

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

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

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Cathy Carpino  
Christopher Heimann  
Gary Phillips  
Paul K. Mancini

AT&T Inc.  
1120 20<sup>th</sup> Street NW  
Suite 1000  
Washington, D.C. 20036  
(202) 457-3046 – phone  
(202) 457-3073 – facsimile

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Its Attorneys

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**I. INTRODUCTION**

As is evident from even the most cursory reading of section 254(b) of the Telecommunications Act of 1996, the Commission cannot reasonably conclude that incremental reform that touches just one of many high-cost support mechanisms and continues to support only plain old telephone service (POTS) will satisfy its obligations to consider and appropriately balance the full-range of principles in that section, as required by the Tenth Circuit.<sup>1</sup> For this simple reason, the Commission must reject all four proposals on which it sought comment. It also should be abundantly clear that reform of the Commission’s universal service high-cost programs cannot be achieved in a vacuum: the Commission must tackle intercarrier compensation reform. In the face of continued reliance on the rapidly declining implicit subsidies contained in switched access charges, the Commission can no longer – if it ever could – find that these state implicit support mechanisms “function effectively to preserve and advance universal service.”<sup>2</sup> Finally, the Commission must modify its revenues-based contribution

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<sup>1</sup> *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10<sup>th</sup> Cir. 2005) (*Qwest II*) (Commission must “consider fully the Act’s principles as a whole”).

<sup>2</sup> *Id.*, 398 F.3d at 1233.

methodology to a telephone numbers-based methodology because the current methodology can no longer sustain the Commission's universal service programs.<sup>3</sup>

In its comments, AT&T proposed a path forward that would enable the Commission to respond fully to the Tenth Circuit's two remands and issue rules that will work in concert with the Commission's 2010 National Broadband Plan to establish universal service support mechanisms and policies that will achieve the full-range of objectives in section 254(b) and promote deployment of broadband to all Americans, consistent with the priorities of the President, Congress, and this Commission.<sup>4</sup> We urge the Commission to incorporate this framework in its Notice of Proposed Rulemaking that it will release in December.<sup>5</sup> First, the Commission should establish two broadband funds: one to support the deployment of broadband facilities by providers of fixed location communications services (i.e., wireline and fixed wireless services) and the second to support the deployment of broadband facilities by mobile wireless providers. These funds would provide targeted, project-based, and competitively

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<sup>3</sup> As noted in AT&T's Comments, next quarter's contribution factor is expected to be 12.9%, thereby shattering the 12 % glass ceiling that the Commission established seven years ago. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (and related proceedings), Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, ¶ 128 (2002) (increasing the limited international revenue exception from 8 to 12 % to "provide more than adequate margin of safety if the current contribution factor increases over time").

<sup>4</sup> See *A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket No. 09-51 (rel. April 8, 2009). See also Prepared Remarks of Acting Chairman Copps, Free Press Summit: Changing Media, at 5, May 14, 2009:

I believe the national broadband strategy that the Commission is tasked to develop by next February is the most important charge we have been given, certainly since the '96 Act, and perhaps the most important challenge we have ever been given. I can't say exactly where it will lead, but I'm optimistic it will be a strategy that unleashes the power of truly transformative technology to change the lives of each and every citizen across this land of ours—no matter who they are, where they live, or the particular circumstances of their individual lives.

<sup>5</sup> Response of Federal Communications Commission to Petition for a Writ of Mandamus, *In re Qwest Corporation et al.*, at 2, No. 09-9502 (10<sup>th</sup> Cir. Mar. 6, 2009) (Commission committing to issuing a Notice of Proposed Rulemaking by December 15, 2009 and a final order that responds to the Tenth Circuit's remand no later than April 16, 2010).

awarded support to encourage the deployment of broadband facilities and services in unserved areas. All federal high-cost support that is currently received by mobile wireless competitive eligible telecommunications carriers (ETCs) would be transitioned to the new Advanced Mobility Fund over a five-year period. And federal high-cost support distributed to price cap incumbent local exchange carriers (ILECs) would be transitioned to the Broadband Incentive Fund. Ultimately, the Commission would refocus *all* of its high-cost support mechanisms to support broadband deployment. In its April 2010 order, the Commission should explain, using a timetable, when this refocusing will occur.

Because a Commission response to the Tenth Circuit is long overdue and the transition to the two broadband funds proposed by AT&T will not occur overnight, the Commission also must act immediately to reform its high-cost model support mechanism for non-rural carriers. First, the Commission should target support to wire centers or to census block groups within wire centers using the Census Bureau's definition of "rural" and a definition of "high cost" that is based on population density. After identifying rural and high-cost areas, the Commission would establish a rate comparability benchmark to determine how much, if any, support a carrier providing service in such areas should be eligible to receive. This benchmark would be based on an appropriate "urban" rate (such as the national average urban rate, the median urban rate, or some other average or median rate). To that benchmark, the Commission would apply a comparability factor to determine whether rates in rural and high-cost areas are "reasonably comparable" with the urban rate. The Commission would make support available in rural and high-cost areas under this recalibrated mechanism to reduce rates in rural and high-cost areas where rates exceed the benchmark and to fund an appropriate portion of any gap between the cost of providing supported services in these areas and the expected retail revenues associated with those supported services or some other measure.<sup>6</sup> Finally, the Commission should

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<sup>6</sup> As mentioned in our comments, expected retail revenues should be calculated assuming that end-user rates are at the comparability benchmark, which will ensure that the federal mechanism does not support unfairly low rates.

condition this support on reductions in intrastate access charges because only by doing more to eradicate implicit access subsidies will the Commission have any ability to gauge whether its non-rural high-cost support mechanism is, in fact, “sufficient.”

In these reply comments, AT&T identifies the shortcomings of the other parties’ proposals and explains why its proposal does not suffer from these deficiencies. As an initial matter, AT&T notes that no other commenter has offered a “complete plan for supporting universal service,” which the Commission still owes the Tenth Circuit.<sup>7</sup> In its 2003 *Tenth Circuit Remand Order*, the Commission provided a laundry list of pending proceedings that, when resolved, would result in its complete universal service plan.<sup>8</sup> Almost six years later, the majority of those proceedings still remain open and thus to satisfy the Court this third time around, the Commission must do more than merely cite pending proceedings in its order due next April.

## II. DISCUSSION

### A. Despite A Fragmented Record, The Industry Is Beginning To Coalesce Around Several Key Principles.

Given the long, tortured history of the non-rural high-cost support mechanism and differing or competing parochial interests at stake in this proceeding, the Commission should not be surprised to find that the comments reveal a paucity of general agreement among the parties. There are, however, a few exceptions to this statement and the current record provides sufficient support for the Commission to be guided by several crucial principles when drafting its proposed rules this fall.

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<sup>7</sup> *Qwest Corp. v. FCC*, 258 F.3d 1191, 1205 (10<sup>th</sup> Cir. 2003) (*Qwest I*).

<sup>8</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, ¶¶ 106-07 (2003) (*Tenth Circuit Remand Order*).

