

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

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 Service	)	

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**REPLY COMMENTS OF AT&T INC.**

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**I. INTRODUCTION AND BACKGROUND**

In its comments, AT&T Inc. (AT&T) proposed a framework to bring federal universal service high-cost support into the digital age in response to policy makers' demands for ubiquitous broadband service. AT&T's proposal would transition high-cost support mechanisms that were designed to ensure the ubiquitous deployment of plain old telephone service (POTS) to mechanisms designed to meet the needs of Americans in the 21<sup>st</sup> Century: providing access to broadband services wherever we live, work or travel.<sup>1</sup> Under AT&T's proposal, which builds upon the Joint Board's *Recommended Decision*,<sup>2</sup> the Commission would establish two broadband funds (one for fixed-location infrastructure and the second for mobile wireless infrastructure) that target unserved areas for project-based support. AT&T also proposed a means by which legacy high-cost funding could transition to the two new funds. AT&T

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<sup>1</sup> In an interview last week with the Wall Street Journal, Chairman Martin stated that "[w]e need to switch our focus from a voice world to a broadband world." Ben Charny, *FCC Head Reiterates Backing of Subsidies to Build Broadband*, Wall St. J., May 30, 2008, at B6 (also expressing support for the idea that broadband networks are as important to the U.S. as the telephone and its networks, and should be treated as such by the government).

<sup>2</sup> *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 (2007) (*Recommended Decision*).

suggested that both funds receive an infusion of new dollars, at least during the early years of the transition, to jump-start broadband deployment in unserved areas. AT&T did not suggest a specific amount; noting instead that the size of these funds would depend on the speed with which the Commission determines broadband should be deployed and the capabilities it determines broadband should offer.

Last month, the Commission issued a news release announcing adoption of an order capping support to competitive eligible telecommunications carriers (competitive ETCs), noting that the cap was a “crucial first step toward comprehensive reform of Universal Service and intercarrier compensation, two carrier regimes that are directly interrelated.”<sup>3</sup> AT&T’s proposed framework presaged the Commission’s finding that high-cost support reform and intercarrier compensation are inextricably related, and thus included alternative recovery mechanisms to allow incumbent local exchange carriers (ILECs) to lower intrastate access charges to interstate levels. As explained in its comments, high access charges have created a disincentive for many ILECs to deploy or to aggressively market broadband because, to date, the broadband Internet access and voice over Internet protocol (VoIP) services made possible by that investment have avoided access charges, on which many ILECs have relied to offer below-cost POTS service, in some cases at rates that are inequitably and/or unreasonably low. Moreover, ILECs may be unable to support and maintain existing infrastructure in high-cost areas absent these access revenue streams. Using a federal benchmark to be set by the Commission, AT&T suggested replacing those implicit subsidies with explicit support, which could include some combination of increases to subscriber line charges (SLCs) and additional federal access universal service

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<sup>3</sup> *Interim Cap Clears Path for Comprehensive Reform, Commission Poised to Move Forward on Difficult Decisions Necessary to Promote and Advance Affordable Telecommunications for All Americans*, News Release, May 2, 2008.

funding. The Commission could ultimately incorporate this proposal into its comprehensive intercarrier compensation effort to transition carriers to a single terminating intercarrier compensation rate for all traffic.

The Commission amassed a large record in response to its three Notices of Proposed Rulemakings (NPRMs).<sup>4</sup> Many of the comments are predictable, trotting out several timeworn, self-serving proposals that would do little to achieve Congress's mandate that federal and state support mechanisms preserve and advance universal service consistent with the requirements of section 254(b) in a competitive marketplace. These proposals generally fall into one of two categories: protect my high-cost support while slashing the support of my competitor, or simply tinker around the edges of reforming the high-cost mechanisms and then revisit the issue several years from now. The Commission should not spend any time on these commenters' suggestions. Rather, as AT&T and many others urged, the Commission should act now to fundamentally reform the existing high-cost support mechanisms and ensure that broadband and mobile wireless services are deployed to unserved areas. The framework that AT&T proposed in its comments, which provides a market-based solution that can be implemented quickly, offers a path to reach those objectives.

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<sup>4</sup> *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 1531 (2008) (requesting comment on the *Recommended Decision*); *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 (2008) (*Reverse Auctions NPRM*); *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 (2008) (*Identical Support NPRM*).

