

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

In the Matter of)	
)	
Request for Review by AT&T Inc. of)	CC Docket No. 96-45
Decision of Universal Service)	WC Docket No. 05-337
Administrator)	

REPLY COMMENTS OF AT&T INC.

Last April, on behalf of three of its AT&T Mobility subsidiaries,¹ AT&T Inc. (AT&T) appealed the Universal Service Administrative Company’s (USAC) audit finding that all three were in “material noncompliance” with the Commission’s high-cost rules as a result of USAC and its auditors applying an arbitrary and unreasonably low quantitative materiality threshold of \$100,000.² There is unanimous support among the commenters that the Wireline Competition Bureau (Bureau) should reject USAC’s finding and direct USAC to modify its materiality guidelines to remove \$100,000 as a quantitative materiality trigger.³ As noted by ITTA, concluding that an audited provider is in “material noncompliance” with the Commission’s high-cost rules when, instead, that auditee is *overwhelmingly* in compliance with those rules “obscures the purpose of the audits by depriving carriers, regulators, and policy-makers with a focused and well-defined image of total overall USF program performance.”⁴ Indeed, the instant appeal is just the latest in an ever-growing stack of USAC audit appeals that highlight how arbitrary and

¹ Acadiana Cellular General Partnership, Lafayette MSA Limited Partnership and New Cingular Wireless PCS, LLC (collectively, AT&T Mobility Louisiana); New Cingular Wireless PCS, LLC; and CCPR Services, Inc.

² Request for Review by AT&T Inc. of Decision of Universal Service Administrator, CC Docket No. 96-45, WC Docket No. 05-337 (filed April 24, 2009) (AT&T Appeal).

³ See ITTA Comments, Qwest Comments, Verizon Comments, USTelecom Comments.

⁴ ITTA Comments at 4.

erroneous audit findings likely have contributed to the high percentage of universal service disbursements that have been deemed “improper” in the Commission’s Inspector General reports filed with Congress.⁵

AT&T agrees with Qwest that imposing a \$100,000 quantitative materiality threshold on larger companies requires nothing short of perfection on the part of the auditee in order to avoid a finding of “material noncompliance.”⁶ Moreover, Qwest is correct that a fixed dollar materiality threshold, without consideration of any other factor, creates a significantly different materiality threshold for differently sized carriers and imposes a higher compliance standard on carriers whose universal service support under review exceeds \$2 million dollars.⁷ Such a result is contrary to the Commission’s competitive neutrality principle, which requires that the Commission’s universal service support rules “neither unfairly advantage nor disadvantage one provider over another. . . .”⁸ Here, the Commission’s designee (USAC) is, in effect, applying a universal service rule that results in a material noncompliance finding when a large provider, such as AT&T Mobility Louisiana, unintentionally misreports a fraction of its line counts but not when a smaller provider unintentionally misreports a significantly higher percentage of its line counts. As AT&T explained in its appeal, AT&T Mobility Louisiana erroneously misreported its original line counts, which resulted in an underpayment of 0.10% of its overall disbursements.

⁵ See, e.g., *The High Cost Program, Initial Statistical Analysis of Data from the 2007/2008 Compliance Attestation Examinations*, Office of Inspector General, FCC (Nov. 26, 2008). In response, Congress has expressed concern about the lack of rigor that has been applied to these audits. See, e.g., *Financial Services and General Government Appropriations Bill, 2010*, House Rept. 111-202 at 62-63 (“The Committee is concerned by reports that some recipients of USF moneys have been the subject of unduly burdensome audits and that the results of those audits have not been effectively presented to improve expenditures from the USF going forward. This is a period of transition for the Commission and its Inspector General. The Committee urges the new leadership to re-evaluate the auditing process to make sure that the auditing process is not unduly onerous and that lessons learned from audits get translated into better performance in the future.”).

⁶ Qwest Comments at 2.

⁷ *Id.* at 2.

⁸ *Universal Service First Report and Order*, 12 FCC 8776, ¶ 47 (1997).

Since that underpayment exceeded \$100,000, the third-party auditor retained by USAC concluded that AT&T Mobility Louisiana had “significant deficiencies” in its internal controls and was in “material noncompliance” with the Commission’s high-cost rules.⁹ On the other hand, USAC and its auditors would have declared any such violation to be immaterial if a small carrier that receives less than \$2 million in high-cost support per year had erroneously misreported a proportionally larger percentage of its line counts so long as any under- or overpayment was less than five percent of the small carrier’s high-cost disbursements.

