

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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| In the Matter of |) | |
| |) | |
| High-Cost Universal Service Support |) | WC Docket No. 05-337 |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Services |) | |

COMMENTS OF AT&T INC.

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April 17, 2008

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I. INTRODUCTION AND SUMMARY

We live in the midst of the greatest revolution in communications technology in history. In little more than a decade, with computing devices of astonishing power and flexibility, we have become joined together by networks comprised of threads of glass and the ether itself. With those devices and over those networks we can send data, text, sound, and images in every possible combination, and to or from an infinite number of locations. But not all locations. While Moore's Law and Metcalfe's Law have combined to make possible what was previously unimaginable, they have not overcome the laws of supply and demand that, in many cases, can make it unprofitable to deploy costly network facilities in sparsely populated areas.

In these comments, AT&T proposes a framework to encourage investment in and deployment of advanced networks to areas that might otherwise miss out on this revolution. In so doing, AT&T is responding to the demands of policy makers who have articulated the desire to bring advanced broadband and mobility services to all citizens and to every corner and byway

of the country.¹ This ambitious goal can only be achieved if policy makers learn the right lessons from past successes and failures. They must also be prepared to sweep away the vestiges of those universal service support regimes and mechanisms that stand in the way of their goal.² The access charge regime, which continues to be the central pillar of support for plain old telephone service (POTS) infrastructure and affordable basic local service (despite Congress's mandate in section 254 that the Commission and the states eliminate implicit subsidies), is one such mechanism that now must be addressed in order to remove disincentives to the provision of broadband services.³

The existing high-cost support mechanisms were never designed to encourage the universal deployment of broadband services by either fixed network or mobile wireless networks. Rather, they were designed to maintain affordable POTS service over traditional narrowband networks. While these mechanisms succeeded in encouraging widespread deployment of such networks by state-sanctioned monopoly service providers, these mechanisms – the non-rural mechanism in particular – have failed to achieve even this goal in a competitive environment in which new entrants can be allowed to cherry-pick the most lucrative customers, leaving incumbents to serve high-cost customers without the implicit subsidies on which universal service traditionally has been based.⁴ Unsurprisingly, therefore, the existing

¹ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice (dated Sept. 6, 2007).

² These include both explicit and implicit support mechanisms.

³ Moreover, the mechanisms that AT&T proposed could be used to transition to a single termination rate for all traffic, including VoIP traffic. The Commission has yet to extend the jurisdictional classification of the *Vonage Order* to non-nomadic VoIP, at least in part, because of the difficult issues related to access charges.

⁴ AT&T notes in this regard that its proposed framework, discussed herein, assumes that the Commission and other policy makers intend to shift the focus of universal service to broadband deployment. To the extent that the Commission maintains the status quo (*i.e.*, retains support for the POTS network and

mechanisms have not encouraged universal broadband deployment. Indeed, under the Commission's current rules, support today is not explicitly available for broadband services at all.⁵

Promoting broadband deployment in high-cost areas will require a shift in focus to universal service support policies and mechanisms that will deliver the benefits of a robust broadband infrastructure to all Americans, regardless of where they live, work, or travel. To successfully accomplish this important policy objective, AT&T hereby proposes a plan that offers incentives that are structured specifically to drive broadband infrastructure deployment and near-term availability of broadband Internet access and VoIP services to unserved areas. This includes effectively managing the transition from today's universal service mechanisms to new tools that support deployment. AT&T's plan immediately restructures the current high-cost support mechanisms to recognize the unique nature of fixed-network technologies and mobile wireless networks.

In particular, AT&T proposes that the Commission transition those mechanisms to a *Broadband Incentive Fund* (for fixed networks) and an *Advanced Mobility Fund* (for mobile wireless networks), which will collectively support the voluntary deployment and offering of broadband service in unserved areas. The plan's defining characteristics are cost control, accountability, state participation, and infrastructure build-out in unserved areas, the very guiding principles recently identified by the Joint Board.

Policy makers must recognize that this revolution in communications technology is rapidly making past business models and their accompanying regulatory superstructure obsolete. In particular, the business model that piles "long distance" service on top of "basic local

narrowband services as the central goal of universal service policies), it will have to complete fundamental reform consistent with the principles of section 254(b), as AT&T previously has advocated.
⁵ 47 C.F.R. § 54.101(a).

exchange service,” and on which the current universal service support mechanisms are based, is increasingly anachronistic. Requiring network providers to maintain this business model via carrier of last resort (COLR) requirements and irrational intercarrier compensation mechanisms will maintain significant barriers to the goal of broadband investment and deployment by forcing providers to divert resources to maintain an increasingly inefficient and obsolete network. Without the flexibility to make their business models consistent with what consumers want and what technology can deliver, network providers will invest less in advanced technology and may temper their marketing efforts to avoid causing a complete collapse of a business model that they might otherwise not try to maintain.

Under the new Broadband Incentive Fund, the Commission would immediately begin providing project-based funding for investment in infrastructure necessary to provide fixed-location broadband internet access services in unserved areas. Using an auction-like application process, states and the Commission would combine their expertise to select a fixed location provider (wireline and fixed wireless) to deploy and offer the supported broadband Internet access service (*e.g.*, up to 1.5 mbps downstream) for a specified period (*e.g.*, seven years). AT&T recommends that this fund receive an infusion of new dollars in an amount to be determined by the Commission that would depend on both the parameters of the broadband service to be offered (the higher the transmission speed, for example, the higher the cost is likely to be) and the speed with which that service is deployed (the more aggressive the deployment schedule, the greater the need for new dollars). This new money would be supplemented by transitioning funding from the current high-cost mechanisms to the Broadband Incentive Fund.

Operating in parallel to the broadband mechanism, the legacy high-cost mechanisms would direct support solely to designated carriers of last resort (COLR) for as long as they

remain regulated at the state level. Once a state completes full rate deregulation, funding provided to price cap carriers in that state under the legacy high-cost support mechanism would shift to the Broadband Incentive Fund for disbursement in that state. Once the Commission's broadband deployment objectives are achieved in that state, funding would be released for projects in other states.

Recognizing the unique characteristics of wireless technologies, AT&T proposes a separate and distinct Advanced Mobility Fund that would immediately make project-based funding available for the deployment of wireless broadband and voice capabilities in unserved areas. Utilizing an application process similar to the Broadband Incentive Fund, wireless providers would be selected to provide the supported service for a specified period. AT&T recommends that this fund receive an infusion of new money, the amount of which would be determined by the Commission, but also suggests an aggressive and systematic transition mechanism to shift all legacy wireless funding to the Advanced Mobility fund. Upon adoption of this plan, legacy funding going to wireless competitive eligible telecommunications carriers (ETCs) would be capped (if it is not already capped) and, beginning one year after implementation, 20 percent of support per year would automatically be transitioned to the Advanced Mobility Fund. All transitioned money would be earmarked for disbursement to wireless broadband projects in the state from which the funding originated until that state no longer had unserved areas.

In addition to these two new funding mechanisms, AT&T proposes that the Commission undertake several steps to encourage rate of return (ROR) carriers to deploy and market broadband services. ROR incumbent local exchange carriers (ILECs) already have made significant progress in the deployment of broadband, however, many may have been reluctant to

offer and aggressively market broadband for fear that such services could significantly reduce access charge revenues. To address these issues, AT&T suggests that the Commission, among other things, affirm that ILECs can use current high-cost funding for broadband investment and establish an access replacement mechanism to enable ILECs to lower intrastate access charges to interstate levels. Once the pressure to maintain access revenues is eased, these carriers will have far more incentive to deploy and market broadband services. In addition to these incentives, under AT&T's framework, ROR ILECs would have to demonstrate that they have made broadband substantially available in their service area or risk having their USF support capped or their service area opened to other carriers under the Broadband Incentive Fund application process.

This proposal represents a leap forward building on AT&T's broadband and mobility pilot proposed last year, providing a roadmap to transition all Americans from POTS to 21st century broadband.