## 1. Statewide averaging is inconsistent with section 254(b)(5).

The record is clear that however the Commission decides to replace its non-rural high-cost support mechanism, statewide averaging should not be a part of it.<sup>9</sup> The Commission's continued reliance on statewide averaging has been, without question, the greatest shortcoming of the existing non-rural high-cost support mechanism. Its flaws have been so well-documented that further elaboration seems unnecessary.<sup>10</sup> Like Qwest, AT&T has its own Gunnison, Colorado-like wire centers for which AT&T receives no support under this mechanism even though these wire centers are both extraordinarily large and sparsely populated.<sup>11</sup> As Embarq and Windstream explain, the premise on which the Commission relied to support its decision to adopt a mechanism based on statewide averaging – i.e., states could and would satisfy their universal service obligations within their own borders – has proven to be false for too many states.<sup>12</sup> Although the Commission has given the states ample opportunity during the past decade to support their high-cost wire centers through explicit high-cost funds and rate rebalancing, too few states have been willing to act.<sup>13</sup> The ensuing state inaction has resulted in

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<sup>9</sup> See, e.g., Embarq Comments; ITTA Comments; Iowa Telecommunications Comments; Nebraska Commission Comments; Qwest Comments; RCA Comments; USTelecom Comments; Windstream Comments. Indeed, only three commenters support the continuation of statewide averaging. See NASUCA Comments; New Jersey Division of Rate Counsel Comments; Vermont and Maine Commissions Comments. AT&T responds to the Vermont and Maine Commissions Proposal below.

<sup>10</sup> See, e.g., Embarq Comments; Qwest Comments; AT&T Comments, CC Docket No. 96-45; WC Docket No. 96-45 (filed April 3, 2006).

<sup>11</sup> Qwest Comments at 2-4. As we noted in our comments, despite having about one-quarter of all rural switched access lines in its service area, AT&T receives high-cost model support in just three of its 22 states.

<sup>12</sup> Embarq Comments at 10 (citing *Ninth Report and Order*, ¶ 49); Windstream Comments at 12-15. In fact, much of the explicit support that larger ILECs had received from state high-cost universal service funds (USFs) when the non-rural high-cost support mechanism was established is being transitioned away. See, e.g., California and Texas high-cost funds.

<sup>13</sup> State commissions are not entirely to blame. One state commission that did take these affirmative steps and subsequently concluded that additional federal high-cost support was required to ensure that its rural rates were reasonably comparable with urban rates filed a petition to receive more federal high-cost support *over four years ago* with the Commission, where it remains pending today. See Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for

a high-cost mechanism that is neither specific, predictable nor sufficient. In response, commenters generally agree that future non-rural carrier high-cost support should be targeted based on a wire center, census block group or on some other, more granular basis.<sup>14</sup> However, as AT&T explained in its comments, at this point – i.e., over eight years after the Tenth Circuit’s first remand and after Congress charged the Commission with developing a national broadband plan by next February<sup>15</sup> – merely retargeting on a disaggregated basis the skimpy high-cost support that is provided to the “non-rural” carriers that serve the overwhelming majority of rural and high-cost subscribers will not save this mechanism on review for a third time in 2010.

**2. Refocusing the high-cost support mechanisms to provide support for broadband deployment in unserved areas is required by sections 254(b)(2), (3), and (5).**

A growing number of parties agree that there is little value in extending the universal service goal of the last century – ubiquitous deployment of facilities to support POTS – into this century; instead, the Commission must refocus its high-cost program to support the deployment of broadband-capable facilities in unserved areas.<sup>16</sup> The commenters that oppose this are

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Supplemental Federal Universal Service Funds for Customers of Wyoming’s Non-Rural Incumbent Local Exchange Carrier, CC Docket No. 96-45 (filed Dec. 21, 2004). Based on Wyoming’s experience, states may have concluded that the Commission is not serious about supporting the states in making the tough decisions necessary to eliminate implicit access subsidies.

<sup>14</sup> See, e.g., Embarq Comments at 12; ITTA Comments at 3; Iowa Telecommunications Comments at 7; Nebraska Commission Comments at 2-3; Qwest Comments at 17; RCA Comments at 29; USTelecom Comments at 4; Windstream Comments at 15.

<sup>15</sup> See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, div. B, tit. VI, § 6001(k)(2) (Feb. 17, 2009) (ARRA).

<sup>16</sup> See, e.g., RCA Comments at 37 (arguing that the “Commission’s universal service policies must break away from underwriting the last century’s copper wire technology geared to the provision of voice service, and move to a new paradigm that will work better to both preserve and *advance* universal service”) (emphasis in original); CTIA Comments at 5 (“the universal service system remains a vestige of the last century, designed to support wireline voice networks in a monopoly environment” and this system “must be revised to reflect the new technological and marketplace realities by focusing on efficient support for today’s communications services. Ubiquitous mobility, and mobile broadband specifically, must be an important goal of the FCC’s universal service rules and policies.”); NCTA Comments 4-6 (recommending that the Commission redirect legacy high-cost support to focus on broadband deployment).

incorrect to assert that the Commission need not address broadband deployment in this proceeding.<sup>17</sup> As the Commission has acknowledged, the Tenth Circuit has directed it “to articulate a definition of ‘sufficient’ that appropriately considers the range of principles in section 254 of the Act, and to define ‘reasonably comparable’ in a manner that comports with its duty to preserve and advance universal service.”<sup>18</sup> Commenters that urge the Commission to undertake only minimal reform of the existing non-rural high-cost support mechanism fail to explain how the Commission will be able to respond to these Tenth Circuit mandates if it ignores half of the relevant principles.<sup>19</sup> Other commenters propose such strained interpretations of the principles to support their proposals that the Commission may have greater success on review if it indeed ignores those principles versus trying to shoehorn them into supporting an order that simply retargets non-rural high-cost support on a wire center or some other disaggregated basis.<sup>20</sup>

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<sup>17</sup> NASUCA Comments at 3 (urging the Commission to focus myopically on the non-rural carrier high-cost support mechanism).

<sup>18</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337 and CC Docket No. 96-45, Notice of Inquiry, FCC 09-28, at ¶ 5 (rel. April 8, 2009) (*Tenth Circuit NOI*).

<sup>19</sup> Section 254(b)(2) requires that access to advanced telecommunications and information services be provided in all regions of the nation; section 254(b)(3) requires that consumers in all regions of the nation have access to advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas; and section 254(b)(5) requires that there be specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service. See CTIA Comments at 8 (on remand, the Commission’s analysis of reasonable comparability must encompass both rates *and* services), 12; Ohio Commission Comments at 8-9 (“narrowing the ‘services gap’ must be a first principle” and “the services available between differing market areas (urban and rural) of non-rural carriers are not reasonably comparable”). The Ohio Commission recommends creating a separate but parallel mechanism for broadband. *Id.* at 9. AT&T, of course, supports the establishment of two broadband funds (one for fixed location providers and the second for mobile wireless providers). It is critical, however, that the Commission transition support awarded pursuant to its legacy high-cost support mechanisms to these broadband funds so that there is a finite period of time during which there are separate high-cost funds designed for separate (i.e., broadband and POTS) purposes.

