

*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**  
**APRIL 26, 2019**

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**INTRODUCTION**

On July 24, 2015, the Federal Communications Commission (“FCC” or the “Commission”) issued an order (the “Merger Order”)<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

This is the Seventh 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, 2017 and filed the Fourth ICO

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<sup>1</sup> *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).

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

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

<sup>4</sup> 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.

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 and filed the Sixth ICO report on October 23, 2018. The ICO received AT&T's Seventh Report on February 25, 2019.

By agreement between the FCC staff and AT&T, the Third Report was submitted 30 days after the original due date. 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 24<sup>th</sup> falls on a weekend or holiday).<sup>5</sup> In this Seventh 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:<sup>6</sup>

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 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-based

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<sup>5</sup> *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 approved by the FCC. *See Letter from Maureen R. Jeffreys, Arnold & Porter, Counsel for AT&T Inc. to Marlene H. Dortch, Secretary FCC* (Oct. 3, 2018). 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 March 25, 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.

<sup>6</sup> 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.

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 seventh 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.<sup>7</sup> 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 December 31, 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 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

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<sup>7</sup> 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.”).

or more to at least 25.7 million customer locations; the ICO has verified that AT&T has met this obligation.

- 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 speeds and pricing specified by the DBS Condition. The ICO continues to receive reports that eligible applicants end up acquiring services outside the *Access* program contrary to their expectation of acquiring *Access* services. Once identified, AT&T is taking appropriate steps to correct the situation. AT&T has provided additional training to its call agents on the process for handling *Access* customers. AT&T has refined its systems and controls to reduce the occurrence of *Access* customers receiving inappropriate equipment or service charges. 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 train the Company's Customer Service Representatives.

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 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 coordinated with AT&T to establish a process for verifying Multi-Dwelling Unit ("MDU") deployments under the October 6, 2016, agreement between AT&T and the FCC where the owner has denied access or where AT&T was unable to reach agreement with the owner to deploy fiber at the location.
- 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 examine 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 Conditions.
- 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 will continue to refine and adjust our approach as this effort moves forward and would welcome feedback from the FCC or AT&T on our efforts to date.

## **METHODOLOGY**

After completing the review described in the first six ICO Reports, the ICO has continued to follow the work plan designed to track AT&T's compliance with each Condition, and the ICO has developed a process for verifying MDU deployments under the process negotiated between the FCC and AT&T. Our efforts, ongoing since the beginning of the ICO's engagement, rely 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 AT&T's 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 consensus and clarity in the ICO's approach, methodology, and conclusions;
- 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**

We have found the process for exchanging information with AT&T sufficient to support our efforts to verify AT&T's compliance with the Merger Conditions. 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 with appropriate AT&T business staff and officers, representatives of the operational compliance and legal functions, and outside legal 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 to gain a fuller understanding of the Company's response.<sup>8</sup> 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.

As it relates specifically to this reporting period, the ICO submitted a comprehensive Request for Information to AT&T on December 11, 2018, posing questions and requests for documents relating to each of the Conditions. The ICO had several follow up meetings, calls, and exchanges with AT&T to clarify the information requests and to receive 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 met with AT&T's Discounted Broadband team, legal representatives, program management personnel, and other AT&T representatives on January 30, 2019 to discuss responses to the ICO's December 2018 Request for Information. That discussion addressed the *Access from AT&T* application process, equipment billing issues, quality assurance questions, and communications with *Access* customers. Separately, the ICO's FTTP Team (including those with E-rate responsibilities) held a video conference with representatives from AT&T's FTTP Team; Product Marketing; Construction & Engineering; Corporate Strategy; Operations; and Legal, Compliance, and Program Management on February 8, 2019. The FTTP discussion focused on AT&T's compliance efforts and developments relating to AT&T's FTTP processes, including reporting MDU deployments, as well as managing limitations imposed by the FTTP Condition. The ICO's FTTP team

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<sup>8</sup> 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.

also met with AT&T's representatives on September 11, 2018, to refine the verification process for reported MDU fiber deployment denials. These meetings offered both sides the opportunity to discuss options for enhancing the effectiveness of the site visit verification process.

For each of these sessions, AT&T ensured it had assembled appropriate AT&T representatives to address the matters on the agenda. As has been true since this oversight process was implemented, these meetings have been instrumental in helping the ICO 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 Seventh 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 throughout 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 provided by AT&T as part of its reporting requirements under the Merger Conditions regarding FTTP deployment for internal consistency and completeness. The ICO continues to work with AT&T to enhance methods for independent validation of the information in the FTTP CSV file, with a particular focus during the reporting period on MDU deployment verification. AT&T provided the ICO with supplemental CSV data reflecting two additional fields: **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]. We use the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] data to verify limitations relating to greenfields and have in the past used [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] to test for CAF installations. AT&T continued to provide information from the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION], a practice started in AT&T's Fifth Report. This data further enables the ICO to refine the verification and validation of FTTP deployments.

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 and to examine 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. Over the reporting period, we also conducted several pilot efforts relating to MDU verification where AT&T does not receive permission to deploy fiber by the MDU owner. As described in more detail below, the FTTP verification process involves selecting sample customer locations (a "cluster" of customer locations) from a particular geographic area selected randomly from the CSV file, visiting selected customer locations in the sample to verify the reported FTTP deployments, and to confirm

location information included in the CSV file. The ICO plans to conduct these FTTP site visits on a rolling basis through January 31, 2020.<sup>9</sup> New locations reported by AT&T are incorporated into the total potential sample population. Going forward, the ICO plans to continue the random sampling approach to verification, although we plan on adding selected MDU locations to the field visits as appropriate to verify MDU deployments where AT&T has not been able to obtain a “Right of Access” agreement from the MDU owner to install fiber. 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 adding to the ICO’s random sampling of FTTP deployments 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 a site visit to a call center in Kingston, Jamaica, operated

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<sup>9</sup> AT&T’s FTTP Condition applies through July 24, 2019. At that point, the FTTP Condition requires AT&T to have deployed fiber to 12.5 million customer locations. Under the accepted final schedule, AT&T will submit its final report including FTTP deployments on September 24, 2019. The ICO will continue to analyze FTTP deployment information and data included in that report through January 31, 2020, and the ICO will submit its final report addressing the FTTP condition on March 25, 2020.

by AT&T's call center contractor responsible for providing customer support relating to *Access from AT&T*.

### **APPROACH TO OBSERVATIONS AND RECOMMENDATIONS**

This Seventh 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 seventh 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 III.3.a. The ICO reviewed AT&T's Seventh Report and Exhibit 1 regarding the reporting requirements set forth in Appendix B of the Merger Order. AT&T's Seventh Report provides the number of customer locations where FTTP service has been deployed as of December 31, 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 Seventh 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"). AT&T's Seventh Report now includes customer locations in MDUs where AT&T has not been able to obtain a "Right of Access" agreement.<sup>10</sup> AT&T is also 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 following table presents FTTP deployments as of June 30, 2018, additional

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<sup>10</sup> 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).

deployments during the current reporting period, the total balance as of December 31, 2018, and the remaining Condition goals:<sup>11</sup>

**[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

**[END HIGHLY CONFIDENTIAL INFORMATION]**

December 31, 2018 goal	8,300,000
Total required by Merger Order	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.**

AT&T's Seventh Report indicates the Company 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 concluded this goal had been reached based on routine monitoring of speed capabilities which is necessary for the Company's marketing purposes. According to AT&T, this monitoring consists of developing a count of all Customer Locations by the highest HSIA (High Speed Internet Access) speed available. As of the end of 2018, this process reported that nearly 30 million Customer Locations had speeds available at 45 Mbps or higher. *AT&T – DirecTV Merger Conditions, 12/11/18 FTTP Deployment RFI Response*, Slides 11 – 14.

