

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Applications of AT&T Inc. and DIRECTV)	MB Docket No. 14-90
for Consent to Assign or Transfer Control of)	
Licenses and Authorizations)	

INDEPENDENT COMPLIANCE OFFICER'S COMPLIANCE REPORT
ON AT&T/DIRECTV MERGER CONDITIONS
OCTOBER 23, 2018

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INTRODUCTION

On July 24, 2015, the Federal Communications Commission (“FCC” or the “Commission”) issued an order (the “Merger Order”)¹ approving the merger of AT&T with DirecTV (as a combined entity, “AT&T” or the “Company”), subject to certain conditions (the “Conditions”). Appendix B of the Merger Order sets forth the Conditions and requires the Company to engage an independent, third-party compliance officer.² Donald K. Stern of Affiliated Monitors, Inc. (“AMI”) was identified as the Independent Compliance Officer (“ICO”) pursuant to an agreement between AT&T and the Commission’s Office of General Counsel, who approved the selection.³ Staff from AMI were likewise approved to assist the ICO in the discharge of his duties. The ICO is responsible for evaluating the Company’s compliance with the Conditions and is required to submit a report within 60 days of receiving each of the semiannual reports that the Company must submit as part of its compliance obligations under the Merger Conditions.⁴

This is the Sixth ICO Report to the FCC. The ICO received the Company’s First Report on January 27, 2016 and filed the First ICO Report on March 28, 2016. The ICO received the Company’s Second Report on July 25, 2016 and filed the Second ICO Report on September 23, 2016. The ICO received the Company’s Third Report on February 24, 2017 and filed the Third ICO Report on April 25, 2017. The ICO received the Company’s Fourth Report on August 24,

¹ *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131 (2015).

² Merger Order App. B (cited hereafter as “Appendix B” or “App. B”) § VII.3.

³ Public Notice, *Independent Compliance Officer Identified in Accordance with AT&T-DIRECTV Merger Condition*, DA 15-1207 (Oct. 23, 2015).

⁴ The ICO’s report “shall include a detailed description of the Company’s efforts during the relevant period to comply with the conditions and will specifically meet the reporting requirements for the conditions set forth in this Appendix B.” App. B § VII.3.e.

2017 and filed the Fourth ICO Report on October 23, 2017. The ICO received the Company's Fifth Report on February 26, 2018 and filed the Fifth ICO Report on April 27, 2018. The ICO received the Company's Sixth Report on August 24, 2018.

By agreement between the FCC staff and AT&T, the Third Report was submitted 30 days after the original due date.⁵ This was done to permit AT&T additional time to gather FTTP data for the third and later reporting periods. As a result, the reporting dates for AT&T are now February 24 and August 24 for each year of the reporting obligation (or the following business day if the 24th falls on a weekend or holiday). In this Sixth ICO Report the ICO makes observations and a limited number of recommendations based on a review of AT&T's reported progress on the following Conditions:⁶

1. Fiber to the Premises ("FTTP") deployment to 12.5 million mass-market customer locations within four years (the "FTTP Condition"). App. B § III.2.(a).
2. The offer of 1 Gbps FTTP Service ("Gigabit FTTP Service") to any E-rate eligible school or library located within or contiguous to a Distribution Area in which the Company deploys FTTP-based service (the "E-rate Condition"). App. B § III.2.(d).
3. The prohibition on favoring the Company's own Video Programming (as defined in Appendix B) services, including through the exemption of such services from usage-

⁵ *Letter from Matthew DelNero, Chief, Wireline Competition Bureau, FCC, to Maureen R. Jeffreys, Arnold & Porter LLP, Counsel for AT&T*, MB Dkt No. 14-90, DA 16-1370 (Dec. 9, 2016). AT&T and the ICO also reached agreement on a schedule for the final reporting sequence. That schedule has been presented to the FCC for approval. *Letter from Maureen R. Jeffreys, Arnold & Porter, Counsel for AT&T Inc. to Marlene H. Dortch, Secretary FCC* (Oct. 3, 2018). Under the proposed schedule, AT&T will file on September 24, 2019, its report addressing the Merger Conditions for the period January 1, 2019 through July 24, 2019. The ICO will file its report covering E-rate, Non-Discriminatory Usage-Based Practices, and the Discounted Broadband Service program on November 25, 2019. The ICO's report covering FTTP will be filed April 24, 2020. AT&T's report covering the Discounted Broadband Service program for the period July 25, 2019 through December 31, 2019, will be filed on February 24, 2020. The ICO's report will be filed April 24, 2020. AT&T's final report covering the Discounted Broadband Service program covering the period January 1, 2020 through April 22, 2020, will be filed on June 1, 2020. The ICO's final report will be filed on July 31, 2020.

⁶ For purposes of the ICO's reporting, the ICO has not focused on AT&T's compliance with the Condition related to internet interconnection disclosure, which is the subject of a separate analysis by an "Independent Measurement Expert." *See* App. B § V.2.

based allowances (the “Non-Discriminatory Usage-Based Practices Condition” or “NDUP”). App. B § IV.2.

4. The establishment and commencement of a program to substantially increase broadband adoption in low-income households throughout the Company’s wireline footprint (the “Discounted Broadband Services Program Condition” or “DBS”). App. B § V.2.

What follows is a description of the methodology of the ICO’s data collection and analysis activities employed over the sixth reporting period, and a presentation, organized by Condition, of observations, suggestions, and recommendations for improving compliance, reporting, and the ICO’s planned monitoring activities during the next reporting period.⁷ Where useful, the ICO points out specific plans for ongoing verification of the Company’s activities under the Merger Conditions.

EXECUTIVE SUMMARY

Since the inception of this engagement, the ICO has developed and used standardized processes for reviewing and validating the Company’s compliance with the Merger Order and independently testing data presented in the Company’s Report. As detailed within this report, the ICO found that AT&T has met the specific reporting requirements called for in the Merger Order:

- AT&T added an additional [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] FTTP deployments during the reporting period, for a total of [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] FTTP deployments through June 30, 2018; there is no evidence AT&T has exceeded any of the limitations imposed by the Merger Conditions on the FTTP deployments (*i.e.*, no more than 1,500,000 greenfield deployments; no more than 2.9 million Fiber to the Node upgrades for

⁷ See App. B § VII.3.d. (“The Independent Compliance Officer shall have the power and authority to review and evaluate the Company’s Implementation and Compliance Plan and any related materials, and recommend to the Company changes to address any perceived deficiencies in the Plan. Any such recommendations shall be included in the Independent Compliance Officer’s Compliance Reports.”).

customers with speeds of 45 Mbps or more; and no use of Connect America Funds); AT&T has in place appropriate controls to ensure it does not exceed Merger Order caps and that Connect America Funds are not used to fulfil its FTTP deployment obligation. AT&T represented in its Fifth Report that it has met its obligation to offer speeds of 45Mbps or more to at least 25.7 million customer locations; the ICO has yet to verify that representation and is working with AT&T to devise a methodology to facilitate verification.

- AT&T has established through its processes and controls that it offered 1 Gbps FTTP Service to E-rate eligible schools or libraries seeking such service through the Form 470 process located within or contiguous to Distribution Areas in which the company deploys FTTP-based service. AT&T has engaged in affirmative and adequate outreach to promote its service offerings to E-rate eligible schools and libraries.
- AT&T has in place appropriate practices and internal controls in the form of training and corporate review processes to achieve compliance with the Non-Discriminatory Usage-Based Practices Condition. The ICO, however, has not been able to validate the Company's practices and controls directly because of AT&T's assertion of the Attorney/Client Privilege over materials relating to the Company's processes and controls. Notwithstanding the limitations imposed by AT&T's assertion of the Attorney/Client Privilege, the ICO is satisfied the terms and conditions offered customers by AT&T for its Fixed Broadband Internet Access Service, including usage-based allowances, do not discriminate in favor of AT&T's Video Programming services. The ICO reached this finding based on a thorough review of AT&T's published terms and conditions, including usage-based practices, relating to the Company's Fixed Broadband Internet Access Service. The ICO also reviewed complaints forwarded by AT&T relating to the Merger Conditions and the ICO reviewed relevant websites for public comment or complaints relating to NDUP compliance; we did not identify any comments or complaints addressing NDUP concerns in those materials or sites.
- AT&T has satisfied all conditions relating to the Discounted Broadband Services Program. It has developed and refined a program that is offering discounted broadband services to eligible customers (*Access from AT&T*) at the specified speeds and pricing. The ICO is satisfied the Company is not intentionally requiring eligible customers to pay installation or modem charges or fees to participate in the program; when AT&T discovers that costs not permitted by the Condition are included in *Access* customer invoices, it takes appropriate steps to reverse those charges. AT&T is taking steps to refine its systems and controls to prevent inappropriate charges to *Access* customers from occurring. AT&T is actively marketing the *Access* program and is on track to promote the program through advertisements and public service announcements having a minimum annual value of \$15 million. It has been aggressive in distributing program information to appropriate organizations and creative in enlisting community support to further the program. It has provided useful

public access points for the program and taken appropriate steps to ensure the Company's Customer Service Representatives are properly trained.

AT&T has accurately described its compliance activities to date and provided explanations in the few cases where there is no activity to report. The Company has been very responsive to the ICO's requests for information. In addition, the ICO notes that AT&T generally has responded appropriately to recommendations offered by the ICO. In short, AT&T has demonstrated its commitment to satisfying the Conditions of the Merger Order.

Through the course of its ongoing monitoring:

- The ICO has expanded its understanding and improved the processes used to track FTTP deployment and has continued the enhanced pace of site visits adopted in the fourth reporting period to confirm FTTP locations. The ICO has taken steps to increase the geo-diversity of the site visits.
- The ICO has continued to examine under the E-rate Condition the process for identifying covered schools and libraries and reviewed AT&T responses to Form 470 requests. Additionally, the ICO has reviewed AT&T's efforts to engage in affirmative and adequate outreach to make eligible entities aware of the opportunity to purchase 1 Gbps FTTP Service.
- The ICO has continued to review the Company's processes for complying with the Non-Discriminatory Usage-Based Practices Condition reporting, examined the terms and conditions offered by AT&T for its fixed broadband products and services, and reviewed public and private complaints regarding AT&T's activities affected by the Condition.
- The ICO evaluated and tested AT&T's Discounted Broadband Services (DBS) Program against Merger Order requirements, focusing extensively on AT&T's efforts to promote the program, training for personnel associated with the program (including personnel at AT&T's contracted call centers), the operations of the call centers responsible for assisting consumers with the application process, and AT&T's billing practices relating to its *Access from AT&T*.

We expect to further refine and adjust our approach as this effort continues and would welcome feedback from the FCC or AT&T on our efforts to date.

METHODOLOGY

After completing the review described in the first five ICO Reports, the ICO continued to follow the work plan designed to track AT&T's compliance with each Condition. That effort, ongoing since the beginning of the ICO's engagement, relies on the following activities:

- Requests for information necessary to test and evaluate each Condition, and follow-up on ICO recommendations contained in AT&T's reports;
- Meetings with the AT&T Project Management Team, as well as representatives from the Company's business lines, to review the processes the Company has established to meet each Condition, and results under each Condition to date;
- Question and answer exchanges with the FCC, as well as discussions to promote understanding;
- Document review, data analysis, and related testing and verification;
- Extensive FTTP field work; and
- Other site visits, which included presentations, interviews, and focus groups.

Requests for Information and Detailed Informational Meetings

As the ICO's review has delved into the Company's reporting processes and engaged in increased substantive testing, so too has the level of information exchange and direct engagement through meetings and site visits expanded over the reporting periods. We have found the framework established for this exchange over the reporting periods to be productive and efficient. The Company continues to respond to ICO requests, promptly setting meetings that include the appropriate AT&T business staff and officers, representatives of the operational compliance and legal functions, and outside counsel; providing detailed presentations that included samples, demonstrative aids and illustrations, including live demonstrations of data accumulation and queries of internal databases; facilitating site visits for FTTP verification; and

affording in each case adequate time for the ICO to ask follow-up questions.⁸ These meetings are essential to the ICO's understanding of AT&T's processes and efforts as they are established (and improved upon), both for complying with the Merger Conditions and for compiling the data needed for semiannual reporting.

The ICO submitted a comprehensive Request for Information to AT&T on May 31, 2018, posing questions and requests relating to each of the Conditions. The ICO had several follow up calls and exchanges with AT&T to clarify the information requests and to exchange responsive information. AT&T responded to the Request for Information with materials and detailed briefings that addressed the matters raised by the ICO.

The ICO's Discounted Broadband Services team held a conference call with AT&T's Discounted Broadband team, legal representatives, program management personnel, and other AT&T representatives on September 19, 2018, to follow up on several of the responses provided by AT&T. That discussion addressed equipment billing issues, quality assurance questions, and communications with *Access from AT&T* customers. Separately, the ICO's FTTP Team (including those with E-rate responsibilities) met with representatives from AT&T's FTTP Team, Product Marketing; Construction & Engineering; Corporate Strategy; Operations; and Legal, Compliance, and Program Management in Dallas on August 1, 2018. The FTTP discussion focused on AT&T's compliance efforts and developments relating to AT&T's FTTP processes, including reporting Multiple Dwelling Unit ("MDU") deployments, as well as managing limitations imposed by the FTTP Condition. The meeting offered both sides the

⁸ The Company continues to provide copies of these presentations, making them electronically available to the ICO through outside counsel's extranet portal. The Company also makes available on the portal other documents requested by the ICO, or otherwise deemed useful by the Company for promoting the ICO's understanding of its internal practices, procedures, and controls.

opportunity to discuss opportunities for enhancing the effectiveness of the site visit verification process. The E-rate discussion provided the ICO with the opportunity to gain a greater understanding of AT&T's outreach efforts and AT&T's current compliance methodology.