II. BACKGROUND

The revolution in communications technology described above presents policy makers concerned about the goals of section 254 with a thorny set of problems. In some ways, the simplest solution might be to quarantine the comparability objectives of the Act to narrowband voice services. AT&T does not in these comments presume to advise policy makers on the fundamental decision of whether to pursue the goal of bringing advanced fixed and mobile broadband services to high-cost areas. However, given a clear desire on the part of many policy makers to pursue that goal, AT&T sets out in these comments a framework about how to rationally pursue that goal. Those proposals arise from a particular understanding of the problem of universal service in this time of rapid technological and market change.

Our first premise is that the combination of broadband and Internet Protocol (IP) has unleashed a profound change in the communications business model. The narrowband world of the 20th century was characterized by a network optimized to provide a single service, POTS. Thus, the business model for that network was inevitably tied to that single service. Broadband IP networks are, by comparison, infinitely flexible in the services (or applications) that can run over them. This flexibility tends to drive the business model for broadband away from particular applications. Indeed, the trend is toward a model in which applications are provided on an optional basis and often at little or no incremental cost to the customer.

Second, this tendency toward a business model built on broadband connectivity as the core service is in conflict with existing universal service mechanisms. Those mechanisms, including COLR requirements, intercarrier compensation regimes, and state and federal explicit subsidy mechanisms focus on the offering of a particular service (POTS telephony) in a particular way (flat-rated “local” plus usage-sensitive “access/long distance”). As broadband penetration rises, these legacy universal service mechanisms and the POTS business model upon which they are based become increasingly will unsustainable. Switched access demand will inexorably decline to a level close to zero. Demand for, and thus the policy rationale to require or support, standalone, fixed-location voice service will also decline to a very low level.

Third, ILECs of all sizes may be in the best position to provide broadband because of the reach of their existing networks in high-cost areas. These same carriers, however, have significant disincentives to invest in broadband because they bear the burdens associated with COLR requirements and rate regulations, as well as face instability in their compensation and subsidy mechanisms.

Fourth, the POTS business model and its associated universal service support regime constitute a barrier to investment in broadband networks in high-cost areas that depend on rapidly evaporating implicit subsidies and explicit support flows. The growing instability of that business model presents both a risk and an opportunity to policy makers focused on broadband. The risk is that the growing subsidy needed to maintain narrowband voice networks will drain funds that might otherwise be available to promote broadband investment and deployment. The opportunity is that the declining viability of the POTS business model makes it feasible to provide a measured transition to the broadband business model.

Fifth, the relatively rapid declines in usage of the POTS network as compared to the less rapid (though consistent and steep) access line loss, makes it possible to temporarily extend the viability of the POTS business model by reforming the usage side of the equation, *i.e.*, intercarrier compensation. AT&T has consistently supported comprehensive intercarrier compensation reform. In these comments AT&T proposes that, at a minimum, policy makers should unify interstate and intrastate terminating access rates at or below the current level of interstate rates.

III. DISCUSSION

Consistent with the Joint Board's recommendation, AT&T urges the Commission to establish two new funds, a Broadband Incentive Fund and an Advanced Mobility Fund, and transition funding from the existing high-cost support mechanisms to these funds. The purpose of the Broadband Incentive Fund will be to provide incentives for broadband deployment in areas where Internet access service meeting the definition of "advanced telecommunications capability"⁶ is not available. The purpose of the Advanced Mobility Fund is to encourage mobile wireless broadband deployment in areas where such service is not available. Because the

⁶ See 1996 Act, § 706(c)(1).

mechanics and many of the details of these funds are similar or identical, AT&T will discuss these new funds together but will highlight and explain their differences, where appropriate. Critically, AT&T also proposes the means by which legacy high-cost funding should transition to these two new funds.

AT&T also recommends that the Commission establish a Lifeline-only ETC designation to ensure that, as support becomes targeted to provide broadband and advanced mobility services to unserved areas, low-income consumers continue to have access to affordable voice service regardless of where they live. AT&T further encourages the Commission to establish an access replacement mechanism to enable ILECs to lower intrastate access charges to interstate levels. Finally, AT&T provides its comments on the issues raised in the three Notices of Proposed Rulemaking (NPRMs).

Policy makers have increasingly advocated shifting the focus of the Commission's high-cost support mechanisms to broadband deployment – particularly in unserved areas. AT&T's proposal is designed to achieve that goal. If however, the Commission determines that high-cost support should continue to explicitly fund only POTS, the Commission must recognize that, as AT&T has articulated in several Commission and court proceedings, the current high-cost mechanisms will not ensure that consumers in rural and high-cost areas continue to receive such services in today's increasingly robustly competitive marketplace, consistent with congressional objectives in section 254(b) of the Act.

A. Establishment of New Broadband Funds

1. Funding

To the extent that the Commission shifts the focus of federal universal service support to broadband deployment, AT&T recommends that all support currently received by price cap and

wireless ETCs be transitioned to the two new funds, which should be designed to provide project-based funding to construct new facilities to provide broadband Internet access service and voice communications capability in unserved areas. Wireline legacy support should be transitioned to the Broadband Incentive Fund and mobile wireless legacy support should be transitioned to the Advanced Mobility Fund, according to the processes and timelines discussed in further detail below. Each new fund should also receive an infusion of new dollars in amounts to be determined by the Commission, at least during the early years of the transition, to jump start broadband deployment in unserved areas. In determining the appropriate levels of funding for each program, AT&T suggests that the Commission consider factors such as how quickly it wants broadband service deployed to unserved areas and the attributes and parameters of the supported service (*e.g.*, minimum data speeds). In its *Recommended Decision*, the Joint Board suggested that about \$1 billion of funding per year be distributed through the new mobility fund (for mobile wireless voice but not mobile broadband services).⁷ The Joint Board also suggested \$300 million for its proposed new broadband fund, but some deemed this amount inadequate.⁸ The Commission should weigh these and other recommendations in light of national broadband service and deployment goals.

2. Eligible Participants, Supported Services, and Support Payments

Participation in both the Broadband Incentive Fund and the Advanced Mobility Fund should be voluntary, with fixed network (Broadband Incentive Fund) and wireless network (Advanced Mobility Fund) applicants submitting applications to the state commission or the

⁷ *High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, para. 28 (2007) (*Recommended Decision*).

⁸ *Id.* at para. 29. See also Statement of Commission Michael J. Copps to the *Recommended Decision* (“Instead of bold recommendations to implement our historic decision, the Joint Board only suggests that \$300 million of federal dollars be dedicated to this challenge.”).

Commission for project-based funding to construct new broadband facilities in unserved areas.⁹ An “unserved area” is one in which broadband Internet access, as defined separately below for each fund, is not available.

In its application for one-time funding to construct broadband facilities, an applicant should be required to identify the support it believes will be necessary to deploy and maintain the infrastructure necessary to provide the supported services in the designated area for the service term. If selected, the applicant must commit to making those services substantially available throughout that designated area within a two-year period and then continuing to make those services available for five years thereafter. An applicant should not have to be an existing ETC, but if it is selected as a winning applicant, the Commission would have to designate the applicant as an ETC participating in the Broadband Incentive Fund or the Advanced Mobility Fund before the applicant could receive federal support.¹⁰ USAC will disburse broadband funding to the winning applicant through a one-time payment or appropriately prorated payments.

a. Broadband Incentive Fund

The Broadband Incentive Fund should provide funding for investment in and deployment of fixed network technologies and infrastructure (including those using fixed wireless technology) capable of providing broadband Internet access service consistent with Commission-defined parameters (*i.e.*, the supported service). These parameters should include providing

⁹ Applicants are also required to participate in the Commission’s Lifeline and Link-Up programs, the funding for which is provided by those programs. *See* 47 C.F.R. §§ 54.400 *et seq.*

¹⁰ In its *Reverse Auctions NPRM*, the Commission tentatively concluded that participants in an auction must already be ETCs based on section 254(e)’s requirement that only ETCs designated under section 214(e) “shall be eligible to receive” universal service support. *High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495, para. 12 (2008) (*Reverse Auctions NPRM*). AT&T believes that the requirements of section 254(e) are satisfied so long as the Commission designates an applicant upon selecting its application and before the applicant receives support.

