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

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 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

REPLY COMMENTS OF VONAGE HOLDINGS CORP.

Vonage Holdings Corp. ("Vonage") is pleased to submit these reply comments to the Commission's FNPRM on universal service reform.[1] These reply comments are limited to two key points: (1) the Commission should not classify Voice-over-Internet-Protocol ("VoIP") as a telecommunications service and (2) the Commission should impose appropriate public interest conditions on the recipients of USF funds.

First, the Commission should not classify VoIP as a telecommunications service. Under statute and the Commission's own precedents, VoIP is an information service and it would be

[1] *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 an 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, FCC 11-13, at ¶ 60 (rel. Feb. 9, 2011) ("*USF/ICC Reform NPRM*").

arbitrary and capricious to determine otherwise in the name of fortifying the Commission's existing authority to support broadband with USF. Indeed, no advocate for classifying VoIP as a telecommunications service has provided a reasoned basis that reconciles its position with existing law. It would be particularly difficult to justify such classification here, as the Commission has authority to support broadband with USF and need not classify VoIP as a telecommunications service to meet the goals of this proceeding

Second, in reforming USF, the Commission should require entities that receive USF funds to comply with public interest conditions, including compliance with the Commission's open internet rules and the provision of standalone broadband. Without such conditions, broadband expansion to high cost and underserved areas will be hampered and users will continue to be denied access to advanced and IP services, an outcome at odds with the underlying goals of the universal service program.

I. THE COMMISSION SHOULD NOT CLASSIFY VOIP AS A TELECOMMUNICATIONS SERVICE.

A. VoIP Is An Information Service Under the Relevant Statutes and According to Commission Precedent.

As Vonage explained in its comments on this NPRM,[2] and in previous filings in this and other proceedings,[3] VoIP is an information service under both the Communications Act and Commission precedent. Information services are characterized the "transform[ation]" of information via telecommunications.[4] Interconnected VoIP, by permitting a call that originates

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[2] *See* Comments of Vonage Holdings Corp. ("Vonage Comments"), WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed April 18, 2011).

[3] *See, e.g.*, Letter from Brendan Kasper, Senior Regulatory Counsel for Vonage Holdings Corp., to Marlene Dortch, Secretary, FCC, GN Docket Nos. 09-191, 09-47, 09-51, and 09-137, and WC Docket No. 07-52 (filed April 21, 2010).

[4] 47 U.S.C. § 153(24); *see National Cable & Telecomms. Ass'n v. Brand X Internet Svcs.*, 545 U.S. 967, 977 (2005) (describing protocol conversion that makes a service an enhanced

on the PTSN to be competed over an IP-based network and vice versa, transforms information by means of a net-protocol conversion and thus falls squarely within the statutory definition of a telecommunications service.

The Commission has long held that services that have the capability for such transformation are information services.[5] This conclusion, which is dictated by the statutory language, is also sound as a matter of policy. As ITI notes, "[r]egulation intended for telecommunications services are unlikely to make sense for services created at the application layer."[6] Nothing has changed to alter that reasoning. Indeed, TIA properly pointed out in its comments that "[t]he Commission has successfully extended various obligations (including universal service contribution obligations) to interconnected VoIP, without addressing the classification of the service."[7] In light of this ability to regulate, there is simply no need for the Commission to classify VoIP as a telecommunications service. And classifying VoIP as a telecommunications service would have no effect on the Commission's authority to support broadband with USF.[8]

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service as the "ability to communicate between networks that employ different data-transmission formats").

5 *Implementation of the Non-Accounting Safeguards of Sections 271 & 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 21956 ¶ 104 (1996); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C.2d 384, 422 ¶ 99 (1980).

6 Comments of The Information Technology Industry Council ("ITI Comments") at 3, WC Docket Nos. 10-90, 07-135, 05-337 and 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92 and 96-45, and FCC 11-13 (filed April 18, 2011).

7 Comments of The Telecommunications Industry Association ("TIA Comments") at 16, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed April 18, 2011).

8 *See id.*

B. No Commenter Can Reconcile Classifying VoIP as a Telecommunications Service with Existing Law

Despite the clear statutory language and ample Commission precedent indicating that VoIP cannot and should not be classified as a telecommunications service, many commenters advocate for just that action. Their arguments, however, fail to address existing law and focus instead on policy arguments. Those arguments are insufficient to overcome the clear statutory language at issue.

