Before the
Federal Communications Commission
Washington, D.C. 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

REPLY COMMENTS OF AT&T INC.

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I. INTRODUCTION

Like AT&T, most parties generally support the Commission's objective of reforming its universal service programs and policies to facilitate achievement of the Commission's and Congress's ambitious goal of ensuring universal access to broadband for all Americans. The comments thus reflect a consensus that the Commission should gradually shift the focus of its high-cost support mechanisms away from legacy services to support broadband in a manner consistent with the principles of section 254(b). But, also like AT&T, most parties found themselves essentially shooting in the dark when trying to comment meaningfully on the questions posed in both the NOI and the NPRM. That is so because the Commission sought comment in the NOI on the minutiae of the National Broadband Plan's broadband assessment model (BAM) without first providing parties with access to the BAM or explaining whether a model is even necessary to distribute high-cost broadband funding under its yet-to-be created Connect America Fund ("CAF"), and, if so, why.[1] And, in the NPRM, the Commission sought

[1] See, e.g., NASUCA Comments at 12 (the BAM remains a "black box" and the level of transparency that existed when the Commission developed the Hybrid Cost Proxy Model "is currently not available from the [BAM]"); T-Mobile Comments at 13 (noting that "the only way to ensure that a model works as

comment on how to reduce or eliminate legacy high-cost support without explaining whether and how such legacy support will be transitioned to any new broadband-focused mechanism.[2] Not surprisingly, given the lack of guidance regarding the objectives, context, and parameters of the Commission's proposed broadband funding, many parties sought to play defense in their comments, repeating entrenched positions that, in several cases, they have held for many years, and leaving the Commission with a deeply divided record that may be of limited utility.

While the Commission could have avoided some of these differences, and obtained a more comprehensive and useful record if it had reordered the process and provided parties access to the model (including its inputs, outputs and variables), the news is not all bad. Indeed, the remarkable consensus among the parties to this proceeding, as well as among policy makers and the commissioners, that broadband should be supported directly by universal service dollars,[3] provides the Commission an important opportunity to undertake long overdue reforms to its high-cost universal service support mechanisms, as well as to the inherently and intimately intertwined, federal and state intercarrier compensation mechanisms on which many carriers continue to rely to support facilities and services serving the majority of consumers living in rural America and other high cost areas. As the Chairman noted in his speech last week to

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expected is through disclosure of the model's inputs and outputs to all interested parties and use of it in a trial period through several varied scenarios"); Washington Utilities and Transportation Commission Comments at 4 (model must be fully transparent so that all users have a meaningful ability to evaluate all of the inputs, variables, and computations in order to assess the merits of the results of the model); CenturyLink Comments at 43-45.

[2] See, e.g., USA Coalition; Farmers Telecommunications Cooperative Comments at 4 (Commission proposing to eliminate high-cost support for current recipients without any assurance that the recipients will have access to support once the funds are transitioned to the Connect America Fund); Home Telephone Company Comments at 6-7 (a reordering of the process should be undertaken).

[3] 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.").

OPASTCO, "maintaining the status quo for USF and intercarrier compensation is not an option;" both "are on an unsustainable path" and both must be "comprehensively reformed to increase accountability and efficiency and encourage targeted investment in broadband.[4] The Commission thus should seize this opportunity and maintain the momentum for real and lasting reform.

As discussed further below, the Commission could help sustain this momentum by immediately allowing support under the existing, legacy mechanisms to be expended on facilities that support both voice and broadband, as well as by utilizing a competitive application process to disburse project-based funding for broadband. The Commission also could encourage investment by ensuring that only CAF recipients are subject to service obligations in supported areas, and relieving providers of legacy service obligations as their high-cost support under existing mechanisms is eliminated. Beyond this, parties in this proceeding have identified clear shortcomings with the NBP's Broadband Assessment Model (BAM) that the Commission will have to address before it can rely on that model to disburse CAF funding. The Commission also will have to provide a clear roadmap on how to transition legacy high-cost support to the CAF.

II. DISCUSSION

1. The Commission Should Expedite Disbursement of USF Support for Broadband via Dual-Use Facilities and A Competitive Application Process.

