

FCC REVERSES USAC DECISION, FINDING IN FAVOR OF WEBEX

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On December 16, 2016, the Federal Communication Commission's Wireline Competition Bureau (the "Bureau") found that Cisco WebEx LLC ("WebEx") offers an information service when it integrates public switched telephone network ("PSTN") audio into the WebEx online collaboration service. The order, *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator by Cisco WebEx LLC*, DA 16-1401, WC Docket No. 06-122 (rel. Dec. 16, 2016) (the "*WebEx Order*"), reversed a decision by the Universal Service Administrative Company ("USAC"), the administrator of the Universal Service Fund ("USF" or the "Fund"), that had directed WebEx to contribute to the Fund based on revenues derived from the sale of integrated PSTN-based audio minutes.

To reach its conclusion that WebEx's service was an information service and thus not subject to USF contribution requirements, the Bureau applied the Commission's long-standing classification framework. The Bureau then concluded that WebEx integrates PSTN-based minutes such that they are no longer "mere transparent transmission" but rather are "processed to further enhance the capabilities of the online collaboration service." *WebEx Order* ¶ 21. The Bureau cited specific factual particulars of the WebEx service, including that the WebEx service "graphically represent[s] who has joined the WebEx session and who is speaking, enable[s] the interface to highlight the video of the speaker, and allow[s] the host to perform certain control functions." *Id.* Because the audio capabilities "are necessary to a meaningful (seamless and otherwise useful) collaboration experience" they are "'intertwined so thoroughly' as to produce a single, integrated information service." *Id.*

The Bureau likewise found that, from the end user's perspective, WebEx markets its service as "a single, integrated collaboration service, rather than a bundle of information processing and telecommunications features." *Id.* ¶ 22. This was true, the Bureau reasoned, even though WebEx permits users to substitute audio from other sources, explaining that this does not change the fact that Cisco "offers all the capabilities a customer needs to engage in online collaboration in a single, seamless service." *Id.* ¶ 23.

The Bureau distinguished WebEx's service from the services at issue in the Commission's *Prepaid Calling Card Order*. The menu-based prepaid calling cards at issue there, the Bureau noted, did not offer integrated services because the calling and menu-based information services "were technically incapable of being used simultaneously." *Id.* ¶ 24. By contrast, WebEx provides services that are "used together and exhibit functional integration." *Id.* The Bureau also distinguished the *InterCall Orders*, which concerned "traditional teleconferencing" and services "bundled" with teleconferencing." *Id.* ¶¶ 25-26.

Finally, the Bureau noted that Cisco's decision to price audio separately did not mean that the audio was necessarily a separate service for regulatory purposes. There are, the Bureau explained, "various business and administrative reasons that influence how a provider prices its

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service and bills its customers,” and, while “[h]ow a provider chooses to price a service may inform a classification decision,” it was not “determinative” in this case. *Id.* ¶ 27.

The decision resolves significant questions concerning the regulatory classification of collaboration services, confirming that the FCC will view these services—including their PSTN audio components—as single information services when the information service and PSTN elements are sufficiently integrated. While the Bureau cited many key classification precedents, it also suggested that a key test will be whether integration is necessary to a “meaningful (seamless and otherwise useful) customer experience.” *Id.* ¶ 21.

The application of the Commission’s classification precedents to conclude that a service that uses the PSTN is an information service is particularly significant, as the Commission’s recent *Open Internet Order* reversed a prior information service classification to find that broadband internet access service (BIAS) is a telecommunications service, resulting in increased regulation for that service. The WebEx decision confirms that the category of information services is alive and well, and that application of the Commission’s existing classification regime can have deregulatory effect.

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For more information regarding Harris, Wiltshire & Grannis LLP’s universal service fund counseling or assistance in responding to FCC classification proceedings, please contact **Brita Strandberg** at +1 202 730 1346 or bstrandberg@hwglaw.com.

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