

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 27, 2018

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INTRODUCTION

On July 24, 2015, the Federal Communications Commission (“FCC” or the “Commission”) issued an order (the “Merger Order”)¹ approving the merger of AT&T with DirecTV (as a combined entity, “AT&T” or the “Company”), subject to certain conditions (the “Conditions”). Appendix B of the Merger Order sets forth the Conditions and requires the Company to engage an independent, third-party compliance officer.² Donald K. Stern of Affiliated Monitors, Inc. (“AMI”) was identified as the Independent Compliance Officer (“ICO”) pursuant to an agreement between AT&T and the Commission’s Office of General Counsel, who approved the selection.³ Staff from AMI were likewise approved to assist the ICO in the discharge of his duties. The ICO is responsible for evaluating the Company’s compliance with the Conditions and is required to submit a report within 60 days of receiving each of the semiannual reports that the Company must submit as part of its compliance obligations under the Merger Conditions.⁴ 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 report on October 23, 2017. The ICO received the Company’s Fifth Report on February 26,

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

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

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

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

2018. By agreement between the FCC staff and AT&T, the Third Report was submitted 30 days after the original due date.⁵ This was done to permit AT&T additional time to gather FTTP data for the third and later reporting periods. As a result, the reporting dates for AT&T are now February 24 and August 24 for each year of the reporting obligation (or the following business day if the 24th falls on a weekend or holiday). In this fifth report (the “Fifth ICO Report”), the ICO makes observations and a limited number of recommendations based on a review of AT&T’s reported progress on the following Conditions:⁶

1. Fiber to the Premises (“FTTP”) deployment to 12.5 million mass-market customer locations within four years (the “FTTP Condition”). App. B § III.2.(a).
2. The offer of 1 Gbps FTTP Service (“Gigabit FTTP Service”) to any E-rate eligible school or library located within or contiguous to a Distribution Area in which the Company deploys FTTP-based service (the “E-rate Condition”). App. B § III.2.(d).
3. The prohibition on favoring the Company’s own Video Programming (as defined in Appendix B) services, including through the exemption of such services from usage-based allowances (the “Non-Discriminatory Usage-Based Practices Condition” or “NDUP”). App. B § IV.2.
4. The establishment and commencement of a program to substantially increase broadband adoption in low-income households throughout the Company’s wireline footprint (the “Discounted Broadband Services Program Condition” or “DBS”). App. B § V.2.

What follows is a description of the methodology of the ICO’s data collection and analysis activities employed over the fifth reporting period, and a presentation, organized by Condition, of observations, suggestions, and recommendations for improving compliance,

⁵ *Letter from Matthew DelNero, Chief, Wireline Competition Bureau, FCC, to Maureen R. Jeffreys, Arnold & Porter LLP, Counsel for AT&T, MB Dkt No. 14-90, DA 16-1370 (Dec. 9, 2016).*

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

reporting, and the ICO's planned monitoring activities during the next reporting period.⁷ Where useful, the ICO points out specific plans for ongoing verification of the Company's activities under the Merger Conditions.

EXECUTIVE SUMMARY

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

- AT&T deployed FTTP to a total of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** locations by December 31, 2017; there is no evidence that it has exceeded any of the limitations (*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) imposed by the Merger Conditions on the FTTP deployment, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**; AT&T has in place appropriate controls to ensure Connect America Funds have not been used to fulfil its FTTP deployment obligation. AT&T represented that it has **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**; the ICO has yet to verify that representation.
- 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. For the 2016-17 program year, AT&T deployed 1 Gbps FTTP Service to **[BEGIN**

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

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[END HIGHLY

- It appears that 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 we 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*). The ICO is satisfied the Company is not intentionally requiring eligible customers to pay installation or modem charges or fees to participate in the program; when AT&T discovers that costs not permitted by the Condition are included in *Access* customer invoices, it takes appropriate steps to reverse those charges. AT&T is taking steps to modify its systems and controls to prevent inappropriate charges to *Access* customers from occurring. AT&T is actively marketing the *Access* program and is on track in the second year of the program to promote the program through advertisements and public service announcements having a minimum annual value of \$15 million. It has been aggressive in distributing program information to appropriate organizations and creative in enlisting community support to further the program. It has provided useful public access points for the program and taken appropriate steps to ensure the Company's Customer Service Representatives are properly trained.

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

has demonstrated its commitment to satisfying the Conditions of the Merger Order.

Through the course of its ongoing monitoring:

- The ICO has expanded its understanding and improved the processes used to track FTTP deployment and has continued the enhanced pace of site visits adopted in the fourth reporting period to confirm FTTP locations;
- The ICO has continued to examine under the E-rate Condition the process for identifying covered schools and libraries, reviewed all AT&T responses to Form 470 requests to date, and confirmed AT&T's efforts through a sampling of Form 471s.
- The ICO has continued to review the Company's processes for complying with the Non-Discriminatory Usage-Based Practices Condition reporting, examined the terms and conditions offered by AT&T for its fixed broadband products and services, and reviewed public and private complaints regarding AT&T's activities affected by the Condition; and
- The ICO evaluated and tested AT&T's Discounted Broadband Services 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), and the operations of the call centers responsible for assisting consumers with the application process.

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

METHODOLOGY

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

- Requests for information necessary to test and evaluate each Condition, and follow-up on ICO recommendations contained in AT&T's reports;
- Meetings with the AT&T Project Management Team, as well as representatives from the Company's business lines, to review the processes the Company has established to meet each Condition, and results under each Condition to date;
- Exchanges with the FCC;

- Document review, data analysis, and related testing and verification;
- Extensive FTTP field work; and
- Other site visits, which included presentations, interviews, and focus groups.

Requests for Information and Detailed Informational Meetings

As the ICO's review has delved into the Company's reporting processes and engaged in increased substantive testing, so too has the level of information exchange and direct engagement through meetings and site visits expanded over the reporting periods. We have found the framework established for this exchange over the reporting periods to be productive and efficient. The Company continues to respond to ICO requests, promptly setting meetings that include the appropriate AT&T business staff and officers, representatives of the operational compliance and legal functions, and outside counsel; providing detailed presentations that included samples, demonstrative aids and illustrations, including live demonstrations of data accumulation and queries of internal databases; facilitating site visits for FTTP verification; and affording in each case adequate time for the ICO to ask follow-up questions.⁸ These meetings are essential to the ICO's understanding of AT&T's processes and efforts as they are established (and improved upon), both for complying with the Merger Conditions and for compiling the data needed for semiannual reporting.

The ICO submitted a Request for Information to AT&T on December 6, 2017, posing questions relating to each of the Conditions. The ICO had several follow up calls and exchanges with AT&T to clarify the information requests and to exchange responsive information. The

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

ICO's Discounted Broadband Services team met with representatives from AT&T's Discounted Broadband Services; Advertising and Consumer Marketing; Sales & Service Centers; Technology Development; External Affairs; and Legal, Compliance and Program Management at AT&T's Dallas office on February 1, 2018, to receive an overview of AT&T's DBS efforts, and to discuss matters raised in the ICO's December 6, 2017, Request for Information. The DBS discussion provided an overview of AT&T's media spend to promote *Access from AT&T*, including how AT&T calculates the value of DirecTV advertisements; the Company's practices concerning charges relating to wall jack installation; training efforts relating to the DBS Program; key performance metrics for the DBS Program; and invoicing practices relating to *Access from AT&T*.

Separately, the ICO's FTTP Team (including those with E-rate responsibilities) met with representatives from AT&T's Connected Communities; Product Marketing; Construction & Engineering; Business Marketing; Business Operations; and Legal, Compliance, and Program Management in Dallas on March 6, 2018. The FTTP discussion focused on AT&T's compliance efforts and developments relating to AT&T's FTTP processes, including reporting Multiple Dwelling Unit deployments, as well as managing limitations imposed by the FTTP Condition. The meeting offered both sides the opportunity to discuss opportunities for enhancing the effectiveness of the site visit verification process. The E-rate discussion provided the ICO with the opportunity to gain a greater understanding of AT&T's methodology for identifying covered schools and libraries, the E-rate Form 470 response process, AT&T's outreach efforts, and AT&T's current compliance methodology.

There were additional meetings conducted live, telephonically and over AT&T's remote

screen-sharing tool, including:

- January 9, 2018 call to discuss the ICO's Request for Information (RFI);
- February 22, 2018 call to discuss AT&T's process for CAF fund expenditures;
- February 28, 2018 site visit to **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** call center relating to *Access from AT&T* application process and practices;
- March 19, 2018 call to discuss site visit to **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** call center (**[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** provides contract support to AT&T);
- March 21, 2018 call to provide for follow-up discussion relating to the ICO's RFI; and
- April 4, 2018 visit to Ontario, Canada to visit **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** call center relating to *Access from AT&T* application process and practices.

