Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

COMMENTS OF AT&T INC.

Cathy Carpino
Gary L. Phillips
Paul K. Mancini

AT&T Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 457-3046 - telephone
(202) 457-3073 - facsimile

Its Attorneys

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Table of Contents

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I. INTRODUCTION

Initiation of yet another comprehensive high-cost universal service reform proceeding has a certain déjà vu quality to it. Yet, while many parties, including AT&T, have sounded the universal service and intercarrier compensation alarm for years, there is good news that, despite years of inaction, this Commission is gathering some momentum for reform and may be headed in the right direction based on the universal service recommendations contained in the National Broadband Plan ("NBP") and the Commission's Joint Statement on Broadband.[1]

For several years, AT&T has argued that, once reformed, the Commission's high-cost universal service program could be one of the Commission's most potent tools to achieve ubiquitous broadband.[2] Many others have reached the same conclusion and thus it was no surprise that an essential element of the NBP is its recommendation that the Commission

[1] Connecting America: The National Broadband Plan (rel. March 16, 2010), *available at* 2010 WL 972375; *Joint Statement on Broadband*, GN Docket No. 10-66, 24 FCC Rcd 3420 (rel. March 16, 2010) ("The nearly $9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.").

[2] Comments of AT&T Inc., WC Docket No. 05-337, CC Docket No. 96-45 (filed April 17, 2008) ("AT&T April 2008 Comments").

repurpose the existing universal service programs by making them more efficient and broadband-focused. For the legacy high-cost program, the NBP's recommendation is for the Commission to transition support disbursed through today's inefficient mechanisms to the yet-to-be created Connect America Fund ("CAF") and distribute CAF funding through "market-based mechanisms."[3] A key principle of the CAF, according to the NBP, is for the Commission to "identify ways to drive funding to efficient levels, including market-based mechanisms where appropriate, to determine firms that will receive CAF support and the amount of support they will receive."[4]

In the first of many anticipated 2010 Commission notices on universal service-related reforms, which is the subject of these comments, the Commission requests detailed information on a model that the Commission could use to determine high-cost universal service support levels for the provision of broadband in areas that currently are unserved by broadband, as well as in areas that currently have broadband service, but where the provision of such service may be dependent on legacy high-cost support and intercarrier compensation payments.[5] Perhaps in recognition that developing a high-cost model is a time-consuming endeavor, the Commission also sought comment on an expedited process, not involving a model, that it could use to distribute funding to providers that deploy broadband networks in unserved areas.[6] Finally, the

[3] NBP at 145.

[4] *Id.* (also stating that "[i]f enough carriers compete for support in a given area and the mechanism is properly designed, the market should help identify the provider that will serve the area at the lowest cost").

[5] *See, e.g., Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support,* WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, at ¶ 17 (rel. April 21, 2010) ("NOI/NPRM").

[6] *Id.* at ¶¶ 43-48.

Commission requested comment in the companion NPRM on several proposals for reducing legacy high-cost support currently provided to eligible telecommunications carriers ("ETCs"), presumably in order to begin the transition away from these legacy programs and make the resulting "savings" available for initial disbursements through the CAF.[7]

The Commission, working collaboratively with industry participants like AT&T, likely will require several years to develop a thoroughly reviewed and vetted broadband model, incorporating all relevant technologies. Similarly, transitioning support from legacy high-cost mechanisms to a broadband-focused high-cost universal service program in a manner that is consistent with section 254(b) of the Communications Act of 1934, as amended ("Act"), will take some time. Thus we understand the Commission's desire to request comment on these particular proceedings first. But by requesting detailed comment on modeling issues without determining whether a model is even necessary and proposing to eliminate legacy high-cost support without indicating how this transitioned support will be distributed via the CAF, if at all,[8] the Commission has essentially jumped the gun. In order to comment intelligently on the Commission's proposed model and how to transition support, parties must first understand what are the objectives and parameters of CAF funding. By focusing on the model and transition

[7] *See Id.* at ¶ 53 ("those savings [will] be used to further the goals of universalizing broadband without increasing the overall size of the universal service fund").

[8] *See* NBP at 148 (recommending that legacy high-cost support dollars be used to increase funding for rural health care, E-rate, and low-income programs). *See also* NOI/NPRM at ¶ 53 (explaining that "[t]he intent of these proposals is to eliminate the indirect funding of broadband-capable networks today through our legacy high-cost programs"). We note that, if eliminating the "indirect funding of broadband-capable networks today" is indeed the intent of the Commission's proposals, then its proposals to eliminate interstate access support ("IAS") and competitive ETC support are inconsistent with that goal insofar as the Commission's "no barriers" policy mentioned in footnote 119 applies only to rural ILECs. The majority of rural ILECs do not receive IAS and no rural ILEC, obviously, receives competitive ETC support. The Commission's failure to extend its "no barriers" policy to so-called non-rural carriers likely contributed to the fact that approximately half of the housing units unserved by broadband are in large price cap carriers' service areas. *See* NBP at 141.

