



December 14, 2010

Via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Vonage Holdings Corporation Ex Parte Comments
GN Docket No. 09-191, Preserving the Open Internet; WC Docket No. 07-52,
Broadband Industry Practices & GN Docket No. 10-127, Framework for
Broadband Internet Service**

Dear Ms. Dortch:

Vonage Holdings Corp. (“Vonage”) files this letter to supplement its comments in the above-referenced dockets. Chairman Genachowski recently announced that the Commission is considering adopting “Net Neutrality” rules based in part on its ancillary authority under Title I, but in a way that creates different requirements for wireless and wireline broadband Internet services. Specifically, Chairman Genachowski stated that “[t]he record in our proceeding reflects both the importance of openness principles to mobile broadband, and the appropriateness of recognizing differences between fixed and mobile broadband.... Accordingly, the proposal takes important but measured steps in this area -- including transparency and a basic no blocking rule.”¹ Based on press reports, it appears that the draft order does not apply all of the proposed rules from the Open Internet NPRM to wireless broadband services. There are a number of reasons why the Commission should consider applying all of the proposed rules to wireless broadband services or at a minimum expanding the proposed rules for wireless broadband service in the Waxman Proposal by, for example, prohibiting blocking or degrading all applications and services instead of just voice and video applications or services.

¹ Chairman Julius Genachowski Remarks on Preserving Internet Freedom and Openness (Dec. 1, 2010).

Failing to apply all rules would leave the largest segment of broadband consumers subject to lesser protection. According to the recent FCC Form 477 Report,² the wireless share of broadband connections is increasing dramatically. Wireless services now account for the largest share of broadband Internet connections in the United States above such technologies as cable modem and DSL. Wireless connections account for 39% of total broadband subscribership,³ and 31% of residential broadband subscribership.⁴ Treating wireless services differently than wireline services because they are at an “earlier stage of development” would ignore the fact that Americans currently use wireless technology more than any other broadband Internet service technology, and that wireless services are the fastest growing segment of the market.⁵

If wireless broadband providers block non-voice and video applications or engage in unreasonable discrimination against such applications, competition is unlikely to correct this problem. The most recent CMRS Competition Report refused to make a finding that wireless markets are competitive.⁶ This means that if a consumer is not satisfied with her access to applications or services using wireless broadband, she may not find another wireless broadband provider that has chosen to differentiate itself in the market by offering less restrictive access to applications and services. The Commission should adopt rules that give consumers more choices, not less.

² FCC, *Internet Access Services: Status as of December 31, 2009* (rel. Dec. 2010) (“Form 477 Report”), available at: http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1208/DOC-303405A1.pdf.

³ See Form 477 Report, at 23, Chart 6. During the second half of 2009, fixed-location Internet access connections over 200 kbps in at least one direction increased by 3%, to 81 million. In sharp contrast, during the second half of 2009, mobile wireless service subscribers with mobile devices and data plans for full Internet access increased by 48%, to 52 million. See *id.*, at 10.

⁴ See Form 477 Report, at 24, Chart 7. Residential fixed-location Internet access connections over 200 kbps in at least one direction increased by 3% during the second half of 2009, to 74 million. Reported residential mobile wireless service subscribers with mobile devices and data plans for full Internet access increased by 53%, to 34 million, during the second half of 2009. See *id.*, at 10.

⁵ See *id.* at 23-24, Tables 7 and 8.

⁶ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, WT Docket No. 09-66, FCC 10-81, at ¶ 3 (rel. May 20, 2010) (“CMRS Competition Report”) (“rather than reaching an overarching, industry-wide determination with respect to whether there is ‘effective competition,’ the Report complies with the statutory requirement by providing a detailed analysis of the state of competition that seeks to identify areas where market conditions appear to be producing substantial consumer benefits and provides data that can form the basis for inquiries into whether policy levers could produce superior outcomes.”). See also *id.*, ¶ 4 (“The two largest providers, AT&T, Inc. (AT&T) and Verizon Wireless, have 60 percent of both subscribers and revenue, and continue to gain share (accounting for 12.3 million net additions in 2008 and 14.1 million during 2009) ... One widely-used measure of industry concentration indicates that concentration has increased 32 percent since 2003 and 6.5 percent in the most recent year for which data is available.”).

Failing to apply the same open Internet rules to both wired and wireless broadband is likely to frustrate consumer expectations. Increasingly, wired and wireless broadband experiences are converging. Wireless providers are promoting their latest devices as offering consumers the ability to realize the full potential of the web from the palms of their hands. And consumers naturally expect that wireless devices will be able to deliver a full web experience. Yet the proposed rules would fail to ensure that consumers of wireless broadband service have a full web experience, as the rules apparently give a free hand to wireless broadband providers to block or discriminate against applications and services outside of competing voice and video applications and services.

Failing to apply the same rules could alter the competitive dynamic between wired and wireless broadband service. Consumers already use wireless broadband as a replacement for wired broadband and this will only increase in the future with the higher speeds offered by 4G wireless broadband. The wireless broadband providers appear to be exploring pushing wireless broadband as a substitute for wired broadband. For example, Verizon Wireless and DirecTV are reportedly testing a bundled package of 4G broadband service and satellite television service, which could give Verizon a way to compete with cable providers outside of its FiOS footprint.⁷ Given this competition, subjecting wired and wireless broadband technologies to different regulation could artificially advantage one technology over the other.

The primary stated reason for exempting wireless broadband from certain open Internet rules is that wireless broadband is different than wired broadband. As Vonage and many others have pointed out in this proceeding, the differences between wired and wireless broadband networks can be addressed through the reasonable network management exception. There is no need to create a lesser Open Internet framework for wireless broadband to account for these differences. Vonage urges the Commission to consider applying all of the original proposed Open Internet rules to wireless broadband services or at minimum prohibiting wireless broadband providers from blocking or degrading all applications and services.

Respectfully submitted,

/s/ Brendan Kasper
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Vonage Holdings Corp.

cc: Edward Lazarus
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Austin Schlick

⁷ See, e.g., Todd Spangler, DirecTV Tests LTE With Verizon Wireless, Multichannel News, Dec. 10, 2010, available at: http://www.multichannel.com/article/460950-DirecTV_Tests_LTE_With_Verizon_Wireless.php) and Reinhardt Krause, Verizon And DirecTV Test 4G Wireless In A Product Bundle, Investor's Business Daily, Dec. 9, 2010, available at: <http://www.investors.com/NewsAndAnalysis/Article/556328/201012091836/Verizon-And-DirecTV-Test-4G-Wireless-In-A-Product-Bundle.htm>).

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