On December 11, 2018 the ICO requested that AT&T provide a demonstration of its monitoring process for assessing internet speeds, including a demonstration of the methodology and systems used

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<sup>11</sup> The FTTP Deployment numbers are extracted from the Seventh Report. The Goals are extracted from the Merger Order.

to develop this data and to run queries as necessary to help the ICO validate AT&T's conclusions. On February 8, 2019, the ICO team witnessed as AT&T demonstrated the query against the **[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION].**

Based on this review, we are satisfied AT&T has met the speed requirement established by the FTTP Condition. The following chart, based on the query, demonstrates the number of locations with maximum available speed as of December 31, 2018 is approximately 30 million.

**[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

**[END HIGHLY CONFIDENTIAL INFORMATION]**

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<sup>12</sup> The **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** is used by AT&T to advise customers and sales agents the highest speed available at the customer's location.



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

AT&T has revised its FTTP Reporting Process several times over the prior reporting periods to update and improve accuracy in the reporting process and production of the CSV file. *See ATT FCC IA Reporting*, (Rev. 1.19, Jan. 14, 2019). 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 the addition of updated MDU terminology and the new query to include MDU Properties with Fiber Available customer locations.

AT&T previously refined its reporting documentation to use the **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** to group installations into four construction categories used for internal business analysis and decision making. For the current report, the data revealed the following FTTP deployments/upgrades:

**[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

**[END HIGHLY CONFIDENTIAL INFORMATION]**

[Note: FTTC = 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.]

**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 Seventh 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 AT&T's Seventh Report, the Company 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. Seventh Report, p. 11.

In the ICO's Sixth Report, page 16, we explained that AT&T revised its method for counting customer locations that fall under this restriction. On August 1, 2018 AT&T presented the change from [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. In AT&T's Fifth Report, the Company reported that [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] Customer Locations fell under the Condition limitation whereas, in AT&T's Sixth Report, the Company reported [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] total Customer Locations were reported. The minor increase from AT&T's Fifth to Sixth reports reflects the [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].

For the ICO's Sixth Report, we concluded that the updated counting methodology appeared 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. For the ICO's Seventh Report, 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 no CAF funds were "used, received or requested by AT&T" to deploy FTTP to customer locations. Seventh Report, p. 11.

In our review of AT&T's Sixth Report, we discussed how AT&T changed its data measurement processes that address CAF funding. ICO Sixth Report, pp. 18-19. AT&T refined its processes and provided a list of the CAF installations for each calendar year and on September 28, 2018 provided the

lists as of the end of CY 2017. For the ICO's Sixth Report, the ICO conducted a limited examination the CAF installations from Arkansas in 2017 and found no overlap between Customer Locations in the CSV file and the CAF report.

For the ICO's Seventh Report, we reviewed a sample of nine cities in four states from the same list of CAF Installations<sup>13</sup> including Detroit, MI; Grand Rapids, MI; Green Bay, WI; Madison, WI; Milwaukee, WI; Greensboro, NC; Wilmington, NC; and all of Mississippi. By sorting the CAF installation data and CSV file for the selected locations by CLI and customer address and zip code, we were able to compare and confirm there was no overlap between the CAF installations and the CSV file. We have requested AT&T to provide the CAF listings through CY 2018 once available. The ICO intends to continue reviewing CAF funding in other states using the CY 2018 data, and the results of this analysis will be presented in the ICO's next report.

The ICO reviewed the query language and data sources provided in AT&T's most recent update of the FTTP Reporting Process to understand the source of the CAF installation data. Previously, the ICO's multi-step 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. *See* ICO Sixth Report, pp. 19-21. AT&T's process revisions no longer required the ICO to conduct this analysis. Under the revised process, we were able to review directly the data query now used by AT&T to identify CAF funded locations and compare the query output with the locations included in the CSV for potential overlap. Through this simplified process, we confirmed

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<sup>13</sup> AT&T advised that the listing of CAF installation through CY 2018 was not available until after March 1, 2019.

the AT&T data selection process logically identified and excluded CAF and USF funded customer locations from the CSV.

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

AT&T's Seventh Report includes [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] properties, comprising [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] individual Customer Locations, to which AT&T has allocated fiber, has the technical ability to provide fiber-based broadband internet access service and, has attempted to sell fiber to that MDU property, but to which the MDU owner has denied AT&T access or failed to respond to AT&T's marketing efforts ("MDU Owner Denials"). Seventh Report, pp. 12-13.

The CSV files for the first six AT&T Reports include 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. *See Memorandum from Maureen R. Jeffreys to Marlene H. Dortch, Secretary, FCC* (Oct. 6, 2016). To count, that methodology requires that "AT&T [must have] 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." *Id.* AT&T intends to treat situations where it is unable to contact the MDU owner/agent (*e.g.*, owner/agent does not answer phone calls, respond to voicemails, or respond to emails) as falling under the provision that the "MDU owner does not grant access or the parties cannot agree on a plan for extending fiber within the MDU" and AT&T will include

customer locations within those MDUs in the CSV. Our FTTP field verifications, to date, have not encountered any MDUs where AT&T does not have ROA to the property.

The following chart reflects AT&T's current decision process for counting MDU units in the CSV file:

**[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

**[END HIGHLY CONFIDENTIAL INFORMATION]**

**Process for Capturing and Reporting MDU Owner Denial Information.**

As part of the MDU denial process 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 within an MDU Owner Denial property. Additionally,

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<sup>14</sup> During review of AT&T's 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.

AT&T agreed that it would 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 identified as an MDU denial in the CSV. *AT&T – DirecTV Merger Conditions, 9/11/18 FTTP Deployment Meeting – Follow-up Items*, Slide 8.

With that information and awareness, the ICO should be able to determine during the planning process that the location is within an MDU Owner Denial property that may require additional steps and, potentially, more time to verify the information required under the FCC and AT&T agreed-to methodology for counting MDU Owner Denial FTTP deployments.<sup>15</sup> AT&T also will have to make available to the ICO for a sampling of the MDU Owner Denial locations documentation associated with its efforts to market its fiber services.

For AT&T's Seventh Report, the ICO confirmed that the company supplemented the CSV with the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] to identify the MDU building. However, the supplemental CSV file did not include the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] AT&T had agreed to provide. Instead, the supplemental CSV file provided by AT&T to the ICO identified the number of units in the building as follows:

[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]  
[ADDRESS1], [CITY], [STATE], [POSTALCODE], [LAT], [LONG], [GEOID10], [OCN], [SAC], [CLLI], [DA], [UNITS]

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<sup>15</sup> That methodology is detailed in the *Memorandum from Maureen R. Jeffreys to Marlene H. Dortch, Secretary, FCC* (October 6, 2016).

We will work with AT&T to address this difference should it impact our ability to identify MDU denials in our sample. At this preliminary point, however, the ICO is satisfied this change in the supplemental CSV file will not interfere with our ability to verify FTTP deployments relating to MDU Owner Denials.

