

**Before the  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**COMMENTS OF VONAGE HOLDINGS CORP.**

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## SUMMARY

Vonage Holdings Corp. (“Vonage”) urges the Commission to adopt a bill-and-keep regime for interconnected voice over Internet Protocol (“VoIP”). Adopting bill-and-keep for interconnected VoIP now is consistent with the Commission’s goal of transitioning all intercarrier compensation to bill-and-keep and is economically efficient, forward-looking solution that will send appropriate price signals to consumers and the industry. In addition, because interconnected VoIP has been and will remain a key driver for broadband, a bill-and-keep regime for interconnected VoIP will promote the transition to broadband and all-IP networks. Interconnected VoIP should remain separate from any intercarrier compensation transition the Commission proposes. Injecting interconnected VoIP into that process, rather than placing it at the end point of the transition, is a step backwards to go forward.

The Commission has the authority to establish bill-and-keep for interconnected VoIP under Section 251(b)(5) and its own prior determinations that interconnected VoIP providers provide interstate telecommunications, regardless of the ultimate classification of interconnected VoIP. The scope of Section 251(b)(5) is not limited geographically, *i.e.*, to interstate, intrastate or local traffic, or to a particular service. It therefore provides ample authority for the Commission to include interconnected VoIP as compensable traffic and establish bill-and-keep as the appropriate compensation mechanism for this service.

Finally during the period that the intercarrier compensation for telecommunications service transitions to bill-and-keep, the Commission can address the potential for providers to falsely claim that telecommunications service is VoIP to avoid intercarrier compensation requirements by: (1) requiring VoIP providers to indicate in the signaling or billing information for a call that the call is VoIP and (2) prohibiting providers from falsely identifying traffic as VoIP under the Commission’s proposed rules to address phantom traffic.

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	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**COMMENTS OF VONAGE HOLDINGS CORP.**

Vonage Holdings Corp. (“Vonage”), through undersigned counsel, hereby submits its comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking<sup>1</sup> in this matter.

**I. INTRODUCTION/BACKGROUND**

Vonage is a leading provider of communications services connecting individuals and social networks through broadband devices worldwide, currently serving more than 2.4 million subscriber lines. Vonage provides feature-rich, affordable communication solutions offering flexibility, portability and ease-of-use. Consumers can use Vonage service, combined with a Vonage analog

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<sup>1</sup> *In the Matter of In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket Nos. 07-135, 10-90, 05-337 and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45, FCC 11-13 (rel. Feb. 9, 2011) (“NPRM”).

terminal adapter (ATA2)<sup>2</sup> or other CPE and broadband Internet access service, to make calls to and receive calls from the PSTN over any broadband connection, anywhere in the world.

Vonage also offers a softphone product, a software download permitting consumers to use a computer as a fully-functioning telephone, with its own phone number, through a screen-based interface that works just like a telephone keypad. Most recently, Vonage introduced a free Facebook application that permits users with iPhone, iPod Touch, or Android devices to make free mobile calls using Wi-Fi or 3G to all their Facebook friends, directly from within their Facebook friends list.

As the Commission recognizes, the current intercarrier compensation regime is not sustainable in an all Internet Protocol ("IP") world in which the exchange of payments for IP traffic is not based upon the minutes of use, but on the amount of bandwidth consumed.<sup>3</sup> In the all-IP world, voice will be just one of many different applications that ride on the underlying network facilities of different providers. Like the videos, music and other data transmitted over these networks, voice will be just a series of packets.<sup>4</sup> As such, the costs of exchanging, transporting and terminating voice packets will be no different than exchanging, transporting or terminating any other bits of data. However, the uncertainty and perverse incentives of the current regime are hindering the industry's progression to all IP networks.

In addition, the Commission and industry recognize that, as the market transitions to IP or Session Initiation Protocol ("SIP") as the protocol for the transport network layer and the use of high-bandwidth applications continues to increase, the price of usage will be determined by the amount of capacity used rather than the number of minutes exchanged. Indeed, the very concept of a "minute of use" will no longer be relevant in a world in which usage is gauged and priced in terms of gigabytes or gigabytes per second of capacity usage.

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<sup>2</sup> Vonage has historically offered its customers many choices of ATA; in this document, the term ATA is meant to encompass the wide range of such devices available to consumers, generally, and to Vonage subscribers, in particular.

<sup>3</sup> *NPRM* at ¶ 505.