Additionally, the ICO's leadership team met with AT&T's corporate compliance leadership team on July 18, 2018, to discuss the final reporting schedule, MDU FFTP verification challenges, AT&T's Fiber-to-the-Curb practices, and other matters relating to the Merger Conditions. On September 11, 2018, representatives from AT&T met with the ICO's FFTP team to develop a mutually agreeable approach for verifying FFTP deployments in MDUs where the owner refused to grant access permission to AT&T.

For each of these sessions, AT&T ensured it had assembled appropriate AT&T representatives to address the matters on the agenda. These meetings have been instrumental in helping the ICO to understand the substantive and procedural aspects of AT&T's compliance efforts.

Document Review and Data Analysis

The ICO reviewed all materials provided with the Sixth Report, as well as documents provided in response to the ICO's various information requests. Over the course of the reporting period, and later for purposes of addressing questions relating to AT&T's activities over the reporting period, the ICO submitted multiple formal and informal requests for documents. In each case, the Company provided documents (both existing business records and materials prepared specifically to respond to requests) that met the ICO's needs. The ICO reviewed these materials and was provided opportunities to follow up with the appropriate AT&T team members to seek clarification and to pose additional questions.

The ICO reviewed the reporting processes and confirmed data contained in the CSV file regarding FTTP deployment for internal consistency and completeness. AT&T continued to provide the **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION], a practice started in the Fifth Report. This data further enables the ICO to refine the verification and validation of FTTP deployments. The ICO continues to work with AT&T to enhance methods for independent validation of the information in the FTTP CSV file, including the limitations imposed by the Condition.

The ICO also reviewed documents and analyzed data relating to AT&T's E-rate compliance practices, its compliance with the NDUP Condition, and the Company's progress across the range of requirements set forth as part of the DBS Program Condition. The ICO has continued to review the Company's complaint monitoring process. The complaint review process affords the ICO with an additional opportunity to discover Condition-related issues that may warrant further attention, while also demonstrating the performance of a critical element of the Company's internal controls.

Field Visits

The ICO FTTP team planned and conducted field visits to randomly selected properties within selected geographic areas to confirm FTTP customer installation as reported by AT&T in its CSV file. As described in more detail below, this verification process involves selecting sample customer locations from a chosen geographic area and visiting selected customer locations in the sample to verify the reported FTTP deployment and to confirm location information included in the CSV file. The ICO plans to conduct these FTTP site visits on a rolling basis throughout the period the Merger Conditions are in effect. New locations reported

by AT&T are incorporated into the total potential sample population. Going forward, the ICO plans to increase the number of FTTP site visits as necessary and appropriate given the significant increase in FTTP deployments required by the FTTP Condition over the next nine months. Additionally, the ICO will take appropriate steps to increase the geo-diversity of the site visits, while ensuring the sampling method remains statistically sound. This will be accomplished by drawing a random sample of sufficient size to establish the statistical validity of the effort for projecting AT&T's compliance with the FTTP Condition, while adding additional samples from locations that have been underrepresented to date in the random sampling methodology.

AT&T reports it has responded to all FCC Form 470s submitted from covered schools and libraries for services required under the E-rate Condition. The ICO took appropriate steps to verify and validate AT&T's efforts to identify and respond to requests from eligible entities within its fiber footprint. The ICO also took steps to ensure AT&T was engaging in affirmative and adequate outreach to covered entities.

The ICO has engaged in field-testing the Company's DBS Program in the form of reviewing audio recordings of customer-service calls and mailings provided to certain target groups, reviewing samples of *Access from AT&T* customer invoices, reviewing ad purchases by AT&T to promote the *Access from AT&T* program, and conducting site visits to a call center in Canton, Ohio (operated by AT&T's call center contractor responsible for providing customer service relating to *Access from AT&T* applications).

APPROACH TO OBSERVATIONS AND RECOMMENDATIONS

This Sixth ICO Report contains the ICO's observations relating to AT&T's compliance with each Condition, including recommendations and suggestions intended to help AT&T improve the success of its compliance efforts. The ICO relates its observations, suggestions, and recommendations with the acknowledgment that this marks the sixth round of reports for both the Company and the ICO, and that the two are in regular contact and routinely discuss modifications to the evaluation process. In addition, the ICO and AT&T are each separately in regular contact with Commission staff. The ICO has benefited from suggestions offered by AT&T and Commission staff.

AT&T COOPERATION WITH THE ICO

The ICO recognizes that compliance with the Merger Order Conditions is a significant undertaking on behalf of AT&T. In addition, making the numerous documents and other vast quantities of Company information available, and in a format that is amenable to analysis and comment by the ICO, requires more effort still. The staff and leadership of AT&T have been cooperative and supportive of the ICO, particularly regarding (a) communicating the importance of the ICO's review, and encouraging cooperation, transparency and active participation; (b) accommodating requests for documents, scheduling meetings, and arranging site visits; and (c) expending considerable time and resources handling the logistics for field and other visits. The Company's dedicated team for Merger Condition compliance continues to demonstrate by its words and actions a commitment to meeting the Conditions and assisting the ICO in discharging his duties.

OBSERVATIONS ON AT&T'S COMPLIANCE WITH MERGER CONDITIONS

1A. FTTP CONDITION

FTTP Observation 1: AT&T's FTTP reporting satisfies Condition requirements.

We found that AT&T has addressed the conditions set forth in subsections III.2.a.- c. of Appendix B and delivered a report that satisfies subsection 3.a. The ICO reviewed the Sixth Report and Exhibit 1 regarding the reporting requirements set forth in Appendix B of the Merger Order. The Sixth Report provides the number of customer locations where FTTP service has been deployed as of June 30, 2018; the number of upgrades from FTTN technology; the status of AT&T's effort to offer speeds of at least 45 Mbps or more to at least 25.7 million customer locations; and the use of CAF subsidies. The CSV file submitted as Exhibit 1 to the Sixth Report contains each of the fields prescribed in Appendix B § III.3.a.(ii), as well as additional information (Distribution Area, service address, and a unique "service address identification number"). The Sixth Report does not yet include locations in MDUs where AT&T has not been able to obtain a "Right of Access" agreement.⁹ AT&T is taking reasonable steps to report Latitude and Longitude.

The FCC Order approving the merger required AT&T to expand its FTTP coverage to at least 8.3 million mass market customer locations by December 31, 2018. AT&T reports that it has exceeded that requirement. The Total FTTP deployment as of December 31, 2017, the

⁹ AT&T and the Commission staff have agreed that AT&T may count towards the FTTP buildout requirements, under certain specified conditions, the Customer Locations within MDUs that require the MDU owner and AT&T to agree to a right of access to deploy fiber within the MDU where agreement cannot be reached between AT&T and the MDU owner. *Memorandum from Maureen R. Jeffreys to Marlene H. Dortch, Secretary, FCC* (Oct. 6, 2016).

additional deployments during the current reporting period, and the remaining Condition goals are presented in the following table:¹⁰

[BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

December 31, 2018 goal	8,300,000
Four years of the closing date	12,500,000

FTTP Observation 2: AT&T to offer speeds of at least 45 Mbps or more to at least 25.7 million customers.

The August 24, 2018 report indicates AT&T has exceeded its commitment to provide speeds of 45 Mbps or more to at least 25.7 million customers. AT&T informed the ICO that it has concluded this goal has been reached based on **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]. We have requested that AT&T demonstrate the methodology and systems used to develop this data and to run queries as necessary to help the ICO validate AT&T's conclusions. AT&T has agreed to our request and we expect to address the results of the review in our next report.

¹⁰ The FTTP Deployment numbers are extracted from the Sixth Report. The Goals are extracted from the Merger Order.

FTTP Observation 3: AT&T continues to take appropriate steps to update the FTTP reporting process.

As reported in our Fifth report, p.14, AT&T revised the FTTP Reporting Process several times over the prior reporting period to update and improve accuracy in the reporting process and production of the CSV file. *ATT FCC IA Reporting*, Revs. 1.8 – 1.12. Having a well-defined, repeatable and automated process enables AT&T to provide a reliable CSV file in response to the Condition requirements. Revisions to the process since the last semi-annual CSV report include an updated [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] query, further refinements to the data merging process, updated 45Mbps counting methodology and the addition of MDU reporting documentation that will be applicable to future reporting periods.

AT&T refined its reporting documentation for the Fifth Report to utilize the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] type to group installations into the four construction categories. The results revealed the following FTTP deployments/upgrades:

[BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

[Note: Fiber to the Curb = sites that have fiber optic service to a neighborhood distribution site (curb), with copper wire from the distribution site to the premise. Greenfield = sites where fiber optic service is installed with new construction where the site did not previously have copper-

based service. Overbuild = sites that had copper-based service and/or lower level fiber optic service (e.g., 45 Mbps) that have been upgraded. Out-of-Franchise = Any fiber optic service provided by AT&T in a market where the Company was not the incumbent phone service provider.]

At the ICO's request, AT&T also provided clarification of steps in the process to enable the ICO to test reported data regarding the use of CAF, as well as plans to update the process to address MDUs and Fiber to the Node ("FTTN") Upgrades in the coming year. (Please see the discussion under FTTP Observation 5 for challenges relating to FTTN verification and FTTP Observation 7 regarding challenges relating to MDU verification.)

FTTP Observation 4: [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY CONFIDENTIAL INFORMATION]

As initially reported in the ICO's Fourth Report, AT&T [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION] The ICO has confirmed through analysis of the CSV file that AT&T has not included [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY CONFIDENTIAL INFORMATION] in its Sixth Report.

FTTP Observation 5: FTTN Upgrade Condition limit has not been reached.

Of the 12.5 million locations where FTTP is to be installed, the Condition includes a restriction that no more than 2.9 million may be upgrades to customer locations that receive speeds of 45 Mbps or more using FTTN technology. In the Sixth Report, AT&T reported that approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] of the total Customer Locations reported are

upgrades to FTTN technology that received speeds of 45 Mbps or higher as of the Closing Date. Sixth Report, p. 11.

In the Fifth Report, AT&T reported that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of the total Customer Locations reported were upgrades to FTTN technology that received speeds of 45 Mbps or higher as of the Closing Date. During our prior review, AT&T representatives explained that through the Fifth Report the Company had taken the approach of **[BEGIN CONFIDENTIAL INFORMATION]**

[END

CONFIDENTIAL INFORMATION]

On August 1, 2018, AT&T presented its new method for counting customer locations in response to the ICO's December 16, 2017 request for information. As explained, **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]

AT&T DIRECTV Merger Conditions, 8/1/18 FTTP Deployment RFI Response, Slide 33.

As presented, the updated counting methodology appears accurate and reliable. The ICO confirmed that AT&T included **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] to indicate whether the address was capable of 45Mbps as of September 2015. Analysis of that additional field indicates that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** Customer Locations are upgrades to FTTN technology.

FTTP Observation 6: AT&T has not used Connect America Funds for the FTTP deployment required by the Condition.

AT&T reported that it did not use any CAF funds to construct FTTP deployment and included the following explanation to that regard:

AT&T has excluded from the CSV file any constructed FTTP customer location that is located in a PSA that AT&T reported as eligible for CAF I or CAF II funding, whether or not these CAF funds were used in whole or in part to construct that FTTP customer location.

Sixth Report, p. 11, n. 24.

AT&T has changed its data measurement processes that address CAF funding. Previously, examination of the **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] data provided by AT&T allowed the ICO to determine if any of the

installations were supported by CAF funds. AT&T has refined its processes and now provides a list of the CAF installations for each calendar year. However, the data file of CAF funded installations was provided to the ICO on September 28, 2018 and presents information in a format that is different from earlier CAF listings. Because of the limited time available, as a test, the ICO was able to examine the CAF installations from Arkansas in 2017 and found no overlap between Customer Locations in the CSV file and the CAF report. The ICO intends to continue the investigation for other states, and the results of this analysis will be presented in the ICO's next report.

To further validate AT&T's assertion that CAF funded locations are excluded from the CSV file the ICO conducted analysis to determine whether any Customer Unit locations in the CSV file had been associated with CAF funding. Previous analysis using the **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** in the CSV file provided by AT&T indicated that none of the addresses in the file were coded as CAF funded. This analysis provided a second methodology to examine the interface between installations provided in the CSV file and addresses associated with CAF funding.