In response to an ICO request for information, dated December 11, 2018, AT&T provided the MDU process updated status:

**[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION]**

*AT&T – DirecTV Merger Conditions, 12/11/18 FTTP Deployment RFI Response, Slide 6.*

**ICO MDU Owner Denial Verification Process**

Working with AT&T, the ICO team developed a repeatable MDU Owner Denial verification process (*MDU Sample Verification Process*). That process begins with an assessment to determine the number and location of MDU Owner Denial locations in the CSV data. In the current report AT&T included **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** MDU Owner Denial locations derived from **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** MDU properties. The ICO intends to incorporate MDU Owner Denial locations into our FTTP site visits beginning in the eighth reporting period (January 1 – July 24, 2019) and continuing through the



completion of our review of the FTTP Condition. This will involve identifying and extracting MDU Owner Denial locations from the CSV that are in close proximity to random sample clusters pulled from the CSV data. Should the CSV file contain a relatively small number of MDU Owner Denials, the ICO intends to oversample MDU Owner Denials to ensure we are taking sufficient steps to validate the MDU Owner Denials given that the MDU Owner Denial locations will be included only in AT&T's Seventh and Eighth reports (after the Eighth report, we expect AT&T will have satisfied the FTTP Condition).

To illustrate, in AT&T's most recent CSV file approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] of the identified Customer Locations are MDU Owner Denials. We currently target 500 customer locations to visit to verify fiber deployment over a six-month period. [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] of 500 would total only [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] MDU Owner Denial locations which we believe is too small a sample to provide a meaningful review. Thus, we intend to oversample so that our actual percentage of MDU Owner Denial site verification visits is significantly higher than [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]. Additionally, because of the way AT&T counted MDU Owner Denials (all potential customer locations within an MDU are counted, provided AT&T has extended fiber to accessible terminals or other facilities in the right of way outside the MDU), our verification efforts will also focus on confirming that AT&T has met all requirements set forth in its agreement with the FCC and that the existing fiber infrastructure is capable of serving the total number of units included in the CSV for the MDU property.

During verification site visits to MDU Owner Denial locations, the ICO's Telecommunications Subject Matter Expert ("SME") will review the existing fiber infrastructure at each MDU property to confirm that it is extended to accessible terminals or other facilities in the right of way outside the MDU property as required and to confirm that the available fiber is capable of servicing the total number of customer locations included in the CSV file for the MDU property. This will require the ICO's SME to count the available fiber strands to verify there is sufficient splitting capability to service all units included for the MDU property. The SME also will review AT&T's engineering drawings and related materials, and conduct a visual assessment of the MDU property, to confirm the number of customer locations included in the CSV file for the MDU property is reasonably accurate.

The ICO also will take appropriate steps to verify AT&T has satisfied the marketing obligations required by AT&T's agreement with the FCC to count MDU Owner Denials.<sup>16</sup> Additionally, the ICO will confirm that AT&T sent the required letter to the MDU owner/agent documenting its efforts to market fiber and the owner/agent's denial (which includes the owner/agent's failure to respond to AT&T's efforts).<sup>17</sup> This will require the ICO to review those marketing materials or other reliable

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<sup>16</sup> See *Memorandum from Maureen R. Jeffreys to Marlene H. Dortch, Secretary, FCC* (October 6, 2016). On or after October 31, 2016, when marketing fiber deployments to owners of MDUs that require the MDU owner and AT&T to agree to a right of access in order to deploy fiber within the MDU, AT&T will:

- a. Make fiber deployments to individual units the lead and primary proposal when making initial contact with MDU owners.
- b. Train sales representatives to promote fiber deployment to individual units in negotiations with MDU owners. \* \* \*
- c. Notify in writing an MDU owner of the opportunity to have AT&T deploy fiber to reach individual units within the MDU.
- d. Offer to design, at AT&T's expense, an inside wiring plan for the MDU to deliver fiber to reach individual units within the MDU.
- e. Present written materials to MDU owners regarding the benefits of fiber deployment to individual units.

<sup>17</sup> The agreement between AT&T and the FCC requires that in the event of an MDU Owner Denial "AT&T will send a certified letter to the owner of the MDU confirming that the MDU owner has not granted AT&T access to deploy fiber with the MDU." *Id.* AT&T informed the ICO that it intends to send the letter using UPS, including UPS's tracking number delivery notification process. For requested locations, AT&T will provide the ICO with a screen shot of UPS's shipment detail showing delivery date, delivery time, tracking number, and address.

evidence of compliance. The ICO and AT&T have reviewed samples of documentation from actual MDU Owner Denial locations to ensure the materials are suitable to verify compliance. *AT&T-AMI Meeting MDU Denial Samples*, Sep. 11, 2018.

The sample materials produced by AT&T reflect AT&T's overall marketing approach to MDU owners based on the size of the MDU. *AT&T – DirecTV Merger Conditions 8/1/18 FTTP Deployment RFI Response*, Slides 22 – 28. If the MDU property has 100 or fewer units, AT&T intends to pursue a **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

**[END HIGHLY CONFIDENTIAL INFORMATION]**. If the MDU owner/agent is interested in deploying fiber, AT&T will proceed with developing designs for the location and following its standard business practices for marketing and deploying fiber. *Id.* If AT&T is unable to contact the owner/agent or the owner/agent declines to deploy fiber, AT&T will send an official declination letter required by its agreement with the FCC. *Memorandum from Maureen R. Jeffreys to Marlene H. Dortch, Secretary, FCC* (October 6, 2016). The sample materials provided by AT&T to the ICO for MDU properties with 100 or fewer units included a table populated with details reflecting the Company's efforts to market fiber (*e.g.*, property ID; address information; contact information; sources used to develop contact information; a description of the marketing materials provided to the agent/owner; and dates for the documented events), a copy of the required declination letter, and confirmation that the declination letter was delivered. *AT&T-AMI Meeting MDU Denial Samples*, Sep. 11, 2018.

If the MDU property has over 100 units, AT&T intends to pursue **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

**[END HIGHLY**

**CONFIDENTIAL INFORMATION]** *AT&T – DirecTV Merger Conditions 8/1/18 FTTP Deployment RFI Response*, Slides 22 – 28. To the extent the MDU owner/agent is interested in deploying fiber, AT&T will submit a proposal to the owner/agent. If the owner/agent remains interested, AT&T will develop a detailed design for the property and, if agreement is reached, deploy fiber to the premises. *Id.* If AT&T is unable to contact the owner/agent or the owner/agent declines to deploy fiber at any stage in the process, AT&T will send an official declination letter required by its agreement with the FCC. *Memorandum from Maureen R. Jeffreys to Marlene H. Dortch, Secretary, FCC* (October 6, 2016). The sample materials provided by AT&T to the ICO for denials associated with MDU properties with over 100 units included a table populated with the information discussed in the preceding paragraph, proposed design plans and other materials reflecting the Company’s efforts to market fiber, a copy of the required declination letter, and confirmation that the declination letter was delivered. *AT&T-AMI Meeting MDU Denial Samples*, Sep. 11, 2018.

