Henry Hultquist
Vice President
Federal Regulatory

AT&T Services, Inc.
1120 20th Street, NW
Suite 1000
Washington, DC 20036

T: 202.457.3821
F: 214.486.1592
henry.hultquist@att.com
att.com

October 20, 2020

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: **In the Matter of Restoring Internet Freedom, WC Docket No. 17-108; Bridging the Digital Divide for Low-Income Consumers, WC Docket No. 17-287; Lifeline and Link Up Reform, WC Docket No. 11-42**

Dear Ms. Dortch:

Yesterday, Gary Phillips, Christopher Heimann, Cathy Carpino, Caroline Van Wie, and I had two meetings via teleconference with Commission staff. In the first, we met with Allison Baker, economic advisor to Chairman Pai, and Daniel Kahn of the Wireline Competition Bureau. In the second, we met with Thomas Johnson, Michael Carlson, Linda Oliver, and Malena Barzilai from the Office of General Counsel. In those meetings, we refuted certain claims made in a letter that was recently filed by a group of public interest organizations. [1] On October 20, Cathy Carpino also spoke to Ms. Barzilai and Jodie Griffin, who is in the Wireline Competition Bureau. The attached memorandum provides a detailed recitation of the points that we made in the meetings.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Henry G. Hultquist

CC:
Allison Baker
Daniel Kahn
Thomas Johnson
Michael Carlson
Linda Oliver
Malena Barzilai
Jodie Griffin

[1] Public Knowledge, *et al. ex parte letter ("ex parte")*, WC Docket Nos. 17-108, 17-287 at 2 (filed Oct. 14, 2020).

Throughout the net neutrality debate, Title II proponents have scraped the bottom of the barrel, offering one specious claim after another to try to justify regulating providers of broadband internet access services (BIAS) like monopoly-era phone companies. In that same vein, their latest *ex parte* letter claims that AT&T's decision to grandfather copper-based DSL services – services they maintain should not even be considered broadband[1] – somehow underscores the need for full-fledged public utility regulation of broadband.[2] Specifically, they assert that the reclassification of broadband as a Title I service deprives the Commission of oversight of broadband, allowing AT&T "to remove some unknown number of existing DSL connections and replace them with an unknown wireless connection of unknown quality and capacity."[3] They further assert that the phase out of copper-based DSL will preclude AT&T and others from receiving lifeline for broadband because common carrier POTS will be provided over a network entirely separate from those providers' broadband networks. Neither of these claims is correct nor do they provide any basis for reversing the Commission's pro-investment decision to restore its long-standing light-touch regulation of broadband internet access services.

As an initial matter, AT&T is in the business of providing broadband service to customers, wireline and wireless. AT&T spends billions of dollars every year – more than any other company in the United States – investing in its networks so that it can bring state of the art broadband capabilities to as many consumers and businesses as possible. The heavy-handed regulation Title II proponents advocate only increase the cost and uncertainty of that investment, and as a matter of basic business realities, has a chilling effect on it. That is, unfortunately, a reality to which Title II proponents are almost willfully blind. It should be self-evident that forcing AT&T and others to continue pouring millions of dollars into maintaining obsolete copper-based broadband networks and services capable of providing speeds of between 768Kbps and 6Mbps will not promote investment in high speed broadband networks. But the *ex parte* argues just the opposite.

---

[1] *See, e.g.,* Reply Comments of Common Cause, Public Knowledge and Next Century Cities, Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN 20-269 (Oct. 5, 2020) (advocating for broadband to be defined as 100 Mbps/100Mbps); Reply Comments of Communications Workers of America, Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN 20-269 (Oct. 5, 2020) (same). In stark contrast, the DSL services being grandfathered offer speeds ranging from 768 kbps to 6Mbps, depending on the length of the loop connecting a customer's location to the DSL multiplexer.