For each of these sessions, AT&T ensured it had assembled appropriate AT&T representatives to address the matters on the agenda, including senior members of the Company's Entertainment Group, Construction and Engineering (C&E) group, and AT&T's overall Project Management Team. These meetings have been instrumental in helping the ICO to understand the substantive and procedural aspects of AT&T's compliance efforts.

Document Review and Data Analysis

The ICO reviewed all materials provided with the Fifth Report, as well as documents provided in response to the ICO's various information requests. Over the course of the reporting period, and later for purposes of addressing questions relating to AT&T's activities over the reporting period, the ICO submitted multiple formal and informal requests for documents. In each case, the Company provided documents (both existing business records and materials

prepared specifically to respond to requests) that met the ICO's needs. The ICO reviewed these materials and was provided opportunities to follow up with the appropriate AT&T team members to seek clarification and to pose additional questions.

The ICO reviewed the reporting processes and confirmed data contained in the CSV file regarding FTTP deployment for internal consistency and completeness. The ICO continues to work with AT&T to enhance methods for independent validation of the information in the FTTP CSV file, including the limitations imposed by the Condition. As noted in prior ICO reports, AT&T has continued to provide the ICO with access to the **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] and, as expected, this additional information has permitted the ICO to refine methods of independent testing of AT&T's FTTP deployment. Additionally, AT&T provided a new field of information, **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] with its 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, while also demonstrating the performance of a critical element of the Company's internal controls.

Field Visits

The ICO planned and conducted field visits to randomly selected properties within selected geographic areas to confirm FTTP customer installation as reported by AT&T in its CSV file. As reported in the ICO's Fourth Report, to increase overall confidence in the verifications results, the ICO continued to visit a larger number of sites than were visited during the first three reporting periods. As described in more detail below, this verification process involves selecting sample customer locations from a chosen geographic area and visiting selected customer locations in the sample to verify the reported FTTP deployment and to confirm location information included in the CSV file. The ICO plans to conduct these FTTP site visits on a rolling basis throughout the period the Merger Conditions are in effect. New locations reported by AT&T are incorporated into the total potential sample population. Going forward, the ICO plans to increase the number of FTTP site visits as necessary and appropriate given the significant increase in FTTP deployments required by the FTTP Condition over the next 15 months.

AT&T reports it has responded to all FCC Form 470s submitted from covered school and libraries for services required under the condition. In its Fifth Report, AT&T reported **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** E-rate deployments to eligible entities during the reporting period. The ICO took appropriate steps to verify and validate the deployments. The ICO also 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 [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] call center facility in Lubbock, Texas, and a [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] call center facility in Ontario, Canada (both are AT&T's call center contractors responsible for providing customer service relating to *Access from AT&T* applications).

APPROACH TO OBSERVATIONS AND RECOMMENDATIONS

This Fifth 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 here with the acknowledgment that this marks the fifth round of reports for both the Company and the ICO, 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. FTTTP CONDITION

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

We found that AT&T has addressed the conditions set forth in subsections III.2.a.- c. of Appendix B and delivered a report that satisfies subsection 3.a. The ICO reviewed the Fifth Report and Exhibit 1 regarding the reporting requirements set forth in Appendix B of the Merger Order. The Fifth Report provides the number of customer locations where FTTTP service has been deployed as of December 31, 2017; 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 Fifth Report contains each of the fields prescribed in Appendix B § III.3.a.(ii), as well as additional information (Distribution Area, service address, and a unique "service address identification number"). The Fifth Report does not yet include locations in Multiple Dwelling Units (MDUs) where AT&T has not been able to obtain a "Right of Access" agreement.⁹ AT&T is taking reasonable steps to report Latitude and Longitude.

⁹ AT&T and the Commission staff have agreed that AT&T may count towards the FTTTP buildout requirements under certain specified conditions the Customer Locations within MDUs that require the MDU owner and

The FCC Order approving the merger required AT&T to expand its FTTP coverage to at least 5 million mass market customer locations by December 31, 2017. AT&T reports that it has exceeded that requirement. The Total FTTP deployment as of June 30, 2017, the additional deployments during the current reporting period, and the remaining Condition goals are presented in the following table:¹⁰

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[END HIGHLY CONFIDENTIAL INFORMATION]

December 31, 2017 goal	5,000,000
December 31, 2018 goal	8,300,000
Four years of the closing date	12,500,000

FTTP Observation 2: AT&T continues to take appropriate steps to update the FTTP reporting process.

AT&T revised the FTTP Reporting Process several times over the reporting period to update and improve the accuracy in the reporting process and production of the CSV file. *ATT FCC IA Reporting*, Revs. 1.5 – 1.7. Having a well-defined, repeatable and automated process enables AT&T to provide a reliable CSV file in response to the Condition requirements. Revisions to the process since the last semi-annual CSV report include an updated **[BEGIN**

AT&T to agree to a right of access to deploy fiber within the MDU where agreement cannot be reached. Memorandum from Maureen R. Jeffreys to Marlene H. Dortch, Secretary, FCC (Oct. 6, 2016).

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

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query, further refinements to the data merging process, and the addition of MDU reporting documentation that will be applicable to future reporting periods.

AT&T refined its reporting documentation for the Fifth Report. For previous reports, AT&T used a combination of the **[BEGIN CONFIDENTIAL INFORMATION]**

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INFORMATION] to determine if the units were greenfield, overbuild, SE Fiber to the Curb Overlay, or Out of Franchise. The methodology employed in the Fifth Report used the **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] type to group installations into the four categories.

The results revealed the following FTTP deployments/upgrades:

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[Note: Fiber to the Curb = sites that have fiber optic service to a neighborhood distribution site (curb), with copper wire from the distribution site to the premise. Greenfield = sites where fiber optic service is installed with new construction where the site did not previously have copper-based service. Overbuild = sites that had copper-based service and/or lower level fiber optic service (*e.g.*, 45 Mbps) that have been upgraded. Out-of-Franchise = Any fiber optic service

provided by AT&T in a market where the company was not the incumbent phone service provider.]

At the ICO's request, AT&T also provided clarification of steps in the process to enable the ICO to test reported data regarding the use of CAF, as well as plans to update the process to address Multiple Dwelling Units ("MDUs") and FTTN Upgrades in the coming year.

FTTP Observation 3: [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 Fifth Report.

FTTP Observation 4: 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 fiber to the node ("FTTN") technology. As reported by AT&T, FTTN Upgrades to properties already receiving 45 Mbps have not been reached, as shown in the table below.¹¹

¹¹ The ICO extracted the June 30, 2017, Balance from the Fourth Report and the December 31, 2017, Balance from the Fifth Report. The ICO extracted the Condition Limits from the Merger Order.

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During discussions with the AT&T team in July 2017, AT&T informed the ICO that

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CONFIDENTIAL INFORMATION] The *FTTP Reporting Process* in effect during the reporting period states:

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FTTP Reporting Process, p. 42.

AT&T representatives explained that through the Fifth Report the Company has taken the approach of **[BEGIN CONFIDENTIAL INFORMATION]**

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In February 2018, AT&T revised its reporting process for the FTTN Upgrades:

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

ATT FCC IA Reporting (Rev. 1.12, Feb. 23, 2018). The ICO notes the limitation relating to the FTTN Upgrades becomes relevant as AT&T approaches the 2.9 million maximum (similar to the

greenfield limitation). **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] and AT&T has in place a process to facilitate compliance with the FTTN Upgrade limitation, the ICO will take appropriate steps to verify AT&T's application of its revised process over the coming reporting periods.

FTTP Observation 5: AT&T has not used Connect America Funds for the FTTP deployment required by the Condition.

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

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

Fifth Report, p. 11, n. 23.

AT&T's process is designed to ensure the Company does not violate the FTTP Condition. The ICO confirmed through queries conducted on the **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** provided by AT&T that none of the reported deployments were supported by CAF funds. This effort did not produce any indication the reported deployments were funded by any of the codes used by AT&T to track CAF funding within its operational system.

FTTP Observation 6: AT&T is developing a process for documenting access or denial of access to install fiber in Multiple Dwelling Units (MDUs).

The CSV files for the first five AT&T Reports contain 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 an ROA, the FCC and AT&T agreed to a counting methodology for MDU FTTP deployments.¹² Our FTTP field verifications, to date, have not encountered any MDUs where AT&T does not have ROA to the property.

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

AT&T reported to the ICO on March 6, 2018, that the FCC confirmed that AT&T could include 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.*

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

G.fast is a type of deployment where AT&T runs fiber onto the MDU property, then transitions the signal from fiber to existing copper wire lines already installed in the property.