<sup>20</sup> See, e.g., ITTA Comments at 8 (suggesting that “advancing” universal service simply means retargeting support on a more granular basis). The Commission will surely be met with failure at the Tenth Circuit if it contends that “advancing” means shifting support around for POTS (i.e., to “move it beyond where it is today”). *Id.*

### 3. Comprehensive universal service and intercarrier compensation reform are necessary.

A number of parties recognize that the Commission can no longer view its disjointed high-cost support mechanisms, such as the non-rural high-cost model support mechanism, in isolation and that both comprehensive high-cost and intercarrier compensation reform is required to fulfill congressional objectives.<sup>21</sup> As the Ohio Commission notes, the Commission's continued consideration of universal service support mechanisms on a piecemeal basis may result in a fragmented, inconsistent system of mechanisms that is far less likely to meet the public policy goals stated in the Act, a sentiment that Acting Chairman Copps seems to share.<sup>22</sup> Many of these parties also understand that state implicit subsidies in the form of high access charges hinder universal service reform and delay broadband deployment.<sup>23</sup>

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<sup>21</sup> See, e.g., Verizon Comments at 5 (arguing that the Commission cannot reasonably evaluate the high-cost model support mechanism in isolation and noting that this particular mechanism only accounts for approximately \$350 million of the more than \$7 billion spent annually on universal service); CTIA Comments at 2 (“As the Commission moves forward to address the issues raised by the Tenth Circuit, it must realize that all of these [broadband] proceedings are interrelated, and will be vital to the speed and durability of America’s recovery from the current economic crisis, as well as our long-term future.”); Vermont and Maine Commissions Comments at 23 (noting their support for “providing an integrated solution to the *Qwest II* remand, broadband deployment, and intercarrier compensation”); NCTA Comments at 1 (Commission must consider issues raised in its *Tenth Circuit NOI* in a much larger context).

<sup>22</sup> Ohio Commission Comments at 3. Time Warner Comments at 3 (quoting then-Commissioner Copps: “piecemeal Universal Service Fund (USF) reform is actually counter-productive to the far more important goal of rationally implementing comprehensive reform”) (further citation omitted). See also New Jersey Commission Comments at 3, 4 (asserting that it would be “inappropriate to modify the existing mechanism for non-rural carriers prior to comprehensive reform” and a “piecemeal approach is ill-advised and as history has shown, it will not work”).

<sup>23</sup> See, e.g., RCA Comments at 35-36 (stating that universal service and intercarrier compensation reform should be undertaken “in tandem” “so that the relationship between compensation mechanisms and explicit support mechanisms can be rationalized in a manner that is equitable to service providers contributing to the USF, that ensures sufficient support for the preservation and advancement of universal service, and that also produces a unified and simplified intercarrier compensation system that ‘will encourage the efficient use of, and investment in, advanced telecommunications and broadband networks, spur intermodal competition throughout the United States, and minimize the need for future regulatory intervention.’” (quoting *Comprehensive Intercarrier Compensation and Universal Service Reform FNPRM*, FCC 08-262, Attach. A at ¶ 157)).

AT&T estimates that in 2008, approximately \$25 billion was spent on supporting basic local exchange service. This figure is based on the interstate subscriber line charge (SLC), intrastate and interstate access charges, and federal and state universal service funds. As we have explained in previous filings, the first two mechanisms (i.e., the interstate SLC and access charges) will disappear on their own accord, regardless of any Commission action, due to consumers moving to a broadband/VoIP world.<sup>24</sup> To be clear, while we advocate for the elimination of state implicit access subsidies and we urge the Commission to do more to facilitate this action, we certainly do not recommend that the Commission increase the size of its federal USF to \$25 billion (or anywhere near that amount).<sup>25</sup> This staggering figure should, however, prompt the Commission to rethink the purpose of its high-cost fund. How many consumers today purchase stand-alone wireline basic local service? Is ensuring that some relatively *de minimis* number of consumers can continue to obtain their stand-alone wireline basic telephone service at, most likely, artificially low rates worth this exorbitant (albeit largely hidden) price tag? The answer is a resounding no. This amount also should silence the critics of comprehensive reform who argue that the Commission need only address one mechanism (the non-rural high-cost model support mechanism) that is funded at less than \$340 million/year, of which only about half goes to non-rural ILECs.<sup>26</sup> Only by (1) recognizing the true scope and

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<sup>24</sup> See, e.g., Letter from Robert W. Quinn, Jr., AT&T, to Chairman Kevin Martin, FCC, CC Docket Nos. 01-92, 96-45, 99-68, WC Docket Nos. 05-337, 07-135 (filed July 17, 2008).

<sup>25</sup> It would be impossible for the Commission to do so and still comply with sections 254(b)(1) and (5). See *Alenco v. FCC*, 201 F.3d 608, 620 (5<sup>th</sup> Cir. 2000) (*Alenco*); *Qwest II*, 398 F.3d at 1234. See also Qwest Comments at 15 (“what is ‘sufficient’ support also must encompass preventing excessive contribution fees that could result in compromising the affordability of rates”); NASUCA Comments at 43 (“It should be clear that excessive funding would violate both the sufficiency directive of § 254(b)(5) and the affordability directive of § 254(b)(1)”).

<sup>26</sup> See *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2009*, USAC, at 12 (filed May 1, 2009) (noting that non-rural ILECs are projected to receive \$42.08 million and competitive ETCs are projected to receive \$39.98 million in the third quarter of 2009) (available at: [http://www.usac.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Quarterly%20Demand%20Filing%20\\_FINAL%205.1.09\\_.pdf](http://www.usac.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Quarterly%20Demand%20Filing%20_FINAL%205.1.09_.pdf))(USAC Third Quarter Demand Filing).

scale of the problem, (2) transitioning its legacy high-cost support mechanisms to project-based, competitively-awarded support mechanisms that promote the deployment of broadband facilities in unserved areas, and (3) conditioning the receipt of support disbursed under the recalibrated non-rural mechanism on reductions in intrastate access charges, will the Commission be able to rationalize its high-cost program before the Tenth Circuit and square it with the Commission's National Broadband Plan. This, of course, is just Step 1 of a multi-step process. The Commission must complete the work it began late last year to comprehensively address intercarrier compensation reform.<sup>27</sup>

**4. Current revenues-based funding mechanism cannot sustain the federal universal service programs and must be modified to a telephone number- or telephone number- and connections-based methodology.**

Based on USAC's latest information, unless the Commission takes action to artificially lower the percentage, the interstate telecommunications revenues-based contribution factor will exceed 12 percent for the first time in the third quarter of 2009,<sup>28</sup> and almost certainly will continue to spiral upwards. Despite the Commission's efforts to prop up its current contribution methodology,<sup>29</sup> the steady increase in this percentage is no accident: interstate telecommunications revenues continue to shrink and the uncapped universal service mechanisms continue to grow.<sup>30</sup> This alarming trend is well-known throughout the industry and the Commission. Indeed, just a few weeks ago, Acting Chairman Copps requested that Congress

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<sup>27</sup> See *Comprehensive Intercarrier Compensation and Universal Service Reform FNPRM*.