users with advanced telecommunications capability, as defined in section 706 of the Telecommunications Act of 1996,¹¹ and any other pre-defined criteria specified by the Commission, such as minimum downstream transmission capability (*e.g.*, an advertised downstream transmission capability of up to 1.5 mbps). Applicants seeking funding through the Broadband Incentive Fund would have to provide not only the supported service but also access to voice communications capabilities and Lifeline service.¹²

These voice communications capabilities should not necessarily replicate today's universal service definition. Rather, the Commission should consider whether streamlined voice functionality requirements for broadband funding recipients are appropriate because market realities and technological advances may have rendered it unnecessary to continue to mandate all of the existing nine supported voice features in the existing universal service definition.¹³ At a minimum, however, the core voice functionalities that the Commission should require broadband grant recipients to provide should include access to and from the public switched telephone network (PSTN), access to emergency services, and access to telecommunications relay service (TRS) by dialing 711.

b. Advanced Mobility Fund

If selected for funding under this new fund, an applicant would be required to provide mobile wireless broadband Internet access service and mobile wireless voice communications capabilities in the unserved area. More specifically, the applicant must provide users with “advanced telecommunications capability” as defined in section 706 of the Act and consistent

¹¹ 47 U.S.C. § 157 nt.

¹² As discussed herein, a provider's “Lifeline service” obligation is the obligation to participate in the Commission's low-income programs set forth in section 54.400 *et seq.* of its rules.

¹³ 47 C.F.R. § 54.101(a).

with the Commission's current broadband definition.¹⁴ Mobile providers should also be required to provide mobile wireless voice communication capabilities, which, as discussed above with respect to the Broadband Incentive Fund, would not necessarily have to replicate the functionalities required under the Commission's current universal service definition. Finally, mobile wireless providers must provide Lifeline service to eligible customers.

3. Areas Eligible for Support and Allocating Funding Among States

Providers of fixed location and wireless broadband Internet access service will apply, respectively, to the Broadband Incentive Fund or the Advanced Mobility Fund to provide the supported services in "unserved" areas. In identifying and mapping which areas are "unserved," the Commission may rely on information that it gathers from fixed location and wireless broadband providers,¹⁵ information otherwise compiled by other sources,¹⁶ and information provided by the applicants.¹⁷ AT&T suggests that the Commission consider permitting

¹⁴ The Commission currently defines "advanced telecommunications capability" (*i.e.*, broadband) as services and facilities with an upstream and downstream transmission speed of 200 kbps or greater. *See, e.g., Availability of Advanced Telecommunications Capability in the United States*, GN Docket No. 04-54, Fourth Report to Congress, 19 FCC Rcd 20540, 20551-52 (2004). Mobile broadband Internet access service speeds that are commercially available today are generally lower than fixed network speeds, but technological advances continue.

¹⁵ *See Press Release to Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89 (2008). Although the Commission has not yet released this order, according to its press release, the Commission will require broadband providers to report numbers of broadband subscribers by Census Tract, broken down by speed tier, and technology type, and will improve the accuracy of information it gathers about mobile wireless broadband deployment (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280909A1.pdf).

¹⁶ For example, the non-profit organization Connected Nation produces street-level broadband infrastructure mapping and also works in partnership with public and private entities to stimulate demand for broadband services to provide market-based incentives for infrastructure deployment.

¹⁷ Whatever data the Commission elects to use to determine whether a given area is unserved, it is essential that the source for these data is able to keep confidential any proprietary data provided to it for

applicants to self-identify unserved areas, at least at the inception of the new mechanisms, until the more comprehensive broadband service mapping work is completed. Of course, the Commission or the states would have to verify that the applicant has, in fact, proposed to serve an unserved area.

Under AT&T's proposal, the Commission first would determine, by state, how much support will be made available to fund applications. The most heavily weighted criterion for each fund that the Commission should use when performing this apportionment of funding should be the extent to which a state has unserved areas for fixed and mobile wireless services, respectively. As explained in more detail below, the Commission may also consider how much legacy high-cost support providers receive in each state. AT&T suggests that the Commission also set aside a certain percentage of funding to approve meritorious applications that would otherwise not be funded because of limits on the amount of funding allotted to that state.

The Commission should make available information about the unserved areas (*e.g.*, location, size of the unserved area, population density, any available information on planned future development in the area) and the amount of funding available in each state as expeditiously as possible following the effective date of a Commission order establishing these new funds so that would-be applicants can evaluate whether to apply for support to serve those areas. The following sections describe further how the Commission would identify areas eligible for support and how it would allocate funding among the states under each program.

this purpose. For example, because Connected Nation is structured as a non-profit 501(c)(3) corporation, it is not required to publicly disclose the proprietary broadband information that AT&T and other providers provide to it. This fact and a non-disclosure agreement between providers and Connected Nation allows for the sharing of broadband availability data, which in turn leads to accurate broadband coverage maps. If the Commission performs the data gathering and mapping functions, it is imperative that a provider's proprietary data be protected from any disclosure requirements. *See Center for Public Integrity v. FCC*, 505 F.Supp.2d 106 (D.D.C. 2007) (upholding the Commission's determination that FOIA exemptions apply to Form 477 data).

a. Broadband Incentive Fund

- *Unserved Area.* Under the Broadband Incentive Fund, the areas eligible for support are those areas within a price cap ILEC's service area where there is no fixed location broadband Internet access service available that meets the definition of advanced telecommunications capability. The minimum area covered by an application should be all unserved areas within a wire center. AT&T believes that it is appropriate to target this broadband support to unserved areas within a price cap ILEC's service areas because, among other reasons, ROR carriers set their rates on a cost-plus basis, which means that they generally have been able to recover much of the cost of deploying broadband loop infrastructure by simply including the cost of such facilities in their rate bases.
- *Determination of Unserved Area.* As noted above, AT&T suggests that the Commission permit applicants to self-identify unserved areas at least at the start of the new Broadband Incentive Fund to account for the time it will take to compile the mapping information regarding unserved areas. The Commission or state commission would have to verify that the applicant identified all of the unserved areas in that wire center.¹⁸ If the state commission or Commission identifies additional unserved areas in a wire center, the applicant would have to modify its application in order to ensure that it will make the supported services substantially available to the unserved households in that wire center.
- *Apportionment of Funding among States.* As discussed above, the Commission should apportion funding among the states based on identified criteria (including the extent and population of unserved areas in each state) while setting aside some funding for meritorious applications that would not otherwise receive funding based on the

¹⁸ During this self-identification period, the state commission could request public comment on whether the proposed area for service is in fact "unserved" in order to verify an applicant's claim.

Commission's per state funding. Alternatively, the Commission could set aside funding to encourage states to establish matching fund programs. That is, the Commission would make available additional funding for Broadband Incentive Fund applications to provide service in a state if that state matches federal dollars up to a certain amount. In addition, the Commission could make available additional funding to support applications in a state if that state takes steps to assist carriers in its state to lower intrastate access rates to interstate levels prior to the Commission implementing the access replacement mechanisms discussed below.¹⁹

b. Advanced Mobility Fund

- *Unserved Area.* If the Commission's goal is to ensure that all Americans have mobile wireless coverage wherever they live, work or travel for public safety or other reasons, it should consider making support available in the near term for both CDMA and GSM technologies. Present mobile wireless technologies do not allow CDMA customers to roam on GSM networks (and vice versa). For example, if a CDMA customer is in an area where service is available only using GSM technologies, that customer would not be able to make a wireless call to 911, call home, or check e-mail.²⁰ If this is the case, for purposes of the Advanced Mobility Fund, an unserved area is an area in which mobile wireless broadband Internet access service is not available at all or is available using CDMA or GSM mobile wireless technologies, but is not available from both.

¹⁹ As mentioned earlier, high intrastate access rates are a form of universal service support that Congress and the Commission have recognized must be made explicit.

