that enhanced services . . . were themselves not to be regulated under Title II of the Act, *no matter how extensive their communications components*.<sup>29</sup>

Subsequent Commission orders make clear that the policy choices made in *Computer I* and *Computer II*, as described in the *Stevens Report*, apply with full force today. In the seminal *Wireline Broadband Order*, for example, the Commission declined to regulate integrated wireline broadband providers because “regulation can have a significant impact on the ability of wireline platform providers to develop and deploy innovative broadband capabilities that respond to market demands.”<sup>30</sup>

WebEx is precisely the kind of service the Commission long ago decided not to regulate. It is far more than pure “transmission capacity for the movement of information”—it relies almost exclusively on advanced technologies, though it incorporates a communications component. It operates in a highly competitive marketplace, and it is the result of investment and innovation in information services.

As multiple commenters in this proceeding recognize, WebEx is but one of innumerable advanced technologies, the development of which the Commission’s longstanding deregulatory approach has fostered.<sup>31</sup> USAC’s classification of WebEx’s integrated information service,

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<sup>29</sup> *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11,501, 11,513-14 ¶ 27 (1998) (citing *Computer II* at 423-28 ¶¶ 102-14) (emphasis added) (“*Stevens Report*”).

<sup>30</sup> *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 14,853, 14,877 ¶ 44 (2005).

<sup>31</sup> See Citrix at 5 (“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.”); TIA at 4 (“In distinguishing regulated telecommunications offerings from largely unregulated information services, Congress affirmatively opted to promote dynamism and innovation in the development of next-generation offerings. This distinction has ensured that new services combining transmission and processing are left free to develop in an environment driven entirely by customer

however, if left standing, would represent a watershed moment. It would abandon—in the context of a single-party audit—the Commission’s decision to forego “carving out any subset” of information services for regulation, “no matter how extensive their communications components.”

Indeed, USAC’s Audit Report undermines nearly every policy choice that has guided the Commission’s approach to service classification:

- The Commission was concerned that regulation “would tend to inhibit flexibility in the development and dissemination of such valuable offerings.” USAC’s audit report will cause information-service providers to be inflexible and avoid offering consumers flexible pricing plans or the ability to substitute providers of a service’s audio component. The USAC Audit Report will also discourage providers from developing services that include a component that utilizes the PSTN.
- The Commission feared that “any dividing line the Commission drew would at best ‘result in an unpredictable or inconsistent scheme of regulation’ as technology moved forward.”<sup>32</sup> As Citrix explains, accepting the USAC Audit Report would “create tremendous regulatory uncertainty for information services providers, which, in turn, would hinder innovation.”<sup>33</sup>
- The Commission wanted to eliminate “regulation as an inhibiting barrier to the various combinations and permutations of enhanced services that may be offered over the nationwide telecommunications network.” As Sprint points out, the current regulatory uncertainty surrounding USF contributions—which the USAC Audit Report exacerbates—creates the very “inhibiting barrier” the Commission has sought to avoid.<sup>34</sup>
- The Commission feared that opaque classification standards “would lead to distortions, as enhanced service providers either artificially structured their offerings so as to avoid regulation, or found themselves subjected to unwarranted regulation.” The USAC Audit Report, if left standing, will force information-service providers eliminate communications components simply to ensure that their innovative, Internet-based services are not assessed a 15 to 17 percent tax.

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preferences. The result has been a flourishing ICT sector that has driven employment and growth for decades.”).

<sup>32</sup> *Stevens Report* at 11,513 ¶ 27 (citing *Computer II* at 425 ¶¶ 107-08).

<sup>33</sup> Citrix at 1-2.

<sup>34</sup> Sprint at 5.

The Bureau should reject USAC’s Audit Report and, instead, reaffirm the Commission’s long-standing commitment to innovation and investment.

#### **IV. InterCall’s Opposition Is Meritless**

In light of the substantial record discussed above, the Bureau should disregard the comments of the lone opponent to WebEx’s Request, InterCall, for four primary reasons. *First*, InterCall’s opposition relies on a number of fallacies, including claims that: (a) an online collaboration service is the same as a plain-vanilla conferencing service; (b) the *Prepaid Calling Card Order* somehow applies to an integrated service; and (c) despite overwhelming evidence to the contrary, USAC properly analyzed and classified WebEx’s service. *Second*, InterCall fails to account for WebEx’s classification of audio-only minutes—the only scenario where WebEx even conceivably competes with InterCall—as telecommunications, which moots any competitive-neutrality concerns. *Third*, InterCall incorrectly claims that it is impossible to determine a fair-market value for audio-bridging services, despite the existence of comprehensive industry-pricing surveys. *Finally*, InterCall demands that WebEx make USF payments retroactively, based on the *InterCall Orders*, despite the Commission’s admission that those orders apply narrowly to services that are similar to InterCall’s basic conferencing service—and not to advanced services like WebEx’s online-collaboration service.