<sup>28</sup> See *Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Third Quarter 2009*, USAC (filed June 1, 2009) (available at: <http://www.usac.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Contribution%20Base%20Filing.pdf>); USAC Third Quarter Demand Filing.

<sup>29</sup> See, e.g., *Interim CETC Cap Order*, 23 FCC Rcd 8834 (2008) (capping competitive ETC support); *2006 Interim Contribution Methodology Order*, 21 FCC Rcd 7518 (2006) (increasing the wireless safe harbor to 38.1% and requiring interconnected VoIP providers to contribute to the federal USF).

<sup>30</sup> See, e.g., USAC Third Quarter Demand Filing at 11 (noting the \$30 million dollar increase in ICLS support from the second quarter) and 14 (noting the \$20 million dollar increase in Lifeline support from the second quarter).

amend section 254(d) of the Act to permit the Commission to assess intrastate telecommunications service revenues.<sup>31</sup>

AT&T must respectfully disagree that supplementing the current contribution base with intrastate telecommunications revenues is the answer. First, expanding the federal universal service base to include intrastate revenues would seem to undercut, if not eviscerate, state commissions' efforts to make explicit their implicit subsidies via state high-cost funds, which is plainly contemplated in the Telecommunications Act of 1996.<sup>32</sup> If states are unable to support their own high-cost funds, they obviously must rely more heavily, and perhaps completely, on the Commission to ensure universal service within their states. If, in response to this concern, Congress amends the 1996 Act to permit states to assess a provider's interstate telecommunications revenues, consumers can be expected to contribute approximately the same amount in total to the federal USF and any state USF as they do today. Low-volume users of interstate telecommunications services, on the other hand, can be expected to pay more than they do today if the Commission is permitted to assess a provider's intrastate revenues.<sup>33</sup> Second, persuading Congress to amend the Act in this fashion is akin to turning a supertanker – it requires significant effort and time. One can only speculate how high the contribution factor would be before Congress adopted such an amendment and, by then, the damage may have already been done with a large percentage of residential and business customers abandoning traditional telecommunications services for information services that are exempt from assessment. Third, advances in technology have made it more difficult to distinguish telecommunications service

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<sup>31</sup> *Bringing Broadband to Rural America: A Report on a Rural Broadband Strategy*, Acting Chairman Copps, at ¶ 138 (rel. May 22, 2009).

<sup>32</sup> *See* 47 U.S.C. § 254(f).

<sup>33</sup> Under today's contribution methodology, a consumer that makes only local calls would contribute to the federal USF based on the consumer's SLC (i.e., 12.9% of no more than \$6.50). If the Commission were to begin assessing a provider's intrastate revenues, that consumer's provider would recover its contribution costs by applying a federal USF fee to that consumer's intrastate charges (e.g., \$20 for the consumer's basic local rate, which would be in addition to federal USF fee on the SLC).

revenue from information service revenue, forcing service providers to make what we hope are good faith interpretations of the Commission's rules to determine whether and how much to contribute. It is likely, if not inevitable, that competing providers will reach different conclusions, skewing the competitive landscape and potentially resulting in a smaller contribution base.<sup>34</sup> For this reason, a revenues-based contribution methodology is unsustainable. Thus, adding intrastate telecommunications service revenues to the federal contribution base would address only part of the problem and would, at most, simply buy the Commission some additional time in which to adopt a non-revenues-based methodology. The Commission, of course, does not need any additional time since it already has a complete record, refreshed late last year, on which to base an order that changes the current methodology to one based on telephone numbers or telephone numbers and connections.<sup>35</sup>

AT&T and Verizon proposed a telephone numbers-based contribution methodology last year and AT&T again urges the Commission to adopt it.<sup>36</sup> Unlike telecommunications service revenues, telephone numbers form a stable contribution base that will continue to grow. Moreover, as Verizon notes, a numbers-based system is transparent to consumers, easier for the Commission and USAC to administer and audit, and more fairly spreads the contribution burden among all competing providers.<sup>37</sup> Several other commenters recognize that the Commission must at long last overhaul its broken revenues-based contribution methodology.<sup>38</sup> Failing to do so jeopardizes the affordability of interstate telecommunications services.<sup>39</sup>

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<sup>34</sup> See Verizon Comments at 23.

<sup>35</sup> See *Intercarrier Compensation and Universal Service Reform FNPRM*.

<sup>36</sup> See AT&T Comments at 14 & n.26 (citing AT&T and Verizon's contribution methodology filings made last year).

<sup>37</sup> Verizon Comments at 24.

<sup>38</sup> See, e.g., New Jersey Commission Comments at 5 (implement a numbers-based method for determining USF contributions); USTelecom Comments at 2 (move to a primarily numbers-based system for universal service contributions).

<sup>39</sup> *Alenco*, 201 F.3d at 620.

**B. There Is Little Or No Support For The Four Proposals On Which The Commission Sought Comment.**

The Commission sought specific comment on four proposals to reform how high-cost support is disbursed to so-called non-rural carriers.<sup>40</sup> Due to the flaws in all four proposals, it was unsurprising that there is little or no support for any of these proposals.<sup>41</sup> Indeed, many commenters had no interest in discussing these four proposals at all.<sup>42</sup> AT&T respectfully suggests that the Commission reject all four proposals as being too little, too late (Vermont and Maine Commission Proposal, and CostQuest Proposal), outright unlawful (Qwest Proposal), or an unfunded mandate inconsistent with the statute (Embarq Proposal). For reasons we discuss below, AT&T also cannot support ITTA's or Verizon's proposal. While AT&T could not agree more with Qwest, Embarq, and others on the source of the problems with the current high-cost mechanisms and the need for fundamental reform,<sup>43</sup> we disagree with these parties on what that reform should be. For example, several of these parties' proposals do not satisfy the majority of the principles in section 254(b) since they do nothing to advance universal *service*.

*Qwest Proposal.* Of the four, Qwest's proposal misses the mark by the widest margin because it not only fails to satisfy all of the relevant principles, it violates at least two of them.

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<sup>40</sup> *Tenth Circuit NOI* at ¶¶ 8-12.

<sup>41</sup> Based on AT&T's review of the record, only Qwest supports its proposal, only the Vermont and Maine Commissions support a modified version of their proposal, no commenter recommended that the Commission adopt CostQuest's proposal, and, with the possible exception of Iowa Telecommunications, only Embarq supports Embarq's proposal. Although Iowa Telecommunications claims to support Embarq's proposal, it later urges the Commission to adopt ITTA's proposal. *Compare* Iowa Telecommunications Comments at 2 *with id.* at 9. Even Embarq's and Qwest's own trade association, ITTA, rejected in whole or in part their proposals. *See* ITTA Comments (proposing, instead, a mishmash of part of the Embarq proposal with a broadband pilot program proposed in 2007 by Qwest).

