

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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
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**

The record that has been compiled to date in response to the Universal Service Administrative Company's (USAC's) requests for guidance shines a spotlight on several glaring and fundamental problems with the Commission's contribution methodology, which is used to fund the universal service support mechanisms and several other programs, and the process by which contributors report their telecommunications revenues. Fortunately for the Commission, there is consensus among the commenters (and throughout the industry) on how to solve these problems. AT&T Inc. (AT&T), on behalf of its affiliates, urges the Commission to act quickly to implement the recommendations provided below and to provide timely guidance to USAC on its non-contribution-related requests. There should be no impediment to swift Commission action, particularly on USAC's document retention and advertising supported services requests, since all commenters are in agreement on these two issues.

First, the Commission should take immediate action to abolish the current revenues-based contribution methodology and replace it with a telephone numbers- or a telephone numbers and

connections-based contribution methodology.<sup>1</sup> The contribution issues that USAC raised, and the comments filed in response to those requests, highlight the flaws inherent in the current revenues-based contribution methodology (not the least of which is determining how to classify complex enterprise offerings for revenue reporting purposes). While the Commission ultimately may address these few issues in a manner that gives satisfactory guidance to all contributors, new issues will most certainly crop up. Rather than continuing to dig itself further into a hole by issuing clarifications on an *ad hoc* basis (in some cases, years after the formal or informal requests were made), the Commission should instead concede that its revenues-based contribution methodology no longer satisfies the requirements of the Telecommunications Act of 1996 (1996 Act) and cannot be salvaged. It should do so quickly since the contribution factor is likely to top 14 percent in the next quarter and it shows no signs of leveling off, let alone decreasing. Contributors and USAC will require over a year to alter billing and other systems to implement any new methodology and, during that transition, the Commission will be hard pressed to expand the size of the universal service fund (and, thus, further increase the contribution factor) to accommodate any universal service-related broadband initiatives.

Second, since it will take about 18 months before the Commission's new methodology is implemented after the Commission adopts it, the Commission should request comment on its current FCC Form 499-A and the accompanying instructions in an effort to identify and clean-up

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<sup>1</sup> Qwest Comments at 7-9; Sprint Comments at 6-7; Verizon Comments at 4-7; USTelecom Comments at 6. *See also* AT&T Reply Comments, *Intercarrier Compensation and Universal Service Reform FNPRMs*, WC Docket No. 05-337 (and related proceedings), at n.90 (filed Dec. 22, 2008) (listing over 25 commenters, ranging from state commissions, CLECs, cable providers, VoIP providers, wireless providers, rural carriers, mid-sized carriers, and large carriers, that support moving to a telephone numbers- or telephone numbers and connections-based methodology).

inconsistencies within those documents beyond the issues already identified by the commenters.<sup>2</sup> Once the Commission has rectified the form's and instructions' existing flaws, it should implement a process to ensure that the Wireline Competition Bureau (Bureau) seeks comment on any proposed changes to these documents to ensure that any such changes are non-substantive (which would require action by the full Commission), and to implement any such changes only on a prospective basis. As several commenters have remarked, had the Commission applied this basic process from the start, the Commission could have prevented the myriad problems in the current FCC Form 499-A and Instructions, including eliminating the ambiguities (legitimate or otherwise) in these documents that have allowed competitors to report their telecommunications revenues based on fundamentally different interpretations of what is required.<sup>3</sup>

As for two of USAC's non-contribution-related requests, there is unanimous agreement among commenters that the Commission plainly did not make its high-cost and low-income document retention rules retroactive, and that eligible telecommunications carriers (ETCs) are not (and should not be) required to separately list and advertise each of the nine services supported by high-cost and low-income funding.<sup>4</sup> While surprising that such guidance is even necessary, the Commission should waste no time in informing USAC that its document retention

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<sup>2</sup> See, e.g., AT&T Comments at 6-12; Network IP Comments; STi Comments (all discussing problems with the prepaid calling card language). We note that a not-inconsequential benefit to adopting a telephone numbers- or telephone numbers and connections-based methodology is that contributors would no longer use the FCC Form 499-A.