## II. DISCUSSION

### A. Joint Board's Recommended Decision

A diverse group of commenters support the Joint Board's recommendation to establish broadband<sup>5</sup> and mobility<sup>6</sup> support mechanisms that would provide project-based funding to construct new facilities to provide broadband and mobile wireless services in unserved areas. As explained in its comments, AT&T supports this recommendation but, consistent with the policy makers' stated goals, suggests that the Commission make deployment of broadband capabilities the goal of both new funds.<sup>7</sup>

1. **Commission has ample authority to fund broadband service.** A few commenters question the Commission's authority under section 254 of the Communications Act of 1934, as amended (Act), to fund broadband Internet access service.<sup>8</sup> For example, Verizon asserts that section 254(c)(1), which provides that universal service is an evolving level of "telecommunications services," precludes the Commission from making broadband Internet

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<sup>5</sup> See, e.g., AARP; Alltel; Benton Foundation; California Public Utilities Commission; CenturyTel; CoBank, ACB; Connecticut Department of Public Utility Control; CTIA; Embarq; ITTA; Information Technology Industry Council (ITI); Iowa Utilities Board; NASUCA; National Consumer Law Center; NTCA; New Jersey Division of Rate Counsel; North Dakota Public Service Commission; Oklahoma Corporation Commission; OPASTCO; Public Utilities Commission of Ohio; Public Utility Commission of Oregon; Qwest; TDS; TIA; US Cellular; Western Telecommunications Alliance.

<sup>6</sup> See, e.g., Alltel; California Public Utilities Commission; CenturyTel; CoBank, ACB; Connecticut Department of Public Utility Control; CTIA; ITTA; Montana Telecommunications Association; NASUCA; NCTA; National Consumer Law Center; NECA; New Jersey Division for Rate Counsel; North Dakota Public Service Commission; Oklahoma Corporation Commission; OPASTCO; Public Utilities Commission of Ohio; Public Utility Commission of Oregon; TDS; Verizon.

<sup>7</sup> In prioritizing applications, AT&T suggests that the Commission fund applications to provide mobile wireless in areas that lack mobile wireless *voice* service from any provider before funding applications to provide service to areas that lack mobile wireless *broadband* service but which have mobile wireless voice service. AT&T Comments at 21-22.

<sup>8</sup> See, e.g., SouthernLINC Wireless Comments at 30-31; Verizon Comments at 31-33.

access service a service supported by the federal high-cost mechanisms.<sup>9</sup> While noting that section 254(b) expressly directed the Joint Board and the Commission to base their universal service policies on certain principles, including “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation,”<sup>10</sup> Verizon contends that these principles are not statutory commands but, rather, are principles to be considered by the Commission.<sup>11</sup>

The Commission has ample authority to provide project-based funding to ensure that broadband is deployed to unserved areas. As an initial matter, Verizon’s suggestion that the principles enunciated in section 254(b) are merely hortatory is incorrect, as the courts repeatedly have held. Indeed, the Tenth Circuit rejected the Commission’s previous attempts at universal service reform specifically because the Commission failed to comply with Congress’s mandate that federal and state support mechanisms be designed to fulfill the objectives of section 254(b): the “FCC must base its policies on [section 254(b)’s] principles . . . [while] the FCC may exercise its discretion to balance the principles against one another when they conflict, [it] may not depart from them altogether to achieve some other goal.”<sup>12</sup> Facilitating broadband deployment in unserved areas unquestionably is consistent with Congress’s directives in section

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<sup>9</sup> Verizon Comments at 31-32.

<sup>10</sup> 47 U.S.C. § 254(b)(2).

<sup>11</sup> Verizon Comments at 32 (citing *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 421 (1999), cert. dismissed sub nom. *GTE Serv. Corp. v. FCC*, 531 U.S. 975, 121 S.Ct. 423 (2000) (*TOPUC*)).

<sup>12</sup> *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (2001) (*Qwest D*). In this decision, the Tenth Circuit noted the “weaker” reading in *TOPUC*, cited as authority by Verizon, but concluded that “*TOPUC* holds only that that the principles may be overcome by the limitations of the FCC’s jurisdiction under § 152(b), however.” *Id.* at 1199 n.6.

254(b)(2) and (3).<sup>13</sup> Other provisions of the Telecommunications Act of 1996 (1996 Act) also reflect Congress’s objective of encouraging the development and deployment of advanced telecommunications and information services to all Americans. For example, the preamble to the 1996 Act states that the primary purpose of the legislation is to “encourage the rapid deployment of new telecommunications technologies.”<sup>14</sup> Likewise, in section 706 of the 1996 Act, Congress mandated that the Commission “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”<sup>15</sup> It simply is implausible that Congress would repeatedly direct the Commission (including in section 254 itself) to adopt policies and rules to ensure that advanced telecommunications and information services are made available to all regions of the country and at rates reasonably comparable to those services provided in urban areas but then deny the Commission the tools and authority to implement those directives.

As AT&T has explained previously, the Commission’s authority to execute congressional directives set forth in section 254(b) also lies with its more general Title I authority “to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nationwide . . . wire and radio communication service with adequate facilities at reasonable charges.”<sup>16</sup> Consequently, even though section 254(c)(1) does not expressly authorize support for

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<sup>13</sup> Section 254(b)(3) provides that consumers in all regions of the Nation should have “access to telecommunications and information services, including interexchange and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas. . . .”

<sup>14</sup> 1996 Act Preamble.

<sup>15</sup> 47 U.S.C. § 157 nt.