²⁰ The Commission should closely monitor technological and market developments. If mobile wireless carriers move to a common network technology that allows all customers to roam on all carriers' networks in the future, it may well be possible to transition further to a single supported mobile wireless carrier in area(s) that continue to need support to ensure mobile wireless coverage.

Applicants would apply to provide service to unserved areas that they select.

Unlike the Broadband Incentive Fund, AT&T believes that this flexibility is appropriate for mobile wireless providers because the service areas covered by their licenses bear no relationship to ILEC wire centers or study areas, which by definition are a function of ILEC network architecture and deployment.²¹

- *Determination of Unserved Area.* As mentioned above, the Commission should identify areas where there is no mobile wireless broadband Internet access service and where this service is available only via one technology (CDMA or GSM). To make this determination, the Commission could rely on information provided by applicants (*e.g.*, drive test data), information that it otherwise gathers from providers,²² providers' publicly-available coverage maps,²³ and other reliable sources (*e.g.*, information developed by organizations such as Connected Nation). Moreover, as mentioned previously, the Commission could permit applicants to self-identify unserved areas (although the Commission would have to verify that such areas are, in fact, unserved), in

²¹ A CMRS (*e.g.*, cellular or PCS) license can cover several wire centers and/or portions of wire centers (potentially of more than one non-rural ILEC) or may cover only a portion of a single wire center; may not cover all of a single study area (particularly in the case of non-contiguous study areas) and could cover several study areas and/or portions of study areas (potentially of multiple rural ILECs); and may cover some combination of wire center(s) and study area(s), or portions thereof, of several different ILECs, both rural and non-rural.

²² See 477 Report; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report & Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Twelfth Report, FCC 08-28 (rel. Feb. 8, 2008) (*Twelfth Report*). For example, the Commission has estimated, of the approximately 8 million census blocks in the U.S., the census blocks with broadband service available from CDMA-path technologies, from GSM-path technologies, and the number of mobile wireless broadband providers serving each census block. *Twelfth Report* at paras. 142-51; Maps B-39 – B-44.

²³ CMRS providers covering most mobile wireless subscribers in the U.S. have detailed maps showing street-level coverage posted to their websites today. See, *e.g.*, <http://www.wireless.att.com/cell-phone-service/welcome/index.jsp>, click on “Coverage Viewer”, and enter a street address. Click on “Show 3G Coverage” to see where mobile wireless broadband service is available.

order to speed mobile wireless broadband deployment while more comprehensive mapping is completed.

- *Apportionment of Funding among States.* Similar to the Broadband Incentive Fund, the Commission should determine beforehand the criteria it will use to allocate funding among the states, such as, for example, the population to be covered in unserved areas within each state and, because many areas unserved by mobile wireless broadband Internet access service may well also be without mobile wireless voice service, the amount of unserved miles along federal and state highways and other public roads.²⁴ In addition, the Commission should factor how much legacy wireless support will be earmarked for states in accordance with the transition procedures discussed below. For example, the Commission could target Advanced Mobility Fund support to those states where competitive ETCs collectively receive relatively less high-cost support than in other states (*e.g.*, less than \$10 million or \$20 million in total competitive ETC support per year).

4. Application Process

Interested providers would submit applications to either the relevant state commission or the Commission to provide the supported service in unserved areas. An applicant would submit its application to the Commission for review if the state commission determines that it has no jurisdiction to review applications to provide broadband Internet access service.²⁵ Applicants may combine unserved areas in one application to appropriately recognize any economies of

²⁴ AT&T's proposal is consistent with the Joint Board's recommendation, which suggested that the Commission should base its funding allocation decisions for the new mobility fund, in part, on the number of residents in each state who reside in unserved areas. *Recommended Decision* at para. 17.

²⁵ See 47 U.S.C. § 214(e)(6).

scale or scope. Applicants should include the following information and commitments in their applications:

- the applicant's project proposal, which should identify the number of unserved households and, for wireless providers, information such as the population and amount of unserved highway mileage covered by the application, and public safety or other needs that would be met by the application;
- the amount of requested one-time funding to deploy and maintain the supported services in the area for the term of the award;
- the facilities proposed to be deployed;
- the applicant's build-out plan (which should include a deployment schedule not to exceed two years);
- financial information that is sufficient for the state or the Commission to evaluate whether the applicant will have the ability to meet its commitment to serve for the term of the award;
- a commitment to make the supported services substantially available to households (for Broadband Incentive Fund applicants) in the unserved area or to substantially all of the unserved area (for Advanced Mobility Fund applicants) within two years and, then, for five years thereafter;
- a commitment to provide the supported services at rates, terms and conditions that are reasonably comparable to those services offered in urban areas; and
- for mobile wireless applicants, a commitment to negotiate in good faith with providers using other technologies to deploy their own wireless transmission facilities at any new

cell sites constructed with Advanced Mobility Fund support, to the extent feasible and on a nondiscriminatory basis.

5. Application Review and Selection Process

The Commission should establish clear and detailed criteria that states (or the Commission, as the case may be) will follow in reviewing and ranking applications. These criteria should include, among other things, the requested amount of support per number of unserved households (for Broadband Incentive Fund applicants) or per population (for Advanced Mobility Fund applicants) covered by the application, financial qualification requirements, a minimum population density per square mile or a minimum population to be covered by the application, and the amount of time to build-out the unserved area.²⁶ For applications proposing to provide mobile wireless service, the criteria should also include a minimum amount of unserved mileage along federal or state highways, or other frequently traveled roads, and an explanation of any other unfulfilled public safety, homeland security or other needs that may warrant funding.

Based on these Commission-specified criteria, the states should rank applications that would result in the greatest utilization of the supported services (for example, those projects that target the greatest population density and/or unserved mileage along highways) above applications that propose to serve less densely populated areas and/or fewer highway miles. Moreover, when ranking mobile wireless applications using the criteria mentioned above, AT&T recommends that areas and applications be prioritized in the following descending order: areas without mobile wireless *voice* service from any provider; areas where mobile wireless *voice*

²⁶ In certain areas, based on population or other factors, anticipated usage may be sufficiently small that the expenditure of federal support cannot be justified. To the extent that state policy makers believe it is important to make service available in such areas, states should consider establishing their own state funds to provide incentives for fixed network and/or mobile wireless services in such areas.

service is available from just one technology (*i.e.*, CDMA or GSM); areas where mobile wireless *broadband* service is not available at all; and lastly, areas where mobile wireless *broadband* service is available from one but not both technologies.

After reviewing and ranking applications, states would forward all of the applications to the Commission. The Commission should provide substantial deference to the states' ranking in reviewing and granting applications.²⁷ The Commission may only fund one fixed broadband provider per unserved area and up to one CDMA and one GSM wireless mobile broadband provider per unserved area. After the Commission selects the applicants that will receive project-based support, it would have to designate them as ETCs before the applicants could receive funding.

6. Evolution of the Broadband Funds

Periodically, the Commission should reevaluate the size of the new broadband funds, the supported services, whether any program changes are needed, and whether the stated goals of these funds have been met (at which time, future funding might no longer be necessary). In addition, at the end of the term of service, each funding recipient should have the opportunity to petition the Commission to treat a "served" area as "unserved" if continued support is necessary to maintain service to that area and no other provider offers service in that area.²⁸ That

²⁷ As mentioned earlier, in calculating its per state funding amounts, AT&T recommends that the Commission set aside a portion of total available funding so that it may select meritorious applications for funding that were not ranked high enough by a state commission to receive funding based on the amount of support earmarked for that state. Alternatively, for the Broadband Incentive Fund, the Commission could establish a state matching fund program, whereby the Commission could award supplemental funding for applicants proposing to provide service in a state if that state matches federal dollars up to a certain amount.

²⁸ This proposal is consistent with the Joint Board's recommendation, which explained that a secondary purpose of its new Broadband and Mobility Funds would be to "provide continuing operating subsidies to broadband Internet providers serving areas where low customer density would suggest that a plausible economic case cannot be made to operate broadband facilities, even with a substantial construction subsidy" and to "provide continuing operating subsidies to carriers serving areas where service is

provider's "unserved" area would be re-bid using the application processes described above and the Commission would evaluate whether to select that provider's application for additional support using the procedures also described earlier.