##### *A. InterCall’s Competitive-Neutrality Argument Depends on Myriad Misrepresentations and Inaccuracies*

InterCall’s primary complaint—and primary inaccuracy—is that, because the *InterCall Orders* require InterCall to make USF contributions, the Commission’s competitive-neutrality principle requires WebEx to make USF contributions. For competitive neutrality to apply, however, InterCall must show that it competes with WebEx—which it cannot.

InterCall attempts to equate its plain-vanilla audio bridging service to WebEx’s integrated collaboration service,<sup>35</sup> but multiple commenters—including InterCall itself—demonstrate the utter falsity of that suggestion. As TIA explains, “InterCall provide[s] a telecommunications service with bells and whistles, while WebEx provides an information service with a telecommunications component.”<sup>36</sup> Similarly, TechNet states that “[t]he service involved in InterCall was (in the Commission’s words) designed ‘simply to facilitate the routing of ordinary telephone calls.’ Thus, ‘[f]rom the perspective of the user, InterCall’s service [was] an ordinary telephone call (although it may involve three or more participants).’”<sup>37</sup> Sprint observes that “the only revenues at issue in this appeal are those generated from WebEx’s integrated collaboration service—not from a service that competes with audio-bridge providers, which are subject to USF contributions.”<sup>38</sup> Moreover, InterCall itself concedes that, “WebEx provides a number of tools for its customers, including desktop and document sharing, digital whiteboards, video integration, remote keyboard and mouse control, host controls, chat, presence information, and audio integration.”<sup>39</sup> That description of WebEx is a far cry from the “ordinary telephone calls” that InterCall’s service enables.

Even more remarkable is InterCall’s characterization of WebEx’s advanced features as “ancillary” to WebEx’s audio service—just as InterCall’s bells and whistles are ancillary to its

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<sup>35</sup> See Comments of InterCall, Inc. at 2, WCB Docket No. 06-122 (filed May 15, 2013) (“InterCall”) (asserting that the *InterCall Order* “imposed a direct contribution obligation on providers of stand-alone audio bridging services”); *id.* at 3 (“The audio component of WebEx is similar to other stand-alone audio bridging services, like InterCall’s, and is used simultaneously with WebEx’s web-based collaboration tool.”).

<sup>36</sup> TIA at 9.

<sup>37</sup> TechNet at 8.

<sup>38</sup> Sprint at 6.

<sup>39</sup> InterCall at 3.

basic audio-bridging service.<sup>40</sup> InterCall has it backwards. The record firmly establishes that WebEx is far more than an audio service. WebEx’s information-service features *are* its offering, and the audio is simply an ancillary feature that allows participants to converse—not the other way around. Moreover, though InterCall admits that a “consumer faced with similar service offerings will readily choose the cheaper option,”<sup>41</sup> InterCall fails to explain why any consumer ever chooses WebEx, despite WebEx’s audio minutes costing two times more than InterCall’s service—demonstrating that consumers perceive the services as completely different.

Accordingly, InterCall stands alone in its belief that the *InterCall Orders* apply to WebEx. Though InterCall claims support of “other providers,”<sup>42</sup> it fails to identify a single “other provider.” By contrast, every other commenter that addressed this issue concluded that WebEx and InterCall offer entirely different services.

In addition, InterCall wrongly asserts that the Commission’s *Prepaid Calling Card Order* requires WebEx to make USF contributions. Multiple commenters demonstrate the fallacy of InterCall’s argument. As TechNet explains, the prepaid calling cards at issue were telecommunications because the “the use of the telecommunications transmission capability [was] *completely independent* of the various other capabilities that the card makes available.”<sup>43</sup> TechNet further states that the *Prepaid Calling Cards Order* analysis “is inapposite with respect to WebEx, which only offers telecommunications as part and parcel of a single collaboration

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<sup>40</sup> InterCall at 7.

<sup>41</sup> *Id.* at 11.

<sup>42</sup> *Id.*

<sup>43</sup> TechNet at 8 (emphasis added) (citing *Regulation of Prepaid Calling Card Services, Declaratory Ruling and Report and Order*, 21 FCC Rcd. 7290, 7296 ¶ 15 (2006) (“*Prepaid Calling Card Order*”)).

tool.”<sup>44</sup> In addition, TIA explains that, with prepaid calling cards, “the information services offered on the menu could not be used simultaneously with the calling services and thus were entirely separate from the cards’ telephone capability.”<sup>45</sup> TIA further explains that calling-card “‘subscribers buy . . . calling cards to make telephone calls, not to listen to advertisements.’ In contrast, WebEx subscribers use the service to collaborate on document editing, not to hold conference calls.”<sup>46</sup> Thus, the *Prepaid Calling Card Order* is inapposite to WebEx’s service.

Finally, for its legal analysis of WebEx’s service, InterCall merely parrots USAC’s reasoning—which the record here roundly rejects—and adds nothing new. For example, InterCall, like USAC, claims that “the audio component is not integrated” because “it can be used as a standalone service” and “it can be foregone altogether in favor of a third-party audio solution (or integrated web-based VoIP).”<sup>47</sup> Also like USAC, InterCall states that “WebEx audio is even billed separately.”<sup>48</sup> As discussed above, consumers’ post-purchase behavior and providers’ pricing and accounting decisions are irrelevant to a classification decision—what matters is the end-user’s perceptions of the capabilities the provider offers.