Over the past six months, AT&T and ICO have also conducted several pilot projects to develop and to confirm the validity of the ICO’s *MDU Sample Verification Process*. Those pilot projects have involved visiting MDU properties to determine the adequacy of the ICO’s written verification process and to determine what additional information needs to be available either at the time of the site visit or following the site visit to support the effort. The pilot efforts helped AT&T and the ICO develop processes that will allow the ICO to verify the total number of individual units in a given MDU property recognizing that AT&T will not have access to the property for verification purposes.<sup>18</sup> *MDU Sample Verification Process*, Sections B.6.b & B.6.c. The pilot efforts also helped AT&T and the ICO develop

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<sup>18</sup> The ICO’s SME will review AT&T’s engineering drawings, in addition to conducting a visual survey of the MDU property, to confirm the total number of units falling within the FTTP Condition.

a process for confirming the fiber infrastructure available at the MDU location is sufficient to deploy fiber to all units within the MDU counted by AT&T. *Id.* Over the coming months, the ICO will continue to test and refine the effectiveness of the ICO's MDU Owner Denial process.

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

The ICO has continued its effort 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 methodology for the ICO Sampling Plan in 2016 based on the data in the CSV file provided by AT&T in its initial report dated January 25, 2016, and subsequently amended in AT&T's Second Report. The original plan randomly selected 16 cities or geographical areas. Within those selected 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 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 was able to increase to 15 the number of clusters (171 sites visited) factored into the ICO's Third Report. For the ICO's Fourth Report, the ICO increased the number of visited clusters to 18 (278 sites visited). The ICO's Fifth Report included 15 clusters (275 sites visited). The ICO's Sixth Report included 22 clusters (406 sites visited).

The ICO conducted an analysis comparing the number of inspections per state and the number of installations for each state. We found that North Carolina, Illinois, Kentucky and Texas were underrepresented in the random samples from previous years. An additional twelve clusters, three from each of the four states, were generated according to the same methodology as described above. As part of this analysis, the ICO reviewed census data by zip code to confirm that rural communities were adequately represented in the samples.

As described in the ICO's Sixth Report, the ICO has stratified the samples based on AT&T's four regions (Southeast, Southwest, West, and Central). ICO Sixth Report, p. 26. The stratification requires five clusters of 25 distinct DAs and one randomly selected address from each DA. The stratification was employed to increase the geographic diversity of the sample. For the samples comprised of installations reported from January to June 2018, the ICO added another procedure to ensure greater geographic diversity. Any CLLI that contained a DA or address that was inspected from 2016 through spring 2018 was eliminated from the sample. *Id.* Thus, the sampling frame contains only those addresses that are in CLLIs that have not been inspected previously. We anticipate that the sampling frame derived from July-December 2018 locations included in AT&T's Seventh Report will use the same methodology of stratification with the objective of conducting non-repetitive CLLI inspections. As discussed above, the ICO intends to overlay MDU Owner Denial inspections located in the same geographic area as the random clusters derived from the current CSV file.

After three years of sampling, the ICO and AT&T have effectively maximized the efficiency of the site visit process. AT&T provides considerable resources and time to help the ICO verify as many ICO selected sites as possible. This includes providing multiple teams of technicians on the day of the

site visit, so that one team of technicians can be setting up light tests for a site while another team is conducting a light test. Additionally, AT&T frequently sends out technicians in advance of the site visit to assure access to equipment in large MDU complexes and reduce the on-site time required for an MDU visit. The cooperation and resources of AT&T are the most important factors in the efficiency of ICO site visits.

For the ICO's Seventh Report, we have maintained the pace of field visits and broadened the geography of the samples which include (in order visited): Lubbock, TX; Berwyn, IL; Oak Park, IL; Skokie, IL; Louisville, KY; Plano, TX; Oak Lawn, IL; Greensboro, NC; Wilmington, NC; Surfside Beach, TX; Pasadena, TX; El Paso, TX; Charlotte, NC; Fort Lauderdale, FL; and Orlando, FL.

This reporting period, the ICO visited 332 sites in 15 clusters across five states. To date, the ICO has visited 1,544 sites chosen from 92 clusters.

#### **Pre-Site Visit Process**

The field visits consist of confirming the address included in the CSV file is FTTP capable. Because prior site visits have identified address anomalies related to new construction (*i.e.*, greenfield sites), 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 Fiber Serving Terminals (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 SME to confirm more quickly that the location is FTTP capable.

### **Field Visit Steps**

The ICO SME, accompanied by an AT&T field technician, travels to the sampled living unit address to verify that the address from the CSV is a valid living unit (or other permissible customer location under the Merger Condition). Then, per agreement of AT&T and the FCC, the ICO SME takes a Latitude and Longitude reading at the address to assess the accuracy of the Company-supplied coordinates. The ICO SME then examines the installed FST that serves the living unit (per AT&T Engineering) to confirm that the FST was either providing, or capable of providing, fiber-optic broadband service to the sample address. If there are no living units connected to the FST, the AT&T technician tests for fiber optic cable plant continuity to the Primary Flexibility Point (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. If any living unit 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 providing FTTP services.

### **Field Visit Results**

The ICO samples included for this report total 366 separate DAs across 15 distinct samples. After culling the samples to provide logistically practical routes for visits, 332 sites were visited in the field. The ICO SME found that all 332 locations visited met the criteria for inclusion in the FTTP site count. AT&T continues to have available, and provide, supporting data during the field visits for sites obviating the need for post-visit follow-up. Typically, that additional data consists of engineering drawings demonstrating that a dwelling was proposed by a developer where one was not yet built and wire-mapping demonstrating the design of networks from PFP to FST to Living Unit.



### **Additional Living Units Confirmed**

We test the FST based on one sampled address, but any address assigned to that FST can reasonably be considered tested and verified. This is important for verification purposes because only one out of 10 (approximately) of the FSTs that we tested was providing service to the sampled address; most verifications have been made based on the FST serving a different living unit from the same FST or by conducting a light-test to assure the capability of the FST to serve the sample address. For this reporting period, the ICO SME collected engineering data from AT&T identifying all living units associated with each FST Tested. The ICO did not trace these locations back to the actual living units AT&T included in the CSV file beyond a visual assessment of the neighborhood. Using this methodology, we are able to confirm additional FTTP deployments for FSTs serving Single Family Homes (ranging from two to 12 locations associated with each sampled address) and additional FTTP deployments for FSTs serving MDUs (ranging from five to thirty-five for each non-denial MDU sampled address). Using this methodology, we were able to confirm approximately **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** living units capable of being served by the 332 FSTs inspected during this reporting period. We have confirmed a total of **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** living units using this method in the twelve months since inception.

### **Access Challenges Exist**

Despite providing the site visit sample to AT&T in advance, we still encounter occasional difficulties accessing the 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. These

challenges tend to slow the site inspection process. We continue to work with AT&T to resolve these challenges.

**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 explained to us by AT&T that include, but are 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 modified because the ICO sample is based on CSV files that are later updated by AT&T. AT&T explained in its Third Report:

The data provided in Exhibit 1 (CSV file) 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 Second 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.

Third Report, p. 13, n. 28.

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

### **ICO Plans for 2019 Inspections**

The sampling plan for the rest of 2019 will adhere to the basic methodology established in 2016 with minor adjustments. 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 for the ICO SME 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 has now confirmed the feasibility of performing over 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 2019. 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.

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

AT&T is taking reasonable steps to collect and report latitude and longitude. That effort, as described to us by AT&T's representatives, poses significant challenges for AT&T, the result of which being the latitude/longitude data presented by AT&T frequently are inaccurate.

AT&T excluded from its first two reports filed under the Merger Order locations where latitude and longitude could not be identified. AT&T's First Report states that "over 100,000" were excluded (First Report, p. 16, n. 30) and AT&T's Second Report provides Exhibit 1.2 which lists 121,249 locations that were excluded.