Although parties seemed to diverge on almost every topic posed in the NOI and NPRM, there is one point around which most parties coalesced: developing a broadband cost model would be a lengthy and contentious undertaking. Any party that lived through the development

[4] See Prepared Remarks of Chairman Julius Genachowski, FCC, 47th Annual OPASTCO Summer Convention and Trade Show, at 3 (July 28, 2010) (Chairman Genachowski's Prepared OPASTCO Remarks), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0728/DOC-300473A1.pdf.

of the current USF cost model is already dreading (or relishing, depending upon their inclination) a repeat of the seemingly endless rounds of detailed filings and model versions that resulted in the adoption of the out-dated HCPM. Regardless of whether the Commission ultimately proceeds to develop a broadband model, the areas of this country that remain without broadband service should not (and need not) be made to wait on the dark side of the digital divide for the several years development of such a model likely will consume.

AT&T has been arguing for years that the Commission could make an appreciable dent in the broadband availability gap by establishing a competitive application process that directs one-time project-based USF funding to un-served areas without waiting to develop and implement a model-based methodology (assuming the Commission ultimately decides to use such a methodology). AT&T thus commends the Commission for proposing an expedited process to fill the void before the CAF is up and running, but any such process (whether it be an auction or, as AT&T has proposed, an expedited competitive application process) likely will take at least two years to implement. In that time, the Commission could make immediate progress to begin closing the broadband availability gap by permitting all ETCs and CETCs to use high cost funding to deploy facilities that are used not only to provision the existing supported voice services, but also which are used to provision broadband.

In our opening comments, AT&T proposed that the Commission immediately declare that all ETCs and CETCs, not just rural carriers, may use legacy high-cost support to deploy broadband facilities within their designated service areas. The Commission already permits rural ILECs to use USF high cost funding for "dual use" networks, those that can be used to provide both voice and broadband services. In contrast, recipients of "non-rural" high cost support currently may use that support only to deploy facilities used to provide voice services, and thus

cannot use it to help defray the cost of facilities that also could be used to provide broadband services. Over the next two years, USAC will disburse approximately $1.9 billion in high-cost support to "non-rural" carriers,[5] which will not be able to use a penny of it to expand broadband deployment. If the Commission were to broaden its dual-use decision to all carriers receiving high-cost USF funding, the Commission likely would increase significantly broadband capable investment in high-cost un-served areas. While such action would not be a final or perfect solution, as an interim step it would begin to chip away at the broadband problem in some rural areas. With this relatively minor change, the Commission could immediately make an impact on broadband deployment.

This proposed modification should not preclude the Commission from moving ahead with an accelerated competitive procurement process. In fact, AT&T strongly supports the adoption of a competitive application process for the distribution of project-based, one-time USF funding to un-served areas on a permanent basis, not just in the pre-CAF interim. As we outlined in our initial comments, the recommendation of the 71 Economists is very similar to the mechanism that AT&T proposed in 2009. While there clearly would be implementation issues for any such process that would have to be resolved in further proceedings, they pale in comparison to the time and resources that would have to be expended to produce a functioning broadband cost model and CAF. We therefore urge the Commission to issue an NPRM focused solely on the competitive procurement proposal. By using the record from that NPRM and the results of NTIA's broadband mapping work, which is scheduled to be completed by February 2011, the Commission could begin accepting applications for targeted competitive procurement

[5] Calculated from Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for Third Quarter* 2010, Appendix HC01 - High Cost Support with Capped CETC Support Projected by State by Study Area – 3Q2010.

funding in mid-2011. This is a reachable goal on which the Commission should move forward as expeditiously as possible.

2. Only CAF Recipients Should Have Service Obligations In The Supported Areas; The Commission Should Relieve Providers Of Legacy Service Obligations As The Commission Reduces Or Eliminates Their Legacy High-Cost Support.

Commenters agree with AT&T that a broadband provider that voluntarily applies for and is awarded CAF funding should accept the obligation to provide the supported services (e.g., broadband and voice) throughout the designated service area for the term of the award.[6] On the flip side, for ETCs receiving support under the existing high-cost support mechanisms, the Commission should tailor their service/federal carrier of last resort (COLR)-like obligations to apply only in those areas for which they continue to receive high-cost universal service support. Thus, if an existing ETC applies for CAF support for a particular area and its application for funding is denied by the Commission, or if the Commission otherwise eliminates an ETC's legacy high-cost support without providing new support under the proposed mechanisms, the Commission should simultaneously relieve that carriers of its ETC/federal COLR-like obligations.[7] As CenturyLink explains, "if the existing ILEC with COLR responsibilities for voice services fails to be selected, it should be immediately freed of any COLR obligation for

[6] See, e.g., Qwest Comments at 12-13 (Commission should require "the company that has chosen to receive support [to] provide supported broadband and voice services throughout the supported geographic territory.").

