Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	WC Docket No. 05-195
	)	
Schools and Libraries Universal Service Mechanism	)	CC Docket No. 02-6
	)	
NBP Public Notice #15	)	GN Docket Nos. 09-47, 09-51, 09-137

REPLY COMMENTS OF AT&T, INC.

Pursuant to the Notice of Inquiry released by the Commission on November 3, 2009,[1] AT&T Inc. submits the following reply comments.

INTRODUCTION

Of the numerous comments submitted in response to the *Notice*, there is wide-spread support for the *Notice*'s essential underlying premise: the E-Rate program's historical success can be leveraged to advance federal goals of ubiquitous broadband deployment. This view, which AT&T shares, emanates from the E-Rate program's demonstrated progress towards its fundamental mission since its 1998 inception and the natural alignment of the E-Rate program's Act-derived connectivity goals and federal broadband deployment goals.

Even though the E-Rate program, in its eleventh year, is not perfect, most agree that it has delivered on its Act-mandated commitment to ensure connectivity to advanced

[1] Public Notice, *Comment Sought on Broadband Needs in Education, Including Changes to E-Rate Program to Improve Broadband Deployment, NBP Public Notice #15*, WC Docket No. 05-195, CC Docket No. 02-6, GN Docket Nos. 09-47, 09-51, 09-137 (rel. November 3, 2009) (*Public Notice* or *Notice*).

telecommunications and information services for K-12 schools and libraries across the country that need help getting access to those services. Schools and libraries, as AT&T and others noted in their comments, are quintessential "anchor institutions."[2] Thus, it is logical for the Commission to believe these institutions, through the E-Rate program, can provide a boost in achieving ubiquitous broadband deployment.

But, it will be important for the Commission to recognize that there are constraints involved with respect to just how far the E-Rate program can be stretched – including those relating to fund size, scope, and eligibility – and still be effective both structurally and operationally. Accordingly, the Commission should keep two key guardrails in sight as it wades deeper into this territory. First, the E-Rate fund is one of four Universal Service Fund (USF) mechanisms that are funded today based on interstate, retail telecommunications revenues. Those revenues have been in steady decline for some time. Any increase in the E-rate fund beyond its present $2.25 billion per year cap will exacerbate already mounting pressure on the USF overall (which already has led to a 14.1% contribution factor -- the highest ever), and increase the burden on consumers of telecommunications services, who ultimately pay for service providers' USF contributions. And, second, however the USF contribution calibrations play out, any new Broadband Plan requirements placed on the E-rate program should be focused on those *necessary to ensure that no schools or libraries remain unserved and/or underserved by broadband*. This is the best way to leverage the benefits and maintain the soundness of the E-Rate program itself.

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2 *See* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, div. B, tit. VI, § 6001(g)(3)-(4) (directing stimulus funds to be used to "ensure access to broadband service by community anchor institutions"); AT&T's Comments at 1; State E-Rate Coordinators Alliance's (SECA's) Comments at 14.

Finally, the Commission, as a number of commenters (including AT&T) point out, should recognize that the E-Rate program needs to be streamlined to make it more efficient and effective. Most commenting on the subject appear to be in accord that before the E-Rate program's mission is directed toward ubiquitous national broadband, the program's administrative operations should be simplified.[3] AT&T has made its own proposal for simplifying the USAC disbursement process.[4] Some commenters echo these suggestions, while others focus on different ways to improve E-Rate program efficiency.[5] On the whole, these kinds of administrative process improvements are necessary for the E-Rate program *as-is*; they are even more important if the program is modified to assist in the federal broadband deployment mission.

DISCUSSION

A. A Stable and Sustainable USF Contribution Methodology is Critical to the Future of the E-rate Program.

A number of commenters advocate expanding the E-Rate program, either through significantly increasing its cap beyond the present $2.25 billion per year, or expanding certain

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3 *See* American Library Association's (ALA's) Comments at 16-19 (". . . program complexity would be significantly reduced by allowing payment to be returned directly to applicants rather than going through the additional step of passing the money to service providers, who then distribute the money to applicants. Especially in those situations where applicants have paid the entire cost of service up front, reimbursements made to the applicant would ease the time and energy associated with receiving the benefit of discounts"). *See also* EdLiNC's Comments at 5-6; SECA's Comments at 18-19, 26.

4 *See* AT&T's Comments at 12-14.

5 *See, e.g.*, AT&T's Comments at 12-14 (advocating simplification of funds disbursement processes); SECA's Comments at 27 (recommending modified application review procedures to streamline approval processes); West Virginia Department of Education's (West Virginia DOE's) Comments at 13-14 (suggesting that Forms 471 be treated as "Evergreen" applications for annually repeating funding requests).

program scope and eligibility parameters, or both.[6] But, given the mounting pressure on the fund and the rapid, seemingly endless increase in the contribution factor, the Commission could not responsibly adopt such proposals in isolation.