AT&T, Commission staff, and the ICO have agreed that AT&T may report Customer Locations to which AT&T has completed FTTP deployment during a reporting period, but for which latitude and longitude coordinates are not available in AT&T's ordinary course databases as of the end of the reporting period. AT&T understands it must provide the latitude and longitude coordinates in a subsequent report should those coordinates become available, and it has done so.

**Identifying Accurate Latitude and Longitude Remains a Challenge**

As part of our field verification of FTTP deployment, the ICO SME takes a latitude and longitude reading at each randomly-sampled address and compares it with the information reported on the CSV file. The field observations of latitude and longitude coordinates has shown on 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 supplying latitude and longitude data for CSV customer locations 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* (Feb. 13, 2019), p. 1. AT&T has acknowledged challenges relating to this process. *See* Second Report, p. 12. Notwithstanding AT&T's efforts, the latitude and longitude data presented by AT&T frequently are inaccurate, undermining the value of the information. It is worth noting, even if the data were accurate, it would add little value to the ICO's efforts to verify and validate the FTTP build required by the Condition.

#### **1B. E-RATE CONDITION**

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

The ICO has reviewed the Seventh Report and Exhibits 2.a, 2.b, 3 and 4 to address the reporting requirements set forth in Appendix B for E-rate. 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 2019 . . .; (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.” Seventh Report, p. 15. AT&T's Seventh Report summarizes the methodology the Company 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).<sup>19</sup> 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.

AT&T's Seventh Report includes a description of outreach activities, including AT&T's efforts to promote awareness of the opportunity for covered schools and libraries to secure for 1 Gigabit FTTP Service and 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.

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

In AT&T's Seventh Report the Company explained that it applied the same methodology for identifying covered schools and libraries as it applied in its Sixth Report. Seventh Report, p. 17. AT&T explained the methodology as follows:

Specifically, AT&T compiled a list of fiber routes that include PSAs where AT&T had deployed FTTP-based service or planned to deploy FTTP by June 30, 2019. 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<sup>20</sup> make up a fiber route, this methodology sweeps well beyond what the Condition requires.

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<sup>19</sup> 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.

<sup>20</sup> 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. AT&T stated that PSA

Seventh Report, p. 17 (footnote omitted). The ICO confirmed that the methodology used for AT&T's Seventh Report is the same as for AT&T's Sixth Report.

### **Methods for Identifying Covered Schools and Libraries**

In the 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 has remained unchanged for its Sixth and Seventh Reports. AT&T's process is detailed in the *Determination of Intersection Between E-rate Locations & AT&T Internet with FTTP Build Plan Routes* (Rev. Aug. 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.

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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 PSAs in lieu of DAs.

### **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 deployments within a PSA. ICO Fourth Report, pp. 28 – 29. This process is also captured in the *Determination of Intersection Between E-rate Locations & AT&T Internet with FTTP Build Plan Routes*, discussed above. The ICO finds AT&T's approach reasonable and consistently applied.

### **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 ICO's Seventh Report, we 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. Aug. 13, 2018) and provides a detailed step-by-step for the AT&T E-rate team to follow for identifying E-rate sales opportunities and for complying with the Merger Condition.

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

According to AT&T's Seventh Report, page 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 July 1, 2018 to December 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.



**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] 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 470 and Form 471 data located on the *USAC.org* website.

**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. That is also true for this reporting period as explained in the Seventh Report, pages 21-22. AT&T conducted two email campaigns in July/August and in October/November with communications to approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] schools and libraries in its wireline footprint. Seventh Report, p. 22. We have been

able to confirm AT&T's outreach efforts as described above. *See AT&T – DirecTV Merger Conditions, 12/11/18 E-rate RFI Response, Slide 3; AT&T E-rate Consultant Webinar (Oct. 2018).*

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

As discussed in the ICOs Sixth Report, pages 37-38, 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 fiber<sup>21</sup> 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;

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<sup>21</sup> 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 explained 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.

## **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 AT&T's Seventh Report and Exhibit 5 regarding the requirements set forth in Appendix B, Section IV. As required by the Condition, AT&T's Seventh 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. Seventh Report, pp. 24-29; Ex. 5. Exhibit 5 contains a variety of information related to AT&T's Fixed Broadband Internet Access Service, including: applicable *AT&T Internet Terms of Service*; *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. The descriptions and supporting materials presented by AT&T in its Seventh 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 addressed 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.**

AT&T's Seventh 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. Seventh Report, p. 24. 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.<sup>22</sup>

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.

“To help keep customers informed about [its] mass market broadband Internet access services, the AT&T website ([www.att.com](http://www.att.com)) describes the mass market wireless and wired broadband Internet access services [it] offer[s].” *Broadband Information*, (<http://about.att.com/sites/broadband>, last viewed Mar. 28, 2019). The available information includes all product and service offerings for its Fixed Broadband Internet Access Service (<https://www.att.com/internet/>, last viewed Mar. 28, 2019), internet terms and conditions (<https://www.att.com/legal/terms.internetAttTermsofService.html>, last viewed Mar. 28, 2019), and associated usage-based allowances relating to those offerings. AT&T's Internet Terms of Service states that among the basic principles underlying its internet service is that “AT&T will give [its] customers clear notice of any meaningful limitations on the Services.” *Id.* and Ex. 5.a.i.

The ICO reviewed the relevant offerings, including AT&T's terms and conditions and usage-based allowances, published at or linked to <https://www.att.com/internet/internet-services> (last viewed

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<sup>22</sup> 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.

Mar. 28, 2019) and <https://www.att.com/support/internet/usage.html> (last viewed Mar. 28, 2019). AT&T's Home Internet Usage page includes or links to Data Usage Basics; 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*. *Id.* The site provided AT&T contact information and options, including an on-line community page. 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, service, 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 Mar. 28, 2019); Ex. 5.b.

Likewise, AT&T's esupport site provides:

**What do you mean by data usage?**

Usage includes all the data you receive (download) or send (upload). If you

access the internet through your home network, wired or Wi-Fi, using any device (including smartphones), that will be included in your data usage.

**If I stream DIRECTV on my devices over my home Wi-Fi, will this count toward my data usage?**

If you stream DIRECTV on your mobile device over your home internet service Wi-Fi connection, usage will count towards your home internet monthly data usage.

**Will using DIRECTV NOW count towards my data usage?**

DIRECTV NOW is an over-the-top streaming service. All streaming over your home internet, wired or Wi-Fi, will count towards your home internet monthly data usage.

<https://www.att.com/esupport/article.html#!/u-verse-high-speed-internet/KM1010099?gsi=2y9tiw> (last viewed Mar. 28, 2019) (last viewed Mar. 28, 2019); Ex. 5.d.

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 internet traffic the same.

The ICO compared the documents submitted as part of AT&T's Seventh Report 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 regular 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 NDUP 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.<sup>23</sup> In the past, Consumer Union and Consumer Affairs has 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 the complaints have not raised 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. While many complaints still focus on quality of the

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<sup>23</sup> <https://forums.att.com/t5/Internet-Forum/ct-p/attinternet> (last visited Mar. 25, 2019); <http://consumersunion.org/> (last visited Mar. 29, 2019); [https://www.consumeraffairs.com/internet/att\\_broadband.html](https://www.consumeraffairs.com/internet/att_broadband.html) (last visited Mar. 25, 2019).



