

**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

COMMENTS OF AT&T

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COMMENTS OF AT&T

I. INTRODUCTION AND SUMMARY

AT&T Inc. (“AT&T”), on behalf of its operating affiliates, respectfully submits these comments in support of the petition for clarification and reconsideration or, in the alternative, for waiver filed by CTIA – The Wireless Association® (“CTIA”) and the United States Telecom Association (“USTelecom”) (collectively “Petitioners”) regarding the new universal service reporting requirements established by the Commission in connection with the Connect America Fund (“CAF”). AT&T agrees with the Petitioners that the Commission should revisit 47 C.F.R. § 54.313 – an ambiguous rule that should not be construed to impose broadband reporting

obligations on eligible telecommunications carriers (“ETCs”) whose universal service support is being eliminated.

In seeking to justify its new broadband reporting requirements, the Commission reasoned that the information being reported is “necessary and appropriate ‘to ensure the continued availability of high-quality voice services and monitor progress in achieving our broadband goals and to assist the FCC in determining whether the funds are being used appropriately.’”¹

However, this reasoning does not hold true for ETCs whose support is being eliminated. For reasons explained in USTelecom’s initial petition for reconsideration² and, subsequently, in its joint petition filed with CTIA,³ extending broadband reporting obligations to ETCs will provide the Commission with no insight into whether its “broadband goals” are being achieved or whether legacy funds “are being used appropriately.”

Accordingly, for the reasons explained in the Joint Petition and below, the Commission should grant the request for clarification and reconsideration or, in the alternative, for waiver.

¹ *Connect America Fund*, WC Docket No. 10-90, Third Order on Reconsideration, FCC 12-52, ¶ 7 (rel. May 14, 2012) (“*Third Reconsideration Order*”) (quoting *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 580 (2011) (“*USF/ICC Transformation Order*”) *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011)).

² Petition for Reconsideration of the United States Telecom Assoc., CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 (filed Dec. 29, 2011) (“Petition”).

³ Petition for Clarification and Reconsideration or, in the Alternative, for Waiver of CTIA – The Wireless Association® and the United States Telecom Association, WC Docket No. 10-90 et al. (filed June 25, 2012) (“Joint Petition”).

II. THE COMMISSION SHOULD RECONSIDER OR CLARIFY THAT BROADBAND REPORTING OBLIGATIONS DO NOT APPLY TO ETCs RECEIVING LEGACY SUPPORT (SO-CALLED CAF PHASE I FROZEN SUPPORT) OR CAF PHASE I INCREMENTAL SUPPORT.

AT&T agrees with Petitioners that the Commission should reconsider or clarify 47 C.F.R. § 54.313(a)(11), which purports to extend to broadband services the general reporting requirements in section 54.313(a)(1)-(7) (which, with the exception of subsection (7), previously were contained in former section 54.209(a)(1)-(6)) and applied only to voice services provided by common carriers designated as ETCs by the Commission). Extending these reporting requirements to broadband makes no sense and would create conflicts with other Commission decisions, for the reasons explained in the Joint Petition.⁴

At the very least, the Commission should limit any broadband reporting requirements to ETCs receiving CAF Phase II support. Extending broadband reporting requirements to price cap ETCs that receive legacy support (so-called CAF Phase I frozen support) or even CAF Phase I incremental support cannot be reconciled with the Commission's rationale for adopting such requirements in the first place.

If broadband reporting requirements were applied to price cap ETCs receiving frozen high-cost support or CAF Phase I incremental support, these ETCs would be required either to: (i) report broadband data for the entire study area; or (ii) develop the systems and processes to

⁴ See Joint Petition at 5-7. To take but one example, section 54.313(a)(5) requires an ETC to certify that "it is complying with applicable service quality standards and consumer protection rules." For voice services subject to state regulation, such a certification may be understandable, but that is not the case for broadband services. Because broadband Internet access services are interstate in nature, *see, e.g., GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC Rcd 22466, ¶ 16 (1998), *recon. denied*, 17 FCC Rcd 27409 (1999), states would have no authority to establish "service quality standards" for broadband. And, while the Commission established speed and latency "performance metrics" for broadband, *USF/ICC Transformation Order* ¶¶ 90-96, there are no "service quality standards" applicable to broadband at the federal level.

track and report broadband data only in those areas where the ETC is using CAF Phase I support for broadband deployment. Neither option is reasonable.⁵

First, reporting broadband data on a study area basis would not provide the Commission with any meaningful information about the achievement of its “broadband goals” or the “appropriate[]” use of frozen support, which are the justifications offered by the Commission for its reporting requirements.⁶ Study-area wide data would skew the impact of CAF Phase I support because only a fraction of a price cap ETC’s broadband facilities will have been deployed using such support. For example, even if a price cap carrier is repurposing one-third of its frozen support in 2013 to broadband deployment (and two-thirds in 2014), the amount of broadband facilities deployed with those dollars would pale in comparison to the amount of broadband facilities deployed through private investment.⁷

Assume a study area in which 95 percent of the housing units have access to wireline broadband that meets the Commission’s definition of at least 4 Mbps downstream and 1 Mbps upstream – an assumption that would be consistent with the Commission’s most recent (albeit dated) analysis of broadband deployment nationwide.⁸ Assume further that an ETC uses CAF

⁵ The concerns we describe below apply equally to the new *voice* reporting requirements. For this reason and others, the Commission should reevaluate its decision to apply any part of the new reporting rules to frozen high-cost support recipients.

⁶ *Third Reconsideration Order* ¶ 7

⁷ The Columbia Institute for Tele-Information has estimated that broadband providers will invest more than \$240 billion between 2008 and 2015, or approximately \$30 billion annually. See Robert C. Atkinson & Ivy E. Schultz, Columbia Institute for Tele-Information, *Broadband in America*, Preliminary Report Prepared for the Staff of the FCC’s Omnibus Broadband Initiative, at 66, Table 15 (Nov. 11, 2009). By contrast, the entire amount of CAF Phase I frozen high cost support available to price cap carriers is less than \$2 billion annually. *USF/ICC Transformation Order* ¶ 126.

⁸ See *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*, Sixth