Before it reasonably could consider expanding the program, and increasing the funding cap, the Commission first should consider how it might modify the existing program to meet Broadband Plan goals while living within its existing financial parameters. Moreover, any modifications should be considered only if they can be implemented in economically sustainable ways. That, in turn, will depend on the soundness of the overall universal service fund contribution structure itself, and the contribution mechanism on which it is based. It is widely recognized, however, that the current USF contribution methodology is no longer adequate to bear the burdens already placed on it, much less to accommodate substantial new growth in any of the support mechanisms.

1. The present USF contribution structure will not support major E-Rate program scope or cap expansions.

As AT&T has argued in the USF contribution methodology proceedings (and elsewhere), the present USF contribution methodology is untenable.[7] For the past few years, the contribution assessment has continued to increase – the contribution factor will be 14.1% as of

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[6] *See* American Association of School Administrators (AASA) and the Association of Educational Service Agencies (AESA) Comments at 8-10 (seeking cap expansion); ALA's Comments at 12-15 (seeking cap increase but not expansion of eligible services or classes of eligible entities); EdLiNC's Comments at 2-4 (same); School District of Palm Beach County, Florida's Comments at 2-9 (seeking cap increase and expansion of certain program scope and eligibility parameters).

[7] *For discussion*, *see* Comments of AT&T Inc., In re Matter of National Broadband Plan for Our Future, *et al*., NBP Public Notice # 19, GN Docket No. 09-51, *et al*., (FCC December 7, 2009) at 3-5.

January 1, 2010 – and there is nothing to suggest that the trend of escalation will not continue, and even accelerate, in the years to come under the *status quo*. This is due largely, if not entirely, to the revenues-based methodology from which the factor is derived. As long as the interstate telecommunications retail revenue base continues to shrink year-to-year, while the demands on the universal service fund continue to increase year-to-year, there can be but one outcome – a severely strained fund incapable of meeting the needs of the four mechanisms' intended recipients and, thus, the Act's purposes and mandates.[8]

E-rate stakeholders must recognize that expanding the E-Rate program's cap from the present $2.25 billion per year without appropriate action being taken to reform the contribution methodology will exacerbate an already unacceptable situation. For example, hypothetically, if the E-Rate cap were expanded to $5 billion (slightly more than doubled), and all other mechanisms were kept at present levels, the contribution factor under the present methodology would increase to roughly *19.3% -- a five point jump from the January 1, 2010 rate of 14.1*%.[9] Clearly, customers (including schools and libraries) who would pay for this increase *via* larger USF charges on their bills may have difficulty accepting the rationale for the increased assessments. The Commission and E-rate stakeholders themselves may want to ask how a contribution factor that is approaching 15 percent can be considered consistent with the Commission's statutory mission and the fundamental goal of universal service: ensuring that all

8 *See* AT&T's NBP PN #19 Comments at 3.

9 For context, this would represent by far the largest single annual leap in the USF contribution factor in the ten years since the USF contribution methodology was implemented, and would be higher than any growth in the factor over any five year period in that time as well.

Americans have access to affordable communications services.[10] It is in this broader context that any changes to the E-rate program should be considered.

In this regard, it is certainly encouraging to see that several commenters appear to recognize, as AT&T does, that the current USF contribution structure poses a steep challenge to any significant efforts to leverage the E-Rate program for national Broadband Plan goals.[11] SECA suggests that the Commission should expand the USF base of contributors to include all who participate in the program and benefit from the economic opportunities that participation in the program provides.[12] AT&T believes the Commission must adopt contribution reform that expands the funding base by more closely aligning the contribution obligation to the service providers that are benefiting from the deployment of broadband service and the corresponding exponential growth of the Internet. Thus, the Commission should not impose the contribution obligation solely on network providers that have taken on the task of deploying the broadband

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[10] *See* 47 U.S.C. §§ 151, 254. *See also* AT&T's NBP PN #19 Comments at 3.

[11] *See, e.g.*, Board of Cooperative Education Services' (BOCES') Comments at 2-3 (arguing that any consideration of increasing the E-Rate funding cap must take into account the impact on the telecommunications industry, whose contributions fund E-Rate, and the impact on the USF contribution factor, and concluding that it would be unrealistic, under the circumstances, to assume that a sustainable cap increase could support expanding the program's scope); Polk County's Comments at 3 (pointing out that the economic downturn has impacted the telecommunications industry and the USF contribution factor, and that it would not be realistic to believe that a cap increase to support additional eligible entities would be sustainable under the circumstances); School District of Palm Beach County, Florida's Comments at 8 (same); Sprint's Comments at 6 (stating that USF is in "precarious" condition, facing a record 14.2% factor for the first quarter 2010, and program scope and eligibility expansions would only place additional strain on the fund that would further threaten its sustainability).