<sup>42</sup> *See, e.g.,* CTIA Comments; GCI Comments; Nebraska Commission Comments; NECA/NTCA/OPASTCO/ERTA/WTA Joint Comments; New Jersey Division of Rate Counsel Comments; Ohio Commission Comments; Time Warner Cable Comments; USTelecom Comments; Verizon Comments.

<sup>43</sup> *See, e.g.,* Qwest Proposal at 7-19 (detailing the adverse effect that eroding implicit subsidies and increasing competition have had on non-rural carriers' ability to provide services in rural areas at rates that are reasonably comparable to those services provided in urban areas); Embarq White Paper at 3-4; Embarq Comments at 8-11; Windstream Comments at 12-17.

Qwest proposes that the Commission maintain its existing non-rural high-cost model support mechanism for the two “non-rural” carriers that serve the greatest number of rural subscribers – AT&T and Verizon – while the Commission overhauls this invalidated mechanism for all other non-rural carriers.<sup>44</sup> Qwest’s attempt to do an end run around the sufficiency and competitive neutrality principles by packaging its discriminatory proposal as an “interim action” will not save it on judicial review. Unfortunately for Qwest, the Commission’s record on “interim” universal service high-cost support actions affecting “non-rural” and “rural” carriers is, at best, checkered<sup>45</sup> and, given its history at the Tenth Circuit, the Commission is unlikely to get deference in this regard from that court. Moreover, Qwest’s POTS-centric proposal does nothing to address several of the statute’s principles that concern access to advanced services.<sup>46</sup>

While Qwest recognizes that “[t]he concept of universal access should be expanded to encompass universal access to broadband services,” it would have the Commission create a separate mechanism – using some undefined timetable – to meet this objective.<sup>47</sup> In so doing, according to Qwest, the Commission will ensure that the problems with the current high-cost support mechanisms will not be replicated in the new broadband-focused mechanism. AT&T agrees with much of what Qwest says about broadband, including its well-founded concern about perpetuating the flaws with the existing high-cost program if the Commission were simply to pile broadband service on top as a supported service.<sup>48</sup> Unlike AT&T’s proposal, however, Qwest does not propose a transition from the Commission’s current POTS-based funding mechanisms

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<sup>44</sup> Qwest Proposal at 26-27.

<sup>45</sup> See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd 8776, ¶ 204 (1997) (stating that rural carriers would gradually shift to a support system based on forward-looking economic costs); *Rural Task Force Order*, 16 FCC Rcd 11244 ¶ 167 (2001) (rural carrier high-cost support mechanisms “should remain in place for no more than five years”).

<sup>46</sup> 47 U.S.C. § 254(b)(2), (3), (5).

<sup>47</sup> Qwest Comments at 17.

<sup>48</sup> *Id.* at 17-19 (urging the Commission to focus on promoting broadband deployment in unserved areas via project-based grants awarded through a competitive process).

to a high-cost program whose purpose is to support broadband deployment in unserved areas. Maintaining a “POTS fund” indefinitely as Qwest essentially proposes would be unnecessarily costly and thus would risk violating the affordability and sufficiency principles.<sup>49</sup> Finally, in addition to failing to satisfy all of the relevant section 254(b) principles, Qwest’s proposal for mere incremental reform ignores the court’s mandate that the Commission present its complete universal service plan.<sup>50</sup>

*Embarq Proposal.* Embarq has proposed requiring price cap carriers to commit to deploying broadband services as a condition for receiving high-cost support.<sup>51</sup> As Qwest correctly notes, the Commission must reject Embarq’s proposal to condition high-cost funding on deployment of a service – broadband – that is not supported by such funding.<sup>52</sup> Such an unfunded mandate surely would not comply with section 254(b)(5)’s requirement that high-cost support be “sufficient.” And if the Commission were to make broadband a supported service, it would cause the fund to explode, which is why AT&T has proposed targeting such support only to unserved areas. In addition, Embarq’s proposal would do nothing to ensure that currently unserved areas ever get broadband service because it would allow a carrier to halt its broadband build-out once the carrier covers 85 percent of customers in a particular wire center and, like Qwest’s proposal, Embarq’s proposal would never transition support for POTS to support for broadband in unserved areas.

Although ITTA seeks to salvage Embarq’s proposal by deleting this critical flaw, there are other significant, non-broadband-related deficiencies with Embarq’s approach. For example, Embarq’s proposal would not offer carriers “predictable” support because whatever high-cost

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<sup>49</sup> See *Alenco*, 201 F.3d at 620; *Qwest II*, 398 F.3d at 1234.

<sup>50</sup> *Qwest I*, 258 F.3d at 1205; Qwest Comments at 1 (arguing that correcting the high-cost model support mechanism “can no longer wait to be addressed in comprehensive reform”).

<sup>51</sup> Embarq Comments at 19.

<sup>52</sup> Qwest Comments at 9. See also Windstream Comments at 21-22.

support a carrier might receive for providing service in a particular high-cost wire center could be halved if a competitive ETC enters that wire center.<sup>53</sup> Under Embarq’s proposal, it appears that a competitive ETC that meets certain requirements (i.e., the same broadband, rate comparability, and build-out commitments as the ILEC) would equally split whatever support the ILEC receives in a given wire center regardless of how many subscribers the competitive ETC may have in that wire center.<sup>54</sup> Embarq’s proposal thus would seem to continue a variation of the Commission’s misguided and discredited identical support rule. Moreover, while Embarq states that “[n]early everyone recognizes that the high-cost mechanisms . . . badly need reform,”<sup>55</sup> it fails to offer a solution for those mechanisms that represent the lion’s share of high-cost funding. Indeed, it states that “[r]ate-of-return carriers and other USF support mechanisms would be unaffected by this reform proposal – such recipients would draw USF support in the same way they do today.”<sup>56</sup> Like Qwest, if Embarq’s proposal were adopted, it too would fail before the Tenth Circuit because it does not offer a complete plan for universal service.

According to Embarq, high-cost support “should be tied explicitly to the [carrier of last resort (COLR)] obligation in any given area so that each supported carrier has such an obligation, and all COLRs are provided sufficient support for maintaining their networks.”<sup>57</sup> Conversely, if a carrier is not receiving any high-cost support for providing service in a particular

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<sup>53</sup> Embarq Comments at 19-20 (noting that competitive ETCs “would potentially receive up to half” of the available support).

<sup>54</sup> See Letter from David Bartlett, Embarq, to Chairman Martin and Commissioners, WC Docket No. 05-337, CC Docket No. 96-45, at 4 (filed Sept.19, 2008) (stating that once a competitive ETC makes these commitments in a wire center, it would be designated as the supported competitive ETC for that wire center and the “support for the wire center then would be divided equally between the ILEC and the CETC”).

<sup>55</sup> Embarq Comments at 1.

<sup>56</sup> *Id.* at 20.