<sup>16</sup> 47 U.S.C. § 151; AT&T Reply Comments, WC Docket No. 05-337, CC Docket No. 96-45 at 10-11 (filed July 2, 2007). In these reply comments, AT&T also explained that the Commission could rely on its authority under sections 201, 303(r), and 154(i) of the Act and, if necessary, the Commission could forbear from the provisions in section 254(c)(1) to the extent they limit universal service support only to telecommunications services. *Id.* at n.18.

“information services,” it clearly does not prohibit the Commission from providing such support to advance the general mandate of section 151, which was the source of authority for the Commission’s universal service program prior to enactment of the 1996 Act.<sup>17</sup> Adopting the narrow view of the Commission’s authority advanced by Verizon and some other commenters would render section 254(b)(2) a nullity and section 254(b)(3) nearly so. Plainly, such a reading is inconsistent with congressional intent and basic rules of statutory construction.<sup>18</sup>

## **2. Parameters and operation of the new broadband funds.**

Like other commenters, AT&T questioned the Joint Board’s recommendation that the Commission allocate a certain amount of federal dollars to each state and permit the states to award providers federal funding.<sup>19</sup> Many commenters, including at least one state commission, shared AT&T’s concerns about the Commission’s authority to delegate this function to the states and the states’ resources to manage such an undertaking.<sup>20</sup> Like AT&T, commenters also expressed concern about the lack of uniformity among the states that would result if the

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<sup>17</sup> AT&T Reply Comments at 10.

<sup>18</sup> *See, e.g., Duncan v. Walker*, 533 U.S. 167, 174, 121 S.Ct. 2120 (2001) (“[A] statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant” (internal quotation marks omitted)). AT&T also disagrees with Verizon and the Rural Independent Competitive Alliance that the Commission lacks authority to establish separate supported services so that current high-cost recipients that choose not to participate in either broadband fund would still be required to offer broadband and/or mobile wireless service. *See* Verizon Comments at 25 (arguing that an ETC must offer all supported services); Rural Independent Competitive Alliance Comments at 8. Section 214(a)(1)(A) states that an ETC shall “offer the services that are supported by Federal universal service support mechanisms under section 254(c). . . .” The statute expressly contemplates that there will be multiple universal service *mechanisms* (which could include a Broadband Incentive Fund and an Advanced Mobility Fund) and it plainly does not require ETCs to offer *all* of the supported services. The Commission thus has the flexibility to structure its rules as suggested by the Joint Board. *See Recommended Decision* at para. 68.

<sup>19</sup> AT&T Comments at 33.

<sup>20</sup> Iowa Utilities Board Comments at 2 (expressing concern over the cost that would be incurred by the states); Montana Telecommunications Association Comments at 24; NTCA Comments at 46-48; Rural Independent Competitive Alliance Comments at 10-12; Verizon Comments at 14-15.

Commission adopted the Joint Board’s recommendation to permit states to “use any suitable procedure for awarding grants. . . .”<sup>21</sup> By contrast, AT&T’s proposal would establish an application process that would not vary among the states and would have the Commission, not the states, select winning applicants to provide broadband service to unserved areas.<sup>22</sup> As explained in its comments, AT&T suggests that the Commission provide substantial deference to a state commission’s review and ranking of broadband applications, and thus take advantage of each state’s expertise and knowledge of local needs and goals, while maintaining appropriate authority and control over federal high-cost funding.<sup>23</sup>

In evaluating applications, AT&T suggested that the Commission adopt certain criteria that it and state commissions would consider, including the requested amount of support per number of unserved households or per population covered by the application, financial qualification requirements, the amount of time to build-out the unserved area, *etc.* Several commenters offer other suggestions worth considering in the context of AT&T’s proposed framework. For example, Connected Nation recommends that the Commission factor the existence of state “demand-stimulation programs” when awarding federal funding for broadband.<sup>24</sup> If the Commission decides to establish a state matching fund process, the Commission should consider Connected Nation’s proposal to treat a state’s demand-stimulation

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<sup>21</sup> *Recommended Decision* at paras. 15, 47; AT&T Comments at 33; Alltel Comment at 17 (expressing concern that giving states “broad and essentially standardless flexibility” would “fail to establish a clear-cut and ‘predictable’ federal policy”).

<sup>22</sup> AT&T Comments at 33.

<sup>23</sup> *Id.* at 22.

<sup>24</sup> Connected Nation Comments at 28.

initiatives as state matching funds.<sup>25</sup> If designed correctly, such a proposal may encourage more states to devote resources to broadband deployment, thereby lowering the size of the federal fund. Such a proposal also would address Connected Nation's concern that allocating federal support among the states based only on the number of unserved households in each state could create an incentive for states to delay implementation of broadband demand-stimulation programs.<sup>26</sup> AT&T believes that Connected Nation's concern and suggested response warrant consideration by the Commission.