<sup>3</sup> See, e.g., Masergy Comments at 4-6; Network IP Comments at 9-11. In its comments, AT&T also suggested that the Commission direct the Bureau to act on future USAC requests for guidance within some reasonable period of time (e.g., 45 days) and to resolve requests for review of USAC decisions in accordance with the deadlines established in 47 C.F.R. § 54.724. AT&T Comments at 2-4. We urge the Commission to adopt these suggestions as well.

<sup>4</sup> ITAA Comments; NECA Comments; OPASTCO/WTA Comments; Qwest Comments; Sprint Comments; TCA Comments; TDS Comments; Verizon Comments; USA Coalition Comments; USTelecom Comments; YourTel Comments.

rules applicable to the high-cost and low-income programs were implemented on a prospective basis. Any other outcome would be contrary to “familiar considerations of fair notice, reasonable reliance, [ ] settled expectations,” and the law.<sup>5</sup> Moreover, as Qwest notes, carriers clearly should not be penalized for failing to retain documentation prior to the effective date of the rule.<sup>6</sup> On the second request, requiring ETCs to mention each of the nine supported services set forth in 47 C.F.R. § 54.101(a) in their advertisements, including Lifeline advertisements, defies common sense and is not supported by the statute or the Commission’s rules. As USTelecom explains in its comments, section 214(e)(1)(B) of the Communications Act of 1934, as amended, and section 54.201(d)(2) of the Commission’s rules require ETCs to “advertise the availability of *such services and the charges therefore.*”<sup>7</sup> If Congress (or the Commission) desired ETCs to include a “point-by-point listing of the supported services,” it would have used the words “each service” in place of “such services.”<sup>8</sup> AT&T agrees with Qwest and others that the better interpretation of this rule (section 54.201(d)(2)) “is that ETCs are required to advertise the basic telephone service that incorporates these services and functionalities and the cost of that service.”<sup>9</sup> Finally, several commenters noted (as did AT&T) that these two USAC requests for

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<sup>5</sup> ITAA Comments at 3 (further citations omitted).

<sup>6</sup> Qwest Comments at 3.

<sup>7</sup> USTelecom Comments at 2-3.

<sup>8</sup> *Id.* at 3 (also explaining that the phrase “and the charges therefore” indicate that when services are bundled and thus offered for one price, “such bundled services should be considered one service for purposes of fulfilling the advertising requirement”). *See also* Qwest Comments at 2 (noting that carriers do not necessarily have separate charges for these particular services or functionalities; instead, most of these items are included in a single charge for basic telephone service).

<sup>9</sup> Qwest Comments at 2.

guidance should not be limited to the Commission's high-cost program.<sup>10</sup> AT&T and, at least, Qwest have been subject to these same erroneous audit findings in their low-income audits. In issuing its guidance to USAC, AT&T requests that the Commission be clear that such guidance also applies to low-income audits.

## **II. DISCUSSION**

### **A. Prepaid Calling Card Reporting Requirements Must Be Revised And The Commission Should Grant AT&T's Long-Pending Prepaid Calling Card Audit Appeal**

Nowhere is the effect of the Commission's failure to obtain prior public comment on its FCC Form 499-A Instructions more pronounced than it is with prepaid calling card revenue reporting. Other commenters agree with AT&T that the prepaid calling card language in these instructions is confusing, at odds with how the industry actually operates, and inconsistent with the statute and Commission precedent.<sup>11</sup> To make matters worse, USAC's request for clarification of those instructions and guidance on how prepaid calling card providers should report their revenues, and AT&T's appeal of USAC's prepaid calling card audit findings have languished at the Commission for over four and three years, respectively. As a consequence, as we repeatedly have informed the Commission, providers have interpreted the instructions and reported their prepaid card revenues differently – with some contributing based on the revenues they derive from the sale of prepaid cards to resellers, others contributing based on the revenues derived from the ultimate sale of cards to consumers, and still others contributing virtually

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<sup>10</sup> ITAA Comments; Qwest Comments; Sprint Comments; USA Coalition Comments; YourTel Comments.

<sup>11</sup> See Network IP Comments; STi Comments.

nothing at all.<sup>12</sup> This disparity obviously places providers like AT&T at a competitive disadvantage in the marketplace. Continued Commission silence will perpetuate this inequity, and marketplace distortion.