Previously, AT&T provided an updated overview of how the MDU deployment reporting process will work and examples of correspondence with MDU owners that will document MDU access or denial of access. AT&T reports that it plans to implement this process **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] The implementation of this process includes the electronic filing of correspondence with MDU owners that will be accessible to the ICO. The following chart reflects the decision process for counting MDU units in the CSV file:

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The ICO has been working with AT&T to identify documentation and other data necessary to verify compliance with the Condition requirements, as modified by the process agreed to with the FCC. The ICO will take appropriate steps to validate AT&T's MDU deployments once **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] and AT&T begins to count MDU deployments where the property owner has denied a ROA towards its FFTP objectives under the Merger Order.

FTTP Observation 7: The ICO has verified the FTTP deployments reported by AT&T.

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

Sampling Methodology and Process

We first developed the ICO Sampling Plan for 2016 based on the data in the CSV file provided by AT&T in its First Report dated January 25, 2016, and subsequently amended in the Second Report dated July 25, 2016. The original plan randomly selected a sample of 16 cities or geographical areas that each include multiple DAs. Within those selected geographical areas, the ICO drew a random sample of AT&T designated DAs and, within each DA, a random sample of addresses where FTTP deployment was identified by AT&T. This sampling methodology relied on smaller clusters of DAs within a selected geographic sample area, which permits a random selection of installations with equal probability of selection that are also more likely to be geographically proximate (which tends to increase site visit efficiency). During the third reporting period, the FCC requested that the ICO expand the sample size to improve confidence in the validation of AT&T's efforts. The ICO increased to 15 the number of samples (171 sites) factored into the ICO's Third Report. For the fourth report, the ICO increased the number of visited geographic samples to 18 (278 sites).

After two years of sampling, the ICO and AT&T continue finding efficiencies in the field verification process. AT&T provides considerable resources and time to assure the ICO can verify as many sites as possible. This includes providing multiple teams of technicians so that

one team of technicians can be setting up light tests for a site while another team is conducting a light test. The cooperation and resources of AT&T have enabled the ICO to almost double the field visit capacity from an average of 11 sites per day in the second reporting period to an average of 18 sites per day for the Fourth and Fifth Reporting periods.

For the fifth report, the ICO maintained the pace of field visits established in the fourth reporting period and broadened the geographic diversity of the samples. Locations visited in the fifth reporting period include: Overland Park KS, Benton AR, Spring TX, Richmond TX, Greenville SC, Jacksonville FL, Columbia TN, Nashville TN (2 samples), Pass Christian MS, West Park FL, Florida City FL, Atlanta GA, Covington GA and San Antonio TX.

To date, the ICO has visited 806 sites chosen from 55 samples.

Pre-Site Visit Process

The field visits consist of confirming the address included in the CSV file is FTTP capable (*i.e.*, that AT&T has deployed fiber to the location supporting the premise thereby permitting a customer to have a fiber connection should the customer elect to purchase the service) or that AT&T has deployed fiber to the premise and the customer is using the fiber connection. Because prior site visits have identified address anomalies related to new construction (greenfield sites), the ICO now 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 Telecommunications Subject Matter Expert (SME) to confirm more quickly

the location is FTTP capable. Addresses of MDU locations where AT&T reportedly has deployed FTTP service are no longer provided to AT&T two weeks in advance, as the additional preparation time did not materially improve access; AT&T and the ICO have agreed to discontinue this practice.

Field Visit Steps

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

Field Visit Results

The ICO sample population included for this report total 365 separate DAs across 15 distinct geographical samples. After culling the DA samples within each of the 18 geographical areas to provide a logistically practical route for visits, 275 sites were identified and visited in the field.

The ICO SME found that all 275 locations visited met the criteria for inclusion in the FTTP site count. AT&T has assisted in this process by providing supporting data during the

field visits for typical sites where a post-visit follow-up would have been required in the past. Typically, that additional data consisted of engineering drawings demonstrating that a dwelling was proposed by a developer where one was not yet built, although AT&T had installed fiber to the location, and wire-mapping demonstrating the design of networks from PFP to FST to Living Unit.

Access Challenges Exist and May Increase

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

[END HIGHLY CONFIDENTIAL INFORMATION] that can be included in the CSV, and MDUs are introduced under the FCC approved conditions, we anticipate an increased set of access challenges (greenfield sites – generally new construction – rarely have vegetation or other obstructions interfering with the site visit; we expect MDUs will come with a host of building access challenges, as well as challenges associated with locating equipment inside the property). If MDU issues cannot be resolved, this will impair the ICO's ability to field-verify the FTTP condition. The ICO will continue to take appropriate steps to coordinate closely with AT&T to promote efficient field verification efforts and resolve outstanding concerns.

Address Anomalies Exist

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] The ICO also

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

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

[END

CONFIDENTIAL INFORMATION]

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

Fifth Report, p. 11, n. 25 (cites omitted).

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

ICO Plans for 2018 Inspections

The sampling plan for 2018 will adhere to the basic methodology established in 2016 with several exceptions. As discussed earlier, as part of the pre-site visit process, AT&T has begun obtaining and reviewing construction documents and blueprints of DAs prior to inspections and having those records available at the time of the ICO's inspection. Having this process in place greatly assists the ICO SME and AT&T to resolve quickly site condition challenges encountered during visits. As noted in the ICO's Forth Report, the ICO SME has confirmed the feasibility of performing as many as 25 site inspections per day.

Field visits have been increased to two per month. When traveling distances permit, we can combine two or three geographic samples, consisting of 50 or more specific sites, into two (or more) days of back-to-back visits with the potential for increasing the number of overall sites visited. The increase in the number of clusters visited is necessary given the increased number of FTTP deployments required by the Condition in 2018 and again in 2019. We recognize that this increased tempo places strain on AT&T's workforce. We will continue to explore solutions to this challenge with AT&T that meet the need for increased testing and verification of FTTP

deployments, but that allows for more efficient use of AT&T's workforce within a given geographic area, and that distributes the burden over a larger set of AT&T regional teams.

For example, the ICO will further revise its sampling methodology starting in 2018. To decrease the likelihood of inspections in previously inspected geographic areas, which could occur based on our methodology, the ICO will revise the process to sample randomly from each of the four AT&T regions (West, Southwest, Midwest, and Southeast). Because AT&T had been actively building in the Southeast and Texas areas at the time of the earlier ICO inspections, a high number of installations and inspections came from those areas. Creating four strata that correspond to the four AT&T regions will ensure that other geographic areas will be more fully represented and visited in future samples.

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

FTTP Observation 8: FTTP latitude and longitude reporting continues to present challenges for AT&T.

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

remains a particular challenge for AT&T. Consequently, the latitude/longitude data presented by AT&T frequently are inaccurate.

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

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

According to AT&T:

[BEGIN CONFIDENTIAL INFORMATION]

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

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

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

1B. E-RATE CONDITION

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

The ICO has reviewed the Fifth Report and Exhibits 2 through 6 to address the reporting requirements set forth in Appendix B. AT&T reports that it is complying with the E-rate condition by “(1) identifying covered schools and libraries located where AT&T plans to have deployed FTTP services by the end of the first half of 2018 . . .; (2) responding to all Form 470s seeking bids for 1 Gigabit FTTP Service to any covered school or library; (3) deploying as requested 1 Gigabit FTTP service to any bid awarded for that service by a covered school or library; and (4) conducting affirmative and adequate outreach to make covered schools and libraries aware of the opportunity to purchase 1 Gigabit FTTP Services.” Fifth Report, pp. 13 – 14. The Fifth Report summarizes the methodology AT&T uses to identify covered schools and

libraries where AT&T plans to have deployed FTTP services. The report includes a list of covered schools and libraries to which AT&T has submitted a bid to provide FTTP service (Exhibit 2.a), and copies of an equivalent version of the Form 470s associated with each bid prepared by Funds for Learning (Exhibit 3).¹³ The report also includes a list of [BEGIN
HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL
INFORMATION] covered entities to which AT&T has deployed 1 Gigabit Service. Exhibit 2.b.

The Fifth Report includes a description of outreach activities, including AT&T's efforts to promote awareness of the opportunity for covered schools and libraries to bid for 1 Gigabit FTTP Service; a copy of AT&T's 1 Gigabit Service notice it uses to raise awareness with covered entities (Exhibit 4); a list of technology conferences (Exhibit 5) at which AT&T sales representatives have interacted with prospective E-rate customers; and a sample of a promotional flyer (Exhibit 6). In summary, ATT 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 the Fifth Report AT&T explained that it applied the same methodology for identifying covered schools and libraries as it applied in the Fourth Report. Fifth Report, p. 14. AT&T explained the methodology as follows:

Specifically, AT&T compiled a list of fiber routes that include PSAs where AT&T has deployed FTTP-based service or plans to deploy FTTP by June 30, 2018. Using the most recently available Universal Service Administrative Company ("USAC") data, AT&T identified all of the E-rate eligible individual schools and libraries located within those

¹³ 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.

fiber routes, which is approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** schools and libraries. Because multiple PSAs make up a fiber route, this methodology sweeps well beyond what the Condition requires.

