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

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| In the Matter of | ) | |
| | ) | |
| High-Cost Universal Service Support | ) | WC Docket No. 05-337 |
| | ) | |
| Universal Service Contribution Methodology | ) | WC Docket No. 06-122 |
| | ) | |
| Petition for Reconsideration of Verizon Wireless | ) | |

## COMMENTS OF AT&T

AT&T Inc., on behalf of its wholly owned affiliate, AT&T Mobility LLC (AT&T), hereby submits these comments in response to Verizon Wireless's petition for reconsideration[1] of the Wireline Competition Bureau's (Bureau's) letter to the Universal Service Administrative Company (USAC), which directed USAC to implement retroactively two company-specific caps on wireless high-cost support.[2] Verizon Wireless's predecessor in interest, Alltel, is one of the two carriers and AT&T is the second. As Verizon Wireless explains in its Petition,[3] the Commission adopted both companies' interim caps on wireless high-cost support in two orders issued less than a month apart in 2007, the first order approved the transfer of control of Alltel's licenses to Atlantis[4] and the second order approved AT&T's acquisition of Dobson

[1] Petition for Reconsideration of Verizon Wireless, WC Docket Nos. 05-337, 06-122; CC Docket No. 96-45 (filed May 2, 2011) (Petition).

[2] Letter from Sharon Gillett, FCC, to Richard Belden, USAC, DA 11-591 (WCB rel. April 1, 2011).

[3] Petition at 2-3.

[4] *Applications of ALLTEL Corp., Transferor, and Atlantis Holdings, LLC, Transferee, for Consent to Transfer Control of Licenses, Leases and Authorizations*, 22 FCC Rcd 19517, ¶ 9 (2007) (*Alltel/Atlantis Order*) (adopting "an interim cap on high-cost, competitive [eligible telecommunications carrier (ETC)] support provided to ALLTEL as a condition of this transaction, which will apply until fundamental comprehensive reforms are adopted to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years.").

Communications Corp.[5] AT&T files these comments for the limited purpose of reminding the Commission that, however it decides Verizon Wireless's Petition, it must apply that same decision to AT&T. AT&T is identically situated to Verizon Wireless and concepts of equity and fairness dictate identical regulatory treatment of both parties. Additionally, the plain language of the Commission's order adopting the AT&T-specific cap demonstrates that the Commission linked the status of AT&T's cap to Alltel's cap and intended both to be treated the same.

As we explained previously in comments filed at the Commission,[6] shortly after the Commission released the *AT&T/Dobson Merger Order*, AT&T began work on a methodology for implementing AT&T's company-specific cap on its wireless high-cost support (i.e., its competitive ETC high-cost support). Beginning in late December 2007, AT&T participated in several meetings with Commission staff and USAC personnel to discuss our proposal. In early 2008, AT&T included Alltel in our discussions with USAC in order to finalize the methodology to implement the two company-specific caps. And by the time that the Commission issued its industry-wide competitive ETC cap order on May 1, 2008,[7] AT&T believed that there was agreement with USAC and Commission staff on an acceptable methodology for implementing

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[5] *Applications of AT&T Inc. and Dobson Communications Corp. for Consent to Transfer Control of Licenses and Authorizations*, 22 FCC Rcd 20295, ¶¶ 72-73 (2007) (*AT&T/Dobson Merger Order*) (adopting "an interim cap on high-cost, competitive ETC support" that "shall apply until the earlier of comprehensive universal service reform addressing issues related to the distribution of high-cost support; or the elimination or modification of the interim cap . . . on high-cost, competitive ETC support provided to ALLTEL.") (ellipsis in original).

[6] AT&T Comments at 25-27, WC Docket Nos. 05-337, 06-122; CC Docket No. 96-45 (filed Oct. 28, 2009). AT&T submitted these comments in response to a USAC request for guidance on a number of universal service-related topics, including whether to implement the two carriers' company-specific caps. *See* Letter from Richard Belden, USAC, to Julie Veach, FCC, WC Docket Nos. 05-337, 06-122 (dated August 19, 2009) (USAC Request for Guidance).

[7] *High-Cost Universal Service Support*, 23 FCC Rcd 8834, n.21 (2008), *aff'd sub nom. Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009) (*Competitive ETC Industry-wide Cap Order*).

both AT&T's and Alltel's company-specific competitive ETC caps. Consistent with USAC's assertion set forth in its Request for Guidance that it was "ready to implement the company-specific caps in the June 2008 High Cost disbursement cycle,"[8] AT&T and Alltel received letters from USAC in early July notifying the carriers that USAC was going to implement their company-specific caps and such caps "will continue until the implementation of the new interim cap on High Cost support for all competitive ETCs. . . ."[9] The industry-wide interim cap on competitive ETC high-cost support became effective on August 1, 2008. It is our understanding that after the companies' receipt of these USAC letters and conversations that Alltel had with staff in Chairman Martin's office, Commission staff directed USAC via e-mail not to implement the Alltel and AT&T company-specific caps.[10]

While we do not express an opinion on the merits of Verizon Wireless's Petition, other than stating our support for Verizon Wireless's assertion that, in its April 1 letter to USAC, the Bureau should have considered and discussed all of the arguments in the record,[11] AT&T would oppose any Commission decision that has the effect of discriminating against AT&T, in favor of one of its competitors. Based on its orders, it is clear that the Commission intended that the two carriers be treated in an identical manner. First, in its order approving AT&T's acquisition of Dobson, the Commission concluded that AT&T's company-specific cap should exist "until the earlier of comprehensive universal service reform addressing issues related to the distribution of

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[8] USAC Request for Guidance at 5.