B. Transition of Legacy Support to New Broadband Funds

1. Price Cap ILECs

Under today's high-cost mechanisms, price cap ILECs receive approximately \$756 million in federal support.²⁹ AT&T proposes that all of the price cap legacy wireline support be transitioned to the Broadband Incentive Fund. This transition should occur on a state-by-state basis when the relevant state commission grants a price cap ILEC complete retail pricing deregulation.³⁰ The period of time over which the legacy wireline support will be redeployed to the Broadband Incentive Fund will correspond to the amount of time over which the state fully phases in pricing deregulation.³¹ State retail pricing deregulation is an appropriate trigger to start this transition because, once price cap ILECs obtain the ability to price all services at market-based levels, those ILECs would no longer need support under the existing high-cost mechanisms to continue providing basic service to high-cost areas. Once an ILEC has full

essential but where usage is so slight that a plausible economic case cannot be made to support construction and ongoing operations, even with a substantial construction subsidy." *Recommended Decision* at paras. 12, 16.

²⁹ Under AT&T's proposal, this legacy funding would now be available solely to the carriers that perform COLR functions.

³⁰ For purposes of this proposal, by "complete" or "full" retail pricing deregulation, AT&T means complete pricing flexibility with respect to all retail services, including basic residential and business access lines. An ILEC does not have complete retail pricing deregulation if, for example, it operates under a cap or is unable to increase its rates above a certain percentage each year.

³¹ The Commission would need to establish a transition for wireline competitive ETCs operating in these areas. The Commission could consider, for example, a transition that would occur at the *earlier* of a 20 percent/year redeployment over five years or the amount of time set by the state for phasing in pricing deregulation for that wireline competitive ETC.

pricing flexibility, therefore, legacy support should be redeployed to the new Broadband Incentive Fund.

Under AT&T's proposal, when a state grants such relief to price cap ILECs operating in a state, the legacy support provided to those ILECs should be redeployed to the Broadband Incentive Fund. This support, however, will be earmarked for that state until that state no longer has any unserved areas or areas in which fixed location broadband service is available but does not satisfy the Commission-specified criteria for the supported service (*e.g.*, the available service is not at an advertised downstream transmission speed of up to 1.5 mbps). Only after that state has no unserved areas and no areas where the available fixed location broadband service does not meet the Commission's broadband criteria would that funding be redirected to the general Broadband Incentive Fund for use in any state.

2. Wireless Competitive ETCs

Wireless competitive ETC funding provided under the current high-cost mechanisms (*i.e.*, the \$1.3 billion that the Commission is considering capping on an industry-wide basis) should be transitioned over five years to the Advanced Mobility Fund. Immediately after the Commission adopts AT&T's proposal and it becomes effective, neither the Commission nor the states should approve any further ETC applications for federal funding under the current high-cost mechanisms. Beginning one year after the effective date of the Commission's order, the Commission should reduce all legacy wireless support by twenty percent per year (approximately \$260 million per year) over five years. That twenty percent of funding should be redeployed to the Advanced Mobility Fund but earmarked for the state in which such support was provided under the legacy support mechanisms until that state has no unserved areas, at which time such support should be released to fund advanced mobile services in unserved areas

in other states. This reduction in legacy wireless support should continue each year at the same rate until all such support has been redirected to the new fund. Scheduling the reduction in this manner affords recipients of current legacy wireless support predictability, consistent with section 254(b)(5) of the Act.³²

C. Rate of Return Carrier Broadband Incentives

Rate of return (ROR) ILECs have made significant progress in the deployment of broadband facilities in areas they serve.³³ These companies have in large part accomplished this progress primarily through the funding they receive from the existing federal high-cost mechanisms. However, for reasons explained below, many of these companies may be reluctant to offer broadband services such as Internet access and VoIP services because these broadband services affect these companies' access charge revenue streams. Moreover, it has not been entirely clear that the Commission's rules permit this funding to be used for the recovery of broadband investment.

AT&T suggests several incentives for ROR ILECs to offer broadband services to customers they serve. As an initial matter, the Commission should affirm that ILECs can use funding derived from the existing federal high-cost support mechanisms to recover broadband investment. Such a statement should remove any lingering doubt about this matter that may have affected a carrier's willingness to offer broadband services. As described below, the Commission could add an access replacement mechanism that will provide explicit support to ROR ILECs when they reduce their intrastate access charges to interstate levels. Under AT&T's

³² As this funding is reduced, the Commission may decide to establish a process to permit a mobile wireless provider to retain limited funding beyond this five-year transition if a currently served area is at risk of becoming unserved.

³³ See, e.g., NTCA 2007 Broadband/Internet Availability Survey Report (Sept. 2007) (99 percent of survey respondents offer broadband to some part of their customer base).

framework, access replacement mechanism funding is targeted to the carrier that performs the COLR functions for its service area. Relieving some of the pressure on access charge revenue streams in this manner will remove one of the disincentives ROR ILECs have to offer broadband services to the customers they serve. The Commission could also re-index the current high-cost loop fund after an appropriate period of time (*e.g.*, three years) as an additional incentive to offer broadband services. Re-calibrating the high-cost loop mechanism will provide ROR ILECs that have a high-cost loop infrastructure with an additional cost recovery opportunity, which, in turn, will provide a further incentive for these companies to offer broadband services to their customers.

To determine whether this explicit funding has successfully met the Commission's broadband goals, the Commission could require ROR ILECs to demonstrate that they have made the supported broadband Internet access service substantially available to their customers and have aggressively marketed this service within three years of implementation of AT&T's proposal.³⁴ If a ROR ILEC fails to meet this requirement, the Commission could take the following actions: (1) cap a significant portion of its existing federal support; (2) establish an application process, similar to the process that applies to price cap ILEC service territory, for the purpose of encouraging alternative broadband providers to offer service households in the ROR ILEC's service territory; and (3) restrict the ROR ILEC from participation in the application process. AT&T proposes these measures to ensure that companies understand the urgency of achieving the Commission's broadband objectives.

D. Lifeline ETC Designation

Under AT&T's proposal, the Commission would target universal service funding to areas that lack broadband Internet access service altogether or have broadband service that does not

³⁴ A company may request a two-year extension of this requirement by making a good cause showing.

meet Commission-specified criteria. While AT&T proposes that broadband funding recipients provide Lifeline service in these unserved areas, low-income consumers obviously reside in areas that do receive broadband Internet access service today. To ensure that low-income consumers are able to participate in the Commission's low-income programs regardless of where they live, AT&T recommends that the Commission establish a stand-alone ETC designation for Lifeline/Link-Up providers. In light of the Commission's action last week to grant TracFone's request to become a Lifeline-only ETC,³⁵ it seems particularly timely for the Commission to revisit its current ETC framework.³⁶

Permitting applicants to participate only in the Commission's low-income programs, without regard to participation in the existing high-cost mechanisms or proposed broadband incentive mechanisms, may well expand the base of willing participants to include other providers of voice communications service such as cable and other prepaid wireless companies that have, to date, been unwilling to offer Lifeline service (because of the many non-Lifeline-related obligations applicable to ETCs designated for high-cost support) or otherwise unable to qualify under the current rules. AT&T believes that its proposal is thus consistent with one of the Commission's primary objectives for its low-income programs: to increase participation. Moreover, the Commission has ample authority to create a Lifeline Service Provider designation

³⁵ See *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Order, FCC 08-100 (rel. April 11, 2008).

³⁶ This action would be consistent with that taken by several states, which have permitted carriers to apply for and receive Lifeline-only ETC designations with the understanding that those carriers were not permitted to request or receive federal high-cost support.

under sections 1, 4(i), 201 and 205 of the Act³⁷ that could be applied to a broader array of voice communications providers (*e.g.*, VoIP providers that clearly offer voice service but do so as an interstate information service).