Fifth Report, pp. 14 - 15 (footnote omitted). AT&T's current methodology relies on the use of Passive Optical Network (PON) Serving Areas, or PSAs, to establish the areas covered by the E-rate condition. The Merger Conditions require AT&T to offer 1Gbps FTTP Service "to any E-rate eligible school or library located within or contiguous to a *distribution area* in which the Company deploys FTTP-based service" Merger Condition, B.III.2.d (emphasis added). In its Third Report, AT&T explained that the term "distribution area" or "DA" relates to boundaries associated with copper technology, whereas for fiber, the term equivalent to DA is PON Serving Area or PSA. *See* Third Report, p. 16. AT&T also stated that PSA boundaries are often similar, but not identical, to copper DA boundaries. *Id.* The ICO does not have any objections or concerns with AT&T's use of PSAs in lieu of DAs. The ICO confirmed that the methodology used for the Fifth Report is the same as for the Fourth Report.

Methods for Identifying Covered Schools and Libraries

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

[END CONFIDENTIAL

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

Method for Identifying Fiber Route

As explained in the ICO's Fourth Report, as of December 2016, AT&T has used **[BEGIN CONFIDENTIAL INFORMATION]** **[END**
CONFIDENTIAL INFORMATION] for capturing the boundaries of FTTP deployment within a PSA.¹⁴ 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.

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

The ICO confirmed that 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'd August 2, 2017). The process document provides a detailed step-by-step for the E-rate team to follow for identifying E-rate sales opportunities and form complying with the Merger Condition.

¹⁴ AT&T informed the ICO in November 2016 that the **[BEGIN CONFIDENTIAL INFORMATION]** **[END**
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Service Type and Function

After discussions with the FCC E-rate staff in late 2017, the ICO asked AT&T to explain the “Service Type” and “Function” designations to which it was responding for purposes of fulfilling the FTTP Condition requirement. In response, AT&T advised that for the 2017 E-rate season, it was responding to requests from covered schools and libraries that included 1 Gigabit Service where the “Service Type” designated in the Form 470 was, or could otherwise be determined to be, “Internet Access and/or Telecommunications” and the “Function” was designated as, or could otherwise be determined to be, “Internet Access and Transport Bundled.” *AT&T – DirecTV Merger Conditions, 3/7/18 E-rate RFI Response*, Slide 16. On August 22 and 25, 2017, the USAC communicated via its News Briefs that requests for bids on Internet Access/Transport Bundle service that are fiber based must also include a request for “Lit Fiber Service” as a Function. *Id.* Based on USAC’s guidance, for the next E-rate season, AT&T advised the ICO that it will only respond when the Form 470 includes a request for *both* “Internet Access/Transport Bundled” and “Lit Fiber Service.” *Id.*

RECOMMENDATION: Given AT&T’s response to USAC’s guidance, AT&T should consider revising its *DTV I.B. Merger Requirement Processes* (revised on August 2, 2017), to conform to the guidance issued by USAC regarding the requirement for Form 470s to designate both “Internet Service and Transport Bundled” and “Lit Fiber Service.”

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

According to the Fifth Report, p. 17, 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, 2017 – December 31, 2017. Exhibit 2.a provides a listing of all covered entities to

whom AT&T submitted a bid for 1 Gigabit Service; the list provides electronic links to the related Form 470s at Exhibit 3 for each of the bids. Exhibit 3 includes copies of forms prepared by Funds for Learning that capture the information required on properly populated Form 470 documents.

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

As of December 31, 2017, AT&T has deployed 1 Gigabit Service to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] covered entities. 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 has confirmed these [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] deployments through Form 471 data.

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

[END HIGHLY CONFIDENTIAL INFORMATION] included customer filing for E-rate and the other [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY

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

[BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

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

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

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

The ICO confirmed that AT&T continues to use an expansive promotional outreach program that includes both direct outreach to covered schools and libraries, along with an effort to promote more general awareness of AT&T's services among actual and potential E-rate customers. During the fifth reporting period, AT&T representatives participated in 12 technology conferences/events for purposes of promoting its E-rate offerings. During meetings with the ICO on March 6, 2018, AT&T advised that it intends to pivot away from technology events and rely instead on direct mail and email campaigns. *AT&T – DirecTV Merger Conditions, 3/7/18 E-rate RFI Response*, Slide 21. Those campaigns will be executed in [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] with a series of three communications in each

campaign designed to [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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

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

- 10 states (AR, CA, GA, FL, IL, KS, KY, SC, TN, WI) where a state agency provides the state-wide network –most of these states buy these services from commercial ISPs and leverage E-rate and state funding –some were built with dark fiber¹⁵ 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;

¹⁵ A fiber network that has not been put into use.

- 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;
- 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, **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] AT&T

provided a listing of the state internet networks and associated links to the ICO. The ICO examined those links and confirmed the states provided the services described by AT&T.

AT&T explains again in its Fifth 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, if any, reportable deployments of 1 Gigabit FTTP Service during a reporting period. For example, in 15 states within AT&T's 21-state wireline service area, there are 16 state institutions that procure an internet backbone designed to deliver broadband service to anchor institutions, including schools and libraries. In particular, in 10 states, a state agency provides a statewide network, often purchasing the underlying broadband services from commercial ISPs, including AT&T. In six states, the higher education system provides centralized internet access to schools. The state agencies or university systems use E-rate and/or state budgets to fund these networks. Under these models, anchor institutions may receive a finite amount of internet access at no cost or at a rate that is subsidized by state budgets or federal broadband programs outside of E-rate. When schools and libraries can procure internet access services through these statewide networks, they generally only issue their own Form 470s to buy internet access services from commercial ISPs if they need to augment the service they receive from the statewide networks. Therefore, the statewide networks reduce the number of schools and libraries seeking to purchase commercial ISP services. In other instances, statewide networks themselves function as E-rate

service providers, competing at subsidized rates against AT&T and other commercial ISPs to provide service in response to school and library Forms 470.

Fifth Report, pp. 18-19 (footnotes omitted). The ICO has confirmed this information through a review of Form 471s and other USAC documentation, as well as through searches of publicly available documents. The ICO will continue to take steps to verify the information reported by AT&T.

2. NON-DISCRIMINATORY USAGE-BASED PRACTICES CONDITION

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

The ICO has reviewed the Fifth Report and Exhibit 7 regarding the requirements set forth in Appendix B, Section IV. As required by the Condition, AT&T's Fourth 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. Fifth Report, pp. 22-28; Ex. 7. Exhibit 7 contains a variety of information related to AT&T's Fixed Broadband Internet Access Service usage allowance practices, including: *AT&T Internet Terms of Service/att.net Terms of Use for Internet Services* (March 22 – November 14, 2017; November 14, 2017 - present); *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. Fifth Report, pp. 26 - 27 and Ex. 7. The descriptions and supporting materials presented by AT&T in the Fifth 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.

The Fifth 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. Fifth 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.¹⁶

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

AT&T's DirecTV Now offering, while targeted largely at wireless users, including AT&T wireless subscribers, is also available for use over AT&T's Fixed Broadband Internet Access Service. <https://www.att.com/directv/directv-now.html> (last viewed Mar. 26, 2018). The

¹⁶ 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.

ICO examined how DirecTV Now is offered or made available to fixed broadband users. Fixed broadband users, including AT&T fixed broadband customers, can access DirecTV Now only as an “over-the-top” service delivered via a customer’s broadband connection provided by AT&T or another broadband provider. **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] As an over-the-top service, the ICO did not identify any information in the public domain, including att.com, suggesting that AT&T treats the DirecTV Now any differently than any other over-the-top service (*e.g.*, Netflix). The ICO is satisfied AT&T’s DirecTV Now service is offered in a manner consistent with the Merger Conditions.

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

The ICO reviewed the relevant offerings, including the terms and conditions and usage-based allowances, published at *www.ATT.com/internet*, the *AT&T Acceptable Use Policy*, the *Broadband Information* page, the *Home Internet Usage* page, the *Data Allowances and Usage Information* page, and the *Internet and DSL Terms of Service*. The ICO also reviewed the promotions and product offerings under the Bundles Page, the Internet Page, and the AT&T Fiber Page. On the *Home Internet Usage* page, AT&T provides customers with information regarding data allowances, such as the monthly allotment of data, the availability of free

unlimited data with bundling DirecTV or U-verse TV, and the offer of unlimited data for \$30/month without the bundle. AT&T also provides customers with resources to assist them in determining their data usage. The resources on AT&T's website include: *More About Internet Data Usage* page, *Tips for Controlling Your Data Use* page, various device tutorials for monitoring data use, the Data Calculator, and the *How to Check Your Broadband Usage* video. The ICO did not find evidence of discriminatory intent or effect in these resources; rather, the published resources adequately inform the customer of what data usage means and how to monitor it.