AT&T agrees with Network IP and STi that the Commission's FCC Form 499-A Instructions single out prepaid calling card providers to report, in many cases, more revenue than they actually receive, contrary to the Commission's rules and orders.<sup>13</sup> These commenters are correct that, under the Commission's current rules, a contributor is obligated to contribute to the universal service mechanisms on the basis of that contributor's "*collected* end-user interstate and international telecommunications revenues."<sup>14</sup> Where a prepaid calling card service provider sells a prepaid calling card to a retail outlet that sets the price for the card and resells it to an end-user consumer, the original selling carrier has not collected any revenues from an end user, and, indeed, may well have no idea how much revenue the reseller collected from the sale of that card. In that event, as AT&T has explained elsewhere, it is the reseller that is obligated under the Commission's rules to contribute to the fund. But, where the wholesale prepaid calling card service provider has no reasonable basis to believe the reseller is contributing directly to the

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<sup>12</sup> *Compare* Request for Review by AT&T Inc. of Decision of Universal Service Administrator, CC Docket No. 96-45 (filed Oct. 10, 2006) (AT&T October 10, 2006 Appeal) *with* Request for Review of Decision of the Universal Service Administrator by IDT Corporation and IDT Telecom, CC Docket No. 96-45 (filed June 30, 2008). AT&T flagged this issue for the Commission in its appeal. *See* AT&T October 10, 2006 Appeal at 20 & n.65; *see also* Letter from Robert W. Quinn, AT&T, to Dana Shaffer, FCC, CC Docket Nos. 96-45, 97-21 (filed Oct. 4, 2007); AT&T Comments, *Request for Review of Decision of the Universal Service Administrator by IDT Corporation*, CC Docket No. 96-45 (filed Sept. 5, 2008).

<sup>13</sup> STi Comments at 4, 8-9; Network IP Comments at 5-6. Like STi, the only time that AT&T reports its actual prepaid calling card revenues (versus its wholesale customers' revenues) occurs when AT&T has the direct relationship with the prepaid calling card consumer. *See* AT&T October 10, 2006 Appeal at n.53; STi Comments at 2 (explaining that when it sells cards on a retail basis, it actually receives revenue reflecting the full face value of the card).

<sup>14</sup> STi Comments at 4 (quoting 47 C.F.R. § 54.706(b)) (emphasis added by STi); Network IP Comments at 5-6.

universal service fund, that wholesale provider is required to treat the reseller as an end-user customer for revenue reporting and universal service contribution purposes, and thus to report *its* revenue from providing prepaid calling cards to the reseller on its FCC Form 499-A. During the audit period subject to AT&T's appeal, that is exactly what AT&T did with respect to its non-contributing prepaid calling card resellers.<sup>15</sup> USAC's auditors, based on the muddled FCC Form 499-A Instructions applicable to prepaid calling card services, have turned the Commission's rules requiring a contributor to report *its* interstate and international telecommunications revenues on its head by requiring wholesale providers to contribute on the basis of their non-contributing resellers' prepaid calling card revenues.<sup>16</sup>

To extricate itself from the current prepaid calling card quagmire, AT&T recommends that the Commission take several steps. First, the Commission should grant AT&T's October 10, 2006 Appeal, which spawned USAC's prepaid calling card request for guidance. Specifically, the Commission should conclude that AT&T's practice during the audit period of contributing based on *its* prepaid calling card revenue was appropriate since it had no reasonable basis to conclude that its wholesale customers were contributing directly to the universal service fund.<sup>17</sup> Second, on a going-forward basis, the Commission must decide whether prepaid calling card providers, like all other providers of interstate telecommunications, should contribute to the universal service fund based on *their* own revenues, or based on the revenues derived from the sale of such cards by non-contributing resellers to consumers (which would require a rule change). For the reasons noted by Network IP and STi, AT&T believes that the appropriate

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<sup>15</sup> AT&T October 10, 2006 Appeal at 15-17.

<sup>16</sup> Network IP Comments at 6; STi Comments at 3-4; *see also* AT&T October 10, 2006 Appeal at 13-14.