To ensure that low-income consumers will always have at least one provider of Lifeline/Link-Up service, AT&T proposes that, at some appropriate point during the transition periods for price cap ILECs and wireless competitive ETCs described above, these providers be permitted to become Lifeline-only ETCs (Lifeline Service Providers). This conversion should be mandatory if there is no other Lifeline provider in the area covered by that legacy provider's service area. The conversion from legacy ETC to Lifeline Service Provider should be optional (*i.e.*, at the election of the legacy provider) if there is at least one Lifeline Service Provider already in the area covered by the legacy provider's service area.

E. Access Charge Harmonization

The Commission and state regulators historically have relied on above-cost access charges to support the POTS infrastructure and the availability of affordable basic local service. Because broadband Internet access and VoIP services have largely avoided access charges, depriving ILECs of revenues on which they have relied to offer below-cost POTS service, the failure of regulators to eliminate the implicit subsidies in those charges may have discouraged carriers in those high-cost areas from offering broadband services. The existence of high access charges have created a disincentive to broadband investment because the broadband Internet access and VoIP services made possible by that investment have avoided access charges, depriving ILECs of these important revenue streams on which they rely to offer below-cost

³⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, paras. 329-40 (1997) (explaining that the Commission was relying on its preexisting authority under Titles I and II of the Act to modify its existing Lifeline program).

POTS service where such broadband services are offered.³⁸ Consequently, if policy makers wish to allow market forces (rather than regulatory policy) to determine where broadband is offered, taking steps to reduce those implicit subsidies would eliminate a significant disincentive for offering broadband service. Given policy makers' stated objective of encouraging broadband service deployment, AT&T offers here a framework to address this issue.

Specifically, the Commission should reduce and replace access charge revenues with alternative recovery mechanisms that are more compatible with a broadband connectivity business model. As an initial step, AT&T proposes mechanisms that would enable carriers to reduce intrastate originating and terminating access charges to interstate access levels. Ultimately, these mechanisms could also be utilized to transition to a single terminating intercarrier compensation rate for all traffic, including VoIP traffic, which would clear a major hurdle that has confronted the Commission in the IP-Enabled proceeding should it decide, as AT&T has recommended, to extend the *Vonage Order* to non-nomadic VoIP.

Such alternative recovery mechanisms would apply to price cap and ROR ILECs. As explained above, legacy price cap ILECs' support will migrate to the Broadband Incentive Fund. This migration will also apply to the access charge replacement funding established for price cap ILECs.

1. Intrastate originating and terminating access charges will be reduced to interstate access charge levels.
2. This reduction in access revenue (*i.e.*, the access shift) will be offset by alternative recovery mechanisms, which could include some combination of increases to federal

³⁸ This occurs, for example, when the subscriber obtains voice service from an over-the-top VoIP provider as a substitute for traditional long distance service, because VoIP providers do not pay terminating access charges to ILECs for calls terminated on ILEC networks.

subscriber line charges (SLCs) and additional federal access universal service funding.

3. A federal benchmark mechanism would be used to determine how much of the access shift should be recovered through the SLC versus additional federal access universal service funding. The benchmark mechanism functions as follows:
 - a) For each company in a state, the total of the company's basic local service rate, the current SLC, and its state high cost funding (expressed on a per line basis) would be compared to a federal benchmark. If this total is less than the federal benchmark, then the SLC would be increased to help offset the access shift before a company is eligible for additional federal universal service support..
 - b) If the company's total of basic local service rate, current SLC and state high-cost funding (expressed on a per line basis) is greater than the federal benchmark, then the access shift would be offset by additional federal universal service support.
4. The Commission should determine what the appropriate levels should be for the SLC and the federal benchmark in order to accomplish this transition in a financially responsible manner. These two elements are used to generate the revenues needed to offset the access shift and therefore affect the amount of additional federal universal service support that will be needed.

F. Relationship between AT&T's Proposal and the Tenth Circuit Proceeding

In these comments, AT&T offers a framework for shifting legacy high-cost universal service support mechanisms to new broadband support mechanisms to spur investment in and deployment of next-generation networks in rural and high-cost areas. Through the application

process described above, applicants would determine how much subsidy they would require to construct and operate facilities to provide broadband Internet access service and voice communications capabilities to unserved areas for a defined period of time. Applying Commission-established criteria, such as the requested amount of support per household, the Commission would select the applications that best satisfy these criteria. This targeted support, based on the provider's evaluation of its costs to make the supported services available in these demonstrably high-cost areas, does not suffer from the deficiencies of the current non-rural high-cost mechanism.

If the Commission decides, for whatever reason, not to shift the focus of federal high-cost support to broadband, as the Joint Board and others have recommended, and instead to continue to target support to legacy POTS networks and services, it must recognize that (as AT&T previously has shown) the current high-cost support mechanisms have failed to (and indeed cannot) promote universal service objectives (as set forth in section 254(b)) in a competitive environment. The Commission further must recognize that, even if it shifts the focus of federal high-cost support to broadband, if the states do not act to give price cap ILECs complete pricing deregulation and the transition trigger applicable to price cap carriers thus is not activated, the Commission will have to address the fundamental flaws in its existing high-cost mechanisms. Obviously, if the Commission adopts AT&T's access replacement mechanism proposal, it will go a long way toward ameliorating the inherent problems in the current system.

Consequently, if the states fail to implement fully pricing deregulation within some reasonable period of time, the Commission would have to issue final rules in its pending *Qwest II* rulemaking, if it has not already done so.³⁹ In that event, among other things, the Commission

³⁹ *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, FCC 05-205 (2005).

should conclude that all carriers providing service to high-cost rural areas should receive support on the same basis, regardless of the carrier's size. In particular, the Commission should, as AT&T has proposed, eliminate its use of statewide averaging for determining eligibility for high-cost support for non-rural carriers, and, instead calculate support on a disaggregated basis (*e.g.*, by wire center) so that a "non-rural" carrier's costs of serving a particular high-cost area are recognized and not netted out. Additionally, the Commission will have to face up to the fact that the current amount of funding provided to non-rural carriers is inadequate for these carriers to continue providing affordable POTS services to their millions of customers in high-cost rural areas.

While AT&T's proposal is not intended to serve as the panacea for all that ails the Commission's non-rural high-cost mechanism, which was not the subject of the three recent NPRMs, clearly there are concepts in the framework that could be applied to improve the existing mechanism. Through the use of statewide averaging, only ten states receive "high-cost model" support (the non-rural counterpart to rural carrier's high-cost loop support). Applying AT&T's proposal, a non-rural price cap carrier could petition the state commission or the Commission to declare certain of its high-cost wire centers to be "unserved" if continued or new targeted support is necessary to maintain service in the area at affordable rates. Moreover, carriers would identify the amount of support necessary to provide voice service in its high-cost areas so that there would be no question about the sufficiency of this support.

G. Comments on the *Recommended Decision* and the *Reverse Auctions* and *Identical Support NPRMs*

1. Joint Board's *Recommended Decision*

AT&T's proposal embraces the market-based solution to broadband deployment advanced by the Joint Board in its *Recommended Decision*. In that order, the Joint Board

recommended that states award grants to broadband providers to construct new facilities in unserved areas. The Joint Board indicated that the states should be permitted to use any suitable procedure for awarding broadband support, including requests for proposals to serve or reverse auctions.⁴⁰ AT&T suggests that the Commission instead adopt an application process that would not vary among the states. Adhering to the Commission’s bright-line selection criteria will leave state actions less susceptible to challenge. Moreover, many would-be broadband and mobile wireless participants, such as AT&T, operate in numerous states and having to comply with as many different procedures and selection criteria would pose an unnecessary burden upon applicants that may act as a disincentive for participation in the programs.