In reviewing the retail terms and conditions on the AT&T website, the FAQs, and the *Broadband Information* Page, the ICO did not identify any evidence that AT&T was discriminating in favor of its Video Programming services for its Fixed Broadband Internet Access Service. AT&T discloses the data usage limitations. AT&T states in the *Broadband Usage FAQs* that it will “treat all [its] customers’ Internet traffic the same, regardless if they are receiving unlimited data through bundling, adding it to their existing services or have a monthly data allowance.” Fifth Report, Exs. 7.d.i & 7.d.ii. AT&T also explains in the *Broadband Information* page that it “does not favor certain websites or Internet applications by blocking, throttling, or modifying particular protocols” Moreover, AT&T specifies in the *Internet 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. AT&T explains in its published materials that it will provide customers with notices when it adopts network management practices that apply to the customer’s service.

As noted above, AT&T's published materials inform customers that these network management practices will affect all customer's traffic the same.

The ICO compared the documents submitted by AT&T with the documents the ICO reviewed on the AT&T website. In conducting this comparison, the ICO did not identify any material discrepancies that raised concerns between the documents provided by AT&T and the documents on the website.

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

The ICO conducted continuous monitoring of the internet for complaints alleging discriminatory usage-based practices on the part of AT&T. One of the ways this was achieved was using internet alerts. The ICO set up broad alerts with the words "AT&T DirecTV," so that any content (articles, blogpost, etc.) containing those words would be flagged automatically and sent to the ICO via email. While the ICO received many alerts over the reporting period, the ICO did not identify any complaints alleging a violation of the Condition. Most of the alerts received concerned articles about AT&T's new product offerings and promotions; some concerned lawsuits involving AT&T (unrelated to the Condition); others commented on AT&T's business deals. Another method used by the ICO to monitor the internet for complaints involved visiting websites that consumers or groups use as platforms for complaining about or discussing telecommunication practices.¹⁷ For example, Consumer Union and Consumer Affairs, published complaints about AT&T, mostly concerning the quality of the company's services, the cost of the services, and zero-rating. Some of the complaints involved AT&T's data allowances, but

¹⁷ <https://forums.att.com/t5/Internet-Forum/ct-p/attinternet> (last visited March 30, 2018);
<http://consumersunion.org/> (last visited March 30, 2018);
https://www.consumeraffairs.com/internet/att_broadband.html (last visited March 30, 2018).

these complaints did not raise genuine concerns relating to the Condition. Rather, the complaints took issue with the fact that AT&T imposed data caps or that AT&T wireless customers who subscribed to DirecTV could watch DirecTV on their mobile devices without it counting toward their AT&T wireless data cap. The ICO did not identify any complaints presenting facts or information that AT&T used data caps to discriminate against unaffiliated video distribution services regarding the company's Fixed Broadband Internet Access Service.

There were complaints made on consumer forums between June 2017 to December 2017 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 (Ranked #7) and AT&T DSL (Ranked #13) Internet services are in the top 13 of United States internet service providers.¹⁸ 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.¹⁹ As mentioned earlier, there were some concerns expressed regarding AT&T's live streaming service DirecTV Now and AT&T U-verse, however, the ICO did not find any complaints to constitute a violation of the Merger Condition.

¹⁸ <https://ispspeedindex.netflix.com/country/us> (last visited March 30, 2018). The Netflix Speed Index is a measure of prime-time Netflix performance on a particular ISP and not a measure of overall performance for other services/data that may travel across the specific ISP network. Faster Netflix performance generally means better picture quality, quicker downloads, and fewer interruptions.

¹⁹ <http://freestatefoundation.blogspot.com/> (last visited March 30, 2018); <https://www.freepress.net/> (last visited March 30, 2018); <https://www.publicknowledge.org/> (last visited March 30, 2018).

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

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

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

Training

AT&T provided the ICO with a training roster establishing that approximately [BEGIN
CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]
AT&T management and staff had received training relating to the NDUP Condition, and that one or multiple training sessions had been conducted several times a year between August 2015 and May 2017. [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL
INFORMATION] According to AT&T, the training sessions are conducted by AT&T's outside

counsel, and reportedly include an overview of the Condition, an examination of the specific terms and conditions imposed by the Condition, and a discussion of hypothetical customer offers that might implicate the Condition.

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

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

Process Controls

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

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

[END CONFIDENTIAL INFORMATION] AT&T previously provided the ICO with copies of both forms. AT&T has withheld from the ICO populated versions of the forms reflecting actual product offerings. According to AT&T, those populated forms are subject to the Attorney/Client Privilege as those forms contain protected communications between attorney and client. The ICO explored with AT&T legal counsel again in February 2018 options for gaining greater visibility into AT&T's process controls as AT&T uses those controls to vet actual product offerings for compliance with the NDUP Condition. The parties were unable to identify a way for the ICO to achieve greater visibility into the process given the privilege, other than for the ICO to review the output of the process in the public offerings published by AT&T on its website and in advertisements.

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

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

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

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

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

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

Notwithstanding the limitations experienced by the ICO relating to gaining access to information and activities subject to the Attorney/Client Privilege asserted by AT&T, the ICO believes that the available evidence demonstrates that AT&T has designed a multi-layered review process (together with a training regimen) that creates a positive internal control

environment to support Condition compliance. This conclusion is borne out by the ICO's findings in the foregoing discussion relating to the NDUP Condition. The ICO has not identified any evidence in the public space (*e.g.*, the product offerings and related terms and conditions on AT&T's website, complaints posted on public sites, or complaints otherwise made available to the ICO) indicating a lack of compliance with the NDUP Condition. *See* NDUP Observation 3, *supra*.

3. DISCOUNTED BROADBAND SERVICES PROGRAM CONDITION

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

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

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

AT&T described its compliance with 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 (RFI) was sent by the ICO to AT&T on December 6, 2017 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. The RFI addressed AT&T's DBS Program marketing, implementation, training, metrics, updates, communication of changes to the

program, and quality improvement. Among other responses, the ICO received from AT&T: advertising materials (print copy, recordings, video) and evidence of DBS Program advertising expenses, copies of customer bills, redacted recordings of calls to the customer call center, and quality improvement data. As in the past, the requested information was posted by AT&T to a secure, external website to which the ICO has password-protected access, and AT&T's DBS Team made itself available to the ICO to answer any follow-up questions which arose.

The ICO's full DBS Team met with the AT&T DBS Team in Dallas on February 1, 2018 to discuss the materials submitted by AT&T and to receive an update on the DBS Program. On February 28, 2018, two members of the ICO DBS Team made a site visit to **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** in Lubbock, Texas, a call center that contracts with AT&T to handle inquiries regarding the low-cost Internet program, *Access from AT&T*. During that visit, ICO staff interviewed **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** managers; conducted focus groups with customer service agents who answer calls about the *Access from AT&T* applications, eligibility and installations; toured the facility; and learned about training of customer service agents. The ICO had previously visited a **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** call center in Tucson, Arizona in February 2017, and the ICO team members found consistency across the locations. The ICO DBS Team also visited a call center in Windsor, Ontario, run by **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** on April 4, 2018. We found the training and services to

be very good, and similar to the call center services offered through [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]

In addition to the on-site meetings, AT&T hosted DBS conference calls with the ICO on the dates listed below to address the topics raised in the RFIs, field questions in real-time, and/or to prepare for the in-person meetings.

<u>Conference Call Date</u>	<u>Topic of Discussion</u>
October 16, 2017	Discuss ICO Fourth Report
January 9, 2018	Request for information; Question & Answers
March 19, 2018	Site visit to Windsor, Ontario
March 21, 2018	Request for information; Question & Answers

DBS Observation 2: AT&T's DBS Program, established on April 22, 2016 as required under FCC Condition VI, is operational, robust and continues to expand.

After review and assessment of available information provided by AT&T in various formats, along with independent testing identified in this report, the ICO is satisfied that the AT&T DBS Program (*Access from AT&T*) website has been operational as of April 22, 2016, has adequate management support, and continues to be a resource for potential new enrollees.

AT&T's Fourth Report indicates the following:

- Eligible customers continue to be provisioned at the highest speed available at their location as set forth under the Condition, with applicable pricing provided.
- 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.

Fourth Report, pp. 32 – 33. The ICO has continued to verify these representations.