Accordingly, just as it should reject USAC’s misapplication of Commission precedent, the Bureau should reject InterCall’s effort to conflate WebEx’s robust collaboration service with InterCall’s audio conferencing service. The Bureau must likewise reject InterCall’s self-serving effort to gain a competitive advantage by undermining Commission precedent and fostering uncertainty for advanced and emerging services.

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<sup>44</sup> *Id.*

<sup>45</sup> TIA at 8.

<sup>46</sup> *Id.* at 8-9 (citing *Regulation of Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4833 ¶ 20 (2005)).

<sup>47</sup> InterCall at 6.

<sup>48</sup> *Id.* (citing USAC Audit Report).

*B. WebEx's Form 499-A Revenue Allocations Moot Any Competitive Neutrality Problem*

Further undermining InterCall's competitive-neutrality argument is InterCall's admission that WebEx "'reported as telecommunications all revenues associated' with its 'traditional audio-only conference calls.'"<sup>49</sup> As established above, WebEx's online-collaboration service and InterCall's plain-vanilla bridging service do not compete. At most, InterCall could argue that a WebEx session that does not involve a computer could compete with InterCall's service. However, to the extent such audio-only WebEx sessions took place during the USAC audit period, WebEx reported associated revenues as telecommunications and paid the corresponding USF contributions. All other audio-minute revenues were associated with the audio component of WebEx's collaboration service. Thus, in the only possible scenario where WebEx and InterCall could compete, WebEx and InterCall were treated identically for USF-contribution purposes. There is, in short, no competitive harm to InterCall or any other standalone audio bridge provider.

*C. InterCall's Opposition to WebEx's Alternative Argument Has No Merit*

Not only does InterCall oppose classifying WebEx as a single information service, but it also opposes WebEx's alternative argument: namely, even if USAC's classification is correct—which it is not—at a minimum WebEx's audio revenues represent a bundle of telecommunications and information services, requiring WebEx to pay at most the fair-market value of an audio-bridging service. InterCall's opposition, however, fails to raise any legitimate concerns. First, InterCall declares WebEx "should allocate its contributions to accurately estimate the audio-only component."<sup>50</sup> Then, without suggesting how WebEx should "allocate

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<sup>49</sup> *Id.* at 12.

<sup>50</sup> *Id.* at 9.

its contributions,” InterCall opposes the most reasonable approach, which is unbundling the fair-market-value of an audio-bridging provider. InterCall justifies this position by claiming that there is no “public, objective measure of the fair market value of audio bridging services.”<sup>51</sup> InterCall, however, ignores the study that WebEx cited in its Request, which provides a comprehensive analysis of audio-bridge pricing, and from which it is more than reasonable to deduce a fair-market-value.

*D. Neither USAC nor the Commission Can Apply a Telecommunications Classification to WebEx Retroactively*

As established above, accepting a telecommunications classification for one component of WebEx’s integrated service would mark a watershed moment. Even if the Bureau does so—thereby contradicting established classification standards and implementing destructive policies—it cannot, as InterCall suggests, apply the classification retroactively.<sup>52</sup> Contrary to InterCall’s assertion, online-collaboration providers have never been “on notice” that any portion of their information-service revenues is subject to USF-contribution requirements. InterCall cites the *InterCall Orders*, but the Commission itself has admitted that the *InterCall Orders* leave “unaffected those audio bridging companies that do not provide services similar to those of InterCall.”<sup>53</sup> Because WebEx’s collaboration service is nothing like InterCall’s plain-vanilla conferencing service, the *InterCall Orders* do not apply to WebEx, and retroactive contributions

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<sup>51</sup> *Id.*

<sup>52</sup> *See id.* at 12 (“The *InterCall Order* put the entire audio bridging industry on notice that all providers were subject to direct contribution obligations.”).

<sup>53</sup> *See The Conference Group LLC v. FCC*, Docket No. 12-1124, Brief for Respondents, at 35 (D.C. Cir. Dec. 7, 2012).

would be inequitable because of the very “lack of clarity” that caused the Commission to avoid retroactivity in the *InterCall Orders*.<sup>54</sup>

## V. CONCLUSION

The record is clear. USAC, in excess of its limited delegated authority, and intent on expanding the USF contribution base, departed from a long line of Commission service-classification precedent. USAC’s unlawful decision, if left standing, threatens to undermine decades of deregulatory policies, while sowing deep uncertainty and deterring investment and innovation in Internet-based services with a communications component. InterCall’s evasion of the substantive issues through misrepresentations, diversions, and rote repetition of USAC’s analysis highlight this reality. Thus, for these and the reasons stated herein, the Bureau should, consistent with the 1996 Act, Supreme Court precedent, Commission precedent, and the record generated in response to WebEx’s Request, reject the USAC Audit Report and direct USAC to accept the revenue allocations WebEx reported on its 2009 Form 499-A.

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<sup>54</sup> *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator, Order*, 23 FCC Rcd. 10,731, 10,738 ¶ 24 (2008).