

**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
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

REPLY COMMENTS OF AT&T

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The Commission has begun the overdue and necessary process of transforming its outmoded high-cost universal service program to address the challenges of providing ubiquitous broadband service. The ultimate success of the program in achieving its worthy goals will depend significantly on how it is implemented. In particular, the Commission needs to ensure that it does not make it more difficult and costly to achieve the program's goals either by perpetuating burdensome regulatory requirements that impose costs without countervailing benefits or creating new and unnecessary regulatory obligations.

The record reveals considerable agreement about how the Commission should proceed to avoid this trap. Most commenters concur with AT&T that a carrier should not be designated an ETC and bear ETC obligations in areas where the carrier does not receive high-cost universal service support. That result is mandated by the statute, and it is sound policy. There simply is no justification for blindly continuing legacy ETC and similar obligations, particularly when doing so would violate fundamental precepts of universal service policy such as competitive neutrality and the provision of adequate support.

Most commenters also urge the Commission to avoid imposing new regulations that are unrelated to, or actually conflict with, the goal of efficiently deploying broadband service to unserved areas. In particular, the Commission should not impose an unnecessarily complex or costly methodology for testing broadband performance; it should reform the way it determines whether rates for voice services are reasonable comparable; and it should not undermine the efficiency and efficacy of CAF funding by restricting eligibility for auction participation or funding, providing small business credits, requiring letters of credit from all carriers that receive funding, or imposing IP-to-IP or other interconnection requirements that are both premature and unrelated to achieving universal service goals.

I. Carriers Should No Longer Have ETC Obligations or Designations in Areas Where They Receive No High-Cost Support.

The large majority of commenters agree with AT&T that both the statute and sound policy require the Commission to eliminate a carrier's existing ETC obligations and designations in any area where that carrier does not receive high-cost universal service funding.¹ Although a handful of state commissions and others assert that ETC obligations and designations may continue even absent support, none of them offers any explanation for how that outcome would be consistent with sections 214 and 254. And, contrary to their claims, nothing about the role of states under section 214 bars the Commission from acting to eliminate ETC obligations and designations in this context.

As AT&T and others explain, any continued ETC obligations or designations for a carrier that no longer receives high-cost support would run headlong into sections 214 and 254.² *First*, section 214(e)(1) directs that a "common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal service support."³ Under the new rules, just *one* provider will qualify for support in a given area in exchange for offering both legacy services and broadband. As a result, other providers will not be *eligible* to receive universal service funding and, indeed, will be categorically barred from receiving it.⁴ For that reason alone, the

¹ See, e.g., CenturyLink Comments at 9-10; Frontier Comments at 8-10; ITTA Comments at 8-10; T-Mobile Comments at 9; USA Coalition Comments at 28-29; US Telecom Comments at 6-7; Verizon Comments at 2-18; Windstream Comments at 32-35.

² AT&T Comments at 4-6; Verizon Comments at 4-5; Windstream Comments at 34-35; see also Letter from Heather Zachary, Counsel to AT&T, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90 *et al.*, at 2-3 (filed Oct. 19, 2011) ("*AT&T 10/19/11 Ex Parte*").

³ 47 U.S.C. § 214(e)(1) (emphasis added).

⁴ For example, any carrier that elects not to provide broadband service in a given area not only will lose its existing support, but also will be barred even from *competing* for future funding. Similarly, any carrier that does not prevail in the competitive bidding process will be ineligible for funding until the expiration of the auction winner's term of service.

Commission would violate section 214(e)(1) if it failed to eliminate ETC service obligations and designations for such carriers.

Second, forcing an unsupported competitor to provide service in competition with a CAF recipient would violate the Commission's well-established principle of "competitive neutrality," which requires that universal service policies "be competitively neutral . . . [and] neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."⁵ Such a violation of the competitive neutrality principle is especially inappropriate in today's marketplace, in which the ILECs that in many cases would be burdened with unsupported ETC obligations are experiencing rapid declines in the number of access lines and revenues from wireline voice service. Incumbent LECs are not dominant providers of voice service, and there is no basis to require them to continue providing service at a loss in competition with another provider that receives support. Indeed, as AT&T previously explained, given the transformation in the marketplace, the Commission should declare that existing ETC designations and obligations will sunset effective January 1, 2013, when new broadband deployment and service obligations take effect.⁶

Third, many carriers depend heavily on universal service support to offset the high costs of providing service in funded areas. Compelling these carriers to continue providing service after the Commission withdraws that support would contravene section 254, which requires the Commission to design its universal service programs so that support is "sufficient" to enable

⁵ Report and Order, *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 ¶¶ 43-55 (1997).