As described in previous reports, AT&T [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] for applicants to the *Access from AT&T* program, so that all qualifying prospective participants may obtain broadband service. Fifth Report, p. 36. In visiting the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] application-processing site in June 2017, the ICO observed applicants' credit information was not a factor in the decision-making process. Also, in the ICO's active and passive monitoring of complaints (regular searches of the Internet for *Access*-related complaints and receipt of complaints reported to the ICO by AT&T), we have not seen any issues pertaining to denial due to poor credit history.

As of December 31, 2017, AT&T reports providing discounted broadband service to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] households through the *Access from AT&T* program, distributed among all 21 states in the wireline footprint. Fifth Report, p. 37. We note this represents a 55 percent increase in the number of households over the course of the reporting period (July 1–December 31, 2017), evidence that the program continues to grow.

AT&T has established protocols and processes to determine if *Access from AT&T* applicants meet requirements regarding SNAP eligibility (or SSI in California).

- AT&T has continued its engagement of third-party vendor, [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] to conduct SNAP and other eligibility verification checks at the time of DBS Program application.
- Applicants are required to provide evidence of participation in SNAP (or SSI in California), and AT&T has maintained its expanded definition of acceptable documentation of participation to facilitate this aspect of the application process.

AT&T's DBS Team has noted that providing a copy of the SNAP card remains a challenge for some applicants. A significant number of application denials are based on illegible faxes, for example, despite the high-resolution equipment used at [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] to try to alleviate this problem (*i.e.*, high resolution of an illegible transmission is still illegible). [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] call center agents who spoke to the ICO team members were aware that faxed SNAP cards were problematic, and they reported trying to guide callers to use other submission methods (email of photos taken with cell phones, for example). The ICO notes that AT&T continues to work on improving the application experience for *Access from AT&T* customers.

AT&T has simplified its annual recertification process. Rather than require a renewal application as it had in the early stages of the program, AT&T is notifying current *Access from AT&T* customers that they will automatically be approved for the next year and AT&T will direct them to contact the company for alternative service only if they no longer participate in a qualifying benefit program. The ICO has confirmed through the call agent recording monitoring process that customers are no longer being instructed that they must recertify annually. In addition, the ICO confirmed that during the account set-up process, customer service representatives inform customers that, when necessary, a notification may be sent to them approximately thirty days in advance of their unique anniversary dates with specific instructions on what they need to do to continue their participation in the *Access from AT&T* program.

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The ICO reviewed a sample of billing statements from two *Access from AT&T* customers in each of the 21 states in AT&T's wireline footprint. AT&T generated the statements through a random selection process and provided the redacted, recent bills of 42 customers per quarter to the ICO for review. AT&T sent the current bill and up to three previous bills per customer. For the fourth quarter bills, AT&T included the first two months of bills for accounts which had been in place for more than four months. Below is a breakdown of the bills reviewed.

3rd Quarter 2017					
New/Existing Customer	Plan	Data Statement Included	Data Usage Included	Total Charges Included	Equipment Fees
35 - New	37 - \$10	175 - Yes	98 - Yes	175 - Yes	none
7 - Existing	5 - \$ 5				
42 - Total	42 - Total	175 - Total	98 - Total	175 - Total	

4th Quarter 2017					
New/Existing Customer	Plan	Data Statement Included	Data Usage Included	Total Charges Included	Equipment Fees
32 - New	32 - \$10	227 - Yes	203 - Yes	229 - Yes	1 - Yes
10 - Existing	10 - \$ 5				
42 - Total	42 - Total	227 - Total	203 - Total	229 - Total	

Among the 84 customers (42 per quarter) whose bills were reviewed by the ICO, 67 were on the \$10/month plan and 17 were on the \$5/month plan. Of the bills received, 67 were from customers new to AT&T, 17 were from existing customers who had switched to the *Access from AT&T* program. In total, we reviewed 404 individual statements; some customers had as few as one statement, and none more than six.

- Data statements were included in 402 billing statements.

- Data usage was included on 301 statements; those without data usage were primarily initial pro-rated single day bills where usage would not be expected.
- Total charges were specified on all 404 billing statements.
- Additional fees were seen on several statements reviewed in this period; most fees were for late payment or reinstatement of service, and were consistent with AT&T's billing policies, as they have been explained to the ICO. One was for equipment and the ICO will follow-up to be sure that the fee is removed according to the protocol explained in DBS Observation 9, below.
- The ICO identified questions pertaining to five billing statements from the fourth quarter of 2017, including the bill which listed an equipment fee. The ICO will ask for clarification and updates of these accounts. If there are matters that pertain to the conditions which are not sufficiently explained by AT&T, we will include them in the next report.

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

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

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

The ICO notes that Internet searches conducted during the reporting period have continued to bring up links to the *Access from AT&T* website or to information about the program, which is an (imperfect) indication that these common terms are being searched. For

example, the ICO has consistently found that searches for the terms “discount internet” or “low cost internet” bring up the *Access from AT&T* program within the first five listings. Two terms which previously generated a page-one result for the *Access from AT&T* program, “Discount broadband” and “SNAP program,” did not do so when searched in March 2018, but “SNAP internet” did. As noted in the previous report, the ICO understands that AT&T does not control the search results; they are offered merely as some evidence that the program continues to be the subject of searches by members of the public.

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

The Condition pertaining to training requires AT&T to educate the Customer Service Representatives “prior to commencement of the program.” The numbers listed below (included in the previous report), 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]

[END HIGHLY CONFIDENTIAL INFORMATION] staff who were likely to have such interactions, completed such training; and

- **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of the employees working on the *Access from AT&T* program matter for **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** the third-party vendor engaged by AT&T to handle the application review process, completed such training.
- Dedicated DBS Program Customer Service Centers – All customer service agents associated with the *Access from AT&T* program, including third-party vendor representatives, were trained prior to program launch on April 22, 2016. Ongoing training programs remain in place for new hires.
 - AT&T provided the names of the individual employees of **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** who received training in the *Access from AT&T* program website.
 - The ICO received and reviewed copies of these training materials.
 - Training comprises slides, hand-outs, interactive sessions, problem-solving, call scenarios, and hands-on side-by-side training with experienced agents.
 - Average training time for new call center agents at **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** and the *Access from AT&T* program is covered during that time.

AT&T previously reported that internal training and awareness programs were established for its customer service and other representatives who may have interactions with customers about the DBS Program. The ICO received and reviewed copies of AT&T's training materials and found that they clearly described program benefits, restrictions, application processes, and other Condition requirements. AT&T reports that it continues to offer “refresher training” to its Customer Service Representatives, so they will maintain awareness of the program and know how to connect individuals interested in low-cost internet with the agents at the dedicated call centers who can be most helpful.

The ICO conducted the following activities to confirm that, although no longer a requirement, training of Customer Service Representatives has continued:

- Sent two people to Lubbock, TX, 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;
- Sent three people to Windsor, Ontario, 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 142 call-center interactions (described in more detail below).

The **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** managers interviewed during the ICO's monitoring visit of February 28, 2018, understood the purpose and the practical aspects of the DBS Program. The call agents who participated in the focus groups (participants were selected by the ICO) demonstrated an even deeper understanding of the DBS Program, and said they were proud to assist customers in enrolling. The call agents told the ICO representatives that their training was sufficient, and several agents commented that it had improved over time. They said that, in addition to their initial training, they also received ongoing training in the form of updates to their "flow" process, huddles, team meetings and personal coaching.

AT&T added **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** as a call center for the *Access from AT&T* program in November 2017. **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** was providing call center services for other AT&T programs and, according to the managers interviewed there and

the call center agents who participated in the focus groups, the “First Wave” team of agents were all transferred from within [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] and were individuals who had experience serving AT&T customers and were identified for their skills in customer service. The First Wave team received [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] of training. The subsequent new hires received [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] Although the focus group participants had suggestions for improving the training, they all said they felt they received adequate information about the program. Like the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] agents, the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] agents were proud of their work in the *Access from AT&T* program. They reported tailoring the level of assistance they offered to customers to the perceived level of customer sophistication with technological tools. For example, one agent said she typically asks callers if they have a smart phone and if the caller does not know what that is, the agent then recommends completing an application on paper/ by mail. By comparison, if a caller says s/he has an iPhone or Android, the agent is more likely to suggest completing the application online and to direct the caller to the *Access from AT&T* site. The ICO perceived this tailoring as a

commitment on the part of the agents to seeing that the customers are successful in completing their applications.