Utilizing the CAF1 Wireline Build EOY 2015 Final, we identified locations that were associated with CAF funding. We compared this data with the CSV file provided as part of the July 2016 report.¹¹ Respective Common Language Location Identifiers ("CLLI") for the two files were compared, and only two CLLIs overlapped between the 78 unique CLLIs in the CSV

¹¹ The CSV file for comparison was the Exhibit 1.3 file provided as part of AT&T's July 2016 report; this file presented the corrected version of those customer unit installations at the end of the calendar year 2015. Thus, the two files addressed installations during the same time period.

file and the 74 unique CLLIs in the CAF1 file. The two CLLIs present in both files were

[BEGIN CONFIDENTIAL INFORMATION] [END

CONFIDENTIAL INFORMATION]. The first CLLI contained [BEGIN CONFIDENTIAL

INFORMATION] [END CONFIDENTIAL INFORMATION] addresses and the second

CLLI contained [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL

INFORMATION] addresses in the CSV file. The respective numbers for the CAF1 file were

[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL

INFORMATION] installations and [BEGIN CONFIDENTIAL INFORMATION] [END

CONFIDENTIAL INFORMATION] installations. But all records in the CSV file for the

[BEGIN CONFIDENTIAL INFORMATION]

[END

CONFIDENTIAL INFORMATION]. There was no overlap in customer locations between

the CAF1 file and the CSV file for this particular CLLI.

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

None of these 17 addresses were contained in the CSV file, thus there was no overlap between

the CAF I file and the CSV file Exhibit 1.3.

Further analysis was conducted to determine if any installations financed with CAF II funds from 2015 were included in the CSV file. Five randomly selected states were examined (Alabama, Florida, Indiana, Louisiana, and North Carolina) from the CAF II file posted by

AT&T. Our analysis found no overlap between the CAF II file for those sampled states and installations included on the CSV file.

FTTP Observation 7: AT&T is developing a process for documenting denial of access to install fiber in Multiple Dwelling Units.

The CSV files for the first six AT&T Reports contain Customer Locations in MDUs where AT&T has been granted a Right of Access (“ROA”) to the property and fiber has been deployed to the property location. For those MDU locations where AT&T and the property owner have *not* agreed to a ROA, the FCC and AT&T agreed to a counting methodology for MDU FTTP deployments.¹² Our FTTP field verifications, to date, have not encountered any MDUs where AT&T does not have ROA to the property.

AT&T’s Third Report, pp. 10-12, included a description of the agreed-to process to be implemented by AT&T to count towards the FTTP buildout requirements Customer Locations within MDUs that require the MDU owner and AT&T to agree to an ROA to deploy fiber within the MDU when (a) AT&T has deployed fiber within that MDU to the full extent of the rights obtained by AT&T from the MDU owner; or (b) AT&T has extended fiber to accessible terminals or other facilities in the right of way outside that MDU where the MDU owner does not grant access or the parties cannot agree on a plan for extending fiber within the MDU. In each case, for the Customer Locations to be counted, the FTTP deployment or fiber allocation must conform to certain parameters, which AT&T has addressed.

The following chart reflects the decision process for counting MDU units in the CSV file:

¹² See Memorandum from Maureen R. Jeffreys to Marlene H. Dortch, Secretary, FCC (Oct. 6, 2016).

[BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

During review of the Fifth Report AT&T reported to the ICO on March 6, 2018, that the FCC confirmed that AT&T could include alternative architecture G.fast connections (a copper-based technology capable of delivering FTTP data speeds) toward the Company's FTTP deployment obligation under the Merger Order FTTP Condition. *AT&T – DIRECTV Merger Conditions, 3/6/18 FTTP Deployment RFI Response, Slide 12.*

Process for Capturing and Reporting MDU information.

Previously, AT&T provided an updated overview of how the MDU deployment reporting process would work and examples of correspondence with MDU owners that will document MDU access or denial of access. During our review of the Fifth Report, AT&T reported that it planned to implement this process **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]. The planned implementation of this process included the electronic filing of correspondence with MDU owners that will be accessible to the ICO.

During discussions with the ICO on September 11, 2018, AT&T stated that **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]. *AT&T – DirecTV Merger Conditions, 9/11/18 FFTP Deployment Meeting – Follow-up Items, Slide 5.*

As part of the MDU denial/deemed denial process being developed by the parties, in response to an ICO request, AT&T agreed that it would supplement the CSV to include the **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** to identify the MDU property when the living unit is an MDU decline. Additionally, AT&T will supplement the CSV to add the **[BEGIN CONFIDENTIAL INFORMATION]** **[END**

CONFIDENTIAL INFORMATION] to identify each living unit within an MDU property that includes a customer location included as an MDU denial in the CSV. *Id.* Slide 8. These additions will allow the ICO to identify in the sample set for FTTP verification any living unit which is an MDU denial. With that awareness, the ICO should be able to determine during the planning process that the location will require additional steps and, potentially, more time to verify the information required under the FCC and AT&T agreed-to methodology for counting MDU FTTP deployments. That methodology is detailed in the Memorandum from Maureen R. Jeffreys to Marlene H. Dortch, Secretary, FCC (October 6, 2016). AT&T also will have to make available for a sampling of the MDU locations documentation associated with its efforts to market its fiber services.

Pilot tests of MDU denial sites.

Recognizing these challenges, the ICO is developing a supplemental process that will be necessary to confirm MDU denials. The **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] report is expected to have well over **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** MDU denial living units (*AT&T – DirecTV Merger Conditions, 9/11/18 FTTP Deployment Meeting – Follow-up Items*, Slide 5) included in the total FTTP deployment. To prepare for the MDU denials, the ICO proposed to AT&T a pilot effort that will be completed before the **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] report to allow AT&T and the ICO to develop an efficient and effective process for securing and exchanging information necessary to support the FTTP validation effort. In furtherance of this pilot effort, as part of the September 11,

2018 discussion, AT&T presented MDU denial samples showing the data and documentation it has available for MDU denial locations, information that satisfies many of the elements detailed in the October 6, 2016 FCC/AT&T agreement. Over the coming months, AT&T and the ICO intend to conduct additional pilot tests of MDU denial sites to determine (1) what the ICO will see during FTTP verification site visits with regard to FTTC or coiled fiber; (2) the proximity of the fiber to the specific customer MDU location or other MDU buildings; (3) whether the existing fiber infrastructure is sufficient to service the specific customer location; and (4) the process for obtaining and verifying additional required MDU denial documentation relative to the sampled living unit.

FTTP Observation 8: The ICO has verified the FTTP deployments reported by AT&T.

The ICO has continued to refine and improve field verification measures necessary to sample and verify AT&T reported FTTP deployments. For this reporting period, the ICO's field verification of random samplings of FTTP deployed locations over the reporting period found no exceptions to the locations reported by AT&T.

Sampling Methodology and Process

We first developed the ICO Sampling Plan for 2016 based on the data in the CSV file provided by AT&T in its First Report dated January 25, 2016, and subsequently amended in the Second Report dated July 25, 2016. The original plan randomly selected a sample of 16 cities or geographical areas that each include multiple DAs. Within those selected geographical areas, the ICO drew a random sample of AT&T designated DAs and, within each DA, a random sample of addresses where FTTP deployment was identified by AT&T. This sampling methodology relied on smaller clusters of DAs within a selected geographic sample area, which permits a random

selection of installations with equal probability of selection that are also more likely to be geographically proximate (which tends to increase site visit efficiency). During the third reporting period, the FCC requested that the ICO expand the sample size to improve confidence in the validation of AT&T's efforts. The ICO increased to 15 the number of samples (171 sites) factored into the ICO's Third Report. For the Fourth Report, the ICO increased the number of visited samples to 18 (278 sites). The Fifth Report included 15 samples (275 sites).

The ICO updated its sampling plan in 2018 to ensure geographic diversity and to minimize administrative burden on any one AT&T region's support and construction staff. Sampling plans for previous years were generated from a file that contained all installations for a calendar year. For example, a file for 2017 installations would be created by removing installations from years 2016 and before from the CSV file that was submitted February 2018. That file would be arranged by cities/towns and grouped into clusters, each of which contained 25 DAs or more. Installations from cities/towns with less than 25 DAs were grouped together depending on longitude and latitude values. These contrived clusters also contained at least 25 DAs and were designed to group installations that are geographically close. Clusters would then be randomly selected, and DAs and addresses within the DA would each be randomly selected from each cluster. The file was stratified into four regions that correspond to the AT&T regions: West, Central, Southwest, and Southeast. For the February 2018 sample, five clusters were selected from 2017 installations from each of the four regions for a sum of 20 clusters.

After two and a half years of sampling, the ICO and AT&T continue finding efficiencies in the field verification process. AT&T provides considerable resources and time to assure the ICO can verify as many sites as possible. AT&T's efforts include providing multiple teams of

technicians so that one team of technicians can be setting up light tests for a site while another team is conducting a light test with the ICO's Subject Matter Expert ("SME"). The cooperation and resources of AT&T have enabled the ICO to almost double the field visit capacity from an average of 11 sites per day in the second reporting period to 23 sites per day for this reporting period.

For the Sixth Report, the ICO has maintained the pace of field visits and broadened the geography of the samples which include (in order visited): Bloomington IN, Hendersonville TN, Green Cove Springs FL, St. Louis MO, Seagonville TX, McKinney TX, Ft. Worth TX, Huntersville NC, San Diego CA, San Clemente CA, Los Angeles CA, Milwaukee WI, Wauwatosa WI, Racine WI, Strongsville OH, San Bruno CA, San Leandro CA, Mishawaka IN, Columbus GA, Chattahoochee Hills GA, Covington GA, Overland Park KS.

This reporting period included 22 samples (406 sites) across 11 states. To date, the ICO has visited 1,212 sites chosen from 77 samples. Additionally, as discussed below, review of AT&T engineering data also allows the ICO to confirm that for the 406 Fiber Serving Terminals ("FSTs") sampled FTTP is available to serve a total of 3,158 living units.

Pre-Site Visit Process

The field visits consist of confirming the address included in the CSV file is FTTP capable (*i.e.*, that AT&T has deployed fiber to the location supporting the premise thereby permitting a customer to have a fiber connection should the customer elect to purchase the service) or that AT&T has deployed fiber to the premise and the customer is using the fiber connection. Because prior site visits have identified address anomalies primarily related to new construction, the ICO provides AT&T with a full list of the proposed site visit locations

approximately one week in advance of each visit. This allows the Company to prepare in advance a list of FSTs from construction blueprints intended to serve specific customer locations and to provide updated information regarding sample addresses that may have been altered during the final construction of living units. In turn, this allows the ICO Telecommunications SME to confirm more quickly the location is FTTP capable. Addresses of MDU locations where AT&T reportedly has deployed FTTP service (as opposed to MDU denials) are no longer provided to AT&T two weeks in advance, as the additional preparation time did not materially improve access; AT&T and the ICO have agreed to discontinue this practice.

Field Visit Steps¹³

The ICO SME, accompanied by AT&T field technicians, travels to the selected FTTP address, and takes a Latitude and Longitude reading at the FTTP address. The ICO SME identifies which installed FST serves the selected sample location based on engineering information provided by AT&T and tests for fiber optic cable plant continuity to the Primary Flexibility Point (“PFP”). If a customer location is connected to the FST, the continuity test step is omitted, because the fiber connection itself demonstrates that AT&T is not only technically able to provide FTTP service, but is, in fact, providing service. If there are no connections to the FST, an AT&T technician tests for fiber optic cable plant continuity to the PFP. Where necessary, the ICO SME confirms FTTP capability between the PFP and the FST by visual observation of light emanating from the end of the fiber optic cable at the FST.

¹³ As noted previously, the process described below will be revised in [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] for purposes of verifying MDU denial locations.

Field Visit Results

The ICO samples included for this report total 543 separate DAs across 22 distinct samples. After culling the samples to provide a logistically practical route for visits, 406 sites were visited in the field.

The ICO SME found that all 406 locations visited met the criteria for inclusion in the FTTP site count.¹⁴ AT&T continues to have available, and provide, supporting data during the field visits for a typical site obviating the need for post-visit follow-up. Typically, that additional data consists of engineering drawings demonstrating an as-built configuration and wire-mapping demonstrating the design of networks from PFP to FST to Living Unit.

Access Challenges Exist and May Increase

Despite providing the site visit sample to AT&T in advance, the ICO SME still encounters difficulties on occasion accessing FTTP infrastructure. These access challenges include: No on-site staff at MDUs with the ability to provide access to AT&T's infrastructure; infrastructure placed in secured residential rear yards; and infrastructure that is inaccessible due to vegetation overgrowth. Up to this point, access issues have been infrequent. However, as AT&T **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] that can be included in the CSV, and MDUs are introduced under the FCC approved conditions, we anticipate an

¹⁴ Additionally, for this reporting period AT&T has provided the engineering data detailing all the living units assigned to an FST where the ICO had randomly-sampled a living unit. While the ICO tested the FST based on one sampled address, any address assigned to that FST can reasonably be considered tested and verified for the purpose of ICO field verification although the ICO did not trace these locations back to the actual living units beyond a visual assessment of the neighborhood. Using this methodology, we are able to confirm a total of **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** living units capable of being served by the 406 FSTs inspected during this reporting period.

increased set of access challenges (greenfield sites – generally new construction – rarely have vegetation or other obstructions interfering with the site visit; we expect MDUs will come with a host of building access challenges, as well as challenges associated with locating equipment inside the property). If MDU issues cannot be resolved, this will impair the ICO’s ability to field-verify the FTTP condition. The ICO will continue to take appropriate steps to coordinate closely with AT&T to promote efficient field verification efforts and resolve outstanding concerns.