[12] *See, e.g.,* SECA's Comments at 30 (". . . the most effective approach to aligning ongoing funding with increased costs and demand will be to expand the contributor base of the fund. Contributions would need to increase before any changes result in increased funding demand or else the contribution mechanism would simply rise higher than it already has. We recommend expansion of the contributor base to include all those participating in the program and benefiting from the economic opportunities made available by their participation.")

infrastructure; instead, the Commission should consider expanding the contribution obligation to providers that operate in service layers that ride the basic broadband Internet access services.

2. The Commission should expeditiously adopt contribution methodology proposals filed by AT&T and Verizon, consistent with national broadband policy goals.

Last year, AT&T and Verizon filed with the Commission a telephone numbers-based contribution methodology proposal to fund the universal service support mechanisms, including the E-Rate program, as well as telecommunications relay service, and the other funds and fees that rely on revenue information provided on contributors' FCC Forms 499-A.[13] In October 2008, AT&T and Verizon offered a connections component to their previously filed telephone numbers proposal.[14] AT&T subsequently suggested a modification to that proposal on October 29, 2008.[15] A contribution methodology that includes some form of connections component, as AT&T and Verizon have proposed, has the potential, depending upon how it is designed, to expand the universal service funding base in a manner that more closely reflects the changing cast of providers who benefit from the shift to broadband. If, as AT&T recommends, the Commission uses these October 2008 numbers and connections filings as a starting point for developing a new contribution methodology, it would have a structure from which it could consider modifying USF, including leveraging the E-Rate program to achieve Broadband Plan goals in sustainable fashion.

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[13] Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45 (filed Sept. 11, 2008) (September 11, 2008 *Ex Parte*).

[14] Letter from Mary L. Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45 (filed Oct. 20, 2008).

[15] Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, WC Docket No. 06-122 and CC Docket No. 96-45 (filed Oct. 29, 2008).

The per-telephone number and connections assessments under the proposed methodology or a similar plan would result in reasonable charges to consumer and business customers alike. In the September 23, 2008 *Ex Parte* submission, AT&T and Verizon demonstrated that, under their proposal, the per telephone number assessment would be $1.07 per month with the wireless family plan transitional discount and $1.01 per month without the discount. Under AT&T's October 29, 2008 connections proposal, the per telephone number assessment would be fixed (illustratively at $0.85/month) and connections would be assessed via a tiering system based on the connection's capacity: in Tier 1, dedicated connections up to and including 25 mbps up to and including 100 mbps would be assessed at $15.00 per connection per month; and in Tier 3, dedicated connections over 100 mbps would be assessed at $250.00 per connection per month.

Addressing the existing contribution methodology in an expeditious manner only becomes more critical should the Commission attempt to harness and expand the E-Rate program to serve the ubiquitous national broadband deployment mission, as many commenters advocate. Like the other mechanisms, the E-Rate program ultimately will only be as effective and sustainable as the USF platform upon which it rests. The greater the desire to utilize the program to pursue national Broadband Plan goals, thus, the greater the need to reform USF in the fashion advocated by AT&T and Verizon first.

B. The Commission Should Make Necessary Adjustments to E-Rate Priorities in Order to Focus on Deploying Broadband to Unserved/Underserved Applicants.

As AT&T observed in its comments, the Commission "should consider creating a mechanism that gives higher priority to the broadband service needs of schools and libraries that currently are unserved or underserved by broadband."[16] A number of commenters essentially

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16 AT&T's Comments at 10.

agree that the E-Rate program should be re-calibrated in order to emphasize broadband, and that the program's priorities should be managed so as to ensure that unserved or underserved applicants (as identified) are preferentially targeted for the funding needed (whether on a Priority 1 or Priority 2 basis) to achieve at least minimal broadband levels. AT&T urges the Commission to focus on these kinds of objectives (a few of which are addressed briefly below) – which may be achievable without expanding the fund size – before considering more ambitious, program-expanding ideas put before it.

1. Adjusting discount levels could be useful, if done judiciously.

Several commenters recognize that the Commission should focus on providing broadband to those schools and libraries that lack it or that do not meet minimum Commission-established standards. These commenters suggest various ways to reach that objective, such as adjusting discount levels aggressively (*e.g.*, 90% discount) for entities presently lacking broadband.[17] Adjusting discount levels is a potentially useful idea, but with the caveat that steeper discounts (*e.g.*, 90%) may not be necessary in every instance to ensure broadband service deployment to, or acquisition by, those institutions. AT&T feels its own proposal (to first fund entities lacking broadband before funding other entities that already have broadband) is a more cost-effective way to get broadband to those unserved and underserved entities. In any event, the Commission should consider methodologies that match fund support for broadband with actual need, which will tend to ensure equitable distribution of fund resources.