Company's services, the focus has shifted to other AT&T business deals and relationships unrelated to the DirecTV merger conditions. The ICO has not identified 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 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 8<sup>th</sup> on the list of United States internet service providers.<sup>24</sup> 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 services.<sup>25</sup> 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 NDUP 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

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<sup>24</sup> <https://ispspeedindex.netflix.com/country/us> (last visited Mar. 25, 2019). 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.

<sup>25</sup> <http://freestatefoundation.blogspot.com> (last visited Mar. 25, 2019); <https://www.freepress.net/> (last visited Mar. 25, 2019); <https://www.publicknowledge.org/> (last visited Mar. 25, 2019).

indicated AT&T had engaged in discriminatory usage-based practices. 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. AT&T has not changed this approach during the reporting period.

**Training and Process Controls**

AT&T reports that it has established a process to ensure management secures legal approval for all new product offers and pricing before those offerings are made available to the public. Additionally, AT&T has trained over [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] employees on the requirements of the Merger Conditions and the approval process required for new product and service offerings. 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.

In 2017, 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-DirecTV 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. The parties have been 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.

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 is satisfied 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 NDUP 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 Seventh Report again addresses fully the requirements imposed by Appendix B § VI.2. and delivered a report that satisfies subsection VI.2.i 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 FCC Condition VI requirements, along with an analysis of its overall effectiveness in meeting the requirements imposed by the 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 December 11, 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 the DBS, the Request for Information addressed:

- 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;
- Promotional efforts including advertising and public service announcements;
- Internal quality improvement measures;
- Performance metrics for call center agents;
- Efforts to address reported concerns and complaints that customers erroneously believed they were enrolled in the *Access from AT&T* program by non-*Access* AT&T representatives;
- Clarification as to certain internal policies and processes related to the *Access from AT&T* program; and
- Follow up information on specific recorded calls and customer bills reviewed by the ICO.

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

- Information about AT&T's outreach work with Connected Nation and EveryoneOn;
- Details on local community outreach events and new promotional partnerships;
- Internal Key Performance Indicators and metrics showing **[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION];**

- Details on an audit of customers improperly charged installation or equipment fees and reviews of customers incorrectly billed; and

- Details on a media buy for promotion in the Chicago market.

*AT&T – DirecTV Merger Conditions 12/11/18 Discounted Broadband RFI Response* (Jan. 30, 2019).

As in the past, AT&T’s DBS Team made itself available to the ICO to answer any follow-up questions which arose. Additionally, the DBS Team from AT&T and the ICO DBS Team had a meeting in Washington D.C. on January 30, 2019, to discuss AT&T’s response to the Request for Information and to discuss additional requests for information by the ICO.

On February 21, 2019, three members of the ICO DBS Team made a site visit to a [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] call center in Kingston, Jamaica (AT&T contracts with [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] to handle inquiries regarding *Access from AT&T*). The ICO observed processes and procedures at the Kingston call center that were substantially the same as at the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] *Access from AT&T* call centers previously visited by the ICO at Canton, OH; Lubbock, TX; and Tucson, AZ. 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 observed 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.

These efforts and others detailed below allowed the ICO to validate the accuracy of the information presented by AT&T in its Seventh Report.

**DBS Observation 2: AT&T's DBS Program, established on April 22, 2016, continues to operate well and enrollment continues to grow.**

AT&T established its DBS Program, *Access from AT&T*, on April 22, 2016. Based on the observations presented below, the ICO is satisfied the *Access from AT&T* program continues to be well resourced and the program receives management support. In turn, the program has continued to attract new applicants and customers.

Figures provided in AT&T's Seventh Report indicate that the *Access from AT&T* program has expanded, providing discounted broadband service to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] households as of December 31, 2018, distributed among all 21 states in the Company's wireline footprint. Seventh Report, p. 54. The program has continued to grow, with the number of participating households representing an increase of more than 22 percent over the last reporting period.

AT&T's Seventh 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.
- 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.

Seventh Report, pp. 35-36. The ICO has verified these representations. These program offerings are advertised on AT&T's *Access* website. The ICO also has been able to verify AT&T's representations through review of customer billing statements and customer call recordings.

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. Seventh Report, p. 36. As noted in prior reports, the ICO team observed during its visit to the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] application processing site (AT&T contracts with [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] for application processing services) that [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] did not factor applicants' credit information into *Access* eligibility determinations. Likewise, as we experienced with other call centers we have visited, the call agents at the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] Kingston, Jamaica, facility did not factor applicants' credit history into the application process. In addition, 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), has not revealed any issues pertaining to denial due to poor credit history.

AT&T has maintained 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):

- Applicants are required to provide evidence of participation in SNAP (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 *Access* application.

Seventh Report, pp. 34-35.

AT&T has been improving the application experience for *Access from AT&T* applicants. During this reporting period AT&T revised its written guidance to applicants to make it more user-friendly and implemented an automated calling system to notify applicants who provide a phone number, and consent



to the call, that their application has been received and is in process, or that an application has been denied and a new application has been sent. Seventh Report, p. 35. The ICO received and has reviewed the revised customer notifications.

The ICO continues to receive billing statements for three *Access* customers from each of the 21 states in AT&T's wireline footprint per quarter (for a total of 63 customers per quarter). AT&T generated the statements through a random selection process and for each of the 63 customers provided the redacted most recent bill and up to three previous bills. The Company also included the first two months of bills for accounts which had been in place for more than four months. During the previous reporting period, AT&T instituted standard formatting for bills in all states, leading to uniformity and greater clarity. The ICO received and reviewed a total of 373 bills for the 3<sup>rd</sup> Quarter of 2018 and 375 bills for the 4<sup>th</sup> Quarter of 2018. The ICO did not take exception or identify areas of concern with any of the bills. All bills reviewed reflected the rate plan, a data limit statement and customer data usage, along with the total charges including permissible fees (*i.e.*, late payment fees). As the ICO reported previously, AT&T has responded satisfactorily to all questions pertaining to the billing statements.

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 DBS 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's *Access from AT&T* website has been operational since April 22, 2016, and it continues to be a resource for potential new enrollees. <https://www.att.com/shop/internet/access/#/> (last reviewed Apr. 10, 2019). 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. *Id.* 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. <https://accessatt.solixcs.com/#/home> (last viewed, Apr. 10, 2019).

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 required AT&T to educate Customer Service Representatives on the *Access* program “prior to commencement of the program.” The numbers listed below (included in 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.

All customer service agents dedicated to 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 the training materials.
- The training efforts include slide presentations, 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 in those training sessions.

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 ongoing training of call center agents because they are the point of entry for many applicants to the *Access from AT&T* program, and because there is turnover of agents at established call centers, as well as changes to the call centers used by the third party vendors [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]. Since commencement of the program AT&T no longer uses two of the original [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] centers handling the *Access from AT&T* program in Tucson, AZ, and Lubbock, TX, while the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] site in Windsor, Ontario has been added along with the Kingston, Jamaica, [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]. During this reporting period AT&T also advised that it was [BEGIN HIGHLY CONFIDENTIAL

**INFORMATION]**

**[END HIGHLY CONFIDENTIAL INFORMATION].**

The ICO has previously reported that it has heard in call recordings many examples of well-trained agents problem-solving with customers to facilitate the application or order process, as well as instances in which less knowledgeable agents may discourage applicants by dispensing incorrect information. Both scenarios continued to occur during this reporting period. To evaluate the training of the call center agents in this reporting period, the ICO:

- Sent three DBS team members to Kingston, Jamaica, on February 21, 2019, to the site of the third-party vendor, **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**, to interview managers and team leaders, and conduct focus groups with customer service agents; and
- Reviewed recordings of 96 call-center interactions (described in more detail below).

