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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

REPLY COMMENTS OF VONAGE HOLDINGS CORPORATION

Vonage Holdings Corporation ("Vonage") submits its Reply Comments to the Commission's Notice of Proposed Rulemaking, FCC 08-22, released January 28, 2008. These Reply Comments are directed specifically to the issue of the Broadband Fund proposed by the Joint Board in its Recommended Decision.[1]

Vonage takes no position on whether the Commission should establish a separate Broadband Fund. However, if a Fund is established, the Commission should distribute funds only on the conditions that grantees 1) offer broadband as a standalone service, untied and unbundled from any other service the provider may offer, and 2) conform to the principles that the Commission established in its *Internet Policy Statement*.[2] This will ensure that customers in unserved or underserved areas receive the same level of broadband access available to customers where limited broadband competition has developed and will preserve competition for IP-enabled services.

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (rel. Nov. 20, 2007) ("*Recommended Decision*").

[2] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Policy Statement, 20 FCC Rcd 14986 (2005) ("*Internet Policy Statement*").

I. Imposing Conditions Ensures That Consumers in Unserved or Underserved Areas Enjoy Equivalent Services.

The Joint Board has recommended the establishment of a Broadband Fund, primarily to provide grants for the construction of new facilities in unserved areas without broadband Internet services. Two secondary purposes would be to provide grants for new construction to enhance broadband service in underserved areas with substandard service, and to provide continuing operating subsidies to broadband Internet providers in areas where low customer density does not support a business case for operating broadband facilities, even after receiving a substantial construction grant.[3]

It has been the Commission's practice to subject broadband transmission to a "lighter regulatory touch" because the "broadband Internet access market today is characterized by several emerging platforms and providers, both intermodal and intramodal, in *most* areas of the country."[4] However, by definition there is no competition for broadband service in the areas targeted by the Broadband Fund. In the clear absence of the "vigorous" competition on which the Commission has relied to free broadband services from regulation, it is not unreasonable for the Commission to apply some rules to the Broadband Fund to ensure that policy goals are met. Accordingly, it is important that Broadband Fund grantees be prohibited from tying funded broadband service to any of the grantee's other products or services. Otherwise, the grantee could use the Broadband Fund to cross-subsidize those other services, as well as thwart competition from other service providers.

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[3] *Recommended Decision* para. 12.

[4] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 para. 3 (2005).

Unfortunately, the Commission has no rules that would clearly prevent a Broadband Fund grantee from requiring consumers to purchase broadband service bundled with voice and other services. The Commission previously held that compelling ILECs to provide stand-alone DSL would be tantamount to ordering the unbundling of the low frequency portion of the loop, which it has expressly declined to unbundle.[5] It therefore prohibited states from imposing any such requirement, and took no further action to clarify or revisit this holding.

More recently, the Commission imposed standalone broadband conditions in situations where it determined that competition is insufficient to protect consumers. In the three most recent BOC mergers, the Commission conditioned those mergers on, among other things, the applicants' commitment to provide stand-alone DSL service, even though there was no unbundling rule that required them to do so.[6] Given that competition for broadband services is weaker in areas targeted by the Broadband Fund, the Commission should extend consumers' right to standalone broadband in those unserved and underserved areas as well.

Just as grantees should be prohibited from forcing customers to take certain services, they should also be prohibited from blocking or degrading customer access to applications of their choice. However, without the appropriate conditions, the Commission could do little to prevent

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[5] *Bellsouth Telecommunications, Inc. Request for Declaratory Ruling*, WC Docket No. 03-251, 20 FCC Rcd 6830 para. 25 (2005).

[6] *Verizon Comms. Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, 20 FCC Rcd 18433 (2005) ("By conditioning this merger on the offering of a stand-alone DSL broadband offering, we create an opportunity for the development of competitive Voice Over Internet Protocol (VoIP) and help spur innovative communications technologies. According to consumer advocates, many consumers will want bundled services, but when companies unilaterally mandate that broadband and phone services be purchased together, they diminish the incentive of consumers to purchase VoIP phone service from competing providers or to rely on wireless service as their primary option." Statement of Commissioner Adelstein); *SBC Comms. Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, 20 FCC Rcd 18290 (2005); *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, 22 FCC Rcd 5662 (2007).

the broadband grantee from interfering with the traffic generated by application providers that compete with its voice or video service offerings, and otherwise engaging in practices that prompted the Commission to issue its *Internet Policy Statement* in the first place. The *Internet Policy Statement* establishes that:

- consumers are entitled to access the lawful Internet content of their choice;
- consumers are entitled to run applications and use services of their choice;
- consumers are entitled to connect their choice of legal devices that do not harm the network; and
- consumers are entitled to competition among network providers, application and service providers, and content providers.[7]

However, as Commissioner Adelstein recently observed, there is disagreement in the industry over whether the Internet Policy Statement is, by itself, enforceable or whether it has no binding legal effect. He believes that it is likely that the courts will have to decide this.[8] It would be tragic if the Commission were powerless to prevent publicly funded broadband service from being hamstrung by grantees, particularly when, in the case of interconnected VoIP providers, that funding is derived in part from the very entities whose services are blocked. If the Commission truly believes, as does Vonage, that these principles are necessary to "ensure that broadband networks are widely deployed, open, affordable, and accessible to all customers,"[9] then it must explicitly elevate those principles into enforceable rules applicable to grantees.