Several commenters offer suggested data speeds that the Commission should demand from broadband applicants in order to receive funding. AARP, for example, proposes an initial benchmark of symmetrical data speeds of 10 mbps.<sup>27</sup> However, in deciding what data transmission capabilities to support under the broadband funds, the Commission should bear in mind that the greater the capability, the greater the cost to the fund and to the end-user customer, which would likely slow the build-out to unserved areas. Moreover, requiring very high transmission speeds could preclude providers from using certain technologies that are highly efficient for serving particular geographies from participating in the new funds. The better approach may be for the Commission to require more readily achievable capabilities initially and then to review the minimum required capabilities periodically as the fund matures and technologies advance to determine if changes are appropriate.<sup>28</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 29 (also suggesting that the Commission consider factors affecting network deployment that are driven by terrain and topography).

<sup>27</sup> AARP Comments at 13-15 (arguing that funding broadband at speeds less than this would be a misappropriation of subsidy funds that will hinder broadband benefits).

<sup>28</sup> *See, e.g.*, Alltel Comments at 13; ITI Comments at 6.

Many commenters also question whether the Joint Board's proposed funding levels for both the Broadband (\$300 million) and the Mobility Funds (\$1 billion) are adequate to achieve the policy makers' stated broadband and mobility deployment goals.<sup>29</sup> For example, CTIA submitted a study with its comments indicating that it will cost approximately \$22 billion to complete nationwide deployment of broadband-capable mobile wireless infrastructure for both CDMA and GSM technologies.<sup>30</sup> While CTIA's study may accurately identify the likely cost of completing such deployment, that does not mean that federal universal service support mechanisms would have to be sized at that amount. Absent regulatory mandates that would significantly alter the economics of network deployment, mobile wireless providers will likely deploy broadband-capable facilities to many of the currently unserved areas using their own risk capital, without any federal support (or any other public funding).

Some commenters supporting creation of a Mobility Fund have suggested that the Commission make project-based funding available to only one mobile wireless provider in each unserved area.<sup>31</sup> However, as AT&T pointed out in its comments, if one of the Commission's universal service goals is to ensure that all Americans have mobile wireless coverage wherever they live, work or travel for public safety and other reasons, it should consider making funding available to ensure that both CDMA and GSM mobile wireless technologies are available in

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<sup>29</sup> Benton Foundation Comments at 28; CTIA Comments at 29; ITI Comments at 9; National Consumer Law Center Comments at 5; New Jersey Division of Rate Counsel Comments at 31-34; North Dakota Public Service Commission Comments at 7; Windstream Comments at 13-15.

<sup>30</sup> CTIA Comments at 29.

<sup>31</sup> *See, e.g.*, Verizon Comments at 9 (recommending that the Commission award a single wireless construction grant per each unserved area and ongoing wireless subsidies). On the other hand, AT&T's project-based funding did not assume that ongoing support would be necessary except in the event that no other provider has begun offering the supported service in that area at the end of the applicant's term of service and the funding recipient can demonstrate to the Commission that continued support is necessary to maintain service to that area, in which case the provider would have to re-apply for funding, which the Commission may or may not approve. AT&T Comments at 22-23.

unserved areas.<sup>32</sup> If a customer served by a CDMA provider attempts to call 911 in an area served by only a GSM provider, that call will not go through. Using project-based funding to ensure that both technologies are available would remedy this problem.<sup>33</sup> Thus, in deciding whether to limit support only to one wireless provider in any given area, the Commission will have to weigh the speed at which it believes broadband should be deployed to unserved areas throughout America and the importance of ensuring that Americans have ubiquitous mobile wireless coverage against other policy objectives.<sup>34</sup>

### **3. Transition from legacy mechanisms.**

In its comments, AT&T proposed a transition plan that would redirect legacy high-cost dollars to the two new funds.<sup>35</sup> Although the Joint Board did not reach consensus on a transition period, many commenters believe that five years is appropriate.<sup>36</sup> Consistent with the view shared by these commenters, in its proposal, AT&T recommended a five-year period for legacy wireless competitive ETC support to transition to the new Advanced Mobility Fund.<sup>37</sup> While

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<sup>32</sup> AT&T Comments at 17.

<sup>33</sup> For these reasons, CTIA supports the Commission's selection of "at least one provider from each network platform technology to ensure truly ubiquitous service." CTIA Comments at 30-31.

<sup>34</sup> A number of commenters, as well as the Joint Board, recommended funding the two new funds by redirecting support from the existing high-cost mechanisms. NCTA Comments at 19; Qwest Comments at 5; Verizon Comments at 5-8 (recommending that the Commission cap the high-cost fund); *Recommended Decision* at para. 26. This gradual funding approach would limit the speed and geographic scope of broadband deployment to unserved areas, which is why AT&T recommended an infusion of new dollars in both broadband funds, at least at the early stages of the transition.

<sup>35</sup> AT&T Comments at 23-25 (explaining the different transitions that would apply to legacy price cap ILEC funding and legacy wireless competitive ETC funding).

<sup>36</sup> *See, e.g.*, Alltel Comments at 13; CTIA Comments at 19-20; NASUCA Recommended Decision Comments at 58.