The consequences of a “material” versus an “immaterial” violation of the Commission’s rules can be substantial. The former implies that the auditee has significant problems with its internal processes¹⁰ and, as a result, such a finding “is best reserved for situations in which the scope of error indicates a break-down, intentional or inadvertent, that leads to substantial discrepancies in the USF distribution process.”¹¹ Based on the totality of the facts, that clearly was not the case with AT&T’s three subsidiaries: consistent with Commission procedures, the companies promptly corrected their inaccurate line counts through revisions; the companies made many of these revisions eight months before being notified that they were going to be audited and made all but one of them prior to the auditor issuing its final report; and, of course, the monetary impact of the unintentionally inaccurate line count filings is far beneath any reasonable quantitative materiality threshold.¹² USAC’s and the auditor’s exclusive reliance on the \$100,000 materiality threshold thus resulted in a “misleading finding”¹³ of material noncompliance simply because AT&T’s subsidiaries received more than several million dollars a year in universal service support. Another adverse consequence of USAC and its third-party

⁹ AT&T Appeal at 5.

¹⁰ Qwest Comments at 2.

¹¹ ITAA Comments at 3.

¹² *See, e.g.*, AT&T Appeal at 1-2.

¹³ USTelecom Comments at 2.

auditors declaring what should be an immaterial finding to be, instead, “material noncompliance” with the Commission’s rules is that USAC is likely to refer findings of “material violations” to the Commission’s Enforcement Bureau for investigation. It is an understatement to say that responding to such investigations can be as time consuming and costly as responding to the audit itself.

The commenters universally agree with AT&T that the Commission should direct USAC to jettison its fixed dollar materiality threshold and replace it with some reasonable percentage-based standard that would more accurately portray the audited provider’s compliance with the Commission’s rules.¹⁴ Like AT&T, the commenters indicate that five percent may be a reasonable percentage.¹⁵ As we mention below, however, AT&T recommends that the Commission seek comment from interested parties on this and other audit-related issues. Commenters also agree that, consistent with accepted auditing standards, a finding of material noncompliance should not be made merely upon a finding that a certain monetary threshold has been crossed.¹⁶ Rather, as Qwest explains, such a determination “should be made after careful consideration of all of the relevant factors as part of the auditor’s application of proper auditing techniques and the exercise of its professional judgment.”¹⁷ If that had occurred with respect to AT&T’s subsidiaries, it is clear that any finding would have been deemed immaterial.

To the best of AT&T’s knowledge, the guidelines that the third-party auditors use in these universal service audits have never been made public and thus have not been the subject of notice and comment. Based on its affiliates’ and subsidiaries’ experience, AT&T can state with certainty that the IPIA audits that were performed at the direction of the Commission’s former Inspector General were plagued by inconsistencies among the third-party auditing firms and an

¹⁴ *See, e.g.*, ITTA Comments at 3.

¹⁵ ITTA Comments at 4, Qwest Comments at 1, Verizon Comments at 2, USTelecom Comments at 1.

¹⁶ ITTA Comments at 5-6, Qwest Comments at 2.

¹⁷ Qwest Comments at 2.

utter lack of transparency in the firms' processes and procedures. If the Commission had given interested parties the opportunity to review and comment on proposed procedures, the Commission would not have a stack of USAC audit appeals sitting before it as it does today. Consistent with Congress's request that the new leadership at the Commission and its Inspector General re-evaluate and improve their universal service audits, AT&T recommends that the Commission seek comment on all guidelines that it, its Inspector General, and USAC use or have provided to third-party auditing firms for universal service audits. In the meantime, however, AT&T urges the Bureau to correct immediately one of the more egregious errors in these auditing guidelines by (1) directing USAC to eliminate its \$100,000 quantitative materiality threshold and (2) rejecting the auditor's and USAC's conclusion that AT&T's subsidiaries were in material noncompliance with the Commission's rules because they unintentionally submitted inaccurate line counts, which they subsequently corrected through revisions. As AT&T explained in its appeal, the monetary impact of the inaccurate line count filings is far below any reasonable quantitative materiality threshold and, when viewed together with appropriate qualitative factors, any violation was clearly immaterial.

Respectfully Submitted,

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