

**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 THE VOICE ON THE NET COALITION**

**I. INTRODUCTION**

The Voice on the Net Coalition (VON)<sup>1</sup> hereby submits these brief comments in response to the Public Notice issued in the above-referenced proceeding.<sup>2</sup> The VON Coalition supports the many commentators who seek review of the Universal Service Administrative Company (“USAC”) decision, as it is inconsistent with governing Federal Communications Commission (“Commission”) precedent and the definitions under the Communications Act of 1934. USAC’s decision confuses the prior law regarding information services and should be invalidated.

**II. DISCUSSION**

The USAC decision undermines the distinction between information services and telecommunications services that is essential to innovation and the development of new consumer offerings. Under Commission precedent and the Telecommunications Act, an “information service” consists of “the *offering* of a *capability* for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via

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<sup>1</sup> The Voice on the Net Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP-enabled communications. See [www.von.org](http://www.von.org) for more information.

<sup>2</sup> Public Notice, Wireline Competition Bureau Seeks Comment on Cisco WebEx LLC Request for Review of a Decision by the Universal Service Administrative Company, DA 13-717 (rel. Apr. 15, 2013).

telecommunications...”<sup>3</sup> As noted by Citrix Online, the Commission has provided a reasonable interpretation which cannot be changed without notice-and-comment rulemaking.<sup>4</sup> The Commission has consistently held that a “functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission” is an information service.<sup>5</sup> However, the USAC decision departed from the prior precedent of looking at the service overall and instead focused on whether WebEx’s audio features could be used “with or without” the other information service features.<sup>6</sup> This is not the appropriate measure of whether a telecommunications service and an information are properly integrated for USF classification purposes.

The proper test for integration looks toward the *offered* service and factors such as the perception of the consumer toward that offering, not what the user subsequently chooses to do with that service. As noted by Sprint Nextel, the Commission’s classification inquiry asks “whether an entity is providing a ‘single information service with communications and computing components’ or ‘two *distinct* services, one of which is a telecommunications service,” to distinguish between truly integrated services and those that are merely packaged or bundled together.<sup>7</sup> The *Intercall Order*, which USAC improperly applied to the WebEx client, held that a telecommunications service is not integrated where it is “offered to consumers... as a *separate*

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<sup>3</sup> 47 U.S.C. § 153(24) (emphasis added).

<sup>4</sup> Comments of Citrix Online at 3 (citing *Chevron, U.S.A., Inc. v. Nat’l Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984)).

<sup>5</sup> Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Report and Order and Notice of Proposed Rulemaking, 20 FCC Red 14853, ¶ 16 (2005) (“Wireline Broadband Order”).

<sup>6</sup> Cisco WebEx LLC Request for Review of a Decision of the Universal Service Administrator, WC Docket No. 06-122, 7 (April 8, 2013) (citing Letter from Dennis Fischer, Senior Internal Auditor, USAC, to Bill Hodkowski, Cisco WebEx LLC, Attachment at 12, 37 (Feb. 7, 2013)).

<sup>7</sup> Comments of Sprint Nextel at 9 (citing Regulation of Prepaid Calling Card Servs., Declaratory Ruling and Report and Order, FCC 06-79, 21 FCC Red. 7290, 7295 ¶ 15 (rel. Jun. 30, 2006) (emphasis added)).

*and distinct* telecommunications service that is packaged with additional capabilities.”<sup>8</sup> Cisco only offers the WebEx product as one complete service and does not offer the audio capabilities separately from the integrated information services. Furthermore, as Cisco emphasized, there are much less expensive, non-integrated third-party audio offerings.<sup>9</sup> It is hard to argue why a consumer would pay a premium for the WebEx service if they did not perceive the audio services to be integrated with the information services. Under the tests mentioned above, the WebEx client fits within the definition of an integrated information service.

The USAC decision focused primarily on the WebEx payment structure and the customer’s ability to use the audio functions independent from the other information service functions. As noted by Sprint Nextel, WebEx’s decision to price “audio minutes” separately from the overall service fee that must be paid is not determinative of the end user’s perception of the service.<sup>10</sup> This perception is the primary classification criterion described in the Stevens Report.<sup>11</sup> Furthermore, the Commission has held that “[t]he information service classification applies regardless of whether the subscribers use all of the functions and capabilities provided as part of the service...”<sup>12</sup> The “with or without” test applied by USAC violates this authoritative Commission ruling. As Cisco holds out the WebEx service as a single, integrated collaboration service and does not make the audio component available without a subscription to the whole

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<sup>8</sup> See Regulation of Prepaid Calling Card Servs., Declaratory Ruling and Report and Order, FCC 06-79, 21 FCC Rcd. 7290, 7295 ¶ 15 (rel. Jun. 30, 2006).

<sup>9</sup> Cisco WebEx, LLC, Request For Review of a Decision of the Universal Service Administrator, 18 (filed Apr. 8, 2013).

<sup>10</sup> Comments of Sprint Nextel at 10.

<sup>11</sup> *Id.* (citing Fed.-State Joint Bd. on Universal Serv., Report to Congress, 13 FCC Rcd. 11,501, 11,529-30 ¶¶ 57-58 (1998) (“Stevens Report”).

<sup>12</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, ¶ 38 (2002). See also *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