[7] AT&T Comments at 17-18. We respectfully disagree with the Ohio Commission's suggestion that, if no broadband provider seeks to offer broadband service in an unserved area, the Commission should impose a broadband Provider of Last Resort obligation on the ILEC in that area. See Ohio Commission Comments at 15. Apart from being contrary to the Commission's competitive neutrality principle, this proposal would create uncertainty and discourage participation in the CAF. In order for the CAF to have any chance of success, provider participation must be voluntary, and the CAF should be designed to provide the right incentives for providers to participate and serve unserved areas. Imposing an obligation to serve a particular high-cost area without providing the support necessary to make it economic to serve that area will only result in years of protracted litigation over whether the amount of support provided by the Commission is sufficient for enable a provider to build-out and/or maintain broadband-capable facilities in that area.

voice services and related regulatory requirements because it no longer would receive the necessary funding to meet that requirement."[8]

It is not enough that the Commission tailor a provider's federal service obligations to the support provided for any particular area. Rather, the Commission also must address state COLR and other service obligations. We therefore encourage the Commission to seek comment on what steps it can take to encourage states to eliminate any legacy service or other regulatory requirements that would impede the transition from circuit-switched to IP-based networks, such as by making federal universal service funding for broadband conditional on the states removing such regulations.[9] Although the regulatory compact on which those COLR obligations were based has long since disappeared, many states have taken no action to update their laws and obligations, particularly as they pertain to one class of communications provider: ILECs. Unless the Commission squarely addresses this problem, these monopoly-era state regulations will impede broadband deployment in unserved areas, as well as raise significant legal issues.[10]

[8] CenturyLink Comments at 14; USTelecom Comments at 7 ("if a provider is serving an area in which it is not the supported entity, it should be relieved of ETC, [COLR] and dominant carrier obligations for voice and broadband in the supported area.").

[9] AT&T Comments at 17-18, 20. See also Pennsylvania Public Utility Commission Comments at 36 (explaining that "the traditional concepts for the duties and/or responsibilities of COLRs need to be jointly re-examined in a coordinated fashion by both the FCC and the state utility regulatory commissions").

[10] See AT&T Comments at 19-20; CenturyLink Comments at 14 & n.40 ("Indeed, the U.S. Constitution would require that if the carrier loses the benefit of the original regulatory bargain, its COLR and any pricing and service regulations would need to be preemptively eliminated at the same time as the rewards the government provided to induce service in the first place."); NECA/NTCA/OPASTCO/WTA/Rural Alliance (Rural Carrier Associations) Comments at 31 (stating that COLR functions impose "significant and continuing cost burdens" on ILECs).

3. Parties Have Identified Clear Shortcomings With The NBP's Broadband Assessment Model.

As discussed in AT&T's opening comments, while the NBP modelers performed yeoman's work in producing the Broadband Assessment Model (BAM) under very tight deadlines, by their own admission they were forced to rely on a variety of assumptions in calculating (inter alia) the broadband availability gap due to "a lack of data at the required level of granularity, both in terms of availability – which people have access to what services – and of infrastructure – which people are passed by what types of network hardware."[11] AT&T and others have identified a number of flaws in these assumptions,[12] including the number of housing units to which broadband is currently offered at the broadband availability target (4 Mbps downstream/1 Mbps upstream),[13] the amount of revenue available to broadband providers,[14] and the current availability of fiber backbones.[15] Indeed, even the Commission itself has acknowledged since it released the NBP that the plan may have underestimated by 10 million the number of Americans who are living in housing units that are unserved by broadband.[16]

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[11] OBI Technical Paper No. 1 at 1; see also NBP at 136 (estimating that it will cost $24 billion in present value 2010 dollars to provide broadband service, which meets the NBP's target speeds, to currently unserved housing units).

[12] See AT&T Comments at 14-17.