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[17] *See*, *e.g.*, Arkansas State's Comments at 10.

2. Priority Two funding could be adjusted.

Some commenters encourage the Commission to adjust Priority 2 (internal connections) funding as part of the effort to target unserved/underserved applicants for preferential funding.[18] ENA, for example, cites the need to increase P2 funding availability for unserved sites to alleviate the *status quo* in which late broadband adopters (or lower discount level entities) cannot install internal networks capable of supporting broadband in the first instance while others are able to acquire even greater bandwidth access by repeatedly upgrading their existing internal networks with P2 funds.[19] These sentiments are generally echoed by the Iowa Department of Education and others.[20]

AT&T agrees that P2 funding treatment should be adjusted in order to alleviate the disparities that have resulted to date. One useful approach, as AT&T proposed in its comments, would be to direct P2 funding exclusively to unserved/underserved ("unwired") schools and libraries until all targeted institutions have achieved access to threshold adequate bandwidth, and to monitor developments toward that end. This, or a similar approach, would seem critical to ensuring that schools and libraries that still do not have broadband (or sufficient bandwidth) can get it expeditiously, thus fostering the goal of ubiquitous broadband.

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18 *See, e.g.*, ENA's Comments at 8-9; West Virginia DOE's Comments at 16.

19 *See* ENA's COMMENTS at 8-9. SECA, on the other hand, proposes lowering the maximum P2 funding discount from 90% to 75% (maintaining the lowest level at 20%) and other adjustments in order to ensure more even distribution of funds to a larger number of underfunded entities, and to provide greater incentives to applicants to manage bandwidth investment properly. SECA's Comments at 23.

20 *See* Iowa Dept. of Education's Comments at 9-10; San Bernardino County School District's Comments at 2.

3. Removing limits on non-recurring charges can be helpful.

Some commenters propose other changes to allow unserved/underserved schools and libraries to "catch up" that are premised on incenting investment in construction of broadband-enabling facilities by network service providers.[21] These commenters recognize that part of the challenge to getting higher bandwidth to unserved/underserved schools is that providers need sufficient, concrete economic incentives, *i.e*., through adequate, up-front E-Rate funding for schools and libraries customers, to justify the infrastructure investments and upgrades that would be needed for the higher bandwidth desired. West Virginia DOE suggests that the problem could be solved by removing any limits on non-recurring charges (*e.g*., installation costs) in any one funding year for applicants in unserved or underserved areas.[22]

AT&T, as observed in its comments, and believes that an effective way to do this would be to bifurcate the E-Rate program into two sections – a "Facilities Section" to fund non-recurring facilities design and construction costs, *etc*., and a "Recurring Charges Section" for on-going support of eligible recurring charges.[23] Having concrete assurance that such capital costs would be covered sufficiently through the E-Rate program is critical to providers and applicants in order to justify required construction, and in this regard, removing limits on non-recurring

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21 *See* West Virginia DOE's Comments at 15-17; AT&T's Comments at 24.

22 West Virginia DOE's Comments at 15-16.

23 *See* AT&T's Comments at 10-11 (By adopting AT&T's proposal to bifurcate the program into two major sections as described, the Commission "could ensure funding for new broadband infrastructure in schools and libraries that currently are unserved or underserved by broadband, and thus allow them to catch up with institutions that already have access to broadband facilities and services.")

charges (for example, by revisiting the *Brooklyn Order* governing payment for non-recurring charges, as AT&T advocates[24]) is a helpful suggestion.

As with the suggestions relating to discounts and adjusting Priority 2 funding, however, it is important for the Commission, if it takes this approach, to ensure that it identifies those unserved/underserved applicants and areas that require this type of solution to gain access to threshold adequate bandwidth in order to minimize undue strain on the fund and ensure equitable fund distribution.

[24] *See* AT&T's Comments at 11.

CONCLUSION

AT&T appreciates the opportunity that the Commission has provided to address these important questions affecting the course toward ubiquitous national broadband deployment, and the use of the E-Rate program to facilitate that goal. The foregoing offers only a few insights on the many ideas and suggestions presented to the Commission in response to the multiple questions and issues presented in the *Public Notice*. It is hoped that the Commission will take the next steps through E-Rate and Universal Service Contribution dockets in the near future to flesh out specific plans and appropriate program modifications that will advance national broadband deployment goals. AT&T looks forward to its continued participation in those efforts.

Respectfully Submitted,

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