AT&T also has concerns with the Joint Board’s proposal to convert the high-cost mechanism into a “block grant” under which the Commission would allocate and transfer a certain amount of dollars to each state, and the states would review applications and award winning providers federal funding. As recognized by the Joint Board, administering federal grants is an “unusual role” for state commissions.⁴¹ Indeed, AT&T believes that delegating this role to the states would be inefficient for that very reason. Moreover, it is by no means clear that the Commission would have the authority to delegate this function to the states.⁴² In contrast, AT&T’s proposal to have Commission select winning applicants builds upon the Commission’s expertise gained through its rural health care pilot program, in which the Commission reviewed

⁴⁰ *Recommended Decision* at para. 15.

⁴¹ *Recommended Decision* at para. 48.

⁴² Under the current ETC framework (set forth in section 214(e)(2)), states designate applicants to be ETCs. After a state grants a provider’s ETC application, the ETC completes certain forms depending on whether the provider is an ILEC or a competitive ETC. Based on the information set forth in the provider’s forms, USAC, using Commission-established formulas, calculates the amount of support the ETC will receive. Under the Joint Board’s proposal, states – not the Commission, through the application of its created formulas – would determine how much support a provider should receive.

and selected applications for one-time funding submitted by interested health care providers, while providing an appropriate vehicle for state participation and input in the process.⁴³

In its *Recommended Decision*, the Joint Board offered several creative suggestions to encourage states to provide their own funding to speed the deployment of broadband and wireless services to unserved areas. In particular, the Joint Board recommended that the Commission establish a state matching fund process so that if a state provided funding in excess of a certain percentage, the state would be eligible to receive additional federal dollars.⁴⁴ Matching state funds could be used to promote broadband deployment objectives, but only under certain conditions. First, state and federal dollars should not be commingled. In other words, if the Commission establishes a state match mechanism, the state funding should be made available to providers through the state's own broadband deployment and advanced wireless funds. The Commission could select additional applications because of the supplemental federal funding but it would not include state funding in its total allocation for that state. Second, states should ensure that their broadband and wireless funding serves as a complement to the federal program, so that, for example, the federal and state programs do not provide duplicative support for the same facilities and costs.

2. *Reverse Auctions NPRM*

AT&T supports the goals that the Commission seeks to achieve through reverse auctions, specifically: to use a market-based, competitive approach to determine funding; to encourage providers to voluntarily compete for universal service funding so that providers have incentives

⁴³ See generally *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360 (2007).

⁴⁴ *Recommended Decision* at paras. 50-52.

to seek the least possible support necessary, and thus control fund growth and encourage the use of efficient technologies.

The application process AT&T has described herein achieves these goals. One of the stated benefits of reverse auctions is that direct market signals are used in lieu of historical cost accounting data or forward-looking cost models to allocate federal universal service support dollars.⁴⁵ As the Commission notes in its *Reverse Auctions NPRM*, if a number of bidders compete in the auction to provide service in the same area, the winning bid might be close to the minimum level of subsidy necessary to provide supported services in that area.⁴⁶ The same rationale and resulting benefit is true for an application process. The winner of a reverse auction is determined based solely on price. An application process, on the other hand, allows the Commission to consider factors in addition to price in awarding grants, such as the speed at which the provider will complete its build-out of new facilities and the proposed information transfer rates. Moreover, there exist significant unanswered questions surrounding a universal service reverse auction but these questions do not apply to AT&T's proposed application process.

One of the thornier issues raised by the Commission's reverse auction proposal is what happens to the losing ILEC's obligation to serve if it is not selected as the winning bidder. Although the Commission suggests that the winning bidder would inherit the COLR obligations from the ILEC that is currently providing service in that area,⁴⁷ it is unclear whether the Commission has the authority to relieve a losing ILEC bidder of its COLR obligations. States

⁴⁵ *Reverse Auctions NPRM* at para. 11.

⁴⁶ *Reverse Auctions NPRM* at para. 11.

⁴⁷ *Reverse Auctions NPRM* at para. 24.

impose COLR obligations on ILECs and unless the Commission believes it can and should preempt the states under section 253(d) (and AT&T is not advocating that the Commission do so), an ILEC could be placed in the untenable position of having its COLR obligations under state law continue but without any federal universal service support if the relevant state does not grant the ILEC COLR relief.⁴⁸ Under AT&T's proposal, even if an ILEC's application is not selected to provide the supported service to an unserved area, states have an appropriate incentive to grant price cap ILECs retail pricing deregulation – because doing so would enable them to receive more funding for broadband deployment in their state (by allowing providers in their state to obtain federal funding to deploy broadband in underserved areas). And granting a price cap carrier pricing flexibility would ensure that the ILEC would not be forced to continue providing service in a high-cost area without any federal support and at rates that are artificially below its costs.

In its *Reverse Auctions NPRM*, the Commission tentatively concludes that the total amount of support that may be awarded for an ILEC's study area should be capped at the current study area amount.⁴⁹ If adopted, this tentative conclusion ensures that “non-rural” carriers that provide service in high-cost rural areas and that do not currently receive high-cost support, never will. Such a conclusion, enshrining the current flawed and unlawful disparate treatment between

⁴⁸ Another equally unpalatable option is for the losing ILEC to request forbearance from ILEC regulation (e.g., sections 251(c) and 271(c)). To the extent that the winning bidder is a LEC, the Commission could, of course, subsequently declare that the winning LEC should be treated as an ILEC. This process, however, has proven to be a complicated and lengthy one. See *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, CC Docket No. 02-78, Report and Order, 21 FCC Rcd 11506 (2006); Qwest Petition for Forbearance under 47 U.S.C. § 160(c) from Resale, Unbundling and other Incumbent Local Exchange Requirements Contained in Sections 251 and 271 of the Telecommunications Act of 1996 in the Terry, Montana Exchange, WC Docket No. 02-78 (filed Jan. 22, 2007).

⁴⁹ *Reverse Auctions NPRM* at para. 39.

“non-rural” and “rural” carriers, could not be sustained in court. As the Tenth Circuit has twice found, support to non-rural carriers and their customers under the Commission’s current mechanisms is not sufficient and fails to comport with the requirements of section 254(b). AT&T’s proposal squarely addresses the inadequate funding provided to certain carriers by virtue of their size and without regard to the carriers’ costs of providing service to rural America. AT&T’s proposal makes available new funding, through the Broadband Incentive Fund, to award support to providers willing to deploy broadband in unserved areas that are located in price cap ILEC service areas.

As explained above, AT&T believes it is important for states to remain stakeholders in the future of broadband deployment in their states. AT&T’s proposal accomplishes this goal in two ways: by allowing states to review and rank broadband and mobile wireless applications and recommending that the Commission give substantial deference to the states’ ranking, and by giving states the tools to speed broadband deployment in their states. The Commission’s *Reverse Auctions NPRM* does not seem to contemplate a role for the states.⁵⁰ AT&T agrees with the Joint Board that universal service is a federal-state partnership⁵¹ and therefore urges the Commission to maintain a central role for the states under the new Broadband Incentive Fund.

3. *Identical Support NPRM*

AT&T applauds the Commission’s commitment to eliminating the so-called “identical support” rule, through which a competitive ETC receives the same per line support as the ILEC, without regard to the competitor’s costs. While the Commission’s goals in establishing this rule

⁵⁰ Indeed, at most, it appears that the Commission may coordinate with the states should the Commission decide to conduct an auction in a geographic area that is different than a rural carrier’s study area. *Reverse Auctions NPRM* at para. 22 (*citing* 47 U.S.C. § 214(e)(5)).

⁵¹ *See, e.g., Recommended Decision* at para. 45.

may have been laudable, the rule is largely responsible for the explosive growth in the Commission's high-cost fund. AT&T's proposal, detailed above, would eliminate this rule but does so in an administratively simpler and more effective fashion than contemplated in the Commission's *Identical Support NPRM* and GVNW's "WiCAC Proposal."⁵²

Under AT&T's proposal, beginning one year after the effective date of an order adopting AT&T's plan, all wireless competitive ETC funding provided under the current high-cost mechanisms would be reduced by 20 percent per year. This reduction would continue at the same pace over a five-year period until all legacy wireless high-cost support is redeployed to the Advanced Mobility Fund. Under this new fund, the Commission would award project-based funding to mobile wireless providers to provide the supported services in areas that are currently unserved by mobile wireless broadband service. The amount of support that would be awarded to mobile wireless providers under this new fund would have no relation to the legacy support received by the ILEC in that area. Rather, mobile wireless providers would apply for funding based solely on their evaluation of the costs of deploying and maintaining facilities in previously unserved areas. In a mere five years, no wireless carrier would receive any high-cost support that is tethered to ILEC support.