The ICO received recordings of 150 calls made to AT&T's third-party call center agents in Tucson, AZ; Lubbock, TX; and Canton, OH, from the period of August 2017 – January 2018. Eight of the calls were in Spanish, which the ICO has yet to review. AT&T redacted from the recordings, all personal, identifiable information, consistent with FCC requirements. As a means of determining the adequacy of the training of the call agents, who act as customer service representatives on AT&T's behalf, the ICO DBS Team evaluated whether the agents' explanations of program eligibility requirements and restrictions were good, fair or poor. The ICO defined "good" to mean the agent met or exceeded expectations, "fair" to mean the agent met some or most of the expectations, and "poor" to mean the agent met few or none of the expectations. The expectations were based on the call center representative's ability to accurately describe how the customer can obtain the DBS Program discount, the DBS Program eligibility requirements, the restrictions, and the certification and recertification process, as well as the representative's general knowledge of the *Access from AT&T* program. In prior review periods, the ICO noted that many calls in the sample sets were either unrelated to the *Access from AT&T* program or were inaudible. On February 1, 2018, the ICO team asked AT&T if it would be possible to weed out (a) inaudible calls and (b) calls unrelated to the *Access from AT&T* program. A new process for call review was started with the January 2018 sample set, of which all calls were both audible and related to the *Access from AT&T* program. AT&T indicated that the new process yielded 22 calls that were rejected; summary information about the 22 was provided to the ICO. If the new process continues to yield a high number of

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unrelated and/or inaudible calls, the ICO may consider listening to some of the rejected calls to ascertain that they are, in fact, unrelated or inaudible.

	Number of calls reviewed	Call interaction seemed likely to lead to successful outcome	There was an explanation of eligibility	There was an explanation of restrictions	Other comments
Aug. 2017	22	Not evaluated	10 - good or fair	12 - good or fair	5 calls: unrelated to Access. 1 call: dropped.
Sept. 2017	24	21 - good or fair 3 - n/a	17 - good or fair	16 - good or fair	3 calls: unrelated to Access. 1 call: dropped. Several: poor sound.
Oct. 2017	25	16 - good or fair 5 - poor 4 - n/a	12 - good or fair	17 - good or fair 2 - poor	3 calls: dropped. 1 call: very poor sound.
Nov. 2017	25	19 - good or fair 2 - poor 4 - n/a	12 - good or fair 2 - poor	16 - good or fair 3 - poor	2 calls: dropped. 1 call: very poor sound. 2 calls: unrelated to Access.
Dec. 2017	24	18 - good or fair 1 - poor 3 - n/a 2 - unknown	8 - good or fair	16 - good or fair	1 call: dropped.
Jan. 2018	22	20 - good or fair 2 - unknown	18 - good or fair	21 - good or fair	1 call: dropped.

Note: If the call addressed eligibility or restrictions, the ICO evaluated the quality of the explanations given; if the call did not address those matters, the ICO did not rate it in that category.

Some trends were noted among the calls reviewed. More callers were found to be inquiring about existing service than in the past, *e.g.*, whether they could continue to get the *Access from AT&T* service at another location or at another speed/price point. In the March set,

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] The sophistication of information exchange with callers has increased; for example, [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] because these can complicate installation and require technicians' on-site assistance. Understanding this type of issue, and then being able to explain it to customers and proactively problem-solve (*e.g.*, set up a technician installation), reflects a high level of training and understanding among the call agents.

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

- [BEGIN CONFIDENTIAL INFORMATION]

CONFIDENTIAL INFORMATION]

[END

The ICO heard instances of solid customer service in this sample set and found that the overall level of knowledge exhibited by the call agents was high. **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]

In the previous report, the ICO noted that AT&T was going to identify changes to its processes in real time (or close to it) so the call review process would accurately reflect what the agents were being instructed to do. AT&T gave timely notice that *Access from AT&T* applicants would receive denials via email, and the ICO found that agents explained this to callers promptly after the change was made.

DBS Observation 5: AT&T is on target to meet or exceed the general marketing and targeted outreach required under Condition VI for the current reporting period.

AT&T has reported that the required \$15 million threshold value related to promotional activities, including public service announcements, was met and exceeded for the first year of the program and is on schedule to be spent in the second full year. AT&T tracks the \$15 million expenditure value on an annual basis coinciding with the compliance conditions; the expenditures for the first such year concluded on April 21, 2017. As reported in the ICO's Fourth Report, AT&T provided detailed information indicating that as of April 21, 2017, the company spent more than **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] in specific media areas, such as spot television, spot radio, network radio, newspaper, social media, Hispanic spot television, Hispanic spot radio, DirecTV Ad Value, and out-of-home media. A portion of the spot television component comprised advertising purchases on DirecTV, which AT&T stated they purchased at current market rates. For the first full year, and for the second year through December 2017, the ICO has received copies of invoices submitted via AT&T's invoice portal, and spreadsheets detailing check numbers, dates and amounts.

In the period since the previous report, AT&T sent the ICO updated figures which represent after-the-fact reconciling of accounts based on actual number of advertisements run in specific periods. The reconciled amount is [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] which is [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] less than originally stated. The ICO was satisfied with the explanation of the reconciliation process and satisfied that the amount, although slightly lower than originally stated by AT&T, still exceeded the required spend for the first year. The materials provided to the ICO for the second year correspond with the figures in AT&T's most recent report; we will look for the reconciled figures when the second reporting year is complete.

For the purposes of assessing AT&T's compliance with this spending condition, the ICO has asked for and received print advertisement copy, as well as recordings of radio and television advertisements. The ICO's team members have seen the television advertisements and have heard radio advertisements run "live" and noted they were not confined to after-midnight or other off-peak time slots. The ICO has asked for additional materials relative to demonstration

of the advertising purchases (*e.g.*, actual newspaper clippings), which the ICO has learned are not kept by AT&T in the ordinary course of its business. However, AT&T is working with the ICO to determine whether there are options which would serve a similar purpose. The ICO will continue to evaluate the monetary value of AT&T's DBS promotions, with a focus on reviewing invoices and equivalent records.

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

AT&T reports that, in conjunction with outreach organizations Connected Nation and EveryoneOn, it has contacted more than 1,000 local and national organizations. Fifth Report, p. 40 & Ex. 8. Many of the organizations disseminating information about the DBS Program use signs, fliers, and hand-outs to reach their constituents. In addition, many are also communicating through social media (*e.g.*, Facebook and Twitter), websites, and electronic newsletters.

For purposes of confirming the 20-organization requirement was met, the ICO assumed that organizations which were promoting the program online received such marketing information from AT&T, Connected Nation, or EveryoneOn. The ICO did an Internet search for key terms such as, "Access from AT&T," "partner organization," "Facebook" and "low cost Internet." The searches brought up live links to more than 20 organizations which have promoted the *Access from AT&T* program actively since July 2017. One group, the national Parent Teacher Association (PTA) disseminated information broadly in July 2017 as part of its "Close the Homework Gap" initiative, and the postings were easily found on Facebook and Twitter.

In addition to the key-word searches, the ICO navigated to 40 Internet links, selected at random from the list provided by AT&T in Exhibit 8 of its most recent report. The links represented organizations that have agreed to partner with AT&T to promote its *Access from AT&T* program. While we were able to confirm that the 40 organizations are valid and that they serve minority, senior, and/or veteran populations, in all but five of the organization websites, we did not find mention of the *Access from AT&T* program. This finding does not indicate that the organizations are not promoting the Access from AT&T program, but only that they may be doing so in some format other than via their website: through speakers, fliers, hand-outs, or other non-Internet-based means. As the ICO has noted in previous reporting, our activities relative to this condition are intended to confirm that AT&T has met the threshold, and not in any way call into question the figures put forth by AT&T.

AT&T provided the ICO with a list of 23 industry conferences in 2017 at which there would be an opportunity for attendees to learn about the *Access from AT&T* program (*e.g.*, at an AT&T-sponsored booth). Twelve of these events had already been conducted by the time the ICO submitted its Fourth Report and the remaining 11 were to finish by December 1, 2017. As indicated in the Fourth Report, the ICO verified that AT&T was affiliated with each of the industry conferences.

AT&T provided the ICO with copies of collateral materials describing the *Access from AT&T* program in a range of languages. The materials we received were available in Arabic, Chinese, English, Haitian Creole, Korean, Spanish and Vietnamese.

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, as of July 17, 2017, the company sent letters to all public-school districts within the 21-state wireline footprint with information about the *Access from AT&T* program, asking that the information be placed in the National School Lunch Program packets, and giving examples of how a district could help promote the DBS program. AT&T indicates it sent follow-up email to all the school administrators whose email addresses were available to AT&T. AT&T's partner/vendor, EveryoneOn, did additional follow-up with 840 schools and school districts in this reporting period alone (Fifth Report, p. 48) and that 114 schools or school districts agreed to distributed program materials. Previously, the ICO has asked for and reviewed the list of individuals who were sent information about the *Access from AT&T* program and we were able to independently verify through Internet searches that some school administrators had forwarded along information, collateral, or both. In this reporting period, the ICO's Internet searches did not turn up independent verification that any administrators had received or forwarded information about the Access from AT&T program for the school year which commenced in August/September of 2017. We have, therefore, asked AT&T for contact information for individuals at EveryoneOn who can verify that the described outreach happened as reported.