<sup>4</sup> *NPRM*, at ¶ 527.

Vonage urges the Commission to mandate a bill-and-keep intercarrier compensation regime for VoIP and reject any proposal to impose intercarrier compensation obligations or charges on VoIP providers. Even if the Commission decides to establish a glide path to bill-and-keep for all intercarrier compensation rates, it should not inject VoIP into that process. The negative consequences of doing so would reverberate well beyond any transition period.

## II. COMMENTS

### A. Applying Bill-and-Keep to Interconnected VoIP is Consistent with the Commission's Policy Goals.

Adopting a bill-and-keep regime for Interconnected VoIP furthers the Commission's goals for intercarrier compensation reform and a transition to IP networks. In the NPRM, the Commission signaled its preference for bill-and-keep as the end goal of intercarrier compensation reform.<sup>5</sup> Specifically, the Commission articulated that a reformed intercarrier compensation regime would not include rate distinctions based upon jurisdiction or type of traffic.<sup>6</sup> Rather, it would be based upon market-driven, incentive-based policies that would promote and accelerate the transition to broadband and all-IP networks.<sup>7</sup> Implementing bill-and-keep for interconnected VoIP is consistent with a market-driven, incentive based policy.

#### 1. Interconnected VoIP Does Not Fit Within the Historic Circuit-Switched-Based Regime.

Interconnected VoIP developed outside the boundaries of the legacy circuit-switched network to address the need for innovative service, pricing and features.<sup>8</sup> The Internet does not recognize jurisdictional boundaries and is instead designed to get data from one point to another

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<sup>5</sup> NPRM, at ¶ 530.

<sup>6</sup> See, e.g., NPRM, at ¶ 495.

<sup>7</sup> NPRM at ¶ 14.

<sup>8</sup> *In the Matter of Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, WC Docket No. 03-45, 19 FCC Rcd. 3307, at ¶ 1 (2004); *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, 19 FCC Rcd. 22404, at ¶¶ 7-9 (2004), *aff'd sub nom. Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

across multiple networks in a unified, interconnected manner. Interconnected VoIP developed in this environment under the same rationale. As a result, interconnected VoIP developed outside the restrictive boundaries of the geographically-based system in which numbers are bound to rate centers which, in turn, are bound to a geographic locations that are immobile. Interconnected VoIP does not suffer these same restrictions and should remain separate from the intercarrier compensation regime that developed under this anachronistic system.

Under the legacy circuit-switched system, calls follow a direct path or at most, a handful of paths from their origination point to their termination point. The carriers originating, transporting and terminating the call can identify the facilities used and the underlying costs of those facilities. In such a system, per-minute charges that vary by jurisdiction may have some reasonable support based on the argument that it costs carriers more to transmit traffic to/from certain locations than it does to transmit to/from other locations, even if the actual facilities used, and therefore, the costs incurred, by the transmitting carrier are the same. In the VoIP model, in which telephone numbers are not associated with a particular rate center and geographic location is irrelevant, this type of charge is inappropriate. In an IP world, the packets that comprise a call are disassembled, routed over dozens or more separate paths, and reassembled at their destination. There is no single path for the call and, thus, no specific facilities whose cost can be identified. As AT&T and others have recognized, the historical federal/state jurisdictional division "is fundamentally incompatible with IP-based technology and the multiple, simultaneous communications that IP-based technology enables."<sup>9</sup>

2. "Jurisdictionalizing" Traffic and Intercarrier Compensation Pricing Based Upon Geographical Boundaries Have No Place in an IP World.

One of the problems the Commission identified with the current intercarrier compensation regime, is that "rates vary based on the type of provider and where the call originated, even though

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<sup>9</sup> Comments of AT&T, Inc. at 19, NBP PN # 25 (filed Dec. 21, 2009).

the function of originating or terminating a call does not change.”<sup>10</sup> The Commission has made specific findings relating to intercarrier compensation that the cost of terminating traffic does not vary by geography or traffic type.<sup>11</sup> Yet that is exactly how the current regime differentiates calls for purposes of intercarrier compensation. This fundamental flaw in the current regime is rooted in the marketplace of the 1980s and 1990s in which the various, different intercarrier compensation rate structures were developed. The current wireline intercarrier compensation regime requires that parties exchanging traffic jurisdictionalize the traffic in order to assign a rate to the call. In contrast, as the wireless market developed, providers realized that “all-you-can-eat” or unlimited regional and nationwide packages made the most economic sense to their customers and their own bottom lines. The proliferation of these packages made billing on a geographic area less relevant. The same can be said of interconnected VoIP, which has made geography irrelevant in the wireline environment. As the physical and geographic location of a particular service becomes secondary to the functionality of the service *and* as more consumers utilize bundled, all-inclusive services that provide unlimited calling to any jurisdiction, the jurisdictional distinctions and per-minute charges of the past become irrelevant. It would be a mistake to attempt to layer these restrictive concepts over interconnected VoIP, which operates without any such geographic or jurisdictional boundaries.