⁶ AT&T Comments at 7-8.

providers to offer the services deemed “universal.”⁷ As the Indiana Utility Regulatory Commission aptly states, “[a]s a general rule, requiring continuation of mandated service in the face of diminishing financial support is not appropriate public policy.”⁸ Although a few commenters seek to justify continued ETC obligations by appealing to the public-interest benefits of universal service,⁹ they miss the point: the statute and public policy considerations do not permit regulators to achieve those benefits by singling out particular carriers to bear regulatory obligations without concomitant support. And they certainly cannot impose those obligations on one party while providing CAF support to another.

For all of these reasons, the Commission should relieve existing ETCs of their service obligations (and their ETC designations) in any area where they do not receive legacy high-cost or CAF support. The handful of commenters opposing that outcome offer no response to these points. Instead, they are left to claim that any decision about ETC designations must be left to state commissions.¹⁰ As AT&T and others have explained, however, although section 214(e) does give the states a role with respect to the ETC designation process, the Commission has ample authority to address existing ETC obligations and designations under several independent legal theories:

⁷ 47 U.S.C. § 254(b)(5), (e), (f). *See also* AT&T Comments at 6; Comments of AT&T, *Connect America Fund et al.*, WC Dockets Nos. 10-90 *et al.*, at 125-28 (filed Apr. 18, 2011) (“AT&T 4/18/11 Comments”).

⁸ Indiana Utility Regulatory Commission Comments at 5. For the same reason, ACS is correct to argue that, to the extent a state maintains COLR obligations, it should be permitted to do so only if it ensures that sufficient funds are available to compensate providers for fulfilling those obligations. ACS Comments at 10-11.

⁹ *See, e.g.*, NASUCA Comments at 7-8.

¹⁰ *See* NECA Comments at 88-91; Blooston Rural Broadband Carriers Comments at 8-11; Vermont PSB Comments at 5-6; Nebraska PSC Comments at 6-7; Ohio PUC Comments at 6; Massachusetts DTC Comments at 27-29.

Redefine ETC service areas. The Commission could redefine ETC service areas under section 214(e) to exclude those geographic areas where an ETC receives no federal high-cost support and require states to limit ETC designations and obligations to those narrowed service areas. The Commission could do so in one of two ways. It could adopt a rule based on its section 201 rulemaking authority that interprets service areas in this way.¹¹ Although section 214(e)(5) provides that an ETC’s “‘service area’ means a geographic area established by a State commission,” the Supreme Court in *Iowa Utilities Board* made clear that section 201(b) of the Communications Act authorizes the Commission to adopt rules guiding the states’ exercise of the duties allocated to them elsewhere in Title II of the Act.¹² Here, the Commission could adopt an interpretation of “service areas” under section 214 that would be binding on the states.

Alternatively, the Commission could rely on section 254(f) to adopt a rule that limits ETC “service areas” for purposes of determining where ETC designations and obligations apply.¹³ The plain text of section 254(f) bars states from adopting universal service policies that are “inconsistent with the Commission’s rules to preserve and advance universal service,” and the Commission has previously relied on this provision to invalidate state decisions related to ETCs.¹⁴ The record here clearly demonstrates that designating an ETC service area that is larger than the area in which an ETC receives support would be inconsistent with both the competitive neutrality and sufficiency principles embodied in the Commission’s rules, and also would

¹¹ AT&T Comments at 11-13; *see also AT&T 10/19/11 Ex Parte* at 3-4.

¹² *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-86 (1999). Section 201(b) authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of” the Communications Act. 47 U.S.C. § 201(b).

¹³ AT&T Comments at 10-11; *AT&T 10/19/11 Ex Parte* at 4-5; *AT&T 4/18/11 Comments* at 69-71, 77-79.

¹⁴ *See AT&T 10/19/11 Ex Parte* at 4 & n.11; *AT&T 4/18/11 Comments* at 69-71, 77-79; *AT&T Comments* at 10-11.

undermine incentives to invest in deployment of broadband services. Thus, the Commission could direct that states redefine ETC service areas to encompass only those areas where ETCs receive high-cost universal service support.

Reinterpret section 214(e)(1). The Commission also could relieve ETCs of their existing obligations by reinterpreting the language of section 214(e)(1), which provides that ETCs “shall, throughout the service area for which the designation is received . . . offer the services that are supported by Federal universal service support mechanisms . . .” (emphasis added). The Commission could interpret this provision to mean that a carrier’s obligation to offer service applies *only* in those geographic areas where the carrier is receiving support—*i.e.*, where the services “are supported.”¹⁵ Again, that interpretation would be binding on the states.