<sup>17</sup> AT&T October 10, 2006 Appeal at 13-20.

answer to this question is to require prepaid calling card providers to contribute based on their *collected* revenues – like any other provider of interstate telecommunications.<sup>18</sup> Of course, unless the Commission is prepared to compel those entities that resell such cards to end users to contribute directly to the universal service fund, some amount of reseller revenue will not be included in the Commission’s contribution base. The only alternative would be for the Commission to direct prepaid calling card providers to contribute based on the “face value” (if there is one) of cards that they sell without regard to the revenues actually collected from their non-contributing reseller customers, which would not be desirable for the reasons provided by Network IP and STi.<sup>19</sup> For prepaid calling cards that do not have any face value (such as minute-based cards), the Commission could direct prepaid calling card providers to obtain revenue information from all of their wholesale customers and contribute based on those customers’ revenues (as AT&T has done since the fourth quarter of 2006). Of course, the Commission also should permit prepaid calling card providers to follow this process (i.e., obtain revenue information from their wholesale customers and contribute based on those resellers’ revenues) for cards that have a face value because, in many cases, resellers sell those cards to end users at a discount off the stated face value of the cards.

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<sup>18</sup> Network IP Comments at 2-8; STi Comments at 4-9. In addition to the arguments made by these commenters regarding the inappropriateness of requiring prepaid calling card providers, alone, to contribute based on another entity’s end-user revenues, AT&T notes that because the Commission’s rules require contributors that elect to recover their universal service contribution costs via a line item to apply a specific formula (set forth in 47 C.F.R. § 54.712(a)), prepaid calling card wholesale providers that avail themselves of this formula would not be made whole. Moreover, given the small margins that are commonplace throughout this industry, it is unlikely that the wholesale provider could make up that revenue shortfall by merely increasing its rates.

<sup>19</sup> According to STi’s comments, this appears to be the methodology that it applies when reporting its prepaid calling card revenues. STi Comments at 2-4.

In its comments, Verizon suggested that the Commission adopt a safe harbor that prepaid calling card providers could use when they do not know the retail prices at which their cards are resold to end users.<sup>20</sup> This safe harbor would be a percentage associated with the retailer's markup so that a wholesale prepaid calling card provider would contribute based on its wholesale price plus the markup percentage. Verizon explained that, for some period of time, the IRS followed this approach and set the markup percentage at 35 percent.<sup>21</sup> AT&T believes that such an approach could be appropriate if the Commission directs wholesale prepaid calling card providers to contribute to the universal service fund (and the other programs that rely on information contained in the FCC Form 499-A) based on their wholesale customers' revenues. If the Commission adopts this proposal, it should set the markup percentage at 50 percent (i.e., a prepaid calling card provider's contributions would be presumed to be consistent with the rules if it contributed based on 150 percent of its wholesale prepaid calling card revenue).<sup>22</sup> Based on information Sprint previously has provided to the Commission,<sup>23</sup> and AT&T's experience, markups of 50 percent are common in this industry. Permitting certain prepaid calling card wholesale providers to use such a safe harbor would alleviate any concerns regarding their ability to obtain revenue information from hundreds of customers (if not more) on a timely basis.

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<sup>20</sup> Verizon Comments at 8-9.

<sup>21</sup> *Id.* at 8-9.

<sup>22</sup> Of course, wholesale prepaid calling card providers should have the option to report the actual revenues collected by its non-contributing reseller customers from end users.

<sup>23</sup> See STi Comments at n.5 (quoting Sprint, "Most prepaid calling cards are sold through retailers who sell the cards at face value but purchase them at discounts of up to 50%." Sprint Reply Comments, *Regulation for Prepaid Calling Card Services*, WC Docket No. 05-68, at n.21 (filed Oct. 23, 2006)).