Address Anomalies Exist

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] The ICO also

learned that it is not uncommon for AT&T to change, update, or remove sites from the latest revision of the CSV for reasons including, but not limited to:

- Changes in street names from the planning/design phase to the construction phase by developers or municipalities.
- Changes in home orientation on corner lots from the planning/design phase to the construction phase by developer/owner resulting in the house having an address on a perpendicular street.
- **[BEGIN CONFIDENTIAL INFORMATION]**

[END

CONFIDENTIAL INFORMATION]

Several of the site addresses in the ICO sample had to be corrected because the ICO sample is based on CSV files that are later updated by AT&T. AT&T explained in the Sixth Report:

The data provided in Exhibit 1 is obtained from AT&T's ordinary course databases, which may be modified or corrected from time to time. For example, these databases are routinely updated with changes, corrections, and improved data that may be obtained from the field as part of the ongoing FTTP deployment process. Such updates are common in greenfield locations where changes routinely occur as part of the development process, but database updates also occur in locations where AT&T overbuilds fiber. Accordingly, the information provided in Exhibit 1 for a particular Customer Location in one reporting period may be updated in a subsequent reporting period. As explained in the Fifth Semi-Annual Compliance Report, for each compliance report, AT&T plans to provide information for each of the total Customer Locations to which AT&T has deployed FTTP service in satisfaction of this Condition as of the end of that reporting period based on the data available in the ordinary course databases at that time. *See* Fifth Semi-Annual Compliance Report at 12 n. 25.

Sixth Report, p. 13 n. 26.

The ICO observed that the quality of the data provided by AT&T has improved with each successive CSV file and the number of these anomalies has been significantly reduced for this reporting period.

ICO Plans for 2018-2019 Inspections.

As discussed earlier, as part of the pre-site visit process, AT&T has begun obtaining and reviewing construction documents and blueprints of DAs prior to inspections and having those records available at the time of the inspection. Having this process in place greatly assists the ICO SME and AT&T to resolve quickly site condition challenges encountered during visits. The ICO SME is now comfortable performing as many as 25 inspections per day. Accordingly, the size of the geographic clusters within a given sample will continue with 25 DAs.

Field visits will continue at a rate of approximately two per month. When geography permits, two or three samples will be combined over two days of site visits. The increase in the number of clusters visited is appropriate given the increased number of FTTP deployments required by the Condition in 2018-19, as well as the expected inclusion of MDU ROA denial

living units in [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]. We have provided AT&T with the cities/geographical areas to be visited at the beginning of the reporting period to allow for the ICO SME and AT&T personnel to coordinate schedules and group clusters according to their geographical proximity. AT&T proposes to increase the number of reported FTTP sites for 2018 and again in 2019.

We will continue to explore solutions to this challenge with AT&T that meet the need for increased testing and verification of FTTP deployments, but that allows for more efficient use of AT&T's workforce within a given geographic area, and that distributes the burden over a larger set of AT&T regional teams. For example, the ICO revised sampling 2018 methodology described earlier will decrease the likelihood of inspections in previously inspected geographic areas. Because AT&T had been actively building in the Southeast and Texas areas at the time of the earlier ICO inspections, a high number of installations and inspections came from those areas. Creating four strata that correspond to the four AT&T regions will ensure that other geographic areas will be more fully represented and visited in future samples.

Additionally, the ICO will sample the current CSV file for the inspections to be conducted in the six months following release of AT&T's semi-annual reports. Previously, inspections had been randomly selected from the previous year's list of installations (*i.e.*, samples were pulled from one CSV file for an entire year's set of inspections). This revised methodology will ensure that inspections are conducted with the most recent set of deployment data, providing for a larger pool from which to pull samples.

As discussed extensively above, the ICO, with AT&T's cooperation, also is developing a revised verification process to address MDU denials. We expect the process to be ready and

tested prior to the receipt of MDU denial locations in [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION].

FTTP Observation 9: FTTP latitude and longitude reporting continues to present challenges for AT&T.

Historically, AT&T has not collected latitude and longitude coordinates as part of its normal business operations. The requirement in the Merger Condition to include latitude and longitude presented a new challenge for AT&T. In the Sixth Reporting period, AT&T continued to pursue reasonable steps to collect and report latitude and longitude. That effort, however, remains a particular challenge for AT&T. Consequently, the latitude/longitude data presented by AT&T frequently are inaccurate.

As part of our field verification of FTTP deployment, the ICO SME takes a latitude and longitude reading at each selected FTTP address and compares it with the information reported on the CSV file. The field observations of latitude and longitude coordinates has shown an average, over the sites sampled by the ICO to date, the latitude and longitude is [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION].

AT&T stated that it does not ordinarily collect latitude and longitude coordinates for customer locations and it is a challenge to do so as required under the Merger Order. To date, AT&T has been supplementing latitude and longitude data with each CSV record required by the Merger Order, as supplied by the consulting firm, [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION].

According to AT&T:

- [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] *Data Verification Procedures for FTTP Deployment Data Submissions* (August 4, 2016), p. 1. AT&T has acknowledged challenges relating to this process. See Second Report, p. 12.

AT&T understands it must provide accurate latitude and longitude coordinates. In January 2018, AT&T revised its process to [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. *Id.* While the ICO does not rely on Latitude or Longitude data to verify FTTP deployments, the ICO will take appropriate steps to assess the accuracy of AT&T's revised geo-coding process in the coming reporting periods.

1B. E-RATE CONDITION

FTTP E-Rate Observation 1: AT&T's E-rate reporting satisfies Condition requirements.

The ICO has reviewed the Sixth Report and Exhibits 2.a, 2.b, 3 and 4 to address the reporting requirements set forth in Appendix B. AT&T reports that it is complying with the E-rate condition by “(1) identifying covered schools and libraries located where AT&T plans to

have deployed FTTP services by the end of the first half of 2018 . . .; (2) responding to all Form 470s seeking bids for 1 Gigabit FTTP Service to any covered school or library; (3) deploying as requested 1 Gigabit FTTP service to any bid awarded for that service by a covered school or library; and (4) conducting affirmative and adequate outreach to make covered schools and libraries aware of the opportunity to purchase 1 Gigabit FTTP Services.” Sixth Report, pp. 14 – 15. The Sixth Report summarizes the methodology AT&T uses to identify covered schools and libraries where AT&T plans to have deployed FTTP services. The report includes a list of covered schools and libraries to which AT&T has submitted a bid to provide FTTP service (Exhibit 2.a), and copies of an equivalent version of the Form 470s associated with each bid prepared by Funds for Learning (Exhibit 3).¹⁵ The report also includes a list of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** covered entities to which AT&T has deployed 1 Gigabit Service. Exhibit 2.b.

The Sixth Report includes a description of outreach activities, including AT&T’s efforts to promote awareness of the opportunity for covered schools and libraries to bid for 1 Gigabit FTTP Service; a copy of AT&T’s 1 Gigabit Service notice used to raise awareness with covered entities (Exhibit 4). In summary, AT&T has directly addressed the conditions set forth in subsection III.2.d. of Appendix B and delivered a report that satisfies subsection III.3.b.

¹⁵ According to the FCC E-rate team, the information included on the forms prepared by Funds for Learning is equivalent to the information required on properly populated Form 470s.

FTTP E-rate Observation 2: AT&T has followed the same mapping process as it used previously for identifying covered schools and libraries.

In the Sixth Report AT&T explained that it applied the same methodology for identifying covered schools and libraries as it applied in the Fifth Report. Sixth Report, p. 15 - 16. AT&T explained the methodology as follows:

Specifically, AT&T compiled a list of fiber routes that include PSAs where AT&T has deployed FTTP-based service or plans to deploy FTTP by June 30, 2018. Using the most recently available Universal Service Administrative Company (“USAC”) data, AT&T identified all of the E-rate eligible individual schools and libraries located within those fiber routes, which is approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] schools and libraries. Because multiple PSAs make up a fiber route, this methodology sweeps well beyond what the Condition requires.

Sixth Report, pp. 15 - 16 (footnote omitted). AT&T’s current methodology relies on the use of Passive Optical Network (“PON”) Serving Areas, or “PSAs”, to establish the areas covered by the E-rate condition. The Merger Conditions require AT&T to offer 1Gbps FTTP Service “to any E-rate eligible school or library located within or contiguous to a *distribution area* in which the Company deploys FTTP-based service . . .” Merger Condition, B.III.2.d (emphasis added). In its Third Report, AT&T explained that the term “distribution area” or “DA” relates to boundaries associated with copper technology, whereas for fiber, the term equivalent to DA is PON Serving Area or PSA. *See* Third Report, p. 16. AT&T also stated that PSA boundaries are often similar, but not identical, to copper DA boundaries. *Id.* The ICO does not have any objections or concerns with AT&T’s use of PSAs in lieu of DAs. The ICO confirmed that the methodology used for the Sixth Report is the same as for the Fifth Report.

Methods for Identifying Covered Schools and Libraries

In ICO's Fifth Report, we noted that AT&T made a broad effort to identify all schools and libraries that exist within the fiber network that have been, or are planned to be, built by considering several sources. AT&T's process is detailed in the *Determination of Intersection Between E-rate Locations & AT&T Internet with FTTP Build Plan Routes* (rev. August 17, 2017). This document details the data sources, applications and processes by which AT&T determines which school and library locations fall within or are contiguous to the AT&T FTTP build plan. The document identifies data sources and descriptions necessary for the mapping process, including [BEGIN CONFIDENTIAL INFORMATION]

[END

CONFIDENTIAL INFORMATION]. For each of the data sources, the document identifies the relevant source/location (internal and external addresses, as appropriate), data format, and description of the data. The ICO finds that AT&T has established a reasonably effective process for identifying all covered schools and libraries under the Condition.

Method for Identifying Fiber Route

As explained in the ICO's Fourth Report, as of December 2016, AT&T has used its Wire Center Route Map methodology for capturing the boundaries of FTTP deployment within a PSA.¹⁶ ICO Fourth Report, pp. 28 – 29. This process is also captured in the *Determination of*

¹⁶ AT&T informed the ICO in November 2016 that the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION].

Intersection Between E-rate Locations & AT&T Internet with FTTP Build Plan Routes, discussed above. The ICO finds AT&T's approach reasonable.

FTTP E-rate Observation 3: AT&T reports using the same process for tracking and responding to Form 470s as used in previous reports.

For the Sixth Report, the ICO confirmed the process described by AT&T for tracking and responding to Form 470s is nearly identical to that used by AT&T in previous reports. The process is documented as the *DTV I.B. Merger Requirement Processes* (rev. August 13, 2018). The process document provides a detailed step-by-step for the E-rate team to follow for identifying E-rate sales opportunities and form complying with the Merger Condition.

Service Type and Function

The ICO's Fifth Report recommended that AT&T consider revising its guidance to conform to the guidance issued by USAC regarding the requirement for Form 470s to designate both "Internet Service and Transport Bundled" and "Lit Fiber Service." Fifth Report, p. 32. The AT&T Sixth Report states that AT&T has updated its process document to conform to the guidance issued by USAC. *See* Sixth Report, p. 18. The ICO confirmed the August 13, 2018 update of the *DTV I.B. Merger Requirement Processes* reflects the current USAC guidance.

**AT&T Responded to [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY CONFIDENTIAL INFORMATION] Form 470s**

According to the Sixth Report, p. 19, AT&T provided a bid in response to [BEGIN
HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL
INFORMATION] Form 470s from covered schools or libraries for 1 Gigabit FTTP Services from January 1, 2018 to June 30, 2018. Exhibit 2.a provides a listing of all covered entities to whom AT&T submitted a bid for 1 Gigabit Service; the list provides electronic links to the

related Form 470s at Exhibit 3 for each of the bids. Exhibit 3 includes copies of forms prepared by Funds for Learning that capture the information required on properly populated Form 470 documents.

For the second half of Funding Year 2017, AT&T Deployed 1 Gigabit Service to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] Covered Entities

AT&T has deployed 1 Gigabit Service to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]¹⁷ covered entities during the period of January 1, 2018 through June 30, 2018. Those [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] entities, along with the data required by Merger Condition III.2.d, are presented in Exhibit 2.b. The ICO selected [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] entities and confirmed deployments of 1Gigabit service through Form 471 data.

During a meeting with the ICO on March 6, 2018, AT&T provided a breakdown of all E-rate 1 Gigabit Service funding activity for Funding Years 2016 and 2017 (the E-rate funding year runs from July 1 – June 30). *AT&T – DirecTV Merger Conditions, 3/7/18 E-rate RFI Response*, Slides 6 & 7. According to AT&T, it identified [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] 1 Gigabit Form 470s for the period, of which [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] included customer filing for E-rate and the other [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY

¹⁷ This brings the total number of deployments during the 2017 Funding Year to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION].

CONFIDENTIAL INFORMATION] resulted in no purchase. The **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** Form 470s generated **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** Form 471 funding requests (“FRNs”). Of the **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** FRNs, AT&T or a team of which AT&T was part was selected **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** times; AT&T competitors were selected **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** times.

[BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

AT&T offered three reasons why **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of the FRNs awarded to AT&T for 1 Gigabit Service were not reportable: approximately **[BEGIN HIGHLY CONFIDENTIAL**

INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] were at a location *not* in AT&T's Fiber Build Plan; approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] were at service speeds ultimately higher or lower than 1 Gigabit (generally from a covered entity having available more or less funding at the time the contract was finally executed which permitted it to buy more or required that it buy less speed); and approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] involved customers cancelling the service order before deployment. The ICO did not identify any information in the 2016-2017 Form 471s inconsistent with AT&T's representations and explanations.

FTTP E-rate Observation 4: AT&T has engaged in affirmative and adequate outreach to make all covered schools and libraries aware of the opportunity to purchase its 1 Gigabit FTTP Service.

The ICO confirmed that AT&T continues to use an expansive promotional outreach program that includes both direct outreach to covered schools and libraries, along with an effort to promote more general awareness of AT&T's services among actual and potential E-rate customers. As discussed during meetings with the ICO on March 6, 2018, AT&T has pivoted away from technology events and relies instead on direct mail and email campaigns. *AT&T – DirecTV Merger Conditions, 3/7/18 E-rate RFI Response*, Slide 21. Those campaigns will be executed in April, June, and November with a series of three communications in each campaign designed to effectively communicate AT&T broadband access expansion with more robust internet services to more locations; to expand communications to a larger K-12 decision-making

audience; to increase the Company's ability to measure outreach effectiveness; and to complement the Discounted Broadband Services Program (*Access from AT&T*). *Id.*, Slide 22.

FTTP E-rate Observation 5: Schools and libraries often buy service from state agencies or government consortia.

As discussed in Observation 3, AT&T competes to provide the covered services with other commercial providers. Additionally, schools and libraries frequently fall under state, county, or other municipal contracting activities and would not be in the market for 1 Gigabit services independently. As noted in the ICO's Fourth Report, there are 16 statewide networks in 14 of AT&T's 21 state ILEC footprint where a state agency and/or the state's higher education system has procured an internet backbone designed to deliver broadband services to anchor institutions, including schools and libraries --

- 10 states (AR, CA, GA, FL, IL, KS, KY, SC, TN, WI) where a state agency provides the state-wide network –most of these states buy these services from commercial ISPs and leverage E-rate and state funding –some were built with dark fiber¹⁸ using funding from the American Recovery and Reinvestment Act of 2009 (ARRA) Broadband Technology Opportunities Program (BTOP);
- 6 states (OH, OK, KS, WI, MI, MO) where the higher education system provides centralized internet access to all the schools;
- Under these models, the anchor institutions receive a finite amount of internet access at no cost or at a highly subsidized rate;
- The state agencies or university systems use E-rate and state budgets to fund these networks;
- These networks are a substitute for commercial ISP services and reduce the addressable market for internet access services for AT&T and its competitors;

¹⁸ A fiber network that has not been put into use.

- Schools and libraries generally only issue their own 470s to buy internet access services from commercial ISPs when they need to augment the service they receive from the state/higher education network.

Fourth Report, pp. 31-32, *citing 7-13-17 AMI Follow up questions E-rate*, Slide 4. AT&T provided a listing of the state internet networks and associated links to the ICO. The ICO examined those links and confirmed the states provided the services described by AT&T.

AT&T explains again in its Sixth Report:

[W]hile AT&T is the largest provider in the E-rate program of all network and voice services, AT&T often serves high speed internet needs for covered schools and libraries through solutions that are not funded through E-rate and/or not covered by the Condition. Accordingly, there are multiple reasons why AT&T may have few reportable deployments of 1 Gigabit FTTP Service during a reporting period. For example, in several states within AT&T's 21-state wireline service area, there are state institutions that procure an internet backbone designed to deliver broadband service to anchor institutions, including schools and libraries, which reduces the number of schools and libraries seeking to purchase commercial ISP services. In addition, schools and libraries often seek bids for a range of speeds. Thus, AT&T may be chosen as the internet access provider for a Form 470 which it reported as being covered by the Condition, but the institution may choose to utilize service at a speed either above or below 1 Gigabit, which service deployment would not be reportable under the Condition. And even if the covered school or library purchases internet access service from AT&T and elects to install 1 Gigabit FTTP Service, the customer may require that service to be delivered at a location or locations that are not within or contiguous to AT&T's FTTP deployment, which again would not be reportable under the Condition. Finally, AT&T faces competition from other private internet access service providers and may not have been chosen as the internet access provider.

Sixth Report, pp. 20-21 (footnotes omitted). The ICO has confirmed this information through a review of Form 471s and other USAC documentation, as well as through searches of publicly available documents. The ICO will continue to take steps to verify the information reported by AT&T.

2. NON-DISCRIMINATORY USAGE-BASED PRACTICES CONDITION

NDUP Observation 1: AT&T's NDUP reporting satisfies the Condition set forth in Subsection IV of Appendix B.

The ICO has reviewed the Sixth Report and Exhibit 5 regarding the requirements set forth in Appendix B, Section IV. As required by the Condition, AT&T's Sixth Report details its compliance with this condition, including a description and examples of the terms and conditions of its usage-based allowances relating to Fixed Broadband Internet Access Service and the Company's procedure for enforcing them. Sixth Report, pp. 24-28; Ex. 5. Exhibit 5 contains a variety of information related to AT&T's Fixed Broadband Internet Access Service usage allowance practices, including: *AT&T Internet Terms of Service* (November 15, 2017 - present); *Broadband Information*; descriptions of network practices and performance characteristics; screenshots of the Company's online data calculator; customer "frequently asked questions"; descriptions of the monthly usage allowance tiers; webpages reflecting data-plan bundling options for new and existing customers; and relevant Myatt screenshots. Sixth Report, pp. 25 - 27 and Ex. 5. The descriptions and supporting materials presented by AT&T in the Sixth Report accurately capture the information on its website relating to the terms and conditions associated with its usage-based allowances for its Fixed Broadband Internet Access Service. AT&T has delivered a report that addresses the conditions set forth in subsection IV.2 of Appendix B and delivered a report that satisfies subsection IV.3.

NDUP Observation 2: AT&T's Terms & Conditions and usage-based practices comply with the Condition.

The Sixth Report expressly states that AT&T does not discriminate in favor of its own Video Programming services, and that AT&T has complied fully with the Condition throughout

the reporting period. Sixth Report, pp. 24 - 25. The information available to the ICO confirms that AT&T's retail terms and conditions, including the application of usage-based allowances, do not discriminate in favor of its own Video Programming services or any content or application available through its Video Programming services, including through the exemption of one or more of its Video Programming services from usage-based allowances, in a manner that violates the Condition.¹⁹

As in prior reports, the ICO did not identify any unbundled Fixed Broadband Internet Access Service offerings that included terms and conditions, usage-based allowances, or other features that discriminated against unaffiliated online video distribution services or favored AT&T's offerings. The usage-based allowances imposed by AT&T on its Fixed Broadband Internet Access Service offerings had equal application across the customer's online video use.

AT&T makes available on its public website all product and service offerings for its Fixed Broadband Internet Access Service, including the terms and conditions, and associated usage-based allowances, relating to those offerings. See <http://about.att.com/sites/broadband> (last viewed September 13, 2018), *Broadband Information* ("To help keep customers informed about our mass market broadband Internet access services, the AT&T website (www.ATT.com) describes the mass market wireless and wired broadband Internet access services we offer.").

The ICO reviewed the relevant offerings, including the terms and conditions and usage-based allowances, published at or linked to <https://www.att.com/support/internet/usage> (last viewed September 13, 2018), the *Home Internet Usage* page (which included Data Usage Basics;

¹⁹ The Condition "does not prohibit the Company from offering discounts for integrated bundles of the Company's U-verse or DIRECTV satellite Video Programming service or rebranded offering of these services with the Company's Fixed Broadband Internet Access Services." App. B § IV.2.

Monthly Data Allowance by Speed; More About Internet Data Usage; additional links to Data Calculator, Check your Usage, and Usage Tips); the *AT&T Data Allowances and Usage Information* page, and the *Internet and DSL Terms of Service*. The site provided AT&T contact information and options, including an on-line chat option. The ICO also reviewed the promotions and product offerings under the Bundles Page and the Internet Page. The ICO did not find evidence of discriminatory intent or effect in these information resources; rather, the published resources adequately inform the customer of the available services, the terms and conditions associated with the available services, and the many tools available for helping customers manage data usage.

AT&T expressly states in its *Broadband Network Practices*:

Does AT&T favor certain website or internet applications by blocking, throttling, or modifying particular protocols on its broadband internet access service?

No, AT&T does not favor certain websites or internet traffic on the basis of content, application, services, user, or use of nonharmful devices on its broadband internet access services.

Does AT&T directly or indirectly favor some traffic over other traffic (such as through prioritization, resource reservation, or traffic shaping) in its provision of broadband Internet access service either (1) in exchange for consideration (monetary or otherwise) from a third party, or (2) to benefit an affiliate?

No, in its provision of broadband internet access services, AT&T does not directly or indirectly favor some traffic over other traffic in exchange for consideration from a third party or to benefit an affiliate

<http://about.att.com/sites/broadband/network> (last viewed September 13, 2018); Ex. 5.b. AT&T explains in its *Internet and DSL Terms of Service* that it may adopt reasonable network management practices. Those network management practices include capping a customer's data usage, modifying a customer's serving facility or service technology, and/or modifying or

limiting a customer's data throughput speed or data consumption as necessary to manage internet traffic. AT&T further explains, however, that it will provide customers with notice when it adopts network management practices that apply to the customer's service. AT&T's published materials inform customers that these network management practices will affect all customer's traffic the same.

The ICO compared the documents submitted by AT&T with the documents the ICO reviewed on the AT&T website. In conducting this comparison, the ICO did not identify any material discrepancies that raised concerns between the documents provided by AT&T and the documents on the website (we identified in some cases very minor differences in the wording that did not affect the point being communicated).

NDUP Observation 3: The ICO has not identified any customer, public, or other complaints establishing a violation of the NDUP Condition.

The ICO conducted continuous monitoring of the internet for complaints alleging discriminatory usage-based practices on the part of AT&T. One of the ways this was achieved was using internet alerts. The ICO set up broad alerts with the words "AT&T DirecTV," so that any content (articles, blogpost, etc.) containing those words would be flagged automatically and sent to the ICO via email. While the ICO received many alerts over the reporting period, the ICO did not identify any complaints alleging a violation of the Condition. Most of the alerts received concerned articles about AT&T's new product offerings and promotions; some concerned lawsuits involving AT&T (unrelated to the Condition); others commented on AT&T's business deals. Another method used by the ICO to monitor the internet for complaints involved visiting websites that consumers or groups use as platforms for complaining about or discussing

telecommunication practices.²⁰ For example, Consumer Union and Consumer Affairs, published complaints about AT&T, mostly concerning the quality of the Company's services, the cost of the services, and zero-rating. Some of the complaints involved AT&T's data allowances, but these complaints did not raise genuine concerns relating to the Condition. Rather, the complaints took issue with the fact that AT&T imposed data caps or that AT&T wireless customers who subscribed to DirecTV could watch DirecTV on their mobile devices without it counting toward their AT&T wireless data cap. The ICO did not identify any complaints presenting facts or information that AT&T used data caps to discriminate against unaffiliated video distribution services regarding the Company's Fixed Broadband Internet Access Service.

There were complaints made on consumer forums between January 2018 to June 2018 that involved the speed of AT&T Internet when customers streamed Netflix. A search of Netflix's ISP Speed Index showed, however, that AT&T U-verse Internet service (AT&T's fiber connection) is rated 15 of 68 on the list of United States internet service providers.²¹ Thus, these complaints did not raise concerns that AT&T was engaging in discriminatory usage-based practices through its fixed broadband internet access services that favored affiliated content over unaffiliated content.

The ICO also searched websites where non-profit groups like The Free State Foundation, Free Press, and Public Knowledge posted complaints or discussions relating to AT&T's internet

²⁰ <https://forums.att.com/t5/Internet-Forum/ct-p/attinternet> (last visited October 3, 2018); <http://consumersunion.org/> (last visited October 3, 2018); https://www.consumeraffairs.com/internet/att_broadband.html (last visited October 3, 2018).

²¹ <https://ispspeedindex.netflix.com/country/us> (last visited October 13, 2018). The Netflix Speed Index is a measure of prime-time Netflix performance on a particular ISP and not a measure of overall performance for other services/data that may travel across the specific ISP network. Faster Netflix performance generally means better picture quality, quicker downloads, and fewer interruptions.

services.²² As mentioned earlier, there were some concerns expressed regarding AT&T's live streaming service DirecTV Now and AT&T U-verse, however, the ICO did not find any complaints to constitute a violation of the Merger Condition.

Furthermore, the ICO reviewed the complaint summaries provided by AT&T. AT&T collects complaints from various sources, including complaints made directly to AT&T, to the FCC, to the Better Business Bureau, and to state attorneys general offices. AT&T did not report any complaints that indicated discriminatory usage-based practices or general data usage complaints. We have included a section at the end of the report further describing the ICO's observations concerning AT&T's complaint review process.

NDUP Observation 4: AT&T continues to use process controls tailored to achieve compliance with the Condition.