[2] Public Knowledge, *et al. ex parte letter ("ex parte"),* WC Docket Nos. 17-108, 17-287 at 2 (filed Oct. 14, 2020).

[3] *Id.* at 5.

To be sure, AT&T fully understands the importance of broadband in people's lives and it makes every reasonable effort to ensure there are alternatives – usually better alternatives – to customers before it withdraws a service. Thus the claim that hundreds of thousands of AT&T customers will "lose access" to "public safety communications" and "important sources of information related to hurricanes and other weather disasters"[4] is patently false. Indeed, at this point, AT&T is *grandfathering,* not withdrawing copper-based DSL, so existing DSL customer can continue receiving their existing services if they so choose. Beyond that, consumers have, and will continue to have, a variety of fixed and mobile broadband alternatives offering *faster* speeds – including cable, satellite, mobile, and fixed wireless broadband from AT&T and others.[5] According to the most recent available Commission data from December 2018, which undoubtedly understates current broadband availability, 91 percent of residential census blocks have at least three providers offering fixed broadband services with a minimum of 10 Mbps downstream and 1 Mbps upstream, and 100 percent have at least two such providers.[6] In addition, approximately 98 percent of Americans have a choice from among three or more mobile broadband providers, including from among three nationwide providers and nearly 100 regional or local mobile broadband providers nationwide.[7] In short, the *ex parte's* attempt to conjure up the specter of large numbers of stranded customers might make for good political theatre, but it is not grounded in reality.

Curiously, in advocating a return to the FCC's short-lived Title II regime, the *ex parte* ignores the fact that the FCC's *Title II Order* did *not* give the Commission oversight of broadband providers' withdrawal of obsolete services. Rather, the Commission concluded that application of section 214 discontinuance requirements to broadband was unnecessary

---

[4] *Id*. at 6.

[5] *See* https://www.att.com/internet/fixedwireless/?afsrc=1&cjevent=d926b79b114311eb830501e60a1c0e0c&source=EC1NAT10600aff12A&wtExtndSource=9069228 (last checked Oct. 18, 2020). Among the offerings available from AT&T are its fiber-based Internet access services which offer speeds ranging from up to 25 Mbps to 100 Mbps for its copper-fiber hybrid services and up to 1 G for AT&T fiber. Other offerings include AT&T Wireless Internet Services, which utilize a puck and AT&T's 4G-LTE wireless network to provide dual-band Wi-Fi Network capability with the capacity to support up to 40 Wi-Fi connected devices, and AT&T Fixed Wireless service, which offers speeds of at least 10 Mbps download and 1 Mbps upload, although users will typically experience download speeds of 25 Mbps – at least two to four times as fast as the highest speed available over AT&T's copper-based DSL services, and approximately 33 times as fast as the lowest speed legacy DSL service. Wireless home internet competition is fierce nationwide, with both T-Mobile and Verizon recently touting their services.
See https://www.t-mobile.com/isp; https://www.verizon.com/home/lte-home-internet.

[6] *See* FCC, *Internet Access Services: Status as of December 31, 2018*, at 6, Fig. 4 (Sept. 2020), https://docs.fcc.gov/public/attachments/DOC-366980A1.pdf.

[7] *See* CTIA, The Wireless Industry: An American Success Story, available at https://www.ctia.org/the-wireless-industry/wireless-industry (last visited Oct. 5, 2020).

and would impose significant costs and burdens that far outweighed any possible benefit from their continued application.[8] It thus forbore from those requirements, expressly rejecting "concerns about discontinuances in rural areas or areas with only one provider,"[9] finding that its universal service rules and their attendant public interest obligations were sufficient to protect consumers.

While the *ex parte's* attempt to conjure up a public safety issue out of AT&T's decision to grandfather obsolete DSL services is thus flawed, so too is the *ex parte's* claim that the phase out of copper-based DSL services will preclude AT&T and others from receiving lifeline for broadband. For starters, copper-based DSL services never were eligible for Lifeline support in the first place because they cannot meet the minimum service standard for Lifeline support for fixed broadband.[10] But in any event, contrary to the *ex parte's* assertions, the Commission has ample authority to support discounts on broadband service—an information service—through the Lifeline program.