<sup>57</sup> *Id.* at 12.

area, its COLR obligation should be eliminated.<sup>58</sup> AT&T agrees with this proposal but recommends that the Commission and the states go a step further: AT&T believes that ETC designations should be revised to encompass only those geographic areas where high-cost support is provided. Like the state-imposed COLR obligation, federal ETC status places a general service obligation on such carriers to offer and advertise the federally defined supported services “throughout” the service area.<sup>59</sup> In recognition of the robust competition for voice services, several states have granted or are in the process of providing partial relief from COLR obligations.<sup>60</sup> However, since the ILECs’ ETC designations cover their entire study areas, these carriers continue to have a COLR-like obligation under federal rules to offer the supported services throughout their study areas. AT&T suggests that the ETC designation be tailored to cover just those areas in which the carrier receives federal high-cost support. For example, under our broadband proposal, AT&T recommended that applicants commit to providing the supported services for the term of the award (e.g., seven years) throughout the applicant-defined geographic area.<sup>61</sup> Recognizing, of course, that consumers with low-incomes reside in areas that do not receive federal high-cost support, AT&T also recommended that the Commission establish a Lifeline Service Provider designation to ensure that such consumers will always have at least one provider of Lifeline/Link-Up service.<sup>62</sup>

*Vermont and Maine Commissions Proposal.* However well-intentioned, the most significant defect with the Vermont and Maine Commissions Proposal is that it would perpetuate

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<sup>58</sup> *Id.* at 2.

<sup>59</sup> 47 U.S.C. § 214(e)(1).

<sup>60</sup> *See, e.g.,* Florida, Indiana, Kansas, Louisiana, Oklahoma, and South Carolina.

<sup>61</sup> *See* AT&T USF NPRMs Comments, WC Docket No. 05-337 and CC Docket No. 96-45 (filed April 17, 2008) (AT&T April 2008 Proposal).

<sup>62</sup> *Id.* at 26-27 (noting that a Lifeline-only designation that is detached from the ETC designation will enable more providers of voice communications service to participate in the program, thereby increasing consumer participation).

statewide averaging. These state commissions assert that the continuation of statewide averaging achieves several objectives: it acts as a check against the Fund growing too large; and it recognizes that universal service is a federal-state partnership in which states should be primarily responsible for rate and cost differences within their own borders.<sup>63</sup> While these two state commissions and a few others, may be willing to take requisite steps so that rates for intrastate services are reasonably comparable to rates charged for similar services within their borders,<sup>64</sup> in the ten years since the Commission adopted statewide averaging for non-rural carriers, too many states have not done enough to ensure that this is the case. The Vermont and Maine Commissions Proposal also suffers from the mistaken assumption that alterations to the current high-cost model could be achieved without significant delay (although even these commissions recognize that “[s]ome deficiencies will take substantial time and resources to remedy”).<sup>65</sup> While AT&T may have agreed a decade ago with much of what these state commissions are proposing, AT&T sees little point in the Commission continuing to distribute high-cost support using a model on long-term basis.<sup>66</sup> Instead, as we have stated before, the Commission should transition its high-cost support mechanisms to a broadband fund that awards project-based support through a competitive application process.

*CostQuest Proposal.* As is the case with the model improvements suggested by the Vermont and Maine Commissions, it is simply too little, too late. While CostQuest’s proposal might have been beneficial if it were adopted a decade ago, at this point, as Qwest notes, adopting a new, forward-looking cost model would take significant Commission time and

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<sup>63</sup> Vermont and Maine Commissions Comments at 7-8 (citing *Ninth Report and Order*, ¶ 46).

<sup>64</sup> *Id.* at 9 (citing *Ninth Report and Order*, ¶ 7).

<sup>65</sup> *Id.*

<sup>66</sup> In our comments, we recognized that some measure of costs (which could be performed using the existing model) is necessary on an interim basis during the transition of legacy high-cost support to a broadband fund. See AT&T Comments at n.65.

resources.<sup>67</sup> Not surprisingly, then, no commenter recommends that the Commission adopt the CostQuest proposal. Instead of investing years to perfect a model, the Commission could better spend its resources on creating a competitive application process that could be implemented without delay whereby broadband providers would apply to provide service for an amount that they select in areas of their choosing.

*ITTA Proposal.* As we note above, ITTA urges the Commission to adopt Embarq's proposal, minus Embarq's unfunded broadband mandate. Added on top is a variation of Qwest's broadband pilot program proposal. In addition to the concerns expressed above regarding the Embarq proposal, AT&T does not believe that Qwest's broadband pilot – and, thus, ITTA's proposal – goes far enough to address certain universal service principles. For example, ITTA offers no transition from the legacy high-cost support mechanisms that support just POTS to a high-cost program that supports broadband. In fact, ITTA's proposal would increase to \$1 billion the amount of explicit federal support available to non-rural carriers to provide POTS. While AT&T does not oppose a short-term increase in non-rural high-cost support in order to comply with the Tenth Circuit's decisions, it is critical that the Commission comply with the statute's directive to *advance* universal service.<sup>68</sup> There is already too much money (approximately \$25 billion/year) being spent to support basic local exchange service. Another shortcoming of ITTA's proposal is that it does nothing to address state implicit access subsidies. In fact, ITTA touts its plan as doing nothing to “compel states toward any particular responsive

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<sup>67</sup> Qwest Comments at 10.

<sup>68</sup> In response to the anticipated criticism that AT&T is ignoring the Commission's obligation to “preserve” universal service, AT&T notes that, under its broadband proposal, a carrier could seek continued support necessary to maintain service in a particular area if no other provider offers service there. AT&T April 2008 Proposal at 21.

action” with regard to implicit subsidies.<sup>69</sup> Plainly, and for the reasons AT&T has detailed above and in its prior comments in this docket that will not do.<sup>70</sup>

In its comments, ITTA purports to explain how its proposal satisfies the relevant section 254(b) principles. AT&T must respectfully disagree with the conclusions that ITTA reached. First, ITTA claims that the requirements of the affordability principle can be satisfied through better targeting of support (which is a goal that we share).<sup>71</sup> According to ITTA, this targeting will “relieve pressure on end-user rates” in high-cost areas that currently receive no support.<sup>72</sup> Unlike AT&T’s proposal, however, ITTA’s proposal would do nothing to ensure that consumers see any benefit from such targeting or that the Commission’s mechanism narrows the gap between urban and rural rates.<sup>73</sup> ITTA also asserts that its proposed targeting will satisfy the Commission’s obligation to ensure that access to advanced services is provided in all regions of the nation by enabling carriers “to leverage supported facilities to benefit advanced services.”<sup>74</sup> Again, ITTA fails to explain how this aspirational goal will, in fact, translate into ensuring that consumers in rural and high-cost areas will have access to advanced services since there is no requirement that carriers do anything with their high-cost support other than continue providing POTS.

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<sup>69</sup> ITTA Comments at 17.

<sup>70</sup> See AT&T Comments at 36 (recommending that recipients of federal high-cost support should be required to reduce their intrastate access charges both to account for any increases in end-user rates needed to reach the comparability benchmark and for any support received through the reformed high-cost support mechanism).

<sup>71</sup> ITTA Comments at 9.