In February 2017, AT&T provided the ICO with an overview of the systems the Company put in place to ensure compliance with the NDUP Condition and other legal requirements related to its product offers and pricing. The three pillars of the compliance system are training, process controls, and its reporting obligation to the FCC. During the current reporting period, the ICO attempted to review, assess, and evaluate AT&T's training and process controls as related to the NDUP Condition. The findings and conclusions reported by the ICO in its Third Report relating to AT&T's training and process controls have not changed during the current reporting period.

²² <http://freestatefoundation.blogspot.com/> (last visited October 3, 2018); <https://www.freepress.net/> (last visited October 3, 2018); <https://www.publicknowledge.org/> (last visited October 3, 2018).

Training

AT&T provided the ICO with a training roster establishing that approximately [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] AT&T management and staff had received training relating to the NDUP Condition, and that one or multiple training sessions had been conducted several times a year between August 2015 and June 2018. *Non-Discriminatory Merger Condition Training Attendees 8-31-15 – 1-26-18* (Feb. 14, 2018). According to AT&T, the training sessions are conducted by AT&T's outside counsel, and reportedly include an overview of the Condition, an examination of the specific terms and conditions imposed by the Condition, and a discussion of hypothetical customer offers that might implicate the Condition.

In December 2017, the ICO requested that AT&T produce relevant training materials and provide other opportunities to gain greater insight into AT&T's training (*e.g.*, observe training and/or interview those receiving the training). AT&T denied the ICO's request. AT&T informed the ICO the training and training materials were subject to the Attorney/Client Privilege, as the training and related materials consisted of protected attorney/client communications. AT&T legal counsel explained the training materials were developed by AT&T legal counsel and reflect the opinions of legal counsel as to what is necessary for the Company to comply with its legal obligations under the Condition. If redacted to remove privileged content, legal counsel opined the materials would be worthless. Concerning the privilege relating to the conduct of the training, AT&T legal counsel explained that because of the legal content of the training, legal counsel conducted the training for the AT&T business teams, and the training was designed to provide the opportunity for candid attorney/client

exchanges between counsel and the business representatives.

Without the ability to observe training, to interview those receiving the training, or to review the training materials, the ICO can only observe that AT&T appears to be providing appropriate employees with training on how to comply with the NDUP Condition. The ICO cannot comment directly on the effectiveness of the training and related materials.

Process Controls

AT&T reports that it has designed a process to ensure management secures legal approval for all new product offers and pricing before those offerings are made available to the public. AT&T informed the ICO the process did not change during the Sixth Reporting period. For purposes of complying with the NDUP Condition, the control process generally starts with the business team presenting the details of its offer to AT&T legal counsel. **[BEGIN CONFIDENTIAL INFORMATION]**

[END

CONFIDENTIAL INFORMATION] This process is supported by two forms: **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]. AT&T previously provided the ICO with copies of both forms. AT&T has withheld from the ICO populated versions of the forms reflecting actual product offerings. According to AT&T, those populated forms are subject to the Attorney/Client Privilege as those forms contain protected communications between attorney and client. The ICO explored with AT&T legal counsel again in February 2018 options for gaining greater visibility into AT&T's process controls as AT&T uses those controls to vet actual product offerings for compliance with the NDUP Condition. The parties

were unable to identify a way for the ICO to achieve greater visibility into the process given the privilege, other than for the ICO to review the output of the process in the public offerings published by AT&T on its website and in advertisements.

AT&T responded to the ICO's Request for Information with the following summary:

AT&T has implemented robust processes with respect to compliance with the NDUP condition. As described in our Semi-Annual Compliance Reports, AT&T's focus has been on integrating compliance into its day-to-day business processes. This is done through training, administered proactively to key personnel to ensure that compliance with the NDUP condition is considered in the planning stages for any proposed new products or offerings, and advice and counsel sought before any key decisions are made. Additional mechanisms and review screens exist in the early stages of product development to ensure that the terms and conditions of new products and offers comply with the NDUP condition.

As a result, potential issues which might present compliance concerns are raised for consideration by counsel and are resolved on that basis before the projects or offerings are formalized and submitted for decision at the business level. Generally, advice and counsel is sought and addressed before a project or offering is assessed for financial or operational viability.

AT&T considers the legal advice and counsel provided with respect to compliance questions related to any particular proposal to be Attorney-Client Privileged communications and hereby asserts that privilege.

AT&T-DirectTV Merger Conditions, 12/6/17 NDUP RFI Response. AT&T's position regarding the privileged nature of this information has not changed during the current reporting period.

Without access to the populated forms used by AT&T to review specific product offerings, or the ability to interview the AT&T officials and employees involved in the process, the ICO can only observe that AT&T has designed what appears to be an appropriate set of process controls to achieve compliance with the NDUP Condition. The ICO cannot comment directly on how the process controls work or the effectiveness of the controls AT&T has put in place.

Notwithstanding the limitations experienced by the ICO relating to gaining access to information and activities subject to the Attorney/Client Privilege asserted by AT&T, the ICO believes that the available evidence demonstrates that AT&T has designed a multi-layered review process (together with a training regimen) that creates a positive internal control environment to support Condition compliance. This conclusion is borne out by the ICO's findings in the foregoing discussion relating to the NDUP Condition. The ICO has not identified any evidence in the public space (*e.g.*, the product offerings and related terms and conditions on AT&T's website, complaints posted on public sites, or complaints otherwise made available to the ICO) indicating a lack of compliance with the NDUP Condition. *See* NDUP Observation 3, *supra*.

3. DISCOUNTED BROADBAND SERVICES PROGRAM CONDITION

DBS Observation 1: AT&T's DBS reporting satisfies Condition requirements.

AT&T's Sixth Report again addresses fully the requirements imposed by Appendix B § VI.2. including:

1. The total number of households participating in the AT&T DBS Program;
2. A detailed description of outreach efforts made during the reporting period to promote the DBS Program to schools and community-based organizations, including a list of participating organizations, and representative examples of promotional and collateral materials provided; and
3. An analysis of DBS Program effectiveness to date.

AT&T described its compliance with Merger Conditions, along with an analysis of its overall effectiveness in meeting the requirements imposed by the DBS Condition.

The ICO has reviewed this report in detail, along with other public and confidential materials relevant to this Condition. A Request for Information was sent by the ICO to AT&T

on May 31, 2018 seeking current documentation, information and data about AT&T's implementation and management efforts as they pertain to several conditions, including the Discount Broadband Service requirements. Relative to DBS, the ICO requested information pertaining to:

- AT&T's ongoing efforts to identify and refund any *Access from AT&T* customers who were erroneously charged for equipment or installation;
- Program marketing via partner organizations, EveryoneOn and Connected Nation;
- Advertising and public service announcements;
- Internal quality improvement measures; and
- Performance metrics for call center agents.

Among other responses, the ICO received from AT&T:

- A comprehensive explanation of the process for identifying erroneously billed *Access from AT&T* customers and (redacted) copies of bills showing that adjustments had been made, as needed;
- Information about AT&T's work with Connected Nation;
- Invitations to participate in upcoming webinars hosted by EveryoneOn;
- A tentative schedule of *Access from AT&T* television and radio advertising spots to be aired in the Chicago, IL area for one week in June;
- Internal metrics showing **[BEGIN CONFIDENTIAL INFORMATION]**

[END

CONFIDENTIAL INFORMATION]; and

- A summary of changes made to the program based on AT&T's ongoing review of the *Access from AT&T* program.

As in the past, the requested information was posted by AT&T to a secure, external website to which the ICO has password-protected access, and AT&T's DBS Team made itself available to

the ICO to answer any follow-up questions which arose. In addition, the DBS Teams from AT&T and the ICO had a conference call on September 19, 2018 to discuss AT&T's response; at this meeting, AT&T further explained its processes and its reports.

In this reporting period, the DBS teams from AT&T and the ICO also held a conference call on May 10, 2018 to discuss how AT&T tracks its media spending for the *Access from AT&T* program and how it measures the effectiveness of that spending. AT&T reported that its
[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] The ICO is satisfied that these system-wide controls are appropriate and sufficient to assure that *Access from AT&T* advertisements are, in fact, being run by the media outlets, as planned. In addition, AT&T provided the ICO with a tentative schedule for one week's worth of *Access from AT&T* radio and television ads in the Chicago market; the running of radio and television spots during this time period was confirmed by an Illinois-based ICO Team member.

On August 28, 2018, the ICO DBS Team made a site visit to **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** in Canton, Ohio, a call center that contracts with AT&T to handle inquiries regarding *Access from AT&T*. As in previous site visits, ICO staff interviewed **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** managers; conducted

focus groups with customer service agents who answer calls about *Access from AT&T* applications, eligibility and installations; toured the facility; and learned about training of customer service agents. The ICO found the training and services of the *Access from AT&T* agents to be very good, as it has been at other [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] locations. The ICO also learned that refresher training is being offered to *Access from AT&T* agents, and that [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] of *Access from AT&T* program-specific training is also offered to agents who handle AT&T calls primarily for programs other than *Access from AT&T*.

DBS Observation 2: AT&T's DBS Program, established on April 22, 2016 as required under FCC Condition VI, continues to operate well and enrollment continues to grow.

The ICO's review and assessment of available information provided by AT&T in various formats, along with independent testing identified in this report has satisfied the ICO that AT&T's DBS Program (*Access from AT&T*) website has been operational as of April 22, 2016, has adequate management support, and continues to be a resource for potential new enrollees.

AT&T's Sixth Report indicates the following:

- AT&T is offering *Access from AT&T* service plans for wireline Broadband Internet Access Service at the download speeds and prices specified in the Condition. (Sixth Report, p. 36)
- AT&T is offering *Access from AT&T* to qualifying households in areas with connections speeds lower than 3 Mbps at a rate of \$5 per month, going beyond the requirements of the Conditions. (Sixth Report, p. 51)

The ICO has continued to verify these representations.

As described in previous reports, AT&T [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] for applicants to the *Access from AT&T* program, so that all qualifying prospective participants may obtain broadband service. Sixth Report, p. 39. In visiting the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] application-processing site in June 2017, the ICO observed applicants' credit information was not a factor in the decision-making process. The ICO has conducted focus groups with call center agents and has not heard any mention from them of credit issues affecting eligibility. Also, in the ICO's active and passive monitoring of complaints (regular searches of the Internet for *Access*-related complaints and receipt of complaints reported to the ICO by AT&T), we have not seen any issues pertaining to denial due to poor credit history.

Figures provided by AT&T in its Sixth Report indicate the *Access from AT&T* program has expanded, providing discounted broadband service to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] households, distributed among all 21 states in AT&T's wireline footprint. Sixth Report, p. 40. Since the last report, this is an increase of almost 45 percent in the number of households enrolled in the program.

AT&T has maintained the established protocols and processes described in the ICO's previous reports for determining whether *Access from AT&T* applicants meet requirements regarding SNAP eligibility (or SSI in California).

- AT&T has continued its engagement of third-party vendor, [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION], to conduct SNAP and other eligibility verification checks at the time of DBS Program application.

- Applicants are required to provide evidence of participation in SNAP (or SSI in California), and AT&T has maintained its expanded definition of acceptable documentation of participation to facilitate this aspect of the application process.

The ICO notes that AT&T continues to work on improving the application experience for *Access from AT&T* customers.

The ICO increased the size of its sample set regarding billing statements for *Access from AT&T* customers to three from each of the 21 states in AT&T's wireline footprint per quarter. AT&T generated the statements through a random selection process and provided the redacted, most recent bill, and up to three previous bills, per customer for 63 customers per quarter to the ICO for review. The Company also included the first two months of bills for accounts which had been in place for more than four months. Below is a breakdown of the bills reviewed.

2nd Quarter 2018					
New/Existing Customer	Plan	Data Statement Included	Data Usage Included	Total Charges Included	Equipment Fees
56 - New	52 - \$10	378 - Yes	329 - Yes	378 - Yes	1 - Yes
7 - Existing	11 - \$ 5				
63 - Total	63 - Total	378 - Total	329 - Total	378 - Total	

Among the 63 customers whose bills were reviewed by the ICO, 52 were on the \$10/month plan and 11 were on the \$5/month plan at the commencement of their plan. Three \$10-customers went down to \$5 and one increased from \$5 to \$10. Of the bills received, 56 were from customers new to AT&T, 7 were from existing customers who had switched to the *Access from AT&T* program. In total, we reviewed 378 individual statements; all but two customers had six statements. One had eight statements and one had five statements.

- Data statements were included in all 378 billing statements.
- Data usage was included on 329 statements; those without data usage were initial pro-rated single day bills where usage would not be expected.
- Total charges were specified on all 378 billing statements.
- Additional fees were seen on several statements reviewed in this period; most fees were for late payment or reinstatement of service, and were consistent with AT&T's billing policies, as they have been explained to the ICO.
- The ICO identified questions pertaining to five billing statements from the second quarter of 2018. The ICO will ask for clarification and updates of these accounts. If there are matters that pertain to the conditions which are not sufficiently explained by AT&T, we will include them in the next report.
- All questions pertaining to bills reviewed in prior reporting periods were answered satisfactorily by AT&T. There are no outstanding matters to report.

Based on the information reported by AT&T to date and our independent reviews, the ICO is satisfied that all key aspects of the *Access from AT&T* program meet Condition requirements.

DBS Observation 3: AT&T continues to provide a link on its consumer-facing homepage dedicated to the *Access from AT&T* (DBS) Program.