As with the other **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** sites, managers interviewed during the ICO's Kingston monitoring visit understood both the purpose and the practical aspects of the DBS Program. The call agents who participated in the focus groups during the Kingston visit (participants were selected by the ICO) told the ICO representatives that their training was comprehensive, although, as experienced by other centers, "going live" and handling calls was a challenge in the beginning. They reported that, in addition to their initial training, they experienced ongoing training in the form of updates to their "flow" process, side-by-side observations, personal coaching, and group "huddles" (although agents reported huddles occurred infrequently).

The agents expressed an awareness that U.S. callers **[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION]** The ICO observed these measures to be reasonable approaches to ensure that eligible applicants are not frustrated in their efforts to enroll in the *Access* program due to communication issues.

In our last report, the ICO noted that **[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION]**. ICO Sixth Report, p. 67. The ICO recommended in its last report that AT&T specifically provide additional training for non-U.S. call center agents to address such challenges. *Id.*, p. 68. AT&T provided the ICO with a copy of July 2018 slides comprising refresher training on eligibility criteria, specifically SNAP or California SSI benefits. AT&T also provided spreadsheets listing employees at the Canton, Ohio, and Kingston, Jamaica, **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** sites who had completed training in July, August or September 2018. *AT&T – DirecTV Merger Conditions, 12/11/18 Discounted Broadband RFI Response*, Slide 39 (Jan. 30, 2019). Records and other information provided to the ICO

for the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] call center in Windsor, Ontario, reflected that call center agents received the information via side-by-side coaching by their supervisors or team leads or in group “huddles” during sessions conducted July 8 through August 20, 2018.

Issues reported in the ICO’s previous report continue regarding [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. As with the Canton call agents during the prior reporting period, the call center agents in Kingston reported handling calls regarding this issue. The ICO also reviewed the customer complaints received by AT&T from July through December 2018. AT&T provided the complaints along with the Company’s responses as explained in the Complaints section below. Through these efforts, the ICO identified [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] such occurrences, along with customers who complained that [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. *See*, pp. 68-69, *infra*. In these cases, AT&T offered appropriate account credits even where it was unclear what information was conveyed at the time of the service order or upgrade. The Company indicated it was [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].

The ICO received and reviewed recordings of 96 calls made to AT&T's third-party call center agents in Lubbock, TX; Canton, OH; Windsor, Ontario; and Kingston, Jamaica from the period of July-October 2018. Six calls were in Spanish. AT&T redacted from the recordings all personal identifiable information, consistent with FCC requirements. At the ICO's request, AT&T screened out inaudible calls from the randomly selected sample.

In this reporting period, the ICO team noted some improvement in calls reviewed from the Kingston and Windsor centers. As noted above, those sites had exhibited difficulties which were not previously found (or found as consistently) at U.S.-based call centers, many having to do with **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**. However, some issues continued from past reviews and the ICO team identified new issues.

The following is a sampling of issues we identified from our review of the calls:

- **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION], such a statement could be confusing or even misleading to the caller.

The ICO advised and discussed these issues with AT&T and [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] representatives and conveyed the observation that [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION], both in examples heard by the ICO or otherwise, could in some cases confuse or frustrate eligible callers who might otherwise be enrolled in the *Access* program. AT&T representatives agreed clarification and supplemental coaching would help address the issue. Beyond the issues raised here, however, most calls reflected good or exemplary customer service, in both English and Spanish language calls.

AT&T has continued to identify for the ICO team changes to its call scripts used by agents in “real time” exchanges (*i.e.*, when agents are engaged with a caller), so the call review process can more accurately assess if agents are acting in accordance with their training. The ICO also requested that going forward the ICO team be advised of other program or program policy changes that may not specifically be reflected in the script. Knowing this information will enable the ICO team to better assess the agents’ accuracy in exchanges with callers.

**RECOMMENDATION 1: Provide training or supplemental coaching for agents to ensure there is clarity about the schedule or date ranges for delivery of equipment.**



**RECOMMENDATION 2:** Continue efforts to ensure that agents on non-*Access* programs appropriately identify and refer customers interested in the *Access from AT&T* program to the appropriate call centers.

**RECOMMENDATION 3:** Continue to monitor complaints and refund requests from callers who [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] to identify any sources or trends related to this issue.

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

AT&T has reported that it is promoting the *Access from AT&T* program through activities that include public service announcements valued at the required \$15 million threshold value. Seventh Report, p. 41. AT&T tracks the \$15 million expenditure value on an annual program basis; the third year of the *Access* program concluded on April 21, 2019. AT&T provided the ICO information indicating that from May 3, 2018 through December 4, 2018, the Company spent [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. *AT&T – DirecTV Merger Conditions, 12/11/18 Discounted Broadband RFI Response*, Slide 18 (Jan. 30, 2019). AT&T provided the ICO with a schedule for media advertisements for the week of January 28, 2019, through February 3, 2019, and an ICO Team member observed a television advertisement run live on local Chicago market television multiple occasions during that period. *See id.*, Slide 19 (Jan. 30, 2019). We will confirm in the next reporting period that AT&T met the \$15 million advertising threshold required by the Merger Condition for the third program year.

AT&T additionally advertised the *Access from AT&T* program to customers at Dollar General and Family Dollar stores in the 21-state wireline footprint area where the program is available. Seventh

Report p. 41. We have reviewed receipts in prior reporting periods and confirmed AT&T is promoting the *Access* program at Dollar General and Family Dollar stores.

**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 it continues to use the outreach organizations Connected Nation and EveryoneOn to promote the *Access* program. AT&T and its outreach organizations have now reached out to more than 1,000 local and national organizations which have, in turn, agreed to promote *Access* from AT&T to the populations they serve. Seventh Report, p. 43 & Ex. 8; *AT&T – DirecTV Merger Conditions, 12/11/18 Discounted Broadband RFI Response*, Slide 12 (Jan. 30, 2019). Interested organizations may access materials through AT&T’s online partner portal, or may order collateral via a print portal, including fliers, FAQ’s, checklists of materials needed to complete the application, email templates, a poster, a promotional video, and the Program launch press release and social media verbiage. Seventh Report, p. 43. Materials are available in seven languages. *Id.* We have confirmed this outreach effort through reports prepared by EveryoneOn (*End-of-Year Report: 2018 Access from AT&T, EveryoneOn*); the National Parent Teacher Association (*National PTA & Access from AT&T, Year 2 Report (January 26, 2018 – December 31, 2018)*); the League of United Latin American Citizens (*AT&T: Access, 2018 End of Year Report by the LULAC Institute* (Dec. 2018)); the Family Career and Community Leaders of America (*AT&T and Family Career and Community Leaders of America (FCCLA) – Access Partnership August – December 2018 Report*); and the OCA – Asian Pacific American Advocates (*OCA – AT&T Access Program Promotion July – December 2018*).