**B. The Commission Should Find That AT&T's FRATM Service Is An Information Service Based On Long-Standing Commission Precedent And It Should Ensure That Contributors Are Accurately Applying The Commission's Findings Contained In The *Wireline Broadband Internet Access Order***

In response to USAC's requests for guidance on the appropriate classification of "ATM/Frame Relay Revenue" and "Virtual Private Network and Dedicated Internet Protocol Revenue," several commenters correctly highlight that the answers to USAC's requests depend on the features and functions offered by the service provider and whether that provider's service offering meets the definition of "information service" or "telecommunications service" found in the 1996 Act.<sup>24</sup> In its comments, AT&T provided a detailed analysis explaining why, under long-standing Commission precedent, its frame relay (FR)/ATM interworked service offering (i.e., FRATM service) appropriately is classified as an information service, while "pure FR" and "pure ATM" services are properly classified as basic telecommunications services.<sup>25</sup> While we will not repeat that analysis here, we note that Verizon's understanding of Commission precedent, as applied to FRATM service (and stand-alone FR and stand-alone ATM, for that matter), is consistent with AT&T's view and, undoubtedly, is shared by others that provide this service.<sup>26</sup> In particular, Verizon explains that, for several decades, the Commission has considered net protocol conversion to be a hallmark of an enhanced service and it reiterated this

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<sup>24</sup> See 47 U.S.C. § 153(20), (46); Sprint Comments at 6, Verizon Comments at 9-11; Level 3 *et al.* Comments at 2.

<sup>25</sup> AT&T Comments at 12-20. To be clear, AT&T agrees with Qwest and others that when ATM or FR is offered as the transmission component of wireline broadband Internet access service on a non-common carriage basis or is self-provisioned by the Internet access service provider, the revenues from that transmission component would not be included in a provider's assessable base. Qwest Comments at 6 (citing *Wireline Broadband Internet Access Order*, 20 FCC Rcd 14853, ¶¶ 102-06, ¶¶ 112-13 (2005)).

<sup>26</sup> Verizon Comments at 12-15 (citing *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, ¶¶ 104-06 (1996); *Protocols Order*, 95 FCC 2d 584, ¶¶ 11, 19 (1983); *Computer II*, 100 FCC 2d 1057, ¶ 2 (1985); *Third Computer Inquiry*, 2 FCC Rcd 3072, ¶ 71 (1987)).

finding after the passage of the 1996 Act.<sup>27</sup> Verizon further explains that FRATM services offer customers a fully integrated communications service that enables them to communicate “in a secure, real-time environment with any other location using any technology.”<sup>28</sup> AT&T agrees with Verizon that such integrated service offerings, which include an end-to-end net protocol conversion and possibly other information service characteristics, are information services that are not subject to universal service assessment.<sup>29</sup>

In a footnote to its comments, NECA notes that the Commission has recognized that certain categories of protocol processing are basic, not enhanced, services.<sup>30</sup> While NECA certainly is correct that protocol processing that is internal to a carrier’s network, and which results in no net protocol conversion to the end user, does not make a service an information service, that is not the case with AT&T’s FRATM service, which does include a net protocol conversion.<sup>31</sup> Consequently, the precedent cited by NECA is inapposite, and does not support a conclusion that AT&T’s interworked FRATM service is a mere telecommunications service. Likewise, NECA’s claim that, because its members have provided ATM and FR services as ordinary basic telecommunications services for many years, those services must always be telecommunications services is incorrect.<sup>32</sup> AT&T also has classified pure ATM and FR services as basic telecommunications services for many years, and contributed to the universal

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<sup>27</sup> Verizon Comments at 12 (citing *Non-Accounting Safeguards Order* at ¶ 104).

<sup>28</sup> *Id.* at 13-14.

<sup>29</sup> *Id.* at 14.

<sup>30</sup> NECA Comments at n.11. *See also* Verizon Comments at n.32.

<sup>31</sup> *See, e.g., Non-Accounting Safeguards Order* at ¶ 106 (describing the three categories of basic protocol processing services, none of which offer end users a net protocol conversion service).

<sup>32</sup> NECA Comments at 4.

service support mechanisms on its revenues from those services. Yet, that does not mean that any service that includes an ATM or a FR component necessarily is properly classified as a telecommunications service. As explained by other commenters, to determine the regulatory classification of a particular service, one must consider the particular capabilities of that service, and how it is provided.<sup>33</sup> Where, as here, those services are provided on an interworked basis, resulting in a net protocol conversion, those services are information services under long-standing Commission precedent. The Commission thus should clarify that AT&T's interworked FRATM services are properly classified as information services, the revenues from which are appropriately excluded from its universal services contribution base.