[13] See, e.g., CenturyLink Comments at 48 (explaining that the model understated the number of unserved housing units because, among other reasons, the modelers' incorrectly accepted cables' assertion that all housing units in their franchise areas are served by broadband); Rural Associations Comments at 55-56; PA PUC Comments at 20.

[14] Windstream Comments at 7; CenturyLink Comments at 53, NECA Comments at 54.

[15] GCI Comments at 27 (FCC modeling of middle mile fiber misses for AK); NECA Comments, App. A at 5.

[16] Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, A National Broadband Plan for Our Future, GN Docket Nos. 09-137, 09-51, Sixth Broadband Deployment Report, FCC 10-129, ¶ 5 (rel. July 20, 2010) (Section 706 Report). Indeed, this 10 million figure is, itself,

Parties also questioned the modelers' rejection of satellite as a viable technology, particularly if used to reach the NBP's estimated 250,000 housing units that are the most costly to serve.[17] AT&T agrees with these commenters that the Commission should not dismiss out-of-hand further consideration of satellite as a potential technology to provide broadband to those 250,000 or so housing units. While AT&T would not necessarily dispute that satellite is not yet a viable option today[18] (although some might reasonably disagree with even that conclusion), that does not mean that it will not be a viable solution in the future. As several commenters point out, sufficient satellite capacity could be added within six years to serve all seven million of the NBP's estimated unserved housing units.[19] The Commission thus should identify the housing units that are the most costly to serve, and, if they remain unserved after some identified number of CAF application rounds or defined period of time, open a proceeding to determine whether satellite technology then can meet the obligations and eligibility requirements to receive

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likely understated because the Commission used a "conservative approach" and selected 3 Mbps downstream/768 kbps upstream "as the cutoffs for the subscriber choice likely to indicate that service offering actual speeds of 4 Mbps download and 1 Mbps upload is available to the subscriber." Id. at ¶ 20.

[17] See, e.g., ViaSat and WildBlue Comments at 2; Hughes Comments at 3; Verizon Comments at 30; ACS Comments at 8; CenturyLink Comments at 5.

[18] OBI Technical Paper No. 1 at 40 ("[S]atellite service has limited capacity that may be inadequate to serve all consumers in areas where it is the lowest-cost technology. Uncertainty about the number of unserved who can receive satellite-based broadband, and about the impact of the disbursement mechanisms both on where satellite ultimately provides service and the size of the investment gap, all lead us to not explicitly include satellite in the base-case calculation.").

[19] ViaSat and WildBlue Comments at 2 (explaining that it will be capable of meeting the NBP's 4Mbps downstream/1Mbps upstream broadband availability target next year, after it launches ViaSat-1); Hughes Comments at 6-7 (noting that its Jupiter satellite, scheduled for launch in 2012, will support speeds of up to 25 Mbps and could support about 1.5 million subscribers at the NBP's target speeds).

CAF support, or whether such CAF requirements should be modified to permit funding for satellite-based broadband to serve those unserved areas.[20]

While the BAM provides an interesting starting point for discussion, before the Commission could rely on that model it would have to address and correct the numerous flaws and incorrect assumptions that already have been identified by AT&T and others based on the limited information about the model the Commission has thus far released. Of course, there may well be other flaws/assumptions/ambiguities that will have to be addressed, but parties will have no way of knowing that until the Commission makes the BAM itself available, along with its inputs and outputs, for thorough industry review and testing. And, as we explained in our comments, it will take the Commission and industry several years – at a minimum – to undertake such a comprehensive and thorough review to create a usable broadband model. Before the Commission embarks on such a costly and time consuming effort, it first should explain how the model will be used. Until then, AT&T (and, probably, many others in the industry) cannot say whether such a significant resource commitment is warranted.

4. The Record Developed In Response To The Commission's NPRM Offers No Clear Roadmap On How To Transition Legacy High-Cost Support To the CAF.