AT&T has a website devoted to the *Access from AT&T* program; as required, a link to this site is provided on the AT&T consumer-facing homepage. The ICO again monitored the *Access from AT&T* website bi-monthly for coverage and accessibility and found it to be operational and accessible from both desktop and mobile devices for the full reporting period. The site provides key program information, including eligibility details, cost, speeds available, contacts, FAQ's and other resources. The online application is available in English and Spanish, and there is one phone number to call for assistance in English, another for assistance in Spanish.

AT&T has maintained a fully accessible, fully functioning website to describe the *Access from AT&T* DBS Program, give information to possible participants, and permit individuals to

begin the application process. In addition, the Company has modified its mobile site to make it easier to navigate and to use as the basis for an online application. AT&T is satisfying the requirement to provide on its consumer-facing homepage a link to a website devoted to describing the DBS Program.

DBS Observation 4: AT&T continues to provide training to its Customer Service Representatives regarding the DBS Program.

As noted in previous reports, the Condition pertaining to training requires AT&T to educate the Customer Service Representatives “prior to commencement of the program.” The numbers listed below (included in the two previous reports), which were reported by AT&T and which tracked with the lists of trained individuals sent to the ICO, indicate that the goal of adequate pre-launch training was met.

- As of July 12, 2016:
 - [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] individuals, representing [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] of Inbound Call Center staff who were likely to have such interactions, completed such training;
 - [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] individuals, representing [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] staff who were likely to have such interactions, completed such training; and
 - [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] of the employees working on the *Access from AT&T* program matter for [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION], the third-party vendor engaged by AT&T to handle the application review process, completed such training.
- Dedicated DBS Program Customer Service Centers – All customer service agents associated with the *Access from AT&T* program, including third-party vendor

representatives, were trained prior to program launch on April 22, 2016. Ongoing training programs remain in place for new hires.

- AT&T provided the names of the individual employees of [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] who received training in the *Access from AT&T* program website.
- The ICO received and reviewed copies of these training materials.
- Training consists of slides, hand-outs, interactive sessions, problem-solving, call scenarios, and hands-on side-by-side training with experienced agents.
- Average training time for new call center agents at [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] and the *Access from AT&T* program is covered during that time.

AT&T reports that it continues to offer “refresher training” to its other Customer Service Representatives, so they will maintain awareness of the program and know how to connect individuals interested in low-cost internet with the agents at the dedicated call centers who can be most helpful. In addition, while on site at a [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] call center in Canton, OH, the ICO inquired about whether training regarding the *Access from AT&T* program is offered to agents who handle other matters (*e.g.*, who receive calls pertaining to U-verse, DirecTV, or other AT&T offerings). The ICO learned that non-*Access from AT&T* agents who are hired by [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] receive about [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] of instruction pertaining to the *Access from AT&T* program.

Despite efforts by the Company and its vendors to provide baseline knowledge of the *Access from AT&T* program to all its Customer Service Representatives, the ICO heard from call

center agents about some program confusion. The agents reported they received **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] The ICO brought this issue to the attention of AT&T, acknowledging that customers may not know exactly what to ask when they call to enroll, or that they may hear about a bundled package and assume it will also include the DBS offering.²³ However, the ICO also mentioned that call center agents suspected other Customer Service Representatives (not assigned to the *Access from AT&T* program), **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]. In discussions concerning this matter, **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] In another discussion, the Company indicated it was working to **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] We will follow up on this matter as part of our on-going review of calls.

Although AT&T previously fulfilled the Condition to train its Customer Service Representatives “prior to commencement of the program,” the ICO continues to assess the

²³ In its review of calls, described in more detail below, the ICO team encountered calls from customers who **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] The ICO shared this observation with AT&T as part of the ICO’s review of calls.

training of call center agents because they are the point of entry for many applicants to the *Access from AT&T* program. The ICO has noted examples of well-trained agents problem-solving with customers to facilitate the application process. Conversely, there were instances in which less knowledgeable agents may have discouraged applicants by dispensing incorrect information. To evaluate the training of the call center agents in this reporting period, the ICO:

- Visited the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] (third-party vendor) facility at Canton, OH, on August 28, 2018 to interview managers and team leaders, and conduct focus groups with customer service agents; and
- Reviewed recordings of 125 call-center interactions (described in more detail below).

The [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] managers interviewed during the ICO's visit of August 28, 2018, understood both the purpose and the practical aspects of the DBS Program. As was true at other locations visited, the call agents who participated in the focus groups (participants were selected by the ICO) demonstrated an even deeper understanding of the DBS Program, and were proud to assist customers in enrolling. In Canton, as at other U.S.-based vendor sites, the call agents told the ICO representatives that their training was sufficient and comprehensive. They said that, in addition to their initial training, they received ongoing training in the form of updates to their "flow" process, huddles, team meetings and personal coaching. The ICO was informed by AT&T that the call center vendors recently used huddles and team meetings to remind its *Access from AT&T* agents about the [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].

The ICO received recordings of 125 calls made to AT&T's third-party call center agents in Tucson, AZ; Lubbock, TX; Canton, OH; Windsor, Ontario; and Kingston, Jamaica from the period of February – June 2018. Six calls were in Spanish, and the data from these interactions are included in the table below. AT&T redacted from the recordings all personal, identifiable information, consistent with FCC requirements. As a means of determining the adequacy of the training of the call center agents, the ICO DBS Team evaluated whether the agents' explanations of program eligibility requirements and restrictions were good, fair or poor. The ICO defined "good" to mean the agent met or exceeded expectations, "fair" to mean the agent met some or most of the expectations, and "poor" to mean the agent met few or none of the expectations. The expectations were based on the call center agent's ability to accurately describe how the customer can obtain the DBS Program discount, the DBS Program eligibility requirements, the restrictions, and the certification and recertification process, as well as the agent's general knowledge of the *Access from AT&T* program.

In prior Report periods, the ICO noted that many calls in the sample sets were either unrelated to the *Access from AT&T* program or were inaudible. On February 1, 2018, the ICO team asked AT&T if it would be possible for AT&T to screen out (a) inaudible calls and (b) calls unrelated to the *Access from AT&T* program. Therefore, all calls sent to the ICO in this reporting period were pre-screened by AT&T for pertinence and audibility. The number screened out is provided with the evaluation data below; AT&T provided additional information to the ICO about those calls, should the ICO wish to listen to them to ascertain that they are, in fact, unrelated or inaudible.

REDACTED—FOR PUBLIC INSPECTION

	February 2018	March 2018	April 2018	May 2018	June 2018
Number of calls reviewed	25 in English	24 in English 1 in Spanish	23 in English 2 in Spanish	23 in English 1 in Spanish*	24 in English 2 in Spanish
Call type	8: new application 12: set-up 2: status inquiry 1: billing 2: problem reported by caller	15: new application 8: set-up 1: status inquiry 1: other- wanted help with appl	13: new application 10: set-up 1: status inquiry 1: other	6: new application 14: set-up 1: status inquiry 2: other	8: new application 15: set-up 2: status inquiry 1: other – question re service at address w/o phone jack
Number of calls not selected for review (found by AT&T to be unrelated or inaudible)	34 calls	12 calls	16 calls	6 calls	3 calls
Call interaction seemed likely to lead to successful outcome	2 calls: N/A 19: good or fair 4: poor	1 call: N/A 21: good or fair 3: poor	2 calls: N/A 22: good or fair 1: poor	1 call: N/A 19: good or fair 3: poor	2 calls: N/A 22: good or fair 2: poor
There was an explanation of eligibility	7 calls: N/A 17: good or fair 1: poor	5 calls: N/A 17: good or fair 3: poor	10 calls: N/A 15: good or fair 0: poor	8 calls: N/A 15: good or fair 0: poor	7 calls: N/A 18: good or fair 1: poor
There was an explanation of restrictions	11 calls: N/A 14: good or fair 0: poor	11 calls: N/A 14: good or fair 0: poor	7 calls: N/A 16: good or fair 2: poor	7 calls: N/A 14: good or fair 2: poor	8 calls: N/A 15: good or fair 3: poor
Other comments	1 call was dropped			*The Spanish call was not reviewed	1 call was dropped

Note: If the call addressed eligibility or restrictions, the ICO evaluated the quality of the explanations given; if the call did not address those matters, the ICO marked it N/A in that area.

In this reporting period, AT&T closed its *Access from AT&T* call center in Tucson, Arizona (May 2018). As noted in the previous report, it had opened *Access from AT&T* call

centers with [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] in Kingston, Jamaica and with [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] in Windsor, Ontario earlier in 2018. The calls reviewed from Kingston and Windsor exhibited some difficulties which were not previously found (or found as consistently) at the U.S.-based call centers.

Below is a sampling of issues identified in calls that were rated as fair or poor:

- [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

The ICO informed AT&T about these issues and learned that AT&T's quality improvement team had identified similar areas for improvement. In reviewing calls made later in the Report period, ICO staff noted some degree of improvement. For example, March and April callers seemed [BEGIN CONFIDENTIAL INFORMATION]

[END

CONFIDENTIAL INFORMATION]

The ICO has attended training sessions for call center agents and interviewed trainers for the call center vendors, [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] the commitment by all three organizations to the integrity of the *Access from AT&T* program is clear. However, the ICO suggests that agents in centers outside the U.S. would benefit from additional focus on terms and concepts that are not mirrored in their own systems, such as food stamps, SNAP, CA SSI, and the difference between social security and SSI benefits. We note that [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] when the ICO met with them in March 2018. The ICO plans to visit the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] site in Kingston in the upcoming reporting period and we will be interested in what the Kingston agents say about their competence and confidence in these areas.

The ICO heard calls exemplifying good customer service, particularly among the calls made to the dedicated Spanish line. Examples of good service included:

- [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

AT&T has continued to identify changes to its processes in real time (or close to it) so the call review process can accurately reflect what the agents are instructed to do. AT&T gave timely notice to the ICO that call center agents:

- **[BEGIN CONFIDENTIAL INFORMATION]**

[END

CONFIDENTIAL INFORMATION]

In the calls reviewed, the ICO found that most agents implemented the changes in the timeframes given, indicating that the training process for call center agents was widespread and ongoing.

RECOMMENDATION 1: Provide training for agents in centers outside the U.S. that focuses on terms and concepts that are not mirrored in their own systems, such as food stamps, SNAP, CA SSI, and the difference between social security and SSI benefits.

RECOMMENDATION 2: Ensure all *Access* agents understand the process for refunding equipment and installation charges if an eligible customer is [BEGIN CONFIDENTIAL

INFORMATION]

[END CONFIDENTIAL INFORMATION]

RECOMMENDATION 3: Consider amending the call flow scripts for agents of non-*Access* programs to help them identify and refer customers interested in the *Access from AT&T* program to appropriate agents.

RECOMMENDATION 4: Consider reviewing program **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** for non-*Access* sales agents to ensure the **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]

DBS Observation 5: AT&T met and exceeded the general marketing and targeted outreach required under Condition VI for the current reporting period.

AT&T has reported that the required \$15 million threshold value related to promotional activities, including public service announcements, was met and exceeded for the second full year of the program. AT&T tracks the \$15 million expenditure value on an annual basis coinciding with the compliance conditions; the expenditures for the second such year concluded on April 21, 2018. AT&T provided the ICO information indicating that as of April 21, 2018, the Company spent approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] in specific media areas, such as spot television, spot radio, network radio, Hispanic spot television, Hispanic spot radio, and out-of-home media. A portion of the spot television component comprised advertising purchases on DirecTV, which AT&T stated they purchased at current market rates. AT&T has provided the ICO with copies of invoices submitted via AT&T's invoice portal; the ICO will continue to work with AT&T to establish a process for additional verification of a random sample of such invoices.

For the purposes of assessing AT&T's compliance with this spending condition, the ICO asked for and received print advertisement copy, as well as recordings of radio and television

advertisements. The ICO's team members have seen the television advertisements and have heard radio advertisements run "live." The ICO asked for additional materials to help verify advertising purchases (*e.g.*, actual newspaper clippings), which the ICO has learned are not kept by AT&T in the ordinary course of its business. The ICO will continue to evaluate the monetary value of AT&T's DBS promotions, with a focus on reviewing a sampling of invoices and equivalent records.

DBS Observation 6: AT&T continues to exceed the requirement to distribute DBS Program marketing information to at least 20 organizations that work with low-income communities on a national and local level.

AT&T reports that, with the help of outreach organizations Connected Nation and EveryoneOn, it has reached out to more than 900 local and national organizations which have, in turn, agreed to promote Access from AT&T to the populations they serve. Sixth Report, p. 44 & Ex. 6. Many of the organizations disseminating information about the DBS Program use signs, fliers, and hand-outs to reach their constituents. In addition, many are also communicating through social media (*e.g.*, Facebook and Twitter), websites, and electronic newsletters.

For purposes of confirming the 20-organization requirement was met, the ICO assumed that organizations which were promoting the program online received such marketing information from AT&T, Connected Nation, or EveryoneOn. The ICO did an Internet search for key terms such as, "Access from AT&T," "partner organization," and "low cost Internet." The searches brought up live links to more than 20 organizations which are actively promoting the *Access from AT&T* program.