<sup>37</sup> AT&T Comments at 24-25 (recommending that beginning one year after the Commission's order becomes effective, legacy wireless high-cost support will decrease by twenty percent each year for five years and be redirected to the Advanced Mobility Fund).

providing current wireless recipients predictability, which is not only required for purposes of section 254(b)(5) but for practical planning purposes (*e.g.*, in many states, wireless competitive ETCs are required to file proposed expenditure plans with state commissions for their approval), AT&T's proposal would establish a fixed transition to redirect a significant amount of legacy support each year to the new Advanced Mobility Fund.

A fixed, prorated five-year transition, however, is not necessarily the best policy for price cap ILECs. Unlike competitive ETCs, ILECs have state-imposed COLR obligations; therefore, a fixed transition that is appropriate for wireless competitive ETCs would not be reasonable for ILECs. As AT&T explained in its comments, the appropriate trigger for transitioning legacy federal high-cost support to price cap ILECs to the Broadband Incentive Fund is complete retail pricing deregulation by the state commission.<sup>38</sup> In addition to full retail pricing deregulation, the Commission could also include a state's elimination of COLR obligations as part of the transition trigger for price cap ILECs. It is AT&T's view that once price cap ILECs obtain the regulatory freedom to price all retail services at market-based levels, those ILECs would no longer need legacy high-cost support to continue providing basic services to high-cost areas. A diverse group of commenters agree with AT&T. NCTA, for example, states that where a state has deregulated the ILEC's local exchange service, the fundamental premise for providing a government subsidy no longer exists and a process for reducing, and eventually eliminating, high-cost support should be initiated.<sup>39</sup> The period of time over which legacy price cap ILEC

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<sup>38</sup> *Id.* at 23-24.

<sup>39</sup> NCTA Comments at 8-9. *See also* NASUCA Recommended Decision Comments at 33-34 (arguing that where rates are no longer regulated and there is no constraint on ILEC earnings, it is inappropriate for other consumers around the country to support that ILEC's returns); Time Warner Telecom Comments at 4-6 (contending that it does not make sense to subsidize services that have been deregulated).

support should transition to the new broadband fund thus should correspond to the time period over which a state implements full retail pricing deregulation, which may be less than five years.

#### **4. Rate of return ILECs and access charge harmonization.**

As a general matter, rate of return carriers are small carriers with low densities and high costs. The Commission's high-cost mechanisms have in large part permitted these ILECs to deploy broadband facilities in their study areas. However, for reasons noted above, many rate of return carriers have disincentives to aggressively market broadband services because of the ensuing loss of access charge revenues if, for example, their subscribers selected an over-the-top VoIP provider instead of a traditional long distance service provider.<sup>40</sup> For these reasons, AT&T proposed treating these ILECs differently from price cap ILECs: AT&T suggested that the Commission affirm that ILECs may use high-cost support to recover broadband investment; establish explicit alternative recovery mechanisms to replace access charges, discussed below; and consider re-indexing the high-cost loop support fund after some period of time in order to give rate of return ILECs an additional cost recovery opportunity, which will provide them an additional incentive to market broadband services to their customers.<sup>41</sup>

There is little agreement in the record on the Joint Board's recommendation to create a provider of last resort (POLR) fund.<sup>42</sup> AT&T does not believe that the Commission should

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<sup>40</sup> Some rate of return carriers may have both deployed and aggressively marketed broadband services in their study areas. Once a significant portion of their customers select VoIP, however, their access revenues will decline even though virtually the same infrastructure will still need to be supported. AT&T's alternative recovery mechanisms proposal discussed below is an attempt to address this issue as well.

<sup>41</sup> AT&T Comments at 25-26.

<sup>42</sup> *See, e.g.*, CTIA Comments at 15 (arguing that setting aside three times as much high-cost funding for ILECs than is available for wireless carriers is "indefensible"); Alaska Telephone Association Comments at 7-13 (supporting the establishment of a POLR Fund but opposing imposing a cap on this fund and unifying the rural and non-rural mechanisms).

establish a third fund the purpose of which is to perpetuate federal high-cost support for POTS. Unifying the rural and non-rural mechanisms, as the Joint Board suggests, could likely take years, all for little benefit. However, if the Commission does not embrace broadband as the focus of high-cost support and, instead, continues to target support to legacy POTS networks and services, it will have to confront the fact that the current non-rural carrier high-cost support mechanisms are flawed and their funding inadequate for “non-rural” carriers to continue providing affordable POTS services to their millions of customers in high-cost areas.<sup>43</sup>

As AT&T explained in its comments, adopting AT&T’s alternative recovery mechanisms to replace existing implicit subsidies in access rates should ameliorate many of the inherent problems in the current federal high-cost support mechanisms.<sup>44</sup> AT&T recommended that the Commission establish a federal benchmark mechanism that will make explicit the subsidies that are currently implicit in intrastate access charges to offset an ILEC’s reduction in access revenue when it reduces its intrastate access charges to interstate levels.<sup>45</sup> These alternative recovery mechanisms could include some combination of SLC increases and additional federal universal service funding. How much universal service funding would be necessary would be determined by comparing a federal benchmark (a per-line amount to be set by the Commission) to the total of a carrier’s basic local service rate, the current SLC, and any state high-cost support. If the carrier’s per-line total is less than the federal benchmark, the carrier would be required to

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<sup>43</sup> In addition, if state commissions do not provide price cap ILECs with complete retail pricing deregulation so that legacy high-cost support is not transitioned to the Broadband Incentive Fund, the Commission will have to address these issues. AT&T Comments at 31.