Forbearance. As yet another option, the Commission could exercise its authority under section 10 of the Act to forbear from section 214(e) to the extent the latter requires ETCs to offer service in areas where they receive no universal service support.¹⁶ And, of course, under section 10(e), a “State commission may not continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from.” 47 U.S.C. § 160(e).

Thus, the Commission has ample authority to shape the ETC process going forward. Indeed, as the American Cable Association argues, the Commission could take full ownership of the ETC designation in connection with CAF and preempt any state role in certifying CAF-

¹⁵ AT&T Comments at 13-14; *see also AT&T 10/19/11 Ex Parte* at 6.

¹⁶ AT&T Comments at 14-15; *see also AT&T 10/19/11 Ex Parte* at 5-6. Contrary to the suggestion of the Blooston Rural Broadband Carriers Comments (at iii, 10) the Commission would not exceed the scope of its forbearance power by taking this step. Section 10 provides that the Commission may “forbear from applying *any* . . . provision of this [Act.]” 47 U.S.C. § 160(a) (emphasis added). And to relieve carriers of their ETC obligations in unfunded areas, the Commission need forbear only from the section 214 requirement that ETCs provide service “throughout the service area for which the designation is received.” *Id.* § 214(e)(1). Such forbearance would not alter existing “service area” designations, and thus the states’ role under section 214(e) would be preserved.

eligible providers.¹⁷ But even if the Commission wants to preserve a role for state commissions, it can and should make clear that a carrier should not be designated an ETC and bear ETC obligations in areas where it does not receive high-cost support. Further, consistent with that principle, the Commission should not require parties to become ETCs as a condition of participating in reverse auctions for CAF support.¹⁸ Rather, only winning bidders should be required to apply for and obtain ETC designations.¹⁹ That approach will both maximize the number of bidders—thereby leading to more efficient auctions—and avoid a situation in which a losing bidder is burdened with ETC obligations in areas where it does not receive high-cost support.

II. The Commission Should Provide Flexibility in Measuring Broadband Performance.

The record reveals considerable agreement on key points regarding measurement of broadband performance:

- The Commission should permit significant flexibility in testing broadband performance so that a provider can take account of its particular network, service mix, and other key characteristics. That is particularly true for incremental CAF Phase I recipients, who will begin receiving support this year and cannot realistically implement a new, uniform testing methodology in that time frame.²⁰

¹⁷ ACA Comments at 21-28.

¹⁸ *Id.* at 18-21; NTCH Comments at 2-5; Clearwire Comments at 8.

¹⁹ Of course, the Commission could continue to require that prospective bidders demonstrate their qualifications (financial and otherwise) and commit to complying with regulatory obligations to provide service that attach to receipt of funding.

²⁰ AT&T Comments at 19, 24; CenturyLink Comments at 5; Frontier Comments at 4-5.

- If the Commission decides it ultimately needs a standardized measurement methodology, it should work with appropriate standards-development organizations to develop such a methodology.²¹
- Testing need only be done on a statistically valid sample of customers, not on every customer. This will help minimize the cost and burden on networks and customers.²²
- The Commission needs to recognize the limits and difficulties in determining “actual” speeds for testing purposes. For example, test traffic can itself affect loading and therefore performance. Further, factors outside the provider’s network (e.g., inside wire) or otherwise outside its control (unpredictable load surges) can affect performance data. For these reasons, among others, the Commission should set a realistic standard and not require perfect performance at all times for all customers.²³
- Providers should be required to submit only a certification that they are in compliance with performance requirements, and not all the underlying data (though that data would be available upon request for auditing or other purposes).²⁴

III. The Commission Should Reject Its Two-Standard-Deviations Methodology for Comparing Rates and Adopt a More Valid Approach.

Whatever validity the two-standard-deviations methodology might once have had, it makes little sense in today’s world, where the basic R-1 voice rate no longer is representative of

²¹ AT&T Comments at 23-24; ADTRAN Comments at 8-9; Frontier Comments at 5. To the extent Verizon is proposing that the Commission extend the SamKnows program to measure performance on all networks supported by the CAF (Verizon Comments at 21-23), such a proposal is premature. At this point, it is not clear that the SamKnows program is scalable or that the benefits of extending it would exceed the costs. *See* ADTRAN Comments at 10.

²² AT&T Comments at 19-22; ADTRAN Comments at 11; ACS Comments at 6; Windstream Comments at 13.