<sup>72</sup> *Id.*

<sup>73</sup> See *Qwest II*, 398 F.3d at 1236; AT&T Comments at 35-36 (explaining that under its proposal, the Commission would make support available to reduce rates in rural and high-cost areas where rates exceed AT&T’s proposed rate comparability benchmark).

<sup>74</sup> ITTA Comments at 11; 47 U.S.C. § 254(b)(2).

ITTA all but ignores the third principle in section 254(b) and incorrectly states that the fourth principle is unrelated to the non-rural high-cost support mechanism.<sup>75</sup> While we agree that targeting furthers section 254(b)(5) by making support more “specific,” ITTA’s proposal is certainly not “predictable” or, perhaps, “sufficient” because, as we note above in our discussion of Embarq’s proposal, a competitive ETC could enter a price cap ILEC’s wire center and take half of its support overnight, without regard to how many subscribers each carrier has. ITTA (and Embarq) have not explained how a price cap ILEC’s support could still be considered “sufficient” after it is halved upon competitive ETC entry. Finally, AT&T agrees that ITTA’s (and Embarq’s) proposal might satisfy the Commission’s competitive neutrality principle because it would award half of a price cap ILEC’s support in a wire center to the competitive ETC.<sup>76</sup> AT&T disagrees, however, that this is the correct way to satisfy this principle. Indeed, while ITTA asserts that this approach is superior to the Commission’s identical support rule, it is unclear to AT&T how this proposal is anything other than a variation of the identical support rule. Instead, the Commission should create a separate broadband fund for mobile wireless providers wherein these providers compete against each other via an application process to build mobile wireless broadband facilities in unserved areas. Similarly, fixed location providers of broadband service would compete against each other to construct fixed broadband networks in unserved areas.

*Verizon Proposal.* In addition to advocating for a telephone numbers-based contribution methodology, which we strongly support, Verizon recommends that the Commission cap the high-cost fund at \$5 billion/year, use reverse auctions to award high-cost support to one mobile wireless provider in any given high-cost area or eliminate such support altogether, and redirect \$300 million/year to address “middle mile” transport cost issues. AT&T addresses Verizon’s universal service distribution recommendations in turn. First, at this point, it is impossible to

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<sup>75</sup> ITTA Comments at 12-13. *Compare, e.g.,* AT&T Comments at 13-15.

<sup>76</sup> ITTA Comments at 15.

determine whether a high-cost cap of \$5 billion “would provide sufficient resources” that complies with the statute.<sup>77</sup> As we mentioned above, based on AT&T’s analysis, there is approximately \$25 billion sloshing around in federal and state explicit and implicit support for basic local exchange service. Until the Commission and the states do more to address state implicit subsidies and the Commission transitions its legacy high-cost mechanisms to broadband funds, AT&T believes it is premature for the Commission to cap the funding for its high-cost program.

Second, for reasons detailed in its previous filings, AT&T believes that a competitive application process, not reverse auctions, is a better way to distribute support to mobile wireless providers on a going-forward basis. A competitive application process would allow the Commission (and the states) to consider factors in addition to price, such as the speed at which the provider will complete its build-out of new facilities and the proposed information transfer rates.<sup>78</sup> AT&T disagrees with Verizon’s suggestion that the Commission consider eliminating funding to mobile wireless providers altogether. Instead, the Commission should transition all mobile wireless competitive ETC support to the new Advanced Mobility Fund over a five-year period by reducing their legacy high-cost support in 20 percent/year increments. Finally, while the Commission may ultimately conclude that there is merit to Verizon’s “middle mile” transport proposal, AT&T believes that it is simply too early to determine whether this middle mile issue is a universal service issue at all, in part or in whole. AT&T asks that the Commission instead consider Verizon’s middle mile proposal in its Broadband NOI proceeding, where the Commission will have a more comprehensive record on which to base any middle mile decisions.

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<sup>77</sup> Verizon Comments at 26; 47 U.S.C. § 254(b)(5).

<sup>78</sup> See, e.g., AT&T April 2008 Proposal at 34.

**C. Unlike The Other Proposals, AT&T's Proposal Satisfies All Of The Relevant Universal Service Principles of Section 254(b) And The Commission Should Incorporate It In Its NPRM.**

Based on the previous discussion, it should be clear to the Commission that the other parties' proposals do not satisfy the universal service principles of the statute and adopting any one of them would invite reversal for a third time at the Tenth Circuit. By contrast, AT&T's proposal does not suffer from these deficiencies and the Commission should incorporate AT&T's framework in its forthcoming Notice of Proposed Rulemaking. Although AT&T will not repeat here how its proposal complies with all of the relevant section 254(b) principles, as it detailed in its comments,<sup>79</sup> we will explain why our proposal is superior to the other parties' proposal through a discussion of those principles.

*Affordability.* Many commenters agree with AT&T that to determine whether rates for a particular service is affordable, the Commission should consider evidence that consumers are subscribing to a service at high levels of penetration and the range of rates at which they are obtaining such a service.<sup>80</sup> These commenters suggest that, given the high subscribership penetration rate,<sup>81</sup> the Commission should declare victory on affordable telephone service.<sup>82</sup> AT&T recognizes, however, that there are some rural and high-cost areas where the rates for service are high and, thus, not reasonably comparable to the rates charged in urban areas for those same services.<sup>83</sup> To address this, and thereby to narrow the gap between urban and rural

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<sup>79</sup> AT&T Comments at 25-28.

<sup>80</sup> See, e.g., NCTA Comments at 6; CTIA Comments at 7.

<sup>81</sup> Last week, the Commission released its latest telephone subscribership report, which shows that telephone subscribership penetration is at 95%. See *Telephone Subscribership in the United States*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (rel. June 2009).

<sup>82</sup> See, e.g., NCTA Comments at 6.

<sup>83</sup> Based on the rate survey data provided by Verizon, we expect that the number of such areas will be the exception, not the rule. Indeed, Verizon's data show that there is no systemic issue with the reasonable comparability of urban and rural rates. See Verizon Comments.

rates,<sup>84</sup> AT&T proposed that the Commission make support available to reduce rates in rural and high-cost areas where rates exceed AT&T's proposed rate comparability benchmark. No other party's proposal addresses this aspect of *Qwest II*. Finally, to determine what is an affordable broadband service rate for high-cost purposes, AT&T suggests that the Commission review the range of rates that consumers pay for this service in areas where the subscribership is high.