Publicly funded services should not accrue to the benefit of a single private party. The Commission should mandate that Broadband Fund grantees adhere to the *Internet Policy*

[7] *Internet Policy Statement* para. 4.

[8] TR Daily, May 29, 2008; *see also Vuze, Inc. Petition to Establish Rules Governing Network Management Practices by Broadband Network Operators*, WC Docket No. 07-52, Vonage Reply at 2 (Feb 18, 2008).

[9] *Internet Policy Statement*, 20 FCC Rcd at 14988 para. 4.

Statement, and take enforcement action when they fail to do so. Likewise, it should prohibit grantees from tying or bundling their broadband access with other services. Imposing these conditions will ensure that consumers in these unserved and underserved markets have access to applications that compete with products or services provided by the broadband grantee.

II. Imposing Conditions in Exchange for Receiving Government Grants Is Lawful and Reasonable.

Many government grant and support programs impose conditions. It goes without saying that the current USF High Cost program imposes minimum service requirements on recipients.[10] A more pertinent example is in a comparable grant program administered by the Rural Utility Service ("RUS"). The RUS "Community Connect" Broadband Grant is designed to encourage the deployment of broadband transmission service to extremely rural, lower-income communities on a "community-oriented connectivity" basis. As a condition of this funding, grantees are required to provide free broadband to every public school, public library, public medical clinic, public hospital, community college, public university, or law enforcement, fire and ambulance station in the service area for at least two years,[11] and also provide a local community center in the service area with at least ten computer terminals and free broadband service for at least two years.[12] Furthermore, the program expressly prohibits an ILEC grantee from providing local exchange service over financed facilities.[13] Another example is the National Telecommunications and Information Administration's ("NTIA") Public Telecommunications Facilities Program ("PTFP"). The purpose of this program is to assist, through matching grants, in the planning and construction of public telecommunications facilities

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[10] 47 CFR § 54.101(a).

[11] 7 CFR § 1739.11(c).

[12] 7 CFR § 1739.11(e).

[13] 7 CFR § 1739.13(b).

in order to extend delivery of such services to as many citizens as possible, increase participation by minorities and women, and strengthen the capability of existing public television and radio stations to provide such services to the public.[14] As a condition of this funding, however, grantees are restricted to purchasing equipment and supplies approved by NTIA,[15] must obtain approval for configuration changes,[16] are prohibited from broadcasting advertisements,[17] and must give the federal government a perfected lien on the purchased equipment.[18]

Conditions on government grants are imposed by statute or rule to ensure that policy goals are met. If providers do not want to abide by conditions of grant program, they are not required to participate in the grant program. The two conditions proposed by Vonage are consistent with the goals of the proposed Broadband Fund and should be adopted as a condition of the funding.

III. Imposing Conditions Promotes Greater Fairness in Universal Service Funding.

Interconnected VoIP providers, unlike other communications providers (LEC and wireless), are required to contribute to universal service but are ineligible to receive most universal service subsidies themselves. Vonage agrees with the Commission that interconnected VoIP providers receive indirect benefits to the extent that universal service ensures that communications services are widely available.[19] They are still at a disadvantage, however,

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[14] 15 C.F.R. § 2301.1.

[15] 15 C.F.R. § 2301.7.

[16] 15 C.F.R. § 2301.19(a)(3).

[17] 15 C.F.R. § 2301.19(a)(5).

[18] 15 C.F.R. § 2301.22(a).

[19] *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 para. 43 (2006).

relative to LECs and wireless providers who not only enjoy those indirect benefits but also are eligible to receive direct benefits from each of the four existing USF funds.

Interconnected VoIP providers will still not be able to draw from the Broadband Fund. Nevertheless, the grant conditions would expand the market for their products, thereby affording them some benefit from their USF contributions in addition to the network effect that benefits all contributors indirectly.

IV. Conclusion

In order to ensure that interconnected VoIP providers and their customers receive the maximum benefit from their USF contributions, the contributions should not fund anti-competitive practices. To that end, the Commission should impose conditions on Broadband Fund grantees that, at a minimum, require them to offer broadband as a standalone service and to conform to the principles that the Commission established in its *Internet Policy Statement*.

Respectfully submitted,

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Brendan Kasper
Senior Regulatory Counsel
Stephen Seitz
Vice President Regulatory Affairs
Vonage Holdings Corp.
23 Main Street
Holmdel, New Jersey 07733
(732) 444-2216

William B. Wilhelm, Jr.
Tamar E. Finn
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, D.C. 20006
(202) 373-6000

Counsel for Vonage Holdings Corp.

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