In its comments, AT&T noted that since it has not been the subject of any audit finding regarding "VPN and Dedicated Internet Protocol Revenue," and given the high-level summary contained in USAC's August 19, 2009 Letter, it could not comment in any meaningful way in response to this particular request.<sup>34</sup> While some additional information was provided by a few commenters on the so-called "dedicated IP" issue,<sup>35</sup> little information was advanced by parties on the VPN matter.<sup>36</sup> Consequently, it is still unclear to AT&T what VPN services were at issue and, thus, whether and how AT&T's VPN revenue reporting practices differ from those of the auditees. Absent additional information on this aspect of USAC's request, AT&T has nothing more to add beyond the information it previously provided in its comments.<sup>37</sup>

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<sup>33</sup> See, e.g., Verizon Comments at 9-10; Sprint Comments at 6.

<sup>34</sup> AT&T Comments at 20-21.

<sup>35</sup> See Level 3 *et al.* Comments; Sprint Comments.

<sup>36</sup> See Level 3 *et al.* Comments at 10-11 (stating some or all of these commenters do not contribute to the universal service support mechanisms based on any of their VPN revenues).

<sup>37</sup> See AT&T Comments at 20-22.

Based on comments filed by Level 3, PAETEC, TelePacific, and Sprint, it appears that these carriers refer to “dedicated IP” as the transmission component of their wireline broadband Internet access service offerings and USAC questioned how some or all of these carriers reported revenues associated with that transmission component.<sup>38</sup> The Commission’s *Wireline Broadband Internet Access Order* is clear that, to the extent an ISP obtains transmission for its Internet access service offering on a common carriage basis (including from an affiliated provider), that transmission component remains a telecommunications service, the revenues from which are subject to federal universal service contribution.<sup>39</sup> The order is equally clear that, after the expiration of a 270-day contributions freeze period,<sup>40</sup> to the extent an ISP obtains transmission on a private carriage basis (including from an affiliated provider) or when the wireline broadband Internet access service provider self-provisions such transmission, no federal universal service contributions are owed on that transmission component.<sup>41</sup> To the extent a contributor did not comply with these Commission requirements, USAC appears to have acted appropriately in issuing a finding against the auditee(s).<sup>42</sup>

Level 3, PAETEC, and TelePacific *seem* (and we emphasize seem because these commenters’ appear to have a host of different “dedicated IP”-related issues and their supporting

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<sup>38</sup> Level 3 *et al.* Comments; Sprint Comments at 7-8. According to the Commission’s *Wireline Broadband Internet Access Order*, the broadband transmission component could be, for example, DSL, ATM, or FR, and is not limited by technology. See *Wireline Broadband Internet Access Order* at n.15.

<sup>39</sup> See *Wireline Broadband Internet Access Order* at ¶¶ 103, 113.

<sup>40</sup> This 270-day period ended on August 14, 2006.

<sup>41</sup> *Wireline Broadband Internet Access Order* at ¶¶ 103, 113.

<sup>42</sup> See Level 3 *et al.* Comments at 21 (“wireline broadband Internet access service is *not* two stand-alone services; first broadband transmission provided on a *common carrier basis* and second, Internet access. Rather wireline broadband Internet access service is a functionally integrated, finished information service.”) (first emphasis in original, second emphasis added).

arguments are far from clear) to assert that regardless of the manner in which an ISP obtains broadband transmission, the transmission component when combined with Internet access service is an information service not subject to universal service assessment.<sup>43</sup> However, the Commission squarely addressed this issue in its *Wireline Broadband Internet Access Order* and plainly stated that universal service contributions are owed on revenues associated with broadband transmission that is provided on a common carriage basis. Specifically, the Commission stated in paragraph 103 of this order (which we provide in its entirety):