NARUC, for instance, asserts simply that VoIP is functionally the same as telecommunications services and should therefore be classified as a telecommunications service.[9] This conclusory argument, however, disregards the enhanced functionality and protocol conversion that characterize VoIP service and that distinguish VoIP from telecommunications service. The statutory definition of information services specifically looks to whether a service "generat[es], acquir[es], stor[es], transform[s], process[es], retriev[es], utilize[es] or mak[es] available information via telecommunications."[10] The Commission has made net-protocol conversion a touchstone for determining whether a service is an information service.[11] As the VON Coalition correctly notes, "VoIP and other IP-enabled applications that originate or terminate in IP are intrinsically information services when traffic is exchanged between an IP network and the PSTN because the traffic must, of necessity, undergo a net protocol conversion

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[9] Comments of The National Association of Regulatory Utility Commissioners ("NARUC Comments") at 4, WC Docket Nos. 10-90, 07-135, 05-337 and 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92 and 96-45 (filed April 18, 2011).

[10] 47 U.S.C. § 153(24).

[11] *See Matter of Implementation of the Non-Accounting Safeguards of Sections 271 & 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 21956 ¶ 104 (1996); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C.2d 384, 422 ¶ 99 (1980).

from circuit-switched format to IP (or vice versa)."[12] Despite that clear statutory language and Commission precedent, NARUC ignores both and argues that the Commission should classify VoIP as a telecommunications service simply because it *looks like* a traditional telephone service. The Commission, however, is not free to contravene the plain language of the statute.

Similarly, the Public Utilities Commission of Ohio argues that VoIP should be classified as a telecommunications service because it functionally resembles a traditional telephone service.[13] Like NARUC, this request ignores the statutory definition of an information service and the Commission's own precedent – which the Commission cannot do. But Ohio also goes further and argues that classifying VoIP as a telecommunications service would bolster the Commission's authority to support broadband with USF.[14] As Vonage and others have explained, though, the Commission's authority to support broadband with USF would not be affected by classifying VoIP as a telecommunications service.[15] The Commission has already stated that it has statutory authority to support broadband with USF.[16] There is thus no need to classify VoIP service as a telecommunications service in this proceeding.

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[12] VON Comments at 8.

[13] Comments of The Public Utilities Commission of Ohio at 9, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed April 18, 2011) (citing Comments of the Public Utilities Commission of Ohio, WC Docket No. 04-36 at 4 (filed May 28, 2004)).

[14] *Id.*.

[15] Vonage Comments at 4-5; TIA Comments at 16. *See also* Comments of Time Warner Cable Inc. ("Time Warner Comments") at 23, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed April 18, 2011).

[16] *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 an 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, FCC 11-13, at ¶ 60 (rel. Feb. 9, 2011).

C. Interconnected VoIP Supports USF Today

Today, VoIP remains an unclassified service. Yet interconnected VoIP providers pay into federal USF,[17] and the Commission has specifically delegated authority to the state commissions to collect state USF from interconnected VoIP providers.[18] Concerns by some of the state commissions that VoIP be made to support USF, then, are baseless.[19] Classifying VoIP as a telecommunications service to achieve such support is unnecessary and would be counterproductive, reducing innovation and hampering competition.[20]

II. THE COMMISSION SHOULD IMPOSE CONDITIONS ON BROADBAND PROVIDERS' RECEIPT OF USF.

The Commission has the authority to impose conditions on broadband providers' receipt of USF, as Vonage noted in its comments.[21] Vonage continues to encourage the Commission to exercise that authority, as do numerous other commenters.[22] In particular, the Commission should require broadband providers seeking USF support to comply with the Commission's open-internet rules[23] and to make broadband service available to users on a standalone basis.[24]

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[17] *Vonage Holdings Corporation's Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd. 22404 (2004).

[18] *Universal Service Contribution Methodology, Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, Declaratory Ruling, 25 FCC Rcd. 15651 (2010).

[19] Comments of The Iowa Utilities Board at 6-7, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed April 18, 2011).

[20] *See* ITI Comments at 3.

[21] *See* Vonage Comments at 9.

[22] *See, e.g.*, Comments of Google, Inc. ("Google Comments"), WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45, at 15 (filed April 18, 2011); Comments of New America Foundation, Consumers Union, and Media Access Project ("Public Interest Comments"), WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45, at 14 (filed April 18, 2011); *cf.* Time Warner Comments at 27-33.

[23] *See, e.g.*, Google Comments at 16; Public Interest Comments at 12; *cf.*, Time Warner Comments at 33.

Such conditions will advance the Commission's goals of facilitating broadband expansion, increasing competition, and making the most effective use of USF funds.

III. CONCLUSION

As the Commission continues its efforts to reform USF, it should carefully consider the effect its actions will have on consumer welfare in the long run. Classifying VoIP as a telecommunications service is one such action, and an unnecessary one. Rather than contravene plain statutory language and long-standing Commission precedent in the name of unnecessarily fortifying its existing authority to support broadband with USF, the Commission should either classify VoIP as an information service or refrain from classifying VoIP at all in this proceeding. In addition, the Commission should ensure that USF reform benefits consumers – particularly those in high cost areas without access to advanced services – by imposing appropriate public interest conditions on receipt of USF funds.

Respectfully Submitted,

/s/

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[24] *See* Google Comments at 17.