AT&T's proposal is consistent with the Commission's tentative conclusion that wireless competitive ETCs should receive support based on their own costs.⁵³ AT&T respectfully disagrees that the most effective way to fund wireless competitive ETCs based on their own

⁵² In addition, as AT&T has noted previously, Commission adoption of an industry-wide competitive ETC cap order eliminates the identical support rule though, of course, it does not provide the roadmap to reducing legacy wireless competitive ETC support down to zero as does AT&T's proposal.

⁵³ *High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, para. 12 (2008) (*Identical Support NPRM*).

costs is to require these providers to submit detailed cost data to the Commission or to the states on an annual basis.⁵⁴ Such a requirement would be an overly regulatory response that would do nothing to further universal service. AT&T's proposal offers a simpler solution for all parties that can be easily implemented, unlike any of the actual cost proposals pending before the Commission.⁵⁵

AT&T has previously described the fundamental flaws of GVNW's purportedly simple proposal to require mobile wireless providers to report costs by 23 accounts.⁵⁶ CMRS providers today maintain their financial books and records in accordance with generally accepted accounting principles (GAAP). CMRS providers are not required to maintain their financial records in accordance with any regulatory accounting requirements, nor are they required to separately book their costs and revenues to the interstate and intrastate jurisdictions. For example, many CMRS providers like AT&T Mobility do not maintain their financial records on a state-by-state geographic basis much less by specific study area. Generally, CMRS providers maintain cost accounting records based on the geographic areas covered by their CMRS licenses, which often cross state borders and may only partially cover the geographic boundaries of a state.⁵⁷

⁵⁴ *Id.* at para. 13.

⁵⁵ Moreover, AT&T's proposal would more clearly create a greater incentive for wireless investment in rural and other high-cost areas. *Id.* at para. 5.

⁵⁶ See Letter from Mary Henze, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337 (filed Oct. 4, 2007). In addition, GVNW's description of the WiCAC model requiring only 23 accounts oversimplifies the process and fails to acknowledge the numerous sub-accounts within the proposed main accounts. For example, main account 32.8171 requires individual inputs for: Wireless Switching (line 260), Operator System Equipment (line 265), Wireless Transmission (line 270), Spectrum Acquisition (line 280); account 32.8176 requires four sub-accounts, etc.

⁵⁷ For example, cellular licenses are granted based on MSAs and RSAs (metropolitan statistical areas and rural service areas). Many MSAs cover multiple states (*e.g.*, the Cincinnati MSA covers portions of

As the transition to the Part 32 System of Accounts for wireline carriers amply demonstrates, adopting a system of accounts as GVNW proposes is not only unnecessary but also likely would be very time-consuming and prohibitively expensive. In May 1986, the Commission required the transition from a former Uniform System of Accounts (Parts 31 and 33) to the current Part 32 USOA.⁵⁸ The Commission initiated the proceeding nearly eight years before the rules were ultimately adopted.⁵⁹ The further NPRM alone took 15 months to complete.⁶⁰ Even though carriers were already reporting costs pursuant to one uniform standard, the Commission gave these carriers 18 months to implement the new Part 32.⁶¹ Carriers also submitted information in that proceeding indicating the costs to implement the updated accounting system would range between \$685 million to \$1.1 billion in 1986 dollars.⁶²

In this NPRM, the Commission further seeks comment on whether and how wireless CETC support should be modified to account for the type of ILEC that also provides service in that area. For example, the Commission sought comment on whether CETCs should be able to recover costs for different network components for non-rural areas than for rural service areas⁶³

Ohio, Kentucky, and Indiana; and the Memphis MSA covers portions of Tennessee, Arkansas, and Mississippi). Furthermore, wireless carriers are not required to maintain their books on a state-by-state basis, such that record keeping is based on operational needs, *e.g.*, partnerships, market clusters.

⁵⁸ *Revision of the Uniform System of Accounts & Financial Reporting Requirements for Class A & Class B Telephone Companies (Parts 31, 33, 42, & 43 of the FCC's Rules)*, CC Docket No. 78-196, Report and Order, FCC 86-221, 51 Fed. Reg. 43498 (1986).

⁵⁹ *Id.* at para. 5 (stating the Commission issued the NPRM initiating the proceeding to revise the uniform system of accounts in July 1978).

⁶⁰ *Id.* at para. 6 (stating that the Commission released the First Supplemental NPRM in August 1979).

⁶¹ *Id.* at paras. 162-165 (ordering paragraphs making new uniform system of accounts effective January 1, 1988).

⁶² *Id.* at para. 9 (discussing implementation cost estimates).

⁶³ *Identical Support NPRM* at para. 15.

and whether the Commission should apply the same benchmarks that it uses for non-rural and rural carriers to determine whether a CETC should receive high-cost support.⁶⁴ AT&T cannot support any proposal that would perpetuate the current flawed high-cost framework that is premised on the size of the ILEC rather than the areas and consumers it serves. AT&T's proposal more appropriately targets unserved areas for universal service support and an applicant's proposed costs of serving such an area would have little correlation to the size of that applicant. AT&T's proposal thus does not suffer from the potential legal infirmities that would attend any Commission order that continues the fiction that a provider's support should be based on its size rather than the costs of providing service to high-cost areas.

Finally, the Commission tentatively concludes that CETCs should no longer receive Interstate Access Support (IAS) and Interstate Common Line Support (ICLS) and has further inquired whether Local Switching Support should also be eliminated for CETCs.⁶⁵ For its actions to be consistent with the principles in section 254(b) (particularly, section 254(b)(5)), the Commission would most likely have to reduce or eliminate this support over a period of years (versus a flash-cut). AT&T's proposal would rationally and predictably reduce *all* legacy high-cost funding received by wireless CETCs over a period of five years and redeploy that support to the new project-based Advanced Mobility Fund. AT&T believes that its proposal would more

⁶⁴ *Identical Support NPRM* at para. 20.

⁶⁵ *Identical Support NPRM* at para. 23 (citing an AT&T *ex parte* submission filed on Mar. 22, 2007). Last March, AT&T submitted a one-year, high-cost interim stabilization proposal for Joint Board consideration. In light of the rapid escalation in the size of the high-cost program attributable to competitive ETCs, the interim stabilization proposal was designed to provide the Commission and stakeholders with necessary breathing room on an emergency basis to implement comprehensive high-cost reform. In it, AT&T recommended that the Commission impose, among other things, a 25 percent reduction in wireless ETCs' IAS and ICLS support, not an immediate, complete elimination of this support.

effectively achieve the Commission's goals of providing wireless competitive ETCs high-cost support based on their own costs and promoting investment in rural and other high-cost areas of the country.⁶⁶

⁶⁶ *Identical Support NPRM* at para. 5.

IV. CONCLUSION

In these comments, AT&T proposes the roadmap to transition universal service support mechanisms that were designed to ensure ubiquitous POTS to mechanisms designed to meet the needs of Americans in the 21st Century: access to affordable broadband service wherever we live, work or travel. In contrast to other proposals, AT&T's market-based broadband proposal can be implemented in a timely fashion, is appropriately targeted to unserved areas, and its transition provides predictability to the current recipients of legacy support. AT&T also suggests a process to remove the current disincentive that many ILECs have to deploy and actively market broadband service. By reducing and replacing access charge revenues with explicit support, AT&T's proposal would further Congress's mandate to eliminate implicit subsidies while satisfying the policy makers' goal to make broadband service ubiquitous in rural America. AT&T's proposed framework will inject economic rationality and discipline into the universal service funding mechanisms and will bring universal service out of the era of the black rotary phone and into the 21st Century.

Respectfully Submitted,

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April 17, 2008

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