We address two circumstances under which the statutory classification of the transmission component arises: the provision of transmission as a wholesale input to ISPs (including affiliates) that provide wireline broadband Internet access service to end users, and the use of transmission as part and parcel of a facilities-based provider's offering of wireline broadband Internet access service using its own transmission facilities to end users. *First, we address the wholesale input.* Nothing in the Communications Act compels a facilities-based provider to offer the transmission component of wireline broadband Internet access service as a telecommunications service to anyone. Furthermore, consistent with the *NARUC* precedent, *the transmission component of wireline broadband Internet access service is a telecommunications service only if one of two conditions is met: the entity that provides the transmission voluntarily undertakes to provide it as a telecommunications service; or the Commission mandates, in the exercise of our ancillary jurisdiction under Title I, that it be offered as a telecommunications service.* *As to the first condition, we explain above that carriers may choose to offer this type of transmission as a common carrier service if they wish. In that circumstance, it is of course a telecommunications service.* Otherwise, however, is it not, as we would not expect an "indifferent holding out" but a collection of individualized arrangements. As to the second condition, based on the record, we decline to continue our reflexive application of the *Computer Inquiry* requirement, which compelled the offering of a telecommunications service to ISPs. Thus, we affirm that neither the statute nor relevant precedent mandates that broadband transmission be a telecommunications service when provided to an ISP, but the provider may choose to offer it as such.<sup>44</sup>

These commenters cannot reconcile their position with the clear language in that order nor do they even attempt to do so since the relevant paragraph is one of the few from that order

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<sup>43</sup> Level 3 *et al.* Comments at 23-25 (invoking the Commission's contamination doctrine).

<sup>44</sup> *Wireline Broadband Internet Access Order* at ¶ 103 (emphasis added) (internal citations omitted).

not quoted or cited in the commenters' pleading. Instead, the commenters selectively quote from the paragraph that follows (paragraph 104) in support of their argument but neglect to mention that this paragraph (and the findings contained therein) concern "the use of the transmission component as part of a *facilities-based provider's* offering of wireline broadband Internet access service to end users *using its own transmission facilities.*"<sup>45</sup> While AT&T would be supportive of these commenters' efforts to persuade the Commission to change its rules so that, regardless of how it is offered, all broadband transmission that is incorporated into an Internet access service offering would be treated in the same manner from a universal service contribution perspective, AT&T disagrees with the self-help approach that these commenters appear to have taken, which is at odds with the Commission's rules.

### **C. Quick Action Required On USAC's CETC Request**

Only three commenters, other than AT&T, addressed USAC's request for guidance on whether it should implement the AT&T and Alltel company-specific funding caps on their wireless competitive ETC (CETC) high-cost support.<sup>46</sup> Qwest and Sprint both recommend that the Commission direct USAC to implement the two carriers' company-specific caps,<sup>47</sup> whereas Verizon urges the Commission to interpret its *CETC Industry-Wide Cap Order*<sup>48</sup> as nullifying the company-specific caps.<sup>49</sup> However the Commission decides this issue, the language

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<sup>45</sup> *Id.* at ¶ 104.

<sup>46</sup> Qwest Comments; Sprint Comments; Verizon Comments.

<sup>47</sup> Qwest Comments at 4-5; Sprint Comments at 5.

<sup>48</sup> *CETC Industry-Wide Cap Order*, 23 FCC Rcd 8834 (2008).

<sup>49</sup> Verizon Comments at 17-29.

contained in the *CETC Industry-Wide Cap Order* requires it to apply that decision equally to both carriers<sup>50</sup> and AT&T urges the Commission to act quickly to resolve this matter.

### III. CONCLUSION

For the foregoing reasons, AT&T respectfully requests the Bureau or the Commission to issue guidance to USAC consistent with AT&T's recommendations provided above. AT&T also urges the Commission to adopt its proposed procedural improvements (e.g., seek comment on the FCC Form 499-A and its instructions, direct the Bureau to provide guidance on USAC requests within some reasonable period of time) and move quickly to a telephone numbers- or telephone numbers and connections-based contribution methodology. USAC's contributor-related requests highlight the fatal flaws with the current revenues-based methodology and it should be painfully clear that these problems will continue to drive up the contribution factor to the point where it begins to undermine the fundamental goal of universal service: ensuring that all Americans have access to affordable communications services.

Respectfully Submitted,

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Its Attorneys

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<sup>50</sup> *CETC Industry-Wide Cap Order* at n.21.