The ICO previously reviewed the collateral materials that were sent to school professionals and found them to be clear and accurate. The materials continue to be available in Arabic, Chinese, English, Haitian Creole, Korean, Spanish and Vietnamese. The electronic versions have links which help to facilitate next steps.

As reported above, relative to its work with national organizations, AT&T is leveraging its relationships with groups such as the National PTA, the American School Counselor Association, and the American Counseling Association as another way to spread information about the *Access from AT&T* program to school professionals. The ICO reviewed the webinar hosted by the National PTA about closing the homework divide via the *Access from AT&T* program, and note that it remains online as a continuing resource.

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

AT&T has maintained the two numbers dedicated to the *Access from AT&T* program. English-speakers can call: (855) 220- 5211, and Spanish-speaking callers can get information at: (855) 220-5225. The call centers are managed by [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] If someone calls who speaks another language, the call agents are instructed to patch in a translator through AT&T's language assistance program. As noted above, the ICO has established a process to review 20 calls per month made to the dedicated line. To receive 20 relevant calls per month (accounting for the fact that some are only tangentially related or may be partially inaudible), the ICO has asked for recordings of 25 calls, selected at random by AT&T and redacted of all personal, identifiable information, then posted on the secure, external website.

In this review period, the ICO reviewed 142 calls in English. Eight calls in the sample set were in Spanish; these have not yet been reviewed by the ICO. The ICO found that call agents in this review period were knowledgeable and helpful.

The interviews conducted in this review period with [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] managers and the focus groups with call agents revealed a potential issue for non-English-speaking callers. [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] We specifically asked the call agents at [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] who participated in the focus groups about [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] The call agents said they did not believe transfers [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] and they were not reluctant to transfer calls or bring on a translator.

RECOMMENDATION: We recommend that AT&T work with [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] do not discourage appropriate transfers of calls to language-appropriate agents.

AT&T DBS Team members mentioned, and the call agents at [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]

confirmed, that a January 23, 2018 Facebook post by an *Access* customer urging people to tell their friends about the *Access* program “went viral” and has since been shared more than 100,000 times. The post led to a large, unexpected increase in calls to the *Access from AT&T* toll-free number from individuals seeking information or hoping to apply for the program. Because the Facebook post was from an individual *Access* customer rather than from AT&T, it did not include important information, such as the availability of the program only in the 21 state AT&T wireline footprint, or the specific requirement that applicants be participants in SNAP or California SSI. A significant percentage of inquiry calls during the period after January 23, 2018, were from individuals who had seen the Facebook post but were outside the 21 states served by the *Access* program, or were otherwise ineligible to participate in the program. The surge in calls strained the resources of [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] and the long wait times for callers during this time period, reported at [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] or more, may have discouraged some eligible participants. AT&T has brought on another call center, managed by [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] and the call-in times are back to normal levels. (A call made on April 5, 2018, for example, went through to the agent with no delay.)

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

In February 2018, the ICO was notified by AT&T that AT&T’s investigation of a customer complaint [BEGIN CONFIDENTIAL INFORMATION]

[END

CONFIDENTIAL INFORMATION] The timing of this report was such that the ICO was not able to confirm the resolution of this issue for the affected *Access from AT&T* customers, but it will be an action item for the next reporting period. The ICO notes that AT&T’s billing review process is consistent with the recommendation to “incorporate review of DBS equipment billing as part of its quality assurance program to see if there is a potential weakness in the set-up process that allows ... errors to occur.” (Fourth Report, p. 64)

Prior to receiving the details of the billing issue noted above, the ICO requested AT&T’s “documented process (Methods and Procedure) associated with the methodology to identify equipment billing errors associated with the *Access from AT&T* program, as well as any reports generated as a result of reviewing Access-related equipment billing errors.” AT&T sent the ICO its internal process controls, published in the company’s **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] In response to the request for any reports generated as a result of reviewing *Access*-related equipment billing errors, AT&T provided a report from October 2017 which identified **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]

In addition to the customer-specific account reviews described for correcting prior billing errors, AT&T has maintained **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] with the ICO and explained that the *Access from AT&T* program's consistently high level of success has resulted in a "raising of the bar," that is, higher

expectations. The ICO continues to be satisfied that AT&T is using the information it gathers through both the complaint and the quality assurance processes to improve the DBS program.

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

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

* * *

The ICO again notes that AT&T's DBS Team is well organized, cooperative, responsive to questions, and committed to the success of the DBS Program. Based on the reports we have received and our independent assessment of the actions taken by AT&T, the ICO finds that AT&T is in compliance with the Conditions pertaining to the Discount Broadband Services Program.

OBSERVATIONS: COMPLAINT REPORTING PROCESS

The ICO 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 ensure that AT&T adequately investigated and addressed complaints received through various channels that relate to possible violations of the Merger Conditions. The second was to give the ICO greater visibility into potential violations and the Company's remediation efforts, if required.

An additional level of complaint monitoring by the ICO, is the regular search of the internet for any indication of a Merger Condition violation. The ICO conducts keyword searches that aim to find any information related to the AT&T/DirecTV merger. Keyword searches include AT&T or DirecTV, as well as several combinations of merger condition terms. Merger

condition terms include, but are not limited to: “FTTP expansion,” “discrimination,” “net neutrality,” “Snap,” “Access,” “low income cable/internet,” “E-Rate,” and “schools and libraries.” The results often yield news articles, online consumer forums, and various online publications relating to AT&T’s business activities. The ICO conducts the searches twice per week. To facilitate the timely consideration of new information, the searches are conducted at the beginning and the end of each week.

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

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

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

Complaints presented evidence of a violation of the Merger Conditions.

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

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

Identifying and Resolving Complaints Alleging a Merger Condition Violation

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

- **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL

INFORMATION]

- During the third reporting period AT&T and the ICO agreed that for complaints identified as Merger-related by OOP/EA but found by the Project Management Team not to allege a violation, AT&T will 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 those 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 1 October – 31 December to the ICO not later than February 15. Additionally, AT&T agreed to notify the ICO promptly of any allegations, lawsuits, or regulatory filings, which credibly and directly relate to the Merger Conditions.

Providing Information About Complaints to the ICO

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

AT&T also provides the ICO with a summary log listing samples (if more there are more than 20 complaints falling in the category) or all complaints received during the reporting period that were referred to the Merger Conditions Project Management Team under AT&T's internal reporting process, where the Project Management Team concluded the complaint did not allege a violation of a Merger Condition. The summary log includes, among other things, the nature of

the complaint and the basis for the Project Management Team's determination that the complaint did not allege a Merger Condition violation. AT&T has agreed to make available to the ICO copies of the actual written complaints (with appropriate redactions, if needed) upon request.

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

AT&T provided the complaint information to the ICO in accordance with the process set forth above. The quarterly summary logs contained a listing of [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] complaints received during the reporting period that were referred to the Project Management Team under the reporting process identified above, but that the team concluded did not allege a violation of a Merger Condition. AT&T did not provide any complaints to the ICO during the reporting period that the Project Management Team determined alleged a Merger Condition violation (either directly or indirectly). The actual written complaints contained in the summary logs were also posted (with necessary redactions) to the extranet site of AT&T's outside counsel.

Upon reviewing the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] complaints AT&T provided, the ICO generally concurs with [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] of Company's conclusions regarding the complaints received during this reporting period. All [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] complaints related to the *Access from AT&T* programs. The ICO disagreed with AT&T's conclusions relating to Case [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] In those [BEGIN CONFIDENTIAL INFORMATION] [END

CONFIDENTIAL INFORMATION] matters, AT&T concluded the complaints “do not allege merger condition violation.” We believe those **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] do allege a violation of the Merger Condition that “[q]ualifying households shall not be required to pay any installation or modem charges or fees in order to participate in the Discounted Broadband Services Program.” App. B, VI.2.e.

- **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]

As it relates to the set of complaints provided by AT&T that did not expressly invoke a violation of the Merger Conditions, the ICO notes:

- **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]

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

RECOMMENDATION:

As set forth in the ICO's Fourth Report, AT&T should base criteria for assessing whether a complaint directly or indirectly alleges a violation of a Merger Condition, and reporting the results of that assessment to the ICO, on the express requirements set forth in the Merger Order (*e.g.*, Qualifying households shall not be required to pay any installation or modem charges or fees in order to participate in the Discounted Broadband Services Program. Merger Order, App. B.VI.2.(e)).

CONCLUSION

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