To be designated an eligible telecommunications carrier (ETC), a state or the Commission must conclude that a provider offers a common carrier service. 47 U.S.C. § 214(e)(1), (2), (6). Once designated, an ETC is eligible to receive universal service support and must offer the services supported by the universal service support mechanisms throughout its designated ETC area. *Id.* § 214(e)(1)(A). The Commission has explained that this requirement is satisfied when the required services are provided by the ETC itself or by any affiliate of the ETC. *See Connect America Fund*, 29 FCC Rcd 15644, n.143 (2014). This is well-trodden ground at the Commission. *See, e.g., Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020*, FCC 20-77, ¶ 139 (rel. June 11, 2020) (*RDOF Procedures PN*) ("a broadband provider may satisfy its voice obligation by offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor"). Thus a service can be supported by federal universal service funds when it is provided by an ETC or by an affiliate of an ETC. "[I]t is the 'common-carrier status' of the provider, not the service, that governs whether the provider is eligible to receive Lifeline support for services provided over its network." *Draft Remand Order* at ¶ 91. And, in context, the services provided over the ETC's network are understood to include services provided over an affiliate's network. *See, e.g., RDOF Procedures PN* at ¶ 138 (facilities are the

[8] *Protecting and Promoting the Open Internet*, WC Docket No. 14-28, 30 FCC Rcd 5601, ¶¶ 509-10 (2015) (*Title II Order*).

[9] *Id.* at ¶ 509 n.1555 (rejecting the claim that the Commission should not eliminate its jurisdiction over termination of operations in markets where a single provider may be the only point of access to the internet).

[10] *See* Lifeline and Link Up Reform and Modernization, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3972 (2016). (The Commission's minimum service standard for fixed broadband was 10/1 Mbps as of December 2, 2016, increased to 20/3 Mbps as of December 1, 2019, and will increase again to 25/3 Mbps on December 1, 2020).

provider's "own" when service is provided by any affiliate within the holding company structure).

While the statute requires that ETCs must offer "the evolving level of telecommunications services" designated under section 254(c), nothing in the statute precludes the Commission from requiring that they also offer (themselves or through an affiliate) other services in order to further the principles set forth in section 254(b).[11] In particular, the Commission may conclude that the principles of section 254(b) are best satisfied by making available discounts on broadband service to eligible low-income consumers, just as it determined nearly a decade ago that it should condition high-cost support on a recipient deploying and offering broadband service, in addition to the voice service it is required to offer as an ETC. As the Commission there stated, it has "a 'mandatory duty' to adopt universal service policies that advance the principles outlined in section 254(b), and [it has] the authority to 'create some inducement' to ensure that those principles are achieved." *See Draft Remand Order* at ¶ 90 (quoting the *2011 USF/ICC Transformation Order* at ¶ 65). The only constraint imposed by section 254(e) is that universal service recipients must use their support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 U.S.C. § 254(e). But that is exactly what occurs when an ETC provides discounted broadband service to Lifeline customers over its own or an affiliate's facilities or through resale of another carrier's services. 47 U.S.C. § 214(e)(1)(A).

[11] *In re FCC 11-161,* 753 F.3d 1015 (10th Cir. 2014) ("nothing in subsection [254](c)(1) expressly or implicitly deprives the FCC of authority to direct that a USF recipient, which necessarily provides some form of 'universal service' and has been deemed by a state commission or the FCC to be an eligible telecommunications carrier under 47 U.S.C. §214(e), use some of its USF funds to provide services or build facilities related to services that fall outside of the FCC's current definition of 'universal service.' In other words, nothing in the statute limits the FCC's authority to place conditions, such as the broadband requirement, on the use of USF funds.").