3. Bill-and-Keep is Forward-Looking, Economically Efficient and Sends Appropriate Price Signals

Broadband, all-IP networks should be fully utilized to benefit users, not constrained by artificial intercarrier compensation rules. The policies underlying traffic exchange between networks

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<sup>10</sup> *NPRM*, at ¶ 495.

<sup>11</sup> *See, e.g., In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 05-337, 03-109, 06-122, and 04-36, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, and 99-68, 24 FCC Rcd. 6475, at ¶ 8 (2008), *aff'd sub nom. aff'd Core Communications, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010), *cert denied*, 131 S. Ct. 597 (2010).

should be forward-looking and affirmatively promote sound and efficient engineering, and should send appropriate price signals to network providers and consumers. An intercarrier compensation regime that fails to do these things will impede broadband deployment, slow the development of all-IP networks and constrain innovation.

As noted, the Commission signaled its intent to transition to bill-and-keep for all intercarrier compensation by the end of its reform. Adopting bill-and-keep now for interconnected VoIP furthers this goal. For one thing, establishing a bill-and-keep regime lends certainty to an area the Commission recognizes has been plagued by uncertainty. The industry wants certainty, as well, but certainty should not be achieved by taking backward steps. Imposing an intercarrier compensation obligation on interconnected VoIP for an interim period while the rest of the industry transitions to bill and keep sends the wrong signals to the market and consumers. Such a backward step would create unnecessary and avoidable complications and burdens on the path to bill and keep. Taking this step would also require interconnected VoIP providers, and anyone with whom they exchange traffic, to make two changes to intercarrier compensation – one change to implement an intercarrier compensation regime and another change to eliminate an intercarrier compensation regime to transition to bill-and-keep. The Commission should not break the compensation system for interconnected VoIP in order to fix the compensation system for other types of service. The better approach is to keep interconnected VoIP separate from any intercarrier compensation transition so that other services will reach the landing point at which interconnected VoIP resides - bill-and-keep - as the forward-most point of the transition. Imposing intercarrier compensation on interconnected VoIP, even on an interim, transitional basis, would have substantial ripple effects and unintended consequences, such as increased costs associated with negotiating and implementing multiple changes to existing intercarrier compensation arrangements and contracts. Costs which are ultimately borne by the consumer of interconnected VoIP services. Adopting a bill-and-keep regime would require only one change, if any change at all, to such arrangements.

Moreover, as the Commission stated, an appropriate intercarrier compensation regime should be forward-looking and a bill-and-keep regime for interconnected VoIP fulfills the Commission's objective because it is forward-looking. First, a bill-and-keep system is the ultimate goal of the Commission's reform effort. Second, an all IP-based network is the direction the industry is heading. It is the future. In this regard, others have advocated that the exchange of traffic in an all IP-based system is similar to the exchange of Internet traffic between Internet providers. Unlike the per-minute charges historically applied to voice traffic, Internet traffic is exchanged between networks based upon the bandwidth used or under bill-and-keep "peering" arrangements. These peering arrangements are typically performed at minimal or no cost among providers of similar tiers and the costs of maintaining the network is recovered from customers of the services that make use of those networks. Many carriers, cable companies, and other service providers are already using IP for long haul, transport and in other elements of their networks. As the use of IP for these functions becomes more widespread and IP moves deeper into the network, an increasing amount of traffic will be exchanged under a "peering" model as parties exchange various types of IP traffic. The migration to an IP-to-IP interconnection should result in lower costs for providers and, ultimately for consumers. That is, unless the Commission imposes on IP-based services outdated, circuit-switched concepts, such as intercarrier compensation. Voice, in the form of interconnected VoIP, is just one more application that will ride on the IP network. Carving out voice traffic/VoIP for different treatment when everything else is transitioning to the same structure, is inefficient, places interconnected VoIP at a competitive disadvantage, and sends inappropriate price signals.