In addition to the key-word searches, the ICO navigated to 40 Internet links, selected at random from the list provided by AT&T in Exhibit 8 of its most recent report. The links

represented organizations that have agreed to partner with AT&T to promote its *Access from AT&T* program. We were able to confirm that the 40 organizations are valid and that they serve minority, senior, and/or veteran populations. On all but two of the organization websites, we did not find mention of the *Access from AT&T* program. This finding does not indicate that the organizations are not promoting the Access from AT&T program, but only that they may be doing so in some format other than via their website: through speakers, fliers, hand-outs, or other non-Internet-based means. As the ICO has noted in previous reporting, our activities are intended to confirm that AT&T has met the threshold, and not in any way call into question the figures put forth by AT&T.

DBS Observation 7: AT&T met and continues to meet the requirements to provide information and collateral materials to and through the schools and school professionals in the wireline footprint.

AT&T reports that in July 2018 the Company again sent letters to all public-school districts within the 21-state wireline footprint with information about the *Access from AT&T* program, asking that the information be placed in the National School Lunch Program packets, and giving examples of how a district could help promote the DBS program. AT&T indicates its partner/vendor, EveryoneOn, made follow-up phone calls to more than 1,000 schools and school districts in this reporting period (Sixth Report, p. 50), reaching 450 by telephone, then sending program information to those individuals after the calls. In the next reporting period, the ICO will take additional steps to verify the list of individuals who were sent information about the *Access from AT&T* program.

The ICO participated in three webinars about the *Access from AT&T* program led by EveryoneOn for school administrators or representatives of school districts (July 10, 18 and 24,

2018). The webinars were hosted live by a representative of EveryoneOn who fully explained the *Access from AT&T* program, including customer eligibility, the application process, installation, and data caps/allowances. An AT&T representative was also on hand to field questions that might arise. Participants received suggestions about how to inform students and families about the *Access from AT&T* program, such as leveraging back-to-school nights and parent orientations, distributing collateral, and pairing up with other technology initiatives (e.g., distribution of laptops) to maximize the effectiveness of the outreach. Samples of the collateral materials were shown during the webinar and participants were emailed a list of supporting Internet links in follow-up to the sessions. The ICO was impressed by the knowledge exhibited by EveryoneOn staff in these presentations and confident that participants left with both information and tools to proceed if they wanted to promote the *Access from AT&T* program in their schools or school districts.

AT&T provided the ICO with copies of collateral materials describing the *Access from AT&T* program in a range of languages. The materials we received were available in Arabic, Chinese, English, Haitian Creole, Korean, Spanish and Vietnamese. The electronic versions of the materials have links which help to facilitate next steps.

DBS Observation 8: AT&T has maintained a dedicated phone number and process to verify DBS Program eligibility, and qualifying callers are transferred to a centralized order-entry center.

AT&T has maintained the two numbers dedicated to the *Access from AT&T* program. English-speakers can call: (855) 220- 5211, and Spanish-speaking callers can get information at: (855) 220-5225. The call centers are managed by [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL

INFORMATION] If someone calls who speaks another language, the call agents are instructed to patch in a translator through AT&T's language assistance program. As noted above, the ICO has been reviewing a sampling of calls concerning the *Access* program.

DBS Observation 9: AT&T internal monitoring and quality assurance process has detected and allowed for correction of issues pertaining to *Access from AT&T*.

In its Fifth Report, the ICO noted that AT&T had discovered that **[BEGIN
CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL
INFORMATION]**

Prior to receiving the details of the billing issue noted above, the ICO requested AT&T's "documented process (Methods and Procedure) associated with the methodology to identify equipment billing errors associated with the *Access from AT&T* program, as well as any reports generated as a result of reviewing Access-related equipment billing errors." As related in

previous reports, AT&T sent the ICO its internal process controls, published in the Company's
[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] The methods and procedures implemented to regularly and systematically review bills of Access from AT&T customers, as well as AT&T's in-depth description of how it handled irregularities when they were identified, satisfies the ICO that AT&T's billing review process remains consistent with the recommendation to "incorporate review of DBS equipment billing as part of its quality assurance program to see if there is a potential weakness in the set-up process that allows ... errors to occur." Fourth Report, p. 64.

DBS OBSERVATION 10: AT&T reviewed and responded appropriately to DBS-related complaints.

This observation is captured in the section below, *Observations: Complaint Reporting Process*.

* * *

The ICO again notes that AT&T's DBS Team is well organized, cooperative, responsive to questions, and committed to the success of the DBS Program. Based on the reports we have

received, and our independent assessment of the actions taken by AT&T, the ICO finds that AT&T is in compliance with the Conditions pertaining to the Discount Broadband Services Program.

OBSERVATIONS: COMPLAINT REPORTING PROCESS

The ICO approaches the review of AT&T's complaint tracking process with two objectives. The first was to assess the sufficiency of the process established by the Company to ensure that AT&T adequately investigated and addressed complaints received through various channels that relate to possible violations of the Merger Conditions. The second was to give the ICO greater visibility into potential violations and the Company's remediation efforts, if required.

An additional level of complaint monitoring by the ICO, is the regular search of the internet for any indication of a Merger Condition violation. The ICO conducts keyword searches that aim to find any information related to the AT&T/DirecTV merger. Keyword searches include AT&T or DirecTV, as well as several combinations of merger condition terms. Merger condition terms include, but are not limited to: "FTTP expansion," "discrimination," "net neutrality," "Snap," "Access," "low income cable/internet," "E-Rate," and "schools and libraries." The results often yield news articles, online consumer forums, and various online publications relating to AT&T's business activities. The ICO conducts the searches twice per week. To facilitate the timely consideration of new information, the searches are conducted at the beginning and the end of each week.

Second, the ICO focused on online locations where cable and internet consumers frequently go to discuss, report, or alert others about cable or internet provider misconduct and

other significant activities. The ICO has identified several online sites, groups, and news centers that consumers often use to report concerns. For example, the ICO regularly searches “Consumer Watchdog,” a non-profit consumer education and advocacy organization; “Public Knowledge,” a site that reports on and promotes freedom of expression, an open internet, and access to affordable communications tools; “Consumer Union,” a policy and action division of Consumer Reports that advocates for consumer protection laws; “Free Press,” a site focused on fighting to save the open internet, protect press freedom, and ensure diverse voices are represented in the media; and major online news sources. The purpose of the online searches is to assure that the ICO is aware of any potential violations. Should the ICO become aware of a potential merger violation, the ICO project team takes appropriate steps to gather relevant facts to assess the accuracy and credibility of the reported information.

Complaint Reporting Process Observation 1: Online searches revealed complaints related to the Merger Conditions; none were found to be a violation of the Conditions.

The ICO identified complaints relating to the Merger Conditions, particularly complaints aimed at the *Access from AT&T* program. However, the ICO did not find that of any of the Complaints presented evidence of a violation of the Merger Conditions.

Complaint Reporting Process Observation 2: AT&T has established a reasonable process to screen and identify complaints potentially relating to Merger Condition violations.

During the second reporting period, the ICO requested that AT&T develop and share a process to identify complaints that come to the Company from various sources to determine whether any of those complaints allege, directly or indirectly, a possible violation of any of the Merger Conditions. Some of the key components of the AT&T process are described below.

Identifying and Resolving Complaints Alleging a Merger Condition Violation

Multiple offices within AT&T can receive complaints from a variety of sources. The AT&T Office of the President (“OOP”), External Affairs (“EA”), and AT&T’s Legal Group all routinely receive complaints from escalations of customer issues. Other sources include FCC formal and informal complaints, FCC Enforcement Bureau inquiries, and complaints lodged in federal district court. AT&T’s process for screening complaints involves the following actions:

- **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL

INFORMATION]

- During the third reporting period AT&T and the ICO agreed that for complaints identified as Merger-related by OOP/EA but found by the Project Management Team not to allege a violation, AT&T provides a sample log of such complaints to the ICO. If 20 or fewer such complaints are identified, AT&T provides a summary log of all those complaints. If 21 or more such complaints are identified, AT&T provides a sample of 20 complaints using a statistically valid sampling technique.
- As initially structured, AT&T was providing to the ICO monthly complaint reports. AT&T and the ICO agreed to alter the reporting period to quarterly reports submitted

45 days after the close of each quarter, still using the parameters set forth above. For example, AT&T was required to submit its report covering the period 1 October – 31 December to the ICO not later than February 15. Additionally, AT&T agreed to notify the ICO promptly of any allegations, lawsuits, or regulatory filings, which credibly and directly relate to the Merger Conditions.

Providing Information About Complaints to the ICO

The AT&T complaint reporting process as written provides the ICO with sufficient information and insight into complaints to permit the ICO to identify any substantive issues relating to the Merger Conditions that might arise in the form of complaints. Specifically, the process calls for AT&T to provide the ICO with a summary log of all complaints received during the reporting period that AT&T has determined to allege, either directly or indirectly, a Merger Condition violation. The summary log includes, among other things, how the complaint was resolved or, if pending, its current status.

AT&T also provides the ICO with a summary log listing samples (if there are more than 20 complaints falling in the category) or all complaints received during the reporting period that were referred to the Merger Conditions Project Management Team under AT&T's internal reporting process, where the Project Management Team concluded the complaint did not allege a violation of a Merger Condition. The summary log includes, among other things, the nature of the complaint and the basis for the Project Management Team's determination that the complaint did not allege a Merger Condition violation. AT&T has agreed to make available to the ICO copies of the actual written complaints (with appropriate redactions, if needed) upon request.

Complaint Reporting Process Observation 3: Results from the AT&T complaint reporting process establish Merger Condition violations that AT&T promptly corrected.

AT&T provided the complaint information to the ICO in accordance with the process set forth above. The quarterly summary logs contained a listing of [BEGIN CONFIDENTIAL

INFORMATION] **[END CONFIDENTIAL INFORMATION]** complaints received during the reporting period that were referred to the Project Management Team under the reporting process identified above, but that the team concluded did not allege a violation of a Merger Condition. In addition, AT&T provided **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** complaints to the ICO during the reporting period that the Project Management Team determined alleged a Merger Condition violation (either directly or indirectly). All **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** allegations were *Access* related. Of the **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** allegations there were: **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** mistaken equipment fee; **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** issues where the customers ordered *Access* while their accounts were suspended for non-payment; and **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** allegations of *Access* bill overcharges. Based off the AT&T complaint summary logs, the **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** billing overcharge allegations were a combination of scenarios. In **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** instances, customers had increased bills, either correctly or incorrectly, due to ordering additional/substitutional services. Other customer bills had increased because the customers exceeded the data limit; incurred late/restoral fees; a customer failing to order *Access* service after receiving *Access* approval; and a separate complaint arose from an issue the Company had

with their *Access* ordering system.

The complaint logs report that credits were issued for [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] allegations. The Project Management Team reports that [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] customers are receiving *Access* service. The remaining [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] customers canceled/disconnected services.

A case of note in the complaint logs was [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] The actual written complaints contained in the summary logs were also posted (with necessary redactions) to the extranet site of AT&T's outside counsel.

After review, the ICO generally concurs with all but one of AT&T's assertions that the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] non-Merger Condition complaints do not allege a violation of the Merger Conditions. All [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] complaints were related to the *Access from AT&T* program. [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] AT&T concluded the complaint "do[es] not allege merger condition violation." We believe this case does allege a violation of the Merger Condition that "[q]ualifying households shall not be required to pay any installation or modem charges or fees in order to participate in the Discounted Broadband Services Program." Merger Conditions, App. B, VI.2.e.

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

During this reporting period the ICO retroactively reviewed a sample of AT&T's complaint log entries alleging billing issues with customer bills. [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] customer bills were selected that AT&T reported have been incorrectly billed an installation or equipment fee. The

ICO requested the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] customers' March 2018 bill, as part of the May 31, 2018 Request for Information. The purpose of this request was to verify that the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] customers did not have an equipment or installation fee charge on their account after AT&T had reported to the ICO that the charges had been removed.

The ICO reviewed the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] bills and did not find any indication of installation or equipment fees. In addition, the bills reflected credits or adjustments on all but one of the customers' bills. However, the credits/adjustments did not appear to be the exact numbers recorded in the complaint logs. The ICO notes that the customers appeared to have received larger credits/adjustments than reported in the complaint logs. This discrepancy, however, does not undermine the fact that AT&T took appropriate corrective action to address the underlying complaint.

The ICO notes that in each case, once the complaint was brought to AT&T's attention, the Company corrected the charges and provided appropriate refunds to the customers. The complaint reporting process appears designed to help ensure that complaints within the Company's knowledge that raise substantive Merger Condition-related issues, as well as billing coding errors, are brought to the attention of appropriate Company officials for review and, if necessary, resolution.

RECOMMENDATION:

AT&T should review and consider refining its recently revised process for assessing whether a complaint directly or indirectly alleges a violation of a Merger Condition to

ensure its process is aligned fully with the express requirements set forth in the Merger Order (*e.g.*, Qualifying households shall not be required to pay any installation or modem charges or fees in order to participate in the Discounted Broadband Services Program. Merger Order, App. B.VI.2.(e)).

CONCLUSION

As noted at the outset, AT&T has submitted a report that complies with the Conditions of the Merger Order. Moreover, AT&T has provided adequate evidence to the ICO demonstrating that the Company has met the Conditions of the Merger Order for the Sixth Reporting period. Please let us know if you have questions or if there are areas of the report you would like to discuss.