<sup>44</sup> *Id.* at 31.

<sup>45</sup> *Id.* at 29-30.

increase the SLC up to a specific cap before it would be eligible for additional universal service support to help offset its reduction in access revenue.<sup>46</sup>

AT&T notes that some states have made little progress in addressing the implicit subsidies currently contained in high intrastate access charges. AT&T would not want the prospect of a near-term federal solution based on AT&T's proposal to create any interim disincentives for states to undertake their own access reform. To eliminate such disincentives, AT&T suggests that the Commission consider the following modification to AT&T's proposal: Any state that has not yet required carriers to reduce their intrastate access charges to interstate levels but that adopts an order directing ILECs in its state to do so prior to the Commission's adoption of AT&T's alternative recovery mechanisms should have the option of receiving the federal benefits of AT&T's proposal "as if" the state had not acted to eliminate those implicit subsidies.

#### **B. *Reverse Auctions NPRM***

Like the proposed POLR Fund, the comments reflect an utter lack of consensus on the use of reverse auctions.<sup>47</sup> However, a majority of commenters opposes or expresses serious reservations about using reverse auctions to distribute federal high-cost support. For its part, AT&T supports the Commission's stated goals for proposing a reverse auctions process: to use a market-based, competitive approach to determine funding; to encourage providers to voluntarily compete for universal service funding so that providers seek the least possible support necessary;

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<sup>46</sup> Although different from AT&T's proposal, Sprint Nextel also suggested increasing SLCs in its May 12 *ex parte* filing. See Letter from Anthony Alessi, Sprint Nextel, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 05-337, CC Docket No. 96-45 (filed May 12, 2008) (recommending that the Commission lower high-cost support by raising SLC caps).

<sup>47</sup> See, e.g., Verizon Comments (supporting reverse auctions); NTCA Comments (opposing reverse auctions); Windstream Comments at 24-25 (recommending that the Commission implement reverse auctions on a trial basis to reduce the number of multiple competitive ETCs in an area).

to control fund growth; and to encourage the use of efficient technologies.<sup>48</sup> AT&T believes that reverse auctions – if designed correctly – may be used successfully to distribute federal high-cost support. The devil is, of course, in the details and commenters have raised many details that would need to be addressed in order to have a successful and legally sustainable reverse auctions process.<sup>49</sup>

As several commenters note, reverse auctions are efficient only so long as all parties are bidding to assume *the exact same universal service responsibilities*.<sup>50</sup> This means that if the previous support recipient is not fully relieved of its service obligations should it not be the auction winner, then the universal service obligation that it is bidding on is intrinsically different from the obligation on which non-incumbents are bidding. In particular, the incumbent will be bidding on an obligation to serve a territory that no other carrier has any obligation to serve – while non-incumbents will be bidding on territories in which the former incumbent retains some obligation to serve. In such a case, the service obligations that non-incumbents are bidding to assume are substantially less onerous and costly than the obligation that the incumbent would be bidding to assume. Not only would such a situation of asymmetric obligation render the auction a biased and inaccurate mechanism for determining the most efficient supplier of universal service, but it also would be patently unfair to incumbents. In such a situation, if the ILEC is not

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<sup>48</sup> *Reverse Auctions NPRM* at para. 11.

<sup>49</sup> For example, NASUCA notes that ILECs offer “optional” services other than those contained in the Commission’s list of supported services (*e.g.*, multi-line and private line services) on which the ILEC’s customers, including state and local governments, rely. NASUCA Comments at 16. For this reason, NASUCA recommends requiring an auction winner, which may not be the ILEC, to have the obligation to provide these “optional” services. While it is clear from section 254(c)(1)(C) that the Commission has no authority to add such services to its supported services list, NASUCA’s comments do raise an interesting potential consequence of an ILEC losing a reverse auction in all or part of its study area, namely that the ILEC may discontinue certain services that are vital to certain customers.

<sup>50</sup> *See, e.g.*, NASUCA Reverse Auctions Comments at 15-20; Embarq Comments at 18; Rural Independent Competitive Alliance Comments at 21.

the winning bidder, it faces the impossible situation of retaining the obligation to serve the territory – but in competition with a rival who is receiving a government subsidy to provide its service.