Not surprisingly, commenters have identified and offered a variety of options for shifting support from legacy services to broadband. Equally unsurprising, the vast majority of these proposals involve cutting existing support payments to some other provider(s) while maintaining

[20] See, e.g., ViaSat Comments at 4 (explaining that "it soon may be feasible for satellite broadband providers to use a 'mesh' network topology to provide voice service, and to bundle that capability with a broadband service. Doing so would cut in half the latency otherwise present in a voice circuit from one satellite user to another satellite user"). We note that even with this improvement, this platform will not support the "high-quality voice-grade service" called for by several parties. See MACRUC Comments at 7. Elizabeth Montalbano, Technology may resolve even that issue in the near future. See Cisco Space Router Passes Satellite Orbit Test, Information Week (July 20, 2010), available at: http://www.informationweek.com/showArticle.jhtml?articleID=226000020.

the status quo for the entities submitting these proposals. But, as the Chairman said last week, the status quo is not acceptable. In order to meet the Commission's ambitious broadband deployment/adoption goals without breaking the bank, the Commission will have to re-purpose its high-cost support mechanisms to focus on delivering universal broadband rather than legacy, POTS. This revamp obviously will cause some (perhaps many) carriers to receive less support than they do today,[21] but such changes are inevitable with any technological revolution and should not hold the Commission back.[22] Simply put, if we are serious about moving forward to a world of ubiquitous broadband, there can be no sacred cows – everything must be on the table. Having said that, as we discussed in our opening comments, it is difficult for AT&T and other parties to comment on how best to structure the transition of legacy support to broadband insofar as the Commission has yet to define clearly its broadband deployment goals, and the parameters of any funding mechanism(s) to reach those goals. As a consequence, the record developed in response to the NPRM on transition issues is not very illuminating or helpful. We therefore recommend that the Commission hold this aspect of the proceeding in abeyance, and issue a further notice on the transition after it develops a more complete record in response to the CAF NPRM. If the Commission nevertheless proceeds to a final order on transition matters, we offer the following observations in response to the comments.

Moving Rate of Return Carriers to Incentive Regulation. In our comments, we explained that, while we are unable to make any recommendations on whether, how, and when the Commission should replace rate-of-return regulation with price cap or some other form of

[21] See generally Chairman Genachowski's Prepared OPASTCO Remarks.

[22] Indeed, had government officials, for example, worried about continued employment of pony express riders, they never would have permitted the growth of the nations' railroads, the development of the telegraph, or the development of the telephone itself.

incentive regulation for rate-of-return carriers, we believe that any such modification must be considered and implemented together with the CAF distribution mechanism and the methodology for transitioning legacy funding.[23] Numerous rate-of-return carriers oppose incentive regulation, arguing that it could never work for rate-of-return carriers. In this regard, many point to the large percentage of unserved housing units in the rural and high cost areas served by so-called "non-rural" carriers (most, if not all, of which are subject to price cap regulation) to support their claims that price cap regulation has been (and will continue to be) a failure in rural America.[24] But, it is not price cap regulation that has created the rural-rural digital divide. Rather, as discussed herein, it is the Commission's failed high-cost universal service policies that have created this situation.

As the Commission's broadband team acknowledged in The Broadband Availability Gap paper, service providers will invest private capital to deploy broadband infrastructure only where they reasonably can expect to earn a return in excess of their cost of capital, and thus have a positive business case for doing so.[25] Due to the relatively lower population densities and longer distances between network end points in rural areas, the cost of providing broadband service generally is much higher and the likely revenues from providing such service are much lower than in urban areas – creating a negative business case and sizable investment gap for broadband in those areas. Without a source of funding to make up the difference, service providers simply

[23] AT&T Comments at 21.

[24] See, e.g., Wiggins Telephone Association at 3 (explaining that calculating support based on a carrier's actual costs "does provide broadband/Internet to rural areas"); Rural Trade Associations Comments at 46 (asserting that "incentive regulation, in contrast [to rate-of-return regulation], has proven to be substantially less successful in encouraging deployment of broadband to uneconomic-to-serve areas"); Farmers Telecommunications Cooperative Comments at 10 ("blatantly evident that price cap[ ] regulated companies have not delivered investments in broadband to rural America"); Pioneer Communications Comments at 4-5.

[25] The Broadband Availability Gap, OBI Technical Paper No. 1 at 1 (Apr. 2010).

cannot justify expending scarce capital to fund deployment of broadband infrastructure in those areas, and these simple economic realities do not change depending on the type of regulation – rate of return vs. price cap/incentive regulation – applied to such providers. Absent a technological breakthrough that dramatically lowers the cost of providing broadband service to such areas, the only way to change this calculus is either to increase those providers' broadband revenues or to subsidize their costs of deploying broadband infrastructure – both of which would require some form of subsidy.