²³ AT&T Comments at 22; ADTRAN Comments at 8; Windstream Comments at 13.

²⁴ ADTRAN Comments at 11; CenturyLink Comments at 6; Frontier Comments at 5-6.

what most customers purchase.²⁵ Instead, the Commission should start with the recognition that if a provider is offering the same or reasonably comparable rates to rural and urban customers for a supported service, then it meets the statutory standard.²⁶ Clearly, a carrier that offers a nationwide rate would, by definition, satisfy that test. The same is true for a carrier that offers a statewide rate. Given that costs and rates vary considerably from state-to-state, rate comparability should be established at a state level, and where a carrier offers the same rate to rural and urban customers throughout a state, it should satisfy the reasonable comparability criterion regardless of how that rate may compare to some national benchmark.²⁷ In situations where a carrier offers different rates to customers within a state, the Commission should begin with a comparison of rates for the same service in rural and urban areas; if rural rates do not exceed urban rates by some (to be defined) percentage, the rates should be deemed reasonably comparable.²⁸ Where none of those conditions apply, then a provider's rates in rural areas could be compared to a state-specific benchmark for that type of service and technology.²⁹

As to broadband service, the Commission should not develop a methodology in the first place, because broadband is not a supported service, and the reasonable comparability test of section 254(b)(3) should be limited to supported services.³⁰ If the Commission nonetheless

²⁵ AT&T Comments at 25.

²⁶ *Id.* at 25-26; CenturyLink Comments at 7; CTIA Comments at 7-8; ACS Comments at 8-9; Cellular South Comments at 35; Frontier Comments at 6-7.

²⁷ AT&T Comments at 26-27; ACS Comments at 8-9.

²⁸ AT&T Comments at 25-26. As AT&T explained, the particular percentage will have to be determined based on the costs of providing service in a given area and the amount of available high-cost support.

²⁹ *Id.* at 26. While ITTA suggests that the same rate-comparability benchmark should apply for all technologies (ITTA Comments at 5), that ignores the differences in cost structures and business models among technologies.

³⁰ AT&T Comments at 27-28.

develops a methodology for broadband services, the same principles described above should apply. In particular, a broadband provider that offers national pricing should be deemed to be offering service in rural and urban areas at reasonably comparable rates.³¹

IV. The Commission Should Reject Calls To Exclude Certain Carriers from Universal Service Auctions or To Impose Unnecessary Eligibility Requirements.

The Commission should reject restrictions and conditions that will reduce the efficiency of universal service auctions and that are unrelated to the goals of the high-cost support program. The Commission cannot lose sight of the fundamental reality that there are limited resources to meet universal service needs. Consequently, the Commission needs to make the universal service program as efficient as possible and achieve broadband deployment at the lowest possible cost. That, in turn, means that the Commission should not adopt rules that would restrict participation in universal service auctions.³² In that way, the Commission can achieve the most efficient bidding system possible, which will minimize the amount of support needed to fulfill universal service objectives.

Mobility funds. Although parties agree that it is premature to finalize plans for the Mobility Fund Phase II auction until the Commission can assess the results of Phase I,³³ the Commission should make clear now that it rejects the proposal to exclude “Tier One” carriers

³¹ *Id.* at 28.

³² The Commission also should not provide small business credits, give municipal networks preferential treatment, or take other measures that would put a thumb on the scale in favor of certain bidders. AT&T Comments at 32-35; GCI Comments at 16-17; Windstream Comments at 25-29; Frontier Comments at 7-8; Wisconsin PSC Comments at 7-8. That too would undermine the efficiency of the auction process and potentially allocate scarce USF funds to higher-cost providers.

³³ AT&T Comments at 33-34; CTIA Comments at 3-4; T-Mobile Comments at 5-6; Rural Telecom Group Comments at 17.

such as AT&T from participation in the Mobility Fund auctions.³⁴ The only justification offered for this proposal is that AT&T and other similarly situated carriers do not “need” USF support in light of their overall income. In reality, however, if it were economical for any wireless provider to deploy a 3G or 4G broadband network in the high-cost areas that remain unserved today, some provider already would have done so. The fact that an area remains unserved shows that market forces alone are insufficient to justify private investment by any provider—Tier One or otherwise—in those areas. The point of the Mobility Fund is to address this situation. Through Mobility Fund support payments, the Commission will alter the business case and finally tilt the balance in favor of mobile broadband deployment in these high-cost, unserved areas. Nothing in the statute permits the Commission to tilt this balance only for providers of a certain size. To the contrary, doing so would violate the principle of competitive neutrality noted above. Moreover, with less competition, winning bids would be higher than necessary and, thus, “excessive” in contravention of sections 254(b)(1) and (5). The end result would be that the Commission could fund fewer bids, thus delaying mobile broadband build-out in unserved areas. Thus, excluding Tier 1 providers from participation in the Mobility Fund auctions not only would be arbitrary, but would directly undermine the basic goals of the high-cost support program.