[9] *See* Attachment (Letter from Karen Majcher, USAC, to Mary Henze, AT&T (dated July 9, 2008)).

[10] *See* USAC Request for Guidance at 5 ("At the written direction of Commission staff, however, USAC did not implement the company-specific caps in the June 2008 High Cost disbursement cycle."). AT&T has not seen this Commission correspondence to USAC.

[11] Petition at 19-20.

high-cost support; *or the elimination or modification of the interim cap . . . on high-cost, competitive ETC support provided to ALLTEL*."[12] Thus, if the Commission agrees with Verizon Wireless that the *Competitive ETC Industry-wide Cap Order* eliminated Alltel's company-specific cap, it also must conclude that this Commission order eliminated AT&T's company-specific cap in the exact same fashion.

Second, the Commission's *Competitive ETC Industry-wide Cap Order* provides that "the interim cap adopted in this Order supersedes the interim caps on high-cost CETC support adopted in the *ALLTEL-Atlantis Order* and the *AT&T-Dobson Order*."[13] Again, the Commission concluded that it was appropriate to treat both carriers in an identical fashion so that if the Commission determines that "supersedes" means "replace," then it must apply that finding to both parties. To reach any other conclusion would be an effective rewrite of prior Commission decisions, which the Bureau has no authority to do and which the Commission could not do absent some reasoned basis.[14] Given the shared history of the two carriers' company-specific caps, AT&T can think of no reasoned basis for the Commission to discriminate against AT&T. Indeed, while the FCC has stated previously that "[c]oncepts of equity or fairness do not mandate identical regulatory treatment of parties that are not identically situated. . . .,"[15] it also must be

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[12] *AT&T/Dobson Merger Order* at ¶ 72 (emphasis added).

[13] *Competitive ETC Industry-wide Cap Order* at n.21 (emphasis added).

[14] *See Williams Gas Processing-Gulf Coast Co. v. FERC*, 475 F.3d 319, 326 (D.C.Cir.2006) ("it is axiomatic that agency action must either be consistent with prior action or offer a reasoned basis for its departure from precedent.") (internal quotation marks and brackets omitted).

[15] *Amendment of Sections 64.702 of the Commission's Rules and Regulations*, 64 Rad. Reg. 2d 649, 1138 (1988).

true that equity and fairness dictate that the Commission apply the same regulatory treatment to identically situated parties.[16]

For these reasons, however the Commission decides Verizon Wireless's Petition for Reconsideration, it must apply that decision equally to AT&T.

Respectfully Submitted,

/s/ Cathy Carpino

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Its Attorneys

[16] *See also*, *U.S. v. Nazzaro*, 889 F.2d 1158, 1161 (1st Cir. 1989) ("If order and fairness are to attend the legal process, identically situated parties should be treated identically.").

# ATTACHMENT

USAC
Universal Service Administrative Company

Karen Majcher
Vice President

High Cost & Low Income Division

July 9, 2008

Mary Henze
Senior Director-Federal Regulatory
AT&T Services, Inc.
1120 20th Street, NW
Suite 1000
Washington, DC 20036

RE: Implementation of Interim Cap for AT&T per FCC 07-196

Dear Mary:

As we have previously discussed, USAC will be capping the High Cost support provided to AT&T Competitive Eligible Telecommunications Carriers (CETCs) consistent with FCC 07-196. The support for AT&T CETCs will be based on High Cost support that AT&T was eligible to receive for June 2007 disbursements.

USAC will implement the cap on High Cost support provided to AT&T as of January 2008 with the June 2008 High Cost support disbursed at the end of July 2008. Therefore, prior period adjustments, if any, for January through May will be reflected in the June 2008 High Cost support disbursed. Once USAC calculates preliminary support for June 2008, the June 2007 baseline support used for High Cost support capping purposes will be forwarded to AT&T for its records. The June 2007 High Cost support information will contain the June 2007 support by AT&T study area and by component. We will be happy to schedule a meeting with you to discuss the baseline support, if necessary.

The interim AT&T cap on High Cost support will continue until the implementation of the new interim cap on High Cost support for all competitive ETCs that supersedes the AT&T High Cost support cap.

If you have any questions or concerns, please feel free to contact me at 202-572-1663.

Sincerely,

Karen Majcher
Vice President
High Cost & Low Income Division