Commenters also have raised significant concerns about COLR obligations and stranded investment should the ILEC lose an auction to a competitor.<sup>51</sup> These concerns are legitimate and the Commission would have to address them before implementing a reverse auction process. In its comments, AT&T similarly raised concerns about an ILEC's COLR obligation, noting that it is the states, not the Commission, that generally impose these obligations. Thus, it is unclear what ability the Commission may have to relieve a losing ILEC of its COLR requirements.<sup>52</sup> AT&T's proposal gives state commissions an incentive to grant price cap ILECs retail pricing deregulation (because doing so would enable their states to receive more federal funding for broadband deployment). Thus, under AT&T's proposal, even if an ILEC's application is not selected for funding, granting a price cap carrier pricing flexibility helps to protect against that carrier being required to continue providing service in a high-cost area without any federal support and at rates that are artificially below its costs.<sup>53</sup>

Several commenters recommend using a reverse auctions, not application, process, to award construction grants to mobile wireless providers to provide service in unserved areas.<sup>54</sup>

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<sup>51</sup> See, e.g., ITTA Comments at 39; NTCA Comments at 42-43.

<sup>52</sup> AT&T Comments at 35-36; Embarq Comments at 18-19 (noting that it is highly questionable whether an ILEC could be relieved of its COLR obligations as a result of an auction absent Commission preemption).

<sup>53</sup> AT&T Comments at 36.

<sup>54</sup> See, e.g., Verizon Comments, App. at 26-29. These commenters would limit the supported service to mobile wireless *voice* service. AT&T believes that the Commission should also require funding recipients to provide mobile wireless broadband Internet access service.

Upon review of the record, AT&T continues to recommend that the Commission use an application process to award project-based funding to mobile wireless providers. AT&T's proposal achieves the same goals as those set forth in the Commission's *Reverse Auctions NPRM*, but provides certain benefits that a reverse auction process would not. For example, AT&T's process gives the Commission greater flexibility in awarding funding. Unlike an auctions process where the focus must be on price, the Commission may consider factors other than price when selecting applications to fund.<sup>55</sup> Moreover, for a reverse auctions process to work, the Commission would have to establish detailed specifications identifying precisely the winning bidders' service obligations to ensure that everyone is bidding on the same thing. Not only would developing such specifications be enormously time consuming and costly for the Commission, such specifications inevitably would be both overly rigid and out-of-date as soon as they were adopted, given the rapid and accelerating pace with which broadband services and technologies are changing. AT&T's proposal addresses these concerns by permitting providers to incorporate the latest technological developments in their applications for funding. AT&T's proposed application process thus could be implemented quickly by the Commission, and at minimal cost. In addition, in establishing a reverse auction, the Commission may feel it necessary to set a reserve amount, or to employ multiple rounds of bidding. All of these preliminary steps would impose significant costs and delays that would be unnecessary if the Commission adopts AT&T's proposed application process.

### **C. *Identical Support NPRM***

The responses to the Commission's *Identical Support NPRM* highlight more than any other universal service funding issue the pitched battle between wireline and wireless

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<sup>55</sup> AT&T Comments at 35.

competitors.<sup>56</sup> There appears to be no middle ground between the commenters that are at either extreme. AT&T posits that the most prudent and efficient course for the Commission to take is to adopt AT&T's proposed transition for legacy wireless competitive ETC support. If it did, there would be no need for wireless providers to submit cost studies for state commission or Commission review and approval.<sup>57</sup> While AT&T has argued previously that Commission adoption of the industry-wide competitive ETC cap effectively eliminates the identical support rule, there can be no question that, if the Commission adopts AT&T's proposal, after just one year wireless competitive ETCs will be receiving twenty percent less in existing high-cost funding. That twenty percent reduction continues at the same pace each year until all legacy wireless competitive ETC support is transitioned to the project-based Advanced Mobility Fund. In addition, under AT&T's proposal, mobile wireless broadband providers would receive support based on their assessment of what would be necessary to build-out and operate mobile wireless service in a specific unserved area. Support to wireless carriers would no longer be related in any way to what type of ILEC (*i.e.*, "rural" or "non-rural") is providing service in the same area and how much federal high-cost support that ILEC receives. AT&T's proposal is thus consistent with the Commission's stated goal of its *Identical Support NPRM*,<sup>58</sup> but satisfies this goal in a manner that will take considerably less time to implement, while avoiding the significant

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<sup>56</sup> See, e.g., US Cellular Comments (arguing against eliminating the identical support rule); Montana Telecommunications Association Comments at 11-17 (arguing for the elimination of the identical support rule, immediate elimination of IAS and ICLS support for wireless competitive ETCs, and implementation of cost-based allocation rules within one year of the Commission's order adopting these proposals).

<sup>57</sup> Moreover, evaluating cost studies from the dozens of competitive ETCs will most certainly prove a resource-intensive undertaking for state commission and Commission staff.