AT&T has also promoted the *Access from AT&T* program through the Department of Housing and Urban Development’s “ConnectHome USA” initiative (*AT&T – DirecTV Merger Conditions*,

*12/11/18 Discounted Broadband RFI Response*, Slide 14 (Jan. 30, 2019)), through local community events via “The Marketing Arm,” (*Id.*, Slides 15 & 16), and in collaboration with the Elizabeth Dole Foundation through its Hidden Heroes Cities campaign.

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

AT&T reports that in the last reporting period the Company sent letters and emails 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. Seventh Report, p. 50. In this reporting period, AT&T provided, and the ICO team reviewed, distribution lists for emails sent to the school districts. *AT&T – DirecTV Merger Conditions, 12/11/18 Discounted Broadband RFI Response*, Slide 13 (Jan. 30, 2019).

**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 two numbers dedicated to the *Access from AT&T* program. English-speakers can call (855) 220- 5211 and Spanish-speaking callers can call (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 bring into the call a translator through AT&T’s language assistance program. As noted above, the ICO has continued its established process of reviewing 20 calls per month made to the dedicated lines. In this review period, the ICO reviewed 96 calls in English and six in Spanish. As in prior reporting periods, the ICO found that call agents in this review period were generally

knowledgeable and helpful about the program. Some knowledge gaps continue to be exhibited by the agents in centers located outside the U.S., which are also the newer centers added to handle the *Access from AT&T* program, but AT&T and its vendors continue to take steps to improve in this area.

During the visit to the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] call center in Kingston, Jamaica, the ICO DBS team conducted interviews with [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] managers and focus groups with call agents. The ICO team found all [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] staff interviewed were familiar with and supportive of the *Access from AT&T* program. The program-dedicated team members had knowledge and training, and support from their more senior team leaders. The agents acknowledged some of the challenges the ICO identified in listening to call recordings and reported ongoing efforts to improve the quality of customer interaction

**DBS Observation 9: AT&T's internal monitoring and quality assurance process has detected and allowed for correction of issues pertaining to *Access from AT&T*.**

In the ICO's Fifth Report, we reported on issues with [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. ICO Fifth Report, pp. 72-75. In the ICO's Sixth Report, we advised that the methods and procedures implemented to regularly and systematically review *Access* bills from AT&T customers, as well as AT&T's in-depth description of how it handled irregularities when they were identified, satisfied the ICO that AT&T's billing review process remained consistent with the ICO's 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.” ICO Sixth Report, p. 74, *citing* ICO’s Fourth Report, p. 64. In its response to the ICO’s Request for Information dated December 11, 2018, AT&T provided the ICO with documentation of its **[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION]** The ICO is satisfied that AT&T is taking appropriate and reasonable steps to address this concern.

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

As reported above, the ICO specifically recognizes AT&T’s efforts to address concerns, reflected in some complaints, that AT&T **[BEGIN CONFIDENTIAL INFORMATION]**

**[END**

**CONFIDENTIAL INFORMATION]**. This observation is discussed 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 DBS Condition.

### **OBSERVATIONS: COMPLAINT REPORTING PROCESS**

The ICO's complaint review process consists of two distinct efforts. One effort involves reviewing complaints received by AT&T that raise concerns relating to the Merger Conditions through a process established by AT&T and the ICO. The other effort involves the ICO team reviewing publicly available information for complaints relating to the Merger Conditions.

#### **Complaints Received by AT&T Relating to the Merger Conditions**

The ICO approached 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 verify 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 Merger Condition violations and the Company's remediation efforts, if appropriate.

The complaint reporting process provides the ICO with adequate information and insight into complaints to permit the ICO to identify 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 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 status.

AT&T also provides the ICO with a summary of all complaints received during the reporting period, or a summary listing samples of complaints received if there are more than 20 complaints falling in the category, 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 summaries include, 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. The ICO has, on occasion, reviewed the actual complaints and other materials requested of AT&T to verify the summaries provided by AT&T are accurate. To date, the ICO has found AT&T's complaint summaries to be accurate. The ICO, however, has taken issue in the past with AT&T's characterization of whether a particular complaint alleges a violation of the Merger Conditions. We have raised those concerns in the ICO's reports along with related recommendations. *See, e.g.*, ICO Sixth Report, pp. 81-82. We concluded that AT&T properly characterized the nature of the complaints reviewed and addressed as part of the ICO's Seventh Report.

### **Publicly Available Information**

The ICO regularly searches 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," "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 each week. To facilitate the timely consideration of new information, the searches are conducted at the beginning and the end of each week.

Additionally, the ICO specifically reviews and searches 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. Should the ICO become aware of a potential Merger Condition 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, through online search efforts. 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.



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 directly or from the escalation 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 steps:

- **[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 would provide a sample log of such complaints to the ICO. If 20 or fewer such complaints are identified, AT&T will provide a summary log of all 20 complaints. If 21 or more such complaints are identified, AT&T will provide 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 October 1 – December 31 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.

**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 the team concluded the complaints did *not* allege a violation of a Merger Condition. After review, the ICO concurs with AT&T's determination that the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] 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. We note that two of the reported complaints involved situations where [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. The concerns expressed in these two complaints are consistent with the situation described by AT&T involving DAs in which AT&T has deployed legacy DSL services but due to capacity limitations "AT&T cannot offer any internet access services to additional customers." Seventh Report, p. 36, n. 59.

AT&T also 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, **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** were billing related concerns or complaints. Examples of the billing concerns or complaints include charges for late fees, data fee overages, installation fees, restoral fees for overdue payments, and customers who claimed they were approved for *Access*, but were not receiving the *Access* discount. **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION]**

The remaining **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** complaints arose from *Access* customers signing up or placing orders for *Access* services with non-*Access* AT&T agents and/or **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** (collectively “non-*Access* AT&T

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<sup>26</sup> AT&T Definition of **[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION]** *Summary Log of Sample of October, November & December 2018 OOP Complaints Referred to Merger Compliance Team that Allege Merger Condition Violation, [BEGIN CONFIDENTIAL INFORMATION]* **[END CONFIDENTIAL INFORMATION]**.

agents”). Complaints that arose from non-*Access* AT&T agents involved **[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION]**

Overall, AT&T reported in their complaint summaries that it addressed, or is in the process of addressing, all the reported complaints. **[BEGIN CONFIDENTIAL INFORMATION]**

**[END CONFIDENTIAL INFORMATION]**

The ICO has concerns regarding the **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** complaints related to the non-*Access* AT&T agents. The Discounted Broadband Services Program condition requires AT&T to “offer wireline Broadband Internet Access Service . . . where technically available, to qualifying households in the Company’s

wireline footprint . . . .” Merger Order, App. B, § VI.2.a. Additionally, “[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.” *Id.*, § VI.2.e. To the extent non-*Access* AT&T agents are placing orders for customers that qualify for *Access* services and [BEGIN CONFIDENTIAL INFORMATION]

[END

CONFIDENTIAL INFORMATION], the Company is falling short of the requirements imposed by the Merger Order. We have discussed this concern with AT&T. AT&T understands the problem and has committed to taking appropriate corrective steps. AT&T informed the ICO that [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]. The ICO recommends that AT&T take additional steps to train non-*Access* AT&T agents on the specifics of the Discounted Broadband Services Program.

Overall, we conclude that 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 resolution.

**RECOMMENDATION: AT&T should consider taking additional steps to train non-*Access* agents on the specifics of the Discounted Broadband Services Program.**

**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 Seventh Reporting period. Please let us know if you have questions or if there are areas of the report you would like to discuss.