issues before identifying to what we will be transitioning, the Commission risks wasting time and resources – for both interested parties and the Commission itself, and is unlikely to obtain as robust record on the issues raised in the NOI and NPRM than if it had sought comment first on the CAF. Additionally, almost four months after the Commission released the NBP, much information about the NBP model (i.e., the broadband assessment model or "BAM") remains unknown, which makes it impossible to answer one of the Commission's threshold NOI questions: Should the Commission "use the [NBP] model as the starting point for developing a cost model, or alternatively, a cost/revenue model . . ."?[9] Nevertheless, AT&T responds to the Commission's NOI and NPRM questions as best it can given the aforementioned constraints and, as the Commission makes available additional information about its proposed CAF and the BAM, we anticipate supplementing the record to offer further responses to the issues raised in the NOI and NPRM.

While the Commission is considering the long list of CAF-related issues identified in these comments and by other parties, it can and should declare that all ETCs, not just rural carriers, are permitted to use legacy high-cost support to deploy broadband facilities within their designated service areas. This simple declaration will, by itself, jump-start broadband deployment.

II. DISCUSSION

A broadband-focused, high-cost universal service program must address two distinct issues: how to incent broadband providers to build out broadband infrastructure in unserved areas where no private sector business case can be made; and how to maintain broadband

[9] NOI/NPRM at ¶ 14. We have been told that the Commission plans to provide remote access to a "run-able" model, which will allow interested parties to kick the proverbial tires of the BAM. As far as we know, these plans still remain pending at this time.

availability and sufficient incentives for continued investment in areas that would be at risk of becoming unserved without legacy high-cost support and intercarrier compensation payments.[10] How the Commission ultimately decides to address the first issue may not be the best way to address the second. Indeed, determining the optimal amount of support to ensure that currently "served" areas remain so as legacy high-cost support and intercarrier compensation payments transition to the CAF or disappear altogether may be dramatically more complicated than determining the amount necessary to compensate providers for building-out broadband facilities in unserved areas. As the Commission evaluates the record developed in this proceeding and other CAF-related proceedings, it should keep in mind that it is possible, perhaps, probable, that each issue may require a different solution. We structure our responses to the questions posed in the NOI based on these two issue sets.

A. The Commission Should Adopt a Competitive Application Process to Bring Broadband to Unserved Areas

In its NOI, the Commission seeks comment on the "use of a model as a competitively neutral and efficient tool for helping [the Commission] to quantify the minimum amount of universal service support necessary to support networks that provide broadband and voice service . . . ." and "potential approaches to providing such targeted funding on an accelerated basis in order to extend broadband networks in unserved areas, such as a competitive procurement auction."[11] If the Commission adopts some sort of a "market-based mechanism,"

[10] The NBP notes that, for many rural carriers, these two revenue streams comprise over 60 percent of these carriers' total or regulated revenues. NBP at 158, n.32.

[11] NOI/NPRM at ¶ 13. The Commission attached as Appendix B to its NOI/NPRM a proposal by 71 economists who recommended that NTIA and RUS use a competitive procurement auction to allocate funding made available through the American Recovery and Reinvestment Act of 2009. In a footnote, the economists state that "[t]he term 'reverse auction' has been used in the context of universal service as a synonym for procurement auction." Comments of the 71 Economists at n.4.

as the NBP recommends, the Commission requests comment on whether a model would be an important tool, for example, to identify the costliest areas to serve or to establish a reserve price if the Commission adopts a reverse auction process.[12] AT&T respectfully submits that a model is unlikely to be necessary to identify the least densely populated, highest-cost areas that are currently unserved by broadband or to calculate support levels for the provision of broadband service in unserved areas. Instead, AT&T believes that, for unserved areas, a competitive application process would not only "drive funding to efficient levels," it would do so faster than through a reverse auction or a model.

Under a competitive application process, a provider would identify both the unserved areas that it is willing to serve and the amount of support it determines is necessary to meet whatever service obligations the Commission establishes (e.g., obligation to provide the supported services for five years). The provider would submit its application under seal to the reviewing authority (e.g., Commission or the relevant state commission) and that authority would score the application based on clearly defined criteria, with the most heavily weighted criterion being the amount of support requested per potential housing unit. The Commission then would select which applications to fund based on the scoring. Given the Commission's well-known funding constraints, it likely will have to grant applications in phases, funding the applications that offer the biggest bang for the buck first. AT&T previously has offered a detailed competitive application proposal through which the Commission could award targeted, broadband-focused high-cost support to unserved areas and we have explained how that proposal

[12] NOI/NPRM at ¶¶ 20-22.

satisfies the principles of section 254(b) of the Act.[13] We ask that the Commission incorporate those two filings into the current the record.