Prior to adoption of the market opening provisions of the Telecommunications Act of 1996, carriers relied on a patchwork of implicit subsidies in their rate structures to subsidize their provision of service in rural and other high cost areas by shifting costs from rural to urban areas, residential to business customers, basic to vertical services, and from local to toll services. These implicit subsidies were feasible in an era of government-sanctioned monopoly franchises, in which carriers were guaranteed a reasonable return on their investment in return for a commitment to provide universal service at affordable rates. Recognizing that eliminating these government sanctioned monopoly franchises would remove the structural underpinnings of the implicit subsidies supporting universal service, Congress directed the Commission and states to work cooperatively to establish a new framework of explicit federal and state universal service support mechanisms to preserve and advance universal service objectives in a competitive environment.

While the Commission adopted explicit universal service support mechanisms for "rural" carriers serving rural areas, it continued to rely largely on rapidly eroding implicit subsidies for so-called "non-rural" carriers serving comparable areas. In particular, it adopted a "non-rural" high cost support mechanism that relied on statewide averaging to determine eligibility for high-

cost funding for "non-rural" carriers, which effectively ensured that they would receive very little – if any – explicit support for providing service in most of their high-cost wire centers, while "rural" carriers received funding based on much smaller geographic areas. Compounding the problem, the Commission grossly underfunded the non-rural carrier mechanism. Although non-rural carriers serve the overwhelming majority of rural households, only 17 percent of the funding provided by the Commission's high cost support mechanisms goes to non-rural carriers – the other 83 percent goes to so-called "rural" carriers to subsidize their provision of service to less than 50 percent of all Americans living in high-cost/rural areas. As both Chairman Genachowski and Senator Rockefeller, Chairman of the Senate Commerce, Science, and Transportation Commission have acknowledged, the rural-rural divide thus is largely due to the fact that the existing high cost support mechanisms provide support based on the classification of service providers (as either "rural" or "non-rural" carriers) rather than on the economics of the consumers and areas they serve.[26] As Senator Rockefeller aptly put it in a recent letter to Chairman Genachowski, "the present universal service system has failed to provide the kind of ubiquitous service that the law requires," and a "more sensible and efficient system – that delivered true universal service – would focus less on the size of the carrier providing the service and more on providing support to those areas of the country that lack service today."[27] Moreover, the Commission has exacerbated the rural-rural divide by failing to extend its "no barriers" policy to non-rural carriers.

[26] Chairman Genachowski's Prepared OPASTCO Remarks at 4 ("the development of a rural-rural divide [is] in part due to USF's uneven distribution of subsidies to different carriers serving rural America").

[27] Letter from Senator Rockefeller to Chairman Genachowski, FCC, dated August 2, 2010, available at http://commerce.senate.gov/public/?a=Files.Serve&File_id=fb94c9fb-94e8-4dbc-bbb4-2e6b13677098.

Not surprisingly, given the lack of a positive business case to provide even POTS in many of their rural and other high cost wire centers, "non-rural," price-cap carriers simply cannot justify funding investment in broadband in those areas. The result, as one would expect, is that deployment of broadband has lagged considerably in the rural and other high cost areas served by price-cap carriers. But, as we have shown, that is not a function of price-cap regulation so much as the failure of the Commission's high-cost support mechanism for "non-rural" carriers.

Limiting Support to a Broadband Service Delivering 4Mbps Upstream and 1Mpbs Down Will Not Create a Permanent Digital Divide. A number of rural carriers, along with their consultants and trade associations, criticize the NBP's recommendation to limit federal high-cost support to a broadband service that delivers 4 Mbps downstream/1 Mbps upstream, while also setting a goal that100 million Americans living in urban and suburban areas should have access to affordable broadband that achieves download speeds of at least 100 Mbps by 2020. These parties contend that NBP's recommendations, if implemented, would create a permanent digital divide in America.[28] These commenters assert that the goal for urban America stands in stark contrast to the inferior broadband speeds that the NBP's universal service policies would set for rural America. Many of these rural ILEC parties contend that such an outcome violates the reasonable comparability principle set forth in section 254(b)(3).[29] They maintain that the Commission therefore should set a higher speed threshold for the universal service broadband

[28] John Staurulakis at 3; TDS at 10; Rural Trade Associations Comments at 15-16 ("because the CAF would be used to support only at 4/1Mbps-capable broadband service in unserved areas, the proposed broadband availability target, if adopted, would create a rural/urban digital divide for millions of American …"); Alaska Telephone Association Comments at 2-3.