Likewise, bill-and-keep for interconnected VoIP will facilitate the transition to IP networks. As noted, the industry is already moving to IP for many network functions. Much of the drive for broadband is fueled by the proliferation of innovative, interconnected VoIP services and the wealth of features VoIP can unleash. The more that companies shift to or expand the use of IP for all of their services, the greater the incentive for others to do so. A number of parties are urging the Commission to mandate IP-to-IP interconnection in some circumstances and that trend is likely to

grow. Establishing an explicit bill-and-keep regime for interconnected VoIP will support this trend and further the expansion of interconnected VoIP and the resultant growth of broadband usage and deployment. On the other hand, imposing a legacy, circuit-switched access charge regime, or any flavor of the Commission's proposed reformed access charge regimes, to interconnected VoIP would stifle consumer demand for broadband and create disincentives to invest in the development of new IP-enabled voice applications.

Bill-and-keep is an economically efficient intercarrier compensation regime that will promote cost savings and, therefore, lower rates for consumers. Historically, intercarrier compensation pricing policies have been based on the assumption that the cost causer, the originating carrier, is also the sole beneficiary of the call; this calling-party-pays regime, which has its origin in the legacy circuit-switched network, does not reflect the true costs and benefits of the exchange of traffic, particularly in the context of an IP market. As the Commission acknowledged, recent analyses demonstrate that both parties to the communication benefit from it.<sup>12</sup> Indeed, customers of the originating provider benefit from being able to terminate calls to customers of the terminating provider and customers of the terminating provider benefit from being able to receive calls from customers of the originating provider. Without the ability of the two providers to exchange communications, none of their customers would obtain the benefits of their interconnection. This same rationale applies to interconnected VoIP and the exchange of communications between IP networks. Both networks, and the customers that are served by those networks, benefit from the ability to interconnect and exchange traffic with the other network. Because a bill-and-keep regime does not shift costs to the calling party, but instead requires both parties to bear their own costs for the benefits they receive from the other party, it more accurately reflects the benefits of the communication for both parties.

In addition to appropriately balancing the costs and benefits of communication between two parties, a bill-and-keep regime provides appropriate incentives to encourage providers to reduce

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<sup>12</sup> *NPRM*, at ¶ 525.

costs. A bill-and-keep compensation methodology recovers the cost of the network from the end users that utilize that network rather than from the providers that interconnect with or exchange traffic with that network. This approach sends the correct price signals to consumers and network providers. Under the existing intercarrier compensation system, an end user that generates an unusual amount of inbound traffic does not necessarily see or bear the costs of that traffic because the terminating carrier is able to collect access charges to offset its costs. As a result, neither the end user nor its underlying carriers have an incentive to reduce costs.<sup>13</sup> To the contrary, as evidenced by the proliferation of access stimulation/traffic pumping schemes and disputes, both the end user and its underlying carrier have an incentive to increase costs, or at the very least, to shift the costs of their use of the network to their competitors.<sup>14</sup> Under a bill-and-keep regime, the network provider has an incentive to reduce its costs or recoup them from its end users. However, because the latter option is limited by the market, which, at some price point, can no longer bear the additional costs, a network provider gains the most from reducing its costs. The end user, in turn, has an incentive to reduce its costs to avoid additional charges from its network provider. Thus, bill-and-keep removes the incentive to develop schemes designed solely to generate intercarrier compensation revenue<sup>15</sup> and appropriately balances the costs of the network among those that use it.

Moreover, if interconnected VoIP is subject to bill-and-keep it will not likely be subject to the terminating access monopoly problems the Commission identified in other contexts. Specifically, the Commission determined that, with respect to terminating access, the service provider that controls access to an end user, has both the ability and incentive to increase the price of such access and

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<sup>13</sup> *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9935-36, ¶ 31 (2001) ("*CLEC Access Charge Reform Order*").

<sup>14</sup> *NPRM*, at ¶ 524.

<sup>15</sup> *NPRM*, at ¶ 524.

can, therefore, impose unreasonable access charges on other providers.<sup>16</sup> The ability of a terminating service provider to impose almost any price for access to its end users is a key factor in many of the arbitrage situations cited by the Commission in the NPRM. Under a bill-and-keep regime, this type of price manipulation is simply not possible because the terminating provider cannot charge the originating or any intermediate provider for the termination of traffic. Consequently, adopting bill-and-keep for interconnected VoIP will reduce or eliminate any concerns about market power by terminating providers.