<sup>58</sup> *Identical Support NPRM* at para. 5.

implementation costs inherent in other proposals (*i.e.*, cost studies or burdensome new accounting rules).<sup>59</sup>

There should be no doubt that creating cost studies is a complex task. Commenters that blithely suggest that, because wireless providers employ bright and talented employees, allocating costs pursuant to Part 32 should be an easy task ignore the history of Part 32.<sup>60</sup> Wireline carriers had significantly more time to implement these accounting rules than what has been suggested for wireless providers.<sup>61</sup> Moreover, as Verizon notes, under the various cost data proposals, a competitive ETC will have every incentive to maximize its costs in order to receive more federal high-cost support and will have no incentive to become more efficient.<sup>62</sup> Putting aside these skewed incentives and GVNW's flawed proposal, the challenges associated with allocating wireless costs are significant. In its comments, Verizon details the futility of performing cost allocations for just one element: spectrum. Verizon's comments offer the

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<sup>59</sup> Panhandle, another commenter with a proposal for calculating mobile wireless costs, does not even pretend that, under its formula, wireless carriers would be eligible to receive support based on their actual costs. Panhandle handicaps a larger mobile wireless provider's ability to obtain high-cost support and justifies its proposed discriminatory treatment by stating that larger providers have "massive economies of scale and purchasing power." Panhandle Comments at 7. AT&T suggests that Panhandle read two Tenth Circuit decisions to learn about the success that the Commission has had explaining how the non-rural mechanism provides larger ILECs with "sufficient" funding. *See Qwest I* and *Qwest Corp. v. FCC*, 398 F.3d 1222 (10<sup>th</sup> Cir. 2005).

<sup>60</sup> GVNW Comments at 11-12. Indeed, because AT&T Mobility and other mobile wireless providers employ bright and talented employees, they better understand the Herculean task of GVNW's proposal better than GVNW, a rural ILEC consultant.

<sup>61</sup> *See* AT&T Comments at 40 (summarizing the history of the Commission's Part 32 proceeding). Confronted with this history, GVNW appears to back away from its wholly unrealistic timeline. *See* GVNW Comments at 18 (noting that several wireless carriers asserted that its proposed timeline was not achievable and suggesting that, instead, the Commission decide what timeline is appropriate).

<sup>62</sup> *See also* CTIA Comments at 23-24 (noting that the "existing mechanisms for rural ILECs, based on the ILECs' embedded costs, actually create disincentives for efficiency by rewarding ILECs with higher costs with greater support" and "it therefore would be ill-advised to import the inefficiencies of the current rural ILEC support mechanism into the support mechanism for wireless ETCs").

perfect example of why the Commission’s proposals in its *Identical Support NPRM* are misguided and should not be pursued.<sup>63</sup>

Based on the comments, if the Commission adopts its proposed elimination of access support to competitive ETCs, wireline and wireless alike, it should brace itself for the prolonged litigation that will ensue.<sup>64</sup> As explained in its comments, AT&T’s proposal would reduce *all* legacy mobile wireless high-cost support (not just IAS and ICLS) over a period of five years and transition that support to the Advanced Mobility Fund, which targets project-based support to unserved areas. Moreover, AT&T’s proposal does not suffer from the same potential legal obstacles (*e.g.*, lack of predictability as required by section 254(b)(5)) as would those proposed by the Commission in its *Identical Support NPRM* and by other commenters.<sup>65</sup>

### **III. CONCLUSION**

A majority of commenters agree with AT&T and policy makers that it is time for the Commission to implement the advanced telecommunications and information services directives set forth in section 254(b) of the Act. AT&T’s proposal to establish two broadband funds (one for fixed-location infrastructure and the second for mobile wireless infrastructure) that are targeted to provide access to broadband services in unserved areas using project-based funding offers the Commission a framework for reforming the high-cost support mechanisms to meet the

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<sup>63</sup> See also Sprint Nextel Comments at 10 (explaining the difficulties involved with allocating costs for backhaul: reverse-engineer financial reporting systems to disaggregate backhaul costs by discrete geographic areas, allocate these costs across areas in cases where the cell site provides coverage to multiple high-cost areas, and allocate that percentage of the backhaul facility used to provide non-USF-supported services).

<sup>64</sup> See, *e.g.*, Alltel Comments at 6; CTIA Comments at 17-18; US Cellular Comments at 52-53.

<sup>65</sup> As noted above, CTIA, like AT&T, supports a five-year transition. CTIA Comments at 20. See also CenturyTel Comments at 24 (arguing not only that the Commission should eliminate IAS and ICLS from mobile wireless competitive ETCs “as soon as possible” but recommending that the Commission “restore” these funds to ILECs).

demands of the 21<sup>st</sup> Century. Importantly, AT&T's roadmap provides a defined transition to redirect funding from legacy high-cost support mechanisms that were designed to ensure ubiquitous POTS and offers a proposal to remove implicit subsidies that may have discouraged some carriers from deploying or aggressively marketing broadband services in their study areas.

There was no consensus in the record on the Commission's tentative conclusions in its *Reverse Auctions* and *Identical Support NPRMs*. Indeed, based on a review of the comments, it appears that the Commission can be assured of litigation if it adopts orders implementing those tentative conclusions and an uncertain future before the courts. Adopting AT&T's proposal would achieve the Commission's stated goals of both NPRMs but would do so in a way that does not trigger the concerns raised by the commenters that oppose the Commission's tentative conclusions. Moreover, AT&T's proposal could be implemented quickly and at little cost to the Commission, state commissions, and carriers. For the foregoing reasons, AT&T respectfully suggests that its proposal form the basis for fundamental reform of the Commission's high-cost support mechanisms.

Respectfully Submitted,

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