[29] See, e.g., Texas and Oklahoma Small Company Group Comments at 11; Blooston Rural Carriers Comments at 5;Rural Trade Associations Comments at 16; Missouri Small Telephone Co. Group Comments at 14-15; South Dakota Telecommunications Association at 21-22; Alexicon Telecommunications Consulting at 23; Nebraska Rural Independent Telephone Companies at 55-56; TCA Inc. at 3-5.

definition and increase federal high-cost universal service funding to the extent necessary to achieve that threshold in rural areas and thus prevent what they see as the NBP's proposed rural–urban digital divide.

However, these critics fundamentally misapprehend the goals of the NBP, and the role it envisions government should play to achieve those objectives. As discussed above, the NBP recommends replacing the existing federal universal service support framework and mechanisms, which were designed to support ubiquitous access to plain old telephone service (POTS), with a new regulatory framework for the 21st Century that would seek to ensure that all Americans have access to broadband. To that end, the NBP recommends that the existing high-cost support mechanisms should, over 10 years, gradually phase out support for circuit-switched voice services and, instead, provide support for broadband service (with a voice capability). At the end of that 10 year transition, federal support would be provided exclusively for that broadband service.

As with any vision that proposes such sweeping reform, the NBP has created great anxiety among many service providers that have benefited from the existing regime, and which understandably are reluctant to change the status quo given the billions of legacy high-cost support dollars that are at stake. While their apprehensions likely were increased by the pending NOI/NPRM's focus on "cuts" to current funding levels and mechanisms (without explaining what will replace those mechanisms), those commenters' claims that that the NBP will enshrine a perpetual digital divide for rural America are simply wrong. As the Chairman and his staff have stated repeatedly, the 100 Mbps to 100 million households objective set forth in the plan was intended to be an aspirational or stretch goal – one that would be achieved (if at all) through

private investment.[30] It never was supposed to form the basis for federal universal service policies and funding. The NBP had to start somewhere, and appropriately set as the Commission's first order of business closing the rural–rural digital divide by establishing mechanisms designed to assure that all Americans have access to a minimum, but nonetheless robust broadband service capable of providing at least 4Mbps downstream and 1Mbps up.[31] Achieving that goal, which will by no means be easy or inexpensive, will go a long way towards narrowing the rural digital divide, as well as bringing to rural America many of the benefits of broadband enjoyed by consumers in urban areas.

The rural ILEC parties' suggestion that the reasonable comparability principle set forth in section 254(b)(3) compels the Commission to adopt a universal service definition based on the Commission's long-term, aspirational goal of 100 Mbps speeds ignores the qualifications set forth in that principle, as well as the fact that it is only one of several (potentially competing) principles that the Commission must balance in formulating federal universal service policies and funding priorities.[32] In particular, they ignore that section 254(b)(3) does not require absolute parity between urban and rural areas, rather, it provides only that consumers in high cost areas should have access to services that are *reasonably* comparable to those services offered in urban areas. They also ignore that, in identifying which services are to be funded through universal service, the Commission is required to consider, *inter alia*, the extent to which such services have been subscribed to by a substantial majority of residential customers. In this

[30] See, e.g., Chairman Genachowski's Prepared OPASTCO Remarks at 5 ("100 megabits is a stretch goal for the year 2020. We want to achieve it everywhere in the United States.").

[31] The Plan estimated that approximately 65% of the unserved housing units were located in the service areas of large and mid-size ILECs. NBP at 141.

[32] See Alenco Communications v. FCC, 201 F.3d 608, 620 (5th Cir. 2000); Qwest Communications [33] Sprint Nextel at 8.

regard, the NBP's aspirational goal is that 100 million households should have access to (that is, be able to purchase) broadband services at speeds of 100 Mbps by 2020. Whether 100 million households, or even a substantial majority of households, will subscribe to such services by 2020 (assuming they are available) remains to be seen. Thus, even if 100 Mbps broadband services ultimately are deployed in some urban areas in the future, that would not mean that section 254(b)(3) would compel the Commission to fund deployment of such a service in all rural areas regardless of the cost.