Finally, establishing bill-and-keep for interconnected VoIP eliminates or reduces the need for ongoing Commission oversight or review of intercarrier compensation charges. If the Commission injects interconnected VoIP into any intercarrier compensation reform or proposed glide path, the Commission (or state public utility commissions) will have to monitor intercarrier compensation rates for interconnected VoIP. In addition, the Commission (or state public utility commissions) will continue to face billing and other disputes based upon whether carriers have implemented the appropriate rates for interconnected VoIP and are assessing those rates only on interconnected VoIP traffic. On the other hand, if the Commission immediately adopts a bill-and-keep requirement for interconnected VoIP, it will not have to regulate intercarrier compensation charges, resolve billing disputes or otherwise oversee the transition of interconnected VoIP rates to a future level.<sup>17</sup> Nor will the Commission have to consider a transition plan or glide path to lessen the impact of a change in interconnected VoIP intercarrier compensation. Interconnected VoIP intercarrier compensation rates will already be at the future state the Commission wants for all intercarrier compensation rates.

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<sup>16</sup> *CLEC Access Charge Reform Order*, at ¶ 34.; *In the Matter of Access Charge Reform*, CC Docket 96-262, First Report and Order, 12 FCC Rcd 15982 (1997), *aff'd sub. nom. Southwest Bell v. FCC*, 153 F.3d 523 (8th Cir. 1998).

<sup>17</sup> It is likely that some companies will have to revise their interconnection or other agreements to reflect the exchange of interconnected VoIP traffic as bill and keep; however, this process should not involve the Commission or state public utility commissions. Most of these agreements have change of law provisions or other terms that explicitly address a Commission ruling on interconnected VoIP that will enable the parties to negotiate appropriate amendments to reflect a bill and keep model for interconnected VoIP.

**B. Applying Bill-and-Keep to Interconnected VoIP is Consistent with the Act and Commission Precedent.**

Vonage agrees with the Commission's conclusion in the NPRM that it has the authority under Section 251(b)(5) to determine that interconnected VoIP should be subject to bill-and-keep. The Commission states in the NPRM that interconnected VoIP is "telecommunications" traffic for purposes of the reciprocal compensation obligations of Section 251(b)(5) of the Communications Act of 1934, as amended (the "Act"), regardless of whether interconnected VoIP is classified as a "telecommunications service" or an "information service".<sup>18</sup>

The Commission has also classified interconnected VoIP services as "telecommunications" in other contexts. For instance, in 2006, the Commission found that interconnected VoIP providers are "providers of interstate telecommunications" for USF contribution purposes.<sup>19</sup> In that order, the Commission concluded that interconnected VoIP providers "provide" telecommunications, *i.e.*, "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."<sup>20</sup> In reaching this conclusion, the Commission pointed out that a provider of interstate telecommunications may not necessarily "offer" telecommunications for a fee directly to the public and, therefore, may not be a telecommunications service provider.<sup>21</sup> The Commission first noted that "provider" is not defined in

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<sup>18</sup> *NPRM*, at ¶ 615.

<sup>19</sup> *In the Matter of Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-337, 99-200, 95-116, and 98-170, FCC Rcd. 7518, at ¶¶ 34, 39 (2006), *pet. for review granted in part and denied in part sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

<sup>20</sup> *Universal Service Contribution Methodology*, 21 FCC Rcd. 7518, at ¶ 39 (citing 47 U.S.C. § 153(43)).

<sup>21</sup> *Universal Service Contribution Methodology*, 21 FCC Rcd. 7518, at ¶ 38.

the Act, but its usage throughout the Act implies that it is a broader term than “offer.” According to the Commission, the determination of what is offered turns on the nature of the functionality the end user is offered.<sup>22</sup> In the case of interconnected VoIP, a customer is offered the ability to place or receive telephone calls over the Internet. However, from interconnected VoIP provider’s perspective, it is providing more than this finished service. As the Commission found, the interconnected VoIP provider is supplying components of the service, one of which is transmission.<sup>23</sup>

The Commission went on to state that it had previously found that interconnected VoIP services involve the transmission of voice by aid of wire, cable, radio or other like connection or by radio.<sup>24</sup> Noting that the heart of telecommunications is transmission, the Commission concluded that interconnected VoIP provide telecommunications.<sup>25</sup> Specifically, the Commission determined that in contrast to services that merely use the Public Switched Telephone Network (“PSTN”) to supply a finished product to end users, interconnected VoIP providers actually supply PSTN transmission itself to end users.<sup>26</sup>