CAF 2 Auction. ILECs that decline a state-level commitment should still be able to participate in the CAF 2 auction. As the Ohio Commission notes, that approach “injects the economies of scale and scope of the incumbent carrier into the competitive bidding process, which will help ensure that the bidding process achieves the most efficient level of support.”³⁵ Indeed, even those few parties that support exclusion of ILECs that decline a state-level

³⁴ Blooston Rural Carriers Comments at 3-5; USA Coalition Comments at 22-23.

³⁵ Ohio PUC Comments at 8-9; *see also* CenturyLink Comments at 15; ITTA Comments at 15.

commitment concede that doing so will result in a “higher cost.”³⁶ There is no justification for imposing that higher cost burden on the CAF. If an ILEC determines it is uneconomic to make a state-level commitment, “penalizing” it by excluding it from the CAF 2 auction will only harm the public interest by undermining the efficiency of the universal service program.

Letters of Credit. Most parties agree that the Commission should not require all ETCs to obtain a letter of credit as a condition of receiving CAF support.³⁷ Such a requirement would be unduly burdensome and, as a result, create disincentives for participation in universal service auctions. Moreover, a letter-of-credit requirement is unnecessary to protect the integrity of USF funds. Instead, the Commission should impose such a requirement, if at all, only on providers that do not meet certain bright-line criteria that demonstrate their financial soundness.³⁸

V. The Commission Should Not Impose Regulatory Obligations That Are Unrelated to Achieving the Goals of the Universal Service Program.

In addition to avoiding eligibility restrictions, the Commission should not impose unnecessary regulatory obligations that are unrelated to the goals of the universal service program. Such obligations will discourage participation and thereby undermine the efficiency of the high-cost program.

Interconnection. As numerous parties explain, the Commission should not impose IP-to-IP or other interconnection requirements as a condition for receipt of universal service funding.³⁹

³⁶ Massachusetts DTC Comments at 11.

³⁷ AT&T Comments at 29-31; ITTA Comments at 10-14; Frontier Comments at 11-12; CenturyLink Comments at 10-11; USA Coalition Comments at 27. The few parties that support a letter-of-credit requirement for all ETCs offer no explanation for why it is necessary or why alternative criteria are insufficient, especially for well-established carriers that have long received universal service support. *See, e.g.*, Massachusetts DTC Comments at 32

³⁸ AT&T Comments at 30-31.

³⁹ AT&T Comments at 32; ADTRAN Comments at 12-13; CenturyLink Comments at 7-8; ITTA Comments at 6-7; Windstream Comments at 13-14.

As an initial matter, such requirements would be premature given that the Commission is still in the midst of determining whether it should regulate IP-to-IP interconnection *at all* and has not made determinations about even basic issues such as technical feasibility. Moreover, such interconnection requirements are unrelated to achieving the objective of the universal service program—supporting the deployment of broadband service to high-cost areas. Commenters offer no basis for subjecting universal service recipients to any additional requirements beyond those that apply to them under the interconnection rules generally. And to the extent that, as some commenters suggest,⁴⁰ ILECs that receive universal service support are not complying with their *existing* interconnection obligations, the answer is to enforce those existing requirements, not to impose a new layer of redundant obligations.

Roaming. The Commission likewise should reject calls to impose additional roaming requirements on recipients of funds from Mobility Phase II.⁴¹ It should particularly dismiss out of hand the proposal that it somehow ensure that roaming is “affordable” for small carriers. Again, the Commission already has rules in place for both voice and data roaming, and additional requirements are unnecessary and unrelated to the objectives of the universal service program.

⁴⁰ Time Warner Cable Comments at 4-6; MDTC Comments at 23-24; New America Foundation Comments at 6-8.

⁴¹ Blooston Rural Carriers Comments at 12-13.

CONCLUSION

As the Commission implements the long-overdue transformation of its high-cost support program to focus on broadband services, it needs to avoid undue regulatory burdens that will undermine the efficiency and effectiveness of the program. AT&T accordingly urges the Commission to adopt the recommendations set forth above and in AT&T's opening comments, which will help clear the way to achieving the Commission's broadband goals.

Respectfully submitted,

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