Moreover, while the Commission generally must strive to implement policies designed to achieve all of the principles set forth in section 254(b) to the extent possible, at least three courts have acknowledged that, where those principles conflict or are in tension, the Commission can and should appropriately balance the individual section 254(b) principles against each other. Thus, for example, in designing policies to advance reasonable comparability of services in rural areas, the Commission is required under section 254(b)(1) to consider the impact on consumers of the costs of those policies and to ensure that those policies do not raise consumers' rates to unaffordable levels.

Plainly, providing all Americans with access to a 100 Mbps broadband service would require exponentially greater levels of federal universal service funding than will the more reasonable, but nonetheless ambitious, goal of ensuring all Americans in rural areas have access to a broadband service that delivers 4 Mbps downstream/1 Mbps upstream. As Chairman Genachowski remarked at a recent OPASTCO conference, those urging the Commission to adopt more ambitious broadband deployment goals must answer two direct questions: (1) how much is it going to cost; and (2) who is going to pay for it? In other words, developing federal universal service high-cost support mechanisms and funding priorities requires the Commission

to balance the tension that is inherent between the Act's reasonable comparability principle and its affordability principle. As it does so, it must bear in mind that technology is continuing to evolve and even though a given technology platform may not be capable achieving an objective in the short term, it may produce the most efficient result over the 10-year planning period.

Capping the Legacy High-Cost Fund. In our comments, we explained that we do not oppose efforts to cap existing high-cost funding, as proposed in the NPRM, so long as the Commission gives carriers flexibility to recover lost revenues from end users. To be clear, we believe it likely the Commission will have to adopt some form of cap to ensure that the overall size of the fund does not balloon to unsustainable levels, and therefore disagree with those commenters that urge the Commission not to cap legacy high-cost funding. AT&T supports the Commission's proposals to transition its high-cost funding mechanisms from supporting legacy, circuit-switched voice service to broadband. To successfully accomplish this objective without substantially increasing the overall size of the universal service fund, the Commission likely will have to limit the amount of support available for circuit switched voice services.

5. The Commission Should Stay Focused on Universal Service in This Proceeding.

In its comments, Sprint claims that the cost of backhaul in rural and other high cost areas purportedly is prohibitive and has inhibited investment in broadband in those areas, and argues that the Commission therefore should use this proceeding as a vehicle to drive down the cost of such backhaul by imposing heavy-handed regulation of ILECs' special access rates.[33] But, as Sprint knows , the Commission already has a proceeding open to evaluate its regulatory

[33] Sprint Nextel at 8.

framework for special access services, and its claims should considered, if at all, there.[34] In any event, however, slashing ILEC special access rates as Sprint proposes would undermine significant investment incumbents and competitors alike are making in backhaul and other use cases associated with special access connections between high-cost areas and the Internet. Left alone, these investments will continue to expand as deployment, adoption and usage of broadband expands in rural areas. The Commission should not upset the apple cart by adopting policies that undermine the business case for those investments. Nevertheless, to the extent that the Commission (erroneously) finds that backhaul costs have created a barrier to broadband investment in rural areas, the Commission should consider dedicating a portion of CAF funding to support deployment of such connections, rather than adopting rules that will undermine the business case for private investment in such facilities where feasible.

III. Conclusion.

AT&T strongly supports the Commission's goal of transitioning its universal service support mechanisms to fund deployment of broadband facilities and services in unserved areas in order to facilitate attainment of the nation's ambitious broadband objectives. However, we question the Commission's apparent assumption that implementing this shift in focus will require adoption of a broadband cost model. As we have explained, the Commission could more rapidly and easily begin funding broadband by adopting a project-based, competitive application mechanism to support broadband deployment. If the Commission nevertheless concludes that developing a model is necessary, it must address the many issues raised by parties regarding the shortcomings of the NBP's BAM, as well as to implement a more transparent and open

[34] As AT&T and others have exhaustively shown in that proceeding (and will not repeat here), Sprint's claims that ILECs special access rates are excessive are meritless. *See* AT&T's Comments and other filings in WC Docket No. 05-25.

development process to ensure that any model the Commission adopts is as accurate, realistic and free from error as possible. It also should take the other steps discussed herein to kick-start funding for broadband while it works on the model to ensure that consumers in rural and other high cost areas do not remain on the far side of the digital divide any longer than necessary.

Respectfully submitted,

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