*Access to Advanced Services.* Several of the parties' proposals ignore this principle altogether<sup>85</sup> and the parties that purport to address it – Embarq and ITTA – do so in such a flawed manner that AT&T does not believe that their respective proposals do in fact comply with section 254(b)(2). Embarq would impose an unfunded broadband mandate on price cap ILECs to deploy broadband facilities throughout 85 percent of their wire centers that receive high-cost support. As such, Embarq's proposal does nothing to promote broadband deployment to the remaining 15 percent of the carrier's customers, who are likely located in the more rural and high-cost areas of the wire center. In addition, the Commission would be hard-pressed to explain to the Tenth Circuit how Embarq's proposal results in "sufficient" support since it would obligate carriers to deploy broadband facilities, the costs for which would not be included in the calculation of support. While ITTA's proposal is an improvement over Embarq's because it deletes this unfunded mandate, it does not go far enough to satisfy this principle. ITTA proposes that the Commission temporarily support the deployment of broadband facilities to unserved areas. AT&T proposed its own broadband pilot program a few months before Qwest filed its proposal.<sup>86</sup> Since then, AT&T has come to realize that the Commission must do more than adopt just a pilot program in order to comply with section 254(b). Refocusing the Commission's high-cost mechanisms to support the deployment of broadband facilities in unserved areas, as

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<sup>84</sup> See *Qwest II*, 398 F.3d 1236.

<sup>85</sup> See Qwest Proposal, Vermont and Maine Commissions Proposal, CostQuest Proposal, Verizon Proposal.

<sup>86</sup> See AT&T Comments, WC Docket No. 05-337, CC Docket No. 96-45 (filed May 31, 2007).

AT&T proposes, also is consistent with Congress's charge to the Commission to make broadband ubiquitously available.<sup>87</sup>

*Reasonable Comparability.* The other parties propose various benchmarks or other means to measure whether rural rates are reasonably comparable to urban rates. Most of these parties, of course, focus exclusively on the reasonable comparability of *rates*, not services as the statute requires. For that reason, as we explained immediately above, these proposals are deficient. As to the reasonable comparability of *rates*, AT&T believes that its proposed recalibration of the non-rural high-cost support mechanism is superior to any benchmark or certification process proposed by the other parties. There is much disagreement in the record about whether the Commission should use rates or costs to determine the amount of support a carrier may be eligible to receive.<sup>88</sup> The language in the statute simply does not support the assertion made by several commenters that the Commission should ignore rates for this calculation.<sup>89</sup> AT&T's proposal, which considers both rates and costs, is responsive to the concerns raised by commenters on both sides of the issue. At the end of the day, however, we would urge the Commission to conclude that it should migrate away from distributing high-cost support based on any model or benchmark. Instead, the more cost-efficient and effective means to distribute this support is through a competitive application process as we have proposed.

*Equitable and Nondiscriminatory Contributions.* A few commenters recognize that this principle *is* relevant to the Commission's inquiry into its high-cost distribution mechanisms.<sup>90</sup> Due to the prevalence of implicit subsidies in state rates, the customers of certain carriers – namely “non-rural” carriers that serve the majority of customers residing in rural and high-cost

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<sup>87</sup> See ARRA.

<sup>88</sup> See, e.g., NCTA Comments; Ohio Commission Comments; Qwest Comments; USTelecom Comments; Vermont and Maine Commissions Comments; Windstream Comments.

<sup>89</sup> See, e.g., Vermont and Maine Commissions Comments at 14-19.

<sup>90</sup> New Jersey Commission Comments; USTelecom Comments; Verizon Comments.

areas yet that receive little to no high-cost support – bear a disproportionate share of the cost of supporting high-cost consumers.<sup>91</sup> Only AT&T’s proposal addresses this problem by conditioning receipt of federal high-cost support on reductions in intrastate switched access charges. To respond fully to this principle, the Commission also should overhaul its revenues-based contribution methodology as proposed by AT&T and Verizon.

*Specific, Predictable, and Sufficient High-Cost Mechanisms.* In order to provide “specific” support, almost all commenters agree that high-cost support must be targeted. The Vermont and Maine Commission Proposal must be rejected on this basis alone. Next, support must be predictable, but as we explain above, Embarq and ITTA’s proposal does not provide for predictable funding since a carrier’s support would be slashed in half if a competitive ETC begins providing service in that carrier’s wire center. These parties’ proposals must be rejected on this basis. Support must also be “sufficient.” Because of the tremendous amount of implicit access subsidies that exist in today’s system, it is simply too early to state that the amount of funding currently available in the high-cost program is “sufficient” and, thus, the Commission should reject those blunt proposals to cap this program. Finally, this principle requires the Commission to advance universal service. Although it seems to support the goal of promoting broadband deployment in unserved areas,<sup>92</sup> Qwest’s proposal, which urges incremental reform, does nothing to advance universal service.

*Competitive Neutrality.* Despite statements such as “Qwest agrees that high-cost support should be distributed in a manner that is company- and technology-neutral,”<sup>93</sup> its non-rural carrier proposal seems to exclude competitive ETCs from obtaining any support. And, of course, more troubling to AT&T, Qwest asks the Commission to correct the non-rural high-cost support mechanism and increase its funding for all non-rural carriers except for AT&T and Verizon.

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<sup>91</sup> See Embarq Comments at 9 (“Customers and competition are harmed by perpetuating the old system of making only a subset of customers pay the cost of universal service through implicit subsidies.”).

<sup>92</sup> Qwest Comments at 5 (broadband proposals “need not be addressed in this proceeding”).

<sup>93</sup> *Id.* at 10.

These carriers would continue to obtain inadequate support under the invalidated existing non-rural carrier high-cost support mechanism on an “interim” basis. The Tenth Circuit would likely laugh the Commission out of the courthouse if it presented the court with this discriminatory proposal next year. Embarq, on the other hand, would continue to fund competition by throwing half of the high-cost support available in a given wire center to a competitive ETC, without regard to how many subscribers that competitor has and without regard to its costs. Clearly there is a better way to satisfy this principle. The Commission should provide support to mobile wireless broadband providers through the Advanced Mobility Fund using legacy mobile wireless competitive ETC dollars. Mobile wireless providers would compete against one another for high-cost support; fixed location providers of broadband service would compete against each other for support disbursed through the Broadband Incentive Fund. This is the appropriate way for the Commission to put an end to the identical support rule while still satisfying the Commission’s universal service principle.

### **III. CONCLUSION**

It should be clear from the preceding discussion that the future of the Commission’s high-cost support program is not in POTS but is, instead, in broadband. Just weeks before the Commission issues a final order in this proceeding, it will have provided its National Broadband Plan to Congress. If the Commission issues an order in response to the Tenth Circuit that merely provides for incremental reform to just one high-cost mechanism, not only does it risk failure again before that court, it will have missed an opportunity to get a jump start on implementing proposals that further Congress’s broadband vision. Comprehensive universal service and intercarrier compensation reform is the Commission’s most potent tool to achieve ubiquitous broadband and there is no reason for further delay based on the Commission’s existing massive record on these topics. AT&T strongly urges the Commission to incorporate its proposed framework (i.e., transition legacy high-cost support to broadband funds that distribute project-

based support via a competitive application process) into its December Notice of Proposed Rulemaking.

Respectfully Submitted,

/s/ Cathy Carpino

Cathy Carpino

Christopher Heimann

Gary Phillips

Paul K. Mancini

AT&T Inc.

1120 20<sup>th</sup> Street NW

Suite 1000

Washington, D.C. 20036

(202) 457-3046 – phone

(202) 457-3073 – facsimile

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Its Attorneys