In addition, the Commission has concluded that the scope of Section 251(b)(5) is not limited to “local traffic” or to local exchange carriers.<sup>27</sup> Specifically, the Commission concluded that “[i]ts scope is not limited geographically (‘local,’ ‘intrastate,’ or ‘interstate’) or to particular services (‘telephone exchange service,’ ‘telephone toll service,’ or ‘exchange access.’”<sup>28</sup> In that decision, the

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<sup>22</sup> *In the Matter of Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, GN Docket No. 00-197, CS Docket No. 02-52, 17 FCC Rcd. 4789, ¶ 38 (2002), *aff’d sub nom. National Cable & Telecommunications Association v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

<sup>23</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd. 4798, at ¶ 40.

<sup>24</sup> *Universal Service Contribution Methodology*, 21 FCC Rcd. 7518, at ¶ 41 (citing *IP-Enabled Services*; *E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 and 05-196, 20 FCC Rcd. 10245, at ¶ 24 (2005), *aff’d sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2007)).

<sup>25</sup> *Universal Service Contribution Methodology*, 21 FCC Rcd. 7518, at ¶ 41.

<sup>26</sup> *Universal Service Contribution Methodology*, 21 FCC Rcd. 7518, at ¶ 41.

<sup>27</sup> See *NPRM*, at ¶ 615.

<sup>28</sup> *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering*

Commission also determined that the reciprocal compensation requirement of Section 251(b)(5) applies to traffic exchanged by a LEC and any other telecommunications carrier.<sup>29</sup> Therefore, the Commission can and should determine in this proceeding, under Section 251(b)(5), that interconnected VoIP traffic should be subject to bill-and-keep.

**C. The Commission Can Take Measures to Ensure that VoIP Traffic is Correctly Identified.**

In order to prevent carriers or other service providers from attempting to take advantage of the bill-and-keep status of interconnected VoIP, the Commission can take measures to ensure that telecommunications traffic is not incorrectly identified as interconnected VoIP traffic to avoid payment of intercarrier compensation. Vonage is aware of the arbitrage opportunities the Commission and others have identified exist in the current intercarrier compensation rules. In addition, Vonage agrees with the underlying policy goals of this proceeding to eliminate those opportunities and reform the intercarrier compensation regime to address an all IP world.

One approach to prevent providers from falsely claiming that traffic is VoIP in order to avoid payment of intercarrier compensation during the period when intercarrier compensation for telecommunications service transitions to bill-and-keep would be for the Commission to require the service provider initiating an interconnected VoIP call include in the call signaling or billing information an appropriate indicator to identify the call as an interconnected VoIP call and to prohibit service providers from falsely indicating that a call is an interconnected VoIP call under the proposed Call Signaling Rules.<sup>30</sup> While Vonage is still investigating vehicles that could be used for

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*Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 05-337, 03-109, 06-122, and 04-36, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, and 99-68, 24 FCC Rcd. 6475, at ¶ 8 (2008), *aff'd sub nom. Core Comm'ns v. FCC*, 08-1393 (D.C. Cir. 2010).

<sup>29</sup> *Id.*, at ¶ 10.

<sup>30</sup> See *NPRM* at ¶¶ 620-634.

this purpose, one potential candidate is the Calling Party's Category (CPC) parameter that is used to interface between SIP messages and the PSTN signaling network.<sup>31</sup> Because there is no VoIP category currently for the CPC parameter, it would be necessary to create a VoIP category that could be populated in the CPC parameter.

### III. CONCLUSION

For the reasons discussed above, Vonage respectfully requests that the Commission adopt a bill-and-keep regime for interconnected VoIP intercarrier compensation.

Respectfully submitted,



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<sup>31</sup> See RFC 3398, Integrated Services Digital Network (ISDN) User Part (IUSP) to Session Initiation Protocol (SIP) Mapping (2002) at § 7.2.1.1 (available at <http://www.rfc-editor.org/rfc/rfc3398.txt>). Cited by *NPRM* at fn 952. In particular, the CPC is a mandatory parameter within an Initial Address Message (IAM). The IAM provides information necessary for PSTN signaling and is created by a PSTN-SIP gateway when the gateway receives a SIP invite. The IAM is populated based on information in the SIP headers of the incoming IP communication.