A reverse auction is another form of a market-based mechanism that the Commission could utilize to determine support levels for the extension of broadband infrastructure in unserved areas. As the Commission notes, in a high-cost reverse auction, the Commission would have to "establish precise definitions of what parties are asked to bid for, including the geographic boundaries of the areas to be served and a precise definition of the service quality that winning bidders would be expected to provide."[14] As we previously have observed, one significant drawback to such an approach is that it will be extraordinarily difficult to define a geographic area that is both competitively neutral and appropriately sized. For example, a wire center is a LEC-centric geography that bears no relation to, for example, a cable provider's franchise area or a wireless provider's cell site radius. Other options that rely on some U.S. Census-based geographic area, such as a census block or a county, are equally problematic; most providers consider a census block to be too small of a geographic area on which to make network build decisions, whereas a county may be too large in many cases.[15]

In any event, by pre-defining the geographic area that must be covered by a bid, the Commission is likely to end up with bids that are higher than if it had permitted providers

[13] AT&T April 2008 Comments; Comments of AT&T Inc., WC Docket No. 05-337; CC Docket No. 96-45 (filed May 8, 2009) ("AT&T May 2009 USF NOI Comments").

[14] NOI/NPRM at ¶ 45.

[15] *See Id.* at ¶ 41 (noting that the Commission's modeling staff concluded that it did not make sense to evaluate whether to build a network at the census block level because "[i]n the real world, private sector firms typically will evaluate the profitability of deployment decisions at a larger, more aggregated service-area level than a census block"). The BAM modelers selected the county as a competitively neutral, appropriately-sized geographic area. We discuss our concerns with this decision below in Section II.C. While there are U.S. Census-based areas between census block and county (e.g., census block group and census tract), these areas also do not generally correspond to all providers' networks and, therefore, may not be technology neutral.

themselves to define which unserved areas they would like to serve. That is, parties may not bid as low as they otherwise would because they may not have the ability to serve all of the housing units in that Commission-defined area (e.g., some portion of that unserved area is outside of the provider's franchise or other licensed service area), or there simply is no business case for them to do so. While the Commission could adopt a waiver process, like NTIA did in its Broadband Technology Opportunities Program ("BTOP"),[16] so that a bidder could request to carve out certain portions of a pre-defined area from its bid, the Commission likely would be flooded with waiver requests and such a waiver process would undermine the Commission's ability to compare competing bids for that area, which seems to be one of the main benefits to using a reverse auction in the first place.

If the Commission were to use reverse auctions to calculate high-cost support levels for deploying broadband infrastructure to unserved areas, it would need to consider whether to establish a reserve price (i.e., "maximum subsidy level that participants would be allowed to place as a bid")[17] for each of the auctions. As the Commission explains, determining the reserve price is a "critical" factor in the design of a reverse auction since a reserve price that is set too low will discourage would-be bidders from participating (which means unserved areas will continue to be unserved) and a reserve price that is set too high will disburse more support than may be necessary to meet the Commission's service obligations for that unserved area, which will have the effect of delaying ubiquitous broadband because of annual high-cost funding constraints.[18] The Commission seeks comment on whether it could use a model or "the

[16] *See* Department of Commerce, NTIA, BTOP, Docket No. 0907141137-0024-06, RIN 0660-2A28, Notice of Funds Availability, section V.D.3.c.ii.

[17] NOI/NPRM at ¶ 20.

[18] *Id*.

alternative of using a particular firm's current support levels" to set reserve prices.[19] For reasons that the Commission itself identified in its NOI, using a provider's current support levels to establish a reserve price would be problematic and any suggestion that the Commission should adopt this approach should be dismissed.[20] Using a model would have its own disadvantages – namely, developing a model that produces accurate outputs likely would take years and, even then, would be subject to challenge by parties that disagree with the model's technology choices, costing approaches, and, of course, inputs. Any ensuing litigation obviously would delay broadband deployment in unserved areas.

Finally, in a true reverse auction, the Commission would consider just one factor in evaluating bids: price. This makes reverse auctions seem deceptively simple, but on the contrary, this is another reason why a high-cost reverse auction would be difficult to conduct. Among other things, the Commission would need to determine beforehand all of the service specifications, terms and conditions of service, and other requirements to which bidders would be required to adhere, to ensure that all bidders are bidding on the same thing. This would be no small undertaking and, in the meantime, while the Commission was expending limited time and resources on developing bid specifications and protocols, areas would continue to go unserved. By contrast, developing an application process, which would require only that the Commission develop application requirements (e.g., minimum service specifications) and clear application

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[19] *Id.* at ¶ 21.

[20] *Id.* (explaining that current support levels are based on statewide or study area average costs; except for so-called "non-rural" high-cost model support, high-cost support is based on an ILEC's actual costs of providing POTS, which is unlikely to be the same as the costs of an efficient provider of broadband service). Additionally, using the support levels derived by the legacy high-cost mechanisms as the reserve prices in reverse auctions may have the effect of essentially perpetuating the much discredited "identical support rule," in which competitors receive the same per-line support amounts as the incumbent provider, regardless of the competitors' costs.

scoring criteria, would be much simpler because applicants' proposals could differ on matters other than price.

As we mentioned above, the Commission requested detailed comment on a "competitive procurement auction" proposal that 71 economists filed at NTIA and RUS when those agencies were deciding how to distribute broadband stimulus grants. In particular, the Commission asked whether it should adopt a similar proposal to accelerate broadband deployment in unserved areas "during the period [the Commission is] considering final rules to implement fully the new CAF funding mechanism."[21] As described by the Commission, the economists' competitive procurement auction proposal shares many of the same attributes as AT&T's proposed competitive application process. First, and most importantly, applicants/bidders themselves would define the unserved areas covered by their proposals,[22] such that the Commission would "encourage competition among bidders [and applicants] offering diverse services in different areas."[23] With a reverse auction, the Commission would pre-define the geographic areas that would have to be covered by any bids and, as we explained above, it seems inevitable that any geographic area the Commission selects will either attract fewer bids or encourage bidders to request more support than they otherwise would if the Commission allowed applicants/bidders to select which areas to serve. Second, both AT&T's application and the economists' competitive procurement auction proposals could be established quickly since neither requires the use of a

[21] *Id.* at ¶ 43.

[22] *Id.* at ¶ 45 (noting that the "economists' proposal potentially differs from some reverse auction proposals in that the bidding parties themselves would be allowed to specifically define the geographic units and other service characteristics associated with their bids").

[23] Comments of the 71 Economists at 5-6.

model nor reserve prices.[24] Instead, both processes would "use competition among providers to determine the subsidy required to achieve any particular goal, [and, therefore, the Commission] does not have to estimate the subsidy actually required for any given project."[25] Third, both proposals require the Commission to establish clear, objective scoring criteria (e.g., the number of housing units that are covered by the application/bid, service speeds) to evaluate the proposals.[26] Again, this is in contrast to a traditional reverse auction, in which bidders compete with respect to a single factor (e.g., price or support level). Using whatever terminology it wishes (i.e., competitive application process or competitive procurement auction), AT&T urges the Commission to find that a competitive methodology that includes these characteristics is the optimal methodology to incent providers to extend broadband facilities in unserved areas.[27]

We believe it would be a mistake for the Commission to adopt any "accelerated process" merely as a pilot program to be used until it develops a broadband model, if that is the Commission's intention.[28] Instead, AT&T believes that the Commission should use such an "accelerated process" to distribute *all* high-cost support that is targeted to encourage broadband

[24] NOI/NPRM at ¶ 45 (explaining that the economists' proposal "could be implemented relatively quickly without addressing the full complexities inherent in other reverse auction proposals. For example, it would not require the development of a cost or cost and revenue model to set reserve prices.").

[25] Comments of the 71 Economists at 4.

[26] *Id.* at 5-6; NOI/NPRM at ¶ 45.

[27] While the Commission seems receptive to the competitive procurement auction approach, it states that one limitation of this methodology is that "it does not appear suitable for areas where operating costs exceed revenues and thus where continuing support is required" because it involves one-time grants. NOI/NPRM at ¶ 45. AT&T does not believe that this is a limitation at all. Instead, the Commission simply would allow (or direct) applicants/bidders to include in their applications/bids whatever amounts they believe are necessary to continue operating for the term of the service commitment.

[28] In its NOI, the Commission explains that an accelerated process could be used "during the period [the Commission is] considering final rules to implement fully the new CAF funding mechanism." *Id.* at ¶ 43. This could be read to suggest that any accelerated process will be limited in time and scope (i.e., an interim measure until the model is completed and implemented).

deployment in unserved areas.[29] To identify areas that are "unserved," the Commission and industry could rely on NTIA's broadband mapping work, which is scheduled to be completed by February 2011,[30] and/or the Commission could allow applicants to self-identify unserved areas. A model is therefore unnecessary to identify unserved areas.[31] If the Commission adopts a competitive application process and heavily weights the "biggest bang for the buck" criterion, it seems likely that the Commission will fund applications or bids covering the greatest number of unserved housing units in the earliest stages of the CAF. Through this natural prioritization of funding the largest, most efficient projects first, the Commission will speed broadband deployment to unserved areas and will do so by operation of the market, not any model.

B. Maintaining Broadband Service in Certain High-Cost Areas

While the Commission's path forward on incenting providers to deploy broadband infrastructure in unserved areas seems relatively straightforward, it is difficult at this time for any party to provide the Commission input on how best to ensure that providers that have relied on existing universal service and/or intercarrier compensation to deploy broadband in high-cost areas will continue to maintain broadband service in those areas. The Commission already has correctly recognized that ongoing support may be "necessary to sustain service in areas that already have broadband because of the existing high-cost universal service program."[32] But it

[29] Of course, there may be some number of the highest-cost unserved areas that no provider will be interested in serving. For those areas, which are likely to be identified years from now, the Commission could try alternative strategies, such as a reverse Dutch auction, in which the Commission would announce that it will make available a certain amount of support (e.g., $1 million) to any provider willing to serve a particular Commission-defined area. If no provider responds, the Commission would increase that figure by a certain amount (e.g., $500,000) and repeat the process until some provider eventually comes forward to accept the support in exchange for providing broadband service throughout that area.

[30] NTIA will update the mapping data every six months for five years.

[31] NOI/NPRM at ¶ 22.

[32] NOI/NPRM at ¶ 13.

should recognize that, in many cases, carriers also have relied on revenues derived from intercarrier compensation to fund broadband deployment. As several rural carrier associations observed in their comments on the NBP, these two sources of revenue can easily amount to more than half of a carrier's revenues.[33] The NBP, however, does not even attempt to quantify how much CAF support may be necessary to ensure that currently served areas remain so after legacy high-cost support dollars are transitioned to the CAF (or to other universal service programs) and intercarrier compensation charge revenues disappear.[34] Nor does it recommend a methodology to determine what ongoing support is necessary to sustain broadband service in areas that are currently served due to current high-cost support and intercarrier compensation-derived revenues.

To answer the basic questions of which carriers should continue receiving support and at what levels in order to maintain broadband service in areas that are at risk of becoming "unserved," the Commission will have to: establish some methodology to identify the carriers and the high-cost areas that require continued support, and another methodology to determine how such support should be calculated; and decide how to transition funding from the legacy high-cost support mechanisms to the CAF. We discuss transition-related issues below in response to the Commission's NPRM questions. If the Commission develops a model to calculate support in this circumstance, it will have to address, at a minimum, what benchmark or benchmarks are appropriate to use (e.g., one single national benchmark, a cost or revenue

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[33] NBP at 158, n.32 (citing comments from four rural carrier trade associations).

[34] Instead, the NBP merely notes that "the estimated [investment] gap does not include any amounts necessary to support companies that currently receive universal service support for voice and already offer broadband that meets the National Broadband Availability Target [i.e., 4 Mbps/downstream and 1 Mbps upstream]." *Id.* at 137.

benchmark) and how should the benchmark(s) be set? What speed should be supported? How should the Commission weigh, if at all, how much a given provider is receiving in legacy high-cost support amounts and intercarrier compensation payments on some particular date (e.g., December 31, 2010) when calculating, via a model, how much support it will receive under the CAF mechanism?

Commenters are limited in their ability to offer informed answers to these questions until the Commission addresses the issues that we identify in Section II.D., *infra* (e.g., redefining a carrier's ETC obligations, ability to recover lost intercarrier compensation payment revenues from a carrier's own customers, and carrier of last resort ("COLR") relief). How the Commission resolves these related issues will obviously affect how much support the Commission ultimately determines is necessary to maintain broadband service in currently served areas.

C. Model Design Issues

It is difficult to answer the Commission's detailed modeling questions until it provides interested parties more information regarding the CAF mechanism, not to mention access to the BAM itself. While these limitations preclude any detailed analysis of the appropriateness of using the BAM in the CAF, we have nevertheless identified several issues with the BAM that the Commission should consider if it adopts a model to distribute CAF support that is designed to maintain broadband service in areas that already have broadband due to legacy high-cost support payments and intercarrier compensation-related revenues.[35] Before we discuss these issues, we would like to acknowledge the tremendous accomplishments of the BAM modelers who were given the Herculean task of developing a BAM in a matter of a few months. If the modelers had

[35] For reasons we provided above, there is no sound policy reason for the Commission to use a model to calculate support to extend broadband infrastructure in unserved areas.

the luxury of even a few more months, it seems likely that the BAM would be different in several material respects.

County. The Commission requests comment on the geographic area that a broadband model should use in calculating the cost of deploying a network and providing services.[36] Irrespective of the merits of the county level calculation that was used by staff to estimate the broadband availability gap, AT&T believes it would be highly problematic to use counties as the geographic area for targeting and calculating high-cost support. Most importantly, broadband providers do not make network build decisions at the county level, as the modelers apparently assume. Rather, they make such decisions on much smaller areas. Targeting and calculating support based on an area smaller than a county is more likely to generate the level of support needed to improve the business case for providing broadband because it would reduce the level of averaging or netting that could occur as the size of the geographic area increases. Typically, as the geographic area over which support is calculated increases, the level of support decreases because it assumes that lower cost areas will subsidize higher cost areas. But, the fact that a provider might have a positive business case to serve some areas does not mean that it will extend service to neighboring areas in which deployment is likely to be a money losing proposition. If it made economic sense to deploy broadband facilities and services in those areas, providers would have done so. No amount of regulatory manipulation will change that simple calculus. Accordingly, and because the goal of the CAF is to create incentives for providers to provide broadband in areas that are uneconomic, it is critical that the support amount offered be sufficient. Choosing a more granular area will increase the likelihood that the level of

[36] NOI/NPRM at ¶¶ 41-42 (explaining that the BAM modelers selected county as the appropriate geographic area to estimate the amount of additional funding required to close the broadband availability gap).

support will enable providers to maintain broadband availability and continue to invest. For these reasons, we believe that a high-cost universal service calculation based on a more granular geographic area than a county, such as aggregations of census blocks, would likely be more appropriate.

Wireline Assumptions. The BAM assumes that ADSL2+ as typically installed could deliver the broadband availability target of 4 Mbps downstream/1 Mbps upstream over a single pair. Based on current standards, this assumption is not correct.[37] While the impact on the broadband availability gap calculation is academic, if the Commission decides to use a model for distributing high-cost support, it should modify this assumption, otherwise it will understate the cost of meeting the NBP's broadband availability target. By the same token, the modelers also assumed that 24 gauge copper wire has been deployed throughout the network. However, it is a common engineering practice for large ILECs to use 26 gauge copper wire for central office-fed households (i.e., households that are connected directly to the central office, versus through a remote terminal). This assumption should be modified in any high-cost support model.

Wireless Assumptions. The BAM modelers did not include the cost of spectrum in their analysis of wireless costs. If the Commission decides to use a model to calculate high-cost support, it should give more consideration to the cost of spectrum and the availability of spectrum in specific geographic areas.

Second Least-Cost Technology. While irrelevant to a competitive application/bid process, if the Commission uses a model to calculate CAF support for currently served areas, the model should use the technology of the entity that the Commission selects to receive high-cost

[37] *See* ITU-T- Recommendation G.992.5 (01/2009)

support and not some default second least-cost technology (or, for that matter, the least-cost technology).

D. Most of the NPRM's Proposals to Transition Support Are Premature

Because the Commission does not have unlimited funds at its disposal and is constrained by its current universal service contribution methodology, the Commission has proposed to fund the CAF using dollars that it currently disburses via its existing high-cost support mechanisms (i.e., mechanisms designed to support ubiquitous POTS).[38] Transitioning support from existing mechanisms to the CAF implicates a host of issues that the Commission must carefully consider to ensure the success of the CAF. Before we discuss the Commission's specific proposals to transition legacy high-cost support to the CAF, we describe several of these fundamental issues that the Commission should address or, at a minimum, raise as part of its forthcoming CAF NPRM. How the Commission resolves these issues will inform appropriate responses to the questions in the instant NPRM.

Redefine a carrier's ETC obligations as it loses its legacy high-cost support. Under the current rules, the Commission requires ETCs to provide supported services throughout their designated service areas, imposing federal carrier of last resort-like obligations. While the Commission has said that an ETC designation is no guarantee that the carrier will receive any high-cost support,[39] many carriers sought and obtained this designation in reliance on the legacy rules, which enabled them to predict, with some accuracy, whether and how much high-cost support they would receive. If the Commission now is going to change those rules, simple fairness dictates that carriers that agreed to provide supported services in areas where they

[38] NOI/NPRM at ¶¶ 50-53.

[39] *See, e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, NPRM, 19 FCC Rcd 10800, ¶ 96 (2004).

reasonably could expect to receive federal high-cost universal service support should be relieved of the obligation to provide those services if that support is withdrawn.[40] We will discuss our recommendations for implementing this proposal in response to the CAF NPRM.

As a related matter, since the Commission has tethered, unnecessarily in our view, its low-income program to the ETC designation, it is essential that consumers with low incomes continue to have access to at least one Lifeline provider as the Commission reforms its high-cost mechanisms and redefines an ETC's obligations. For this reason, AT&T has recommended that the Commission establish a stand-alone Lifeline provider designation that is detached from the Commission's ETC designation, which most carriers sought to obtain high-cost support.[41] We urge the Commission to adopt AT&T's Lifeline proposal as part of its comprehensive Lifeline review.[42]

Ability to recover lost revenues from a carrier's own customers. The NBP recommended that the Commission reduce per-minute rates for intercarrier compensation to zero by 2020, beginning with a reduction in intrastate access charge rates to interstate levels.[43] To offset a carrier's lost intercarrier compensation payment revenues, the NBP recommended that the Commission permit gradual increases in subscriber line charges ("SLCs") and "consider

[40] We believe that section 214(e) of the Act supports the view that an ETC is obligated to provide the supported services only in those areas where it actually receives support (*see* section 214(e)(1)(A), requiring ETCs to offer only those services that are "supported by Federal universal service support mechanisms" throughout their designated areas).

[41] Of course, in recent years, several prepaid wireless carriers have sought the ETC designation in order to provide only Lifeline service.

[42] *See* NBP at 173 (recommending that the Commission expand provider eligibility to include any broadband provider selected by the consumer); *Lifeline Flexibility NPRM*, scheduled to be released in the third quarter of 2010; *Federal-State Joint Board on Universal Service, Lifeline and Link-Up,* CC Docket No. 96-45, WC Docket No. 03-109, Order, FCC 10-72 (rel. May 4, 2010).

[43] NBP at 148.

deregulating the SLC in areas where states have deregulated local rates."[44] AT&T agrees with these recommendations and suggests that the Commission move quickly to adopt them.[45]

State regulatory impediments to a successful CAF and the future of state regulation. COLR and other legacy state service obligations also threaten to impede a successful transition of the Commission's high-cost universal service support mechanisms from POTS to broadband. In far too many states, COLR regulations require ILECs to maintain facilities designed for last century's needs – namely, POTS – even though the regulatory compact on which those COLR obligations were based (i.e., an exclusive franchise and a guaranteed reasonable rate of return) has gone the way of the black rotary phone. ILECs spend billions each year to maintain the public switched telephone network, instead of investing that money in the broadband facilities and services demanded by consumers and policy makers alike.[46] This diversion of private investment capital threatens to increase the cost of achieving the Commission's 2020 deadline for universal broadband deployment. While a small but growing number of states have recognized (or are beginning to recognize) that COLR requirements are unnecessary in today's irreversibly open telecommunications market, many states have taken no action in this regard.

In comments filed last year with the Commission, AT&T recommended that the Commission request comment on the extent to which the Commission must foreclose state

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[44] *Id.*

[45] The NBP also suggested that the Commission adopt interim rules addressing traffic pumping, phantom traffic, and the treatment of VoIP for intercarrier compensation purposes, which would become effective during the second stage of universal service/intercarrier compensation reform (i.e., some time between 2012 and 2016). *See id.* at 148, 149. There is no reason for the Commission to delay issuing and implementing final orders addressing these three issues since it already has sought and received comment on all of them.

[46] *See, e.g.*, Robert C. Atkinson & Ivy E. Schultz, Columbia Inst. For Tele-Info., *Broadband in America: Where It Is and Where It Is Going*, at 29-30 (Nov. 11, 2009), *available at* http://www.broadband.gov/docs/Broadband_in_America.pdf.

regulation of all broadband and IP-based services; what steps the Commission can take to encourage states voluntarily to eliminate legacy requirements that impede the transition from circuit-switched to IP-based networks; and whether the Commission should make federal universal service funding for broadband conditional on states removing legacy POTS regulations.[47] AT&T encourages the Commission to seek comment on these suggestions, along with the NBP's recommendation that the Commission seek comment on what would be an appropriate timeline for transitioning circuit-switched services to IP-based services.[48] Additionally, the Commission should seek comment on what is the appropriate role, if any, for state regulators in an environment in which providers offer services that the Commission has classified as 100 percent jurisdictionally interstate.

1. Capping All Legacy High-Cost Support

The Commission concludes that it should cap legacy high-cost support provided to ILECs and it requests comment on how to implement such a cap.[49] Previously, AT&T has not supported capping the few remaining uncapped legacy high-cost support mechanisms, namely the high-cost model support mechanism, because we believe the Commission has never demonstrated that this particular mechanism ever satisfied the principles in section 254(b).[50] While we continue to believe that the so-called non-rural carrier high-cost model support

[47] Comments of AT&T Inc. on the Transition from the Legacy Circuit-Switched Network to Broadband, NBP Public Notice # 25, GN Docket Nos. 09-47, 09-51, 09-137, at 26-27 (filed Dec. 21, 2009).

[48] NBP at 59.

[49] NOI/NPRM at ¶¶ 51-52 (asking, among other things, whether it should cap support at 2010 levels and whether the cap should be carrier-specific).

[50] *See, e.g.*, AT&T May 2009 USF NOI Comments; Comments of AT&T Inc., CC Docket No. 96-45, WC Docket No. 05-337 (filed March 27, 2006) (explaining, among other things, how that the high-cost model support mechanism fails to provide non-rural carriers with "sufficient" support to "preserve and advance universal service").

mechanism is legally infirm,[51] we will not oppose efforts to cap federal high-cost funding so long as the Commission gives carriers the flexibility to recover lost revenues from their end users. We note, however, that if the Vermont Board is successful in its appeal of the Commission's recent order retaining the existing, flawed non-rural high-cost model support mechanism, the Commission will obviously have to make corresponding adjustments to its high-cost model support mechanism, which may include increasing the amount of support that is disbursed through this mechanism. In addition, any caps on legacy ILEC support and any eventual phase down in ILEC support should not affect legacy competitive ETC support, as the latter support should be subject to its own separate phase down.

2. Shifting Rate-Of-Return Carriers to Incentive Regulation

The Commission seeks comment on the NBP's recommendation that the Commission move all rate-of-return carriers to incentive regulation (i.e., price caps or some other alternative regulation scheme) and convert interstate common line support to a frozen amount per line to limit growth in this legacy high-cost program.[52] At this point in the Commission's NBP-related universal service reform proceedings, AT&T cannot say whether, how, and when the Commission should replace rate-of-return regulation with price cap or some other form of regulation. However, AT&T believes that any modification to rate-of-return regulation must be considered and implemented in conjunction with the development of the CAF distribution mechanism and the methodology for transitioning legacy funding.

[51] We understand that at least one other party, the Vermont Public Service Board, agrees and intends to appeal the Commission's latest *Tenth Circuit Remand Order*, FCC 10-56 (rel. April 16, 2010), at the D.C. Circuit.

[52] NOI/NPRM at ¶¶ 55-56 (citing NBP at 147-48).

3. Eliminating IAS

The Commission requests comment on the NBP's recommendation to eliminate IAS and transition it to the CAF.[53] In its NPRM, the Commission notes that, when it created IAS in 2000, it stated that it would revisit this support mechanism "to ensure that such funding is sufficient, yet not excessive" but that this review never occurred.[54] It would be revisionist history for the Commission to claim that its statements in paragraph 203 of the *CALLS Order* signaled its intent to eliminate this mechanism after five years (i.e., in 2005). The better reading of this paragraph is that the Commission committed to review the size and operation of this mechanism in 2005 to determine whether the $650 million IAS target should be revised upwards or downwards "based on the development of competition and market-based pricing."[55] To withstand judicial review, the Commission will have to provide a more reasoned basis for eliminating IAS than merely pointing to an unfulfilled promise to review this mechanism, the sole purpose of which was to gauge the sufficiency of IAS's $650 million target.

The Commission correctly recognizes in its NPRM that the loss of IAS could have flow-through consequences to the presubscribed interexchange carrier charge ("PICC") and the common carrier line ("CCL") charge.[56] Therefore, increased SLC flexibility should be a prerequisite to the Commission eliminating a price cap carrier's IAS. Under the existing rules, a carrier that cannot recover lost IAS payments from its end users (via SLC increases) is permitted to recover those revenues from other carriers through new intercarrier compensation charges

[53] *Id.* at ¶¶ 57-58.

[54] *Id.* (quoting *CALLS Order* at ¶ 203).

[55] *CALLS Order* at ¶ 203.

[56] NOI/NPRM at n.120.

(i.e., PICC and CCL charges).[57] But replacing IAS support with such intercarrier payments would run counter to the Commission's objective of eliminating per minute intercarrier compensation charges, as well as be inconsistent with the statute insofar as it would replace explicit support (IAS funding) with implicit subsidies in the form of PICC and CCL charges. Accordingly, the Commission should modify its rules to ensure that carriers can recover lost intercarrier compensation revenues and high-cost support revenue from their end users rather than other carriers.

4. Eliminating Competitive ETC Support

The Commission seeks comment on the NBP's recommendation to eliminate competitive ETC support in equal increments over a five-year period and transition that support to the CAF and a limited Mobility Fund.[58] AT&T recommended this same transition in its April 2008 comments. But there is a notable difference between AT&T's proposal and the NBP's recommendation: under AT&T's proposal, the Commission would shift legacy competitive ETC support to an Advanced Mobility Fund, where it would remain until there were no more areas unserved by mobile wireless broadband and voice service. Until we learn more about the parameters of the CAF, we cannot say whether the Commission's proposal to eliminate all competitive ETC support over some period of time is consistent with the principles in section 254(b)

[57] *Id*.
[58] *Id.* at ¶¶60-61.

5. General Proposals to Transition Legacy High-Cost Support to the CAF

The NPRM also requests comment on other suggestions to expedite the transition of legacy high-cost support funds to the CAF.[59] Although constrained by the lack of available information about the CAF design, we believe that it is appropriate for the Commission to consider establishing incentives for states to reduce intrastate access rates to interstate levels as quickly as possible, and allow carriers to recover their revenue shortfalls from increased retail end user rates and state-established explicit funding mechanisms.

[59] *Id.* at ¶ 62.

IV. CONCLUSION

It is clear that the Commission has a tremendous amount of work before it. Designing the CAF, methodologies to transition funding from legacy high-cost support mechanisms to the CAF, and, perhaps, a model are incredibly complex issues in their own right. These issues are intertwined with legacy federal and state regulations that must be overhauled or jettisoned altogether, intercarrier compensation reform, and universal service contribution methodology reform. As the NBP recognizes, each of these tasks is daunting; however, they must be resolved because they have a critical bearing on the Commission's ability to accomplish its broadband goals.

Respectfully Submitted,

/s/ Cathy Carpino

Cathy Carpino
Gary Phillips
Paul K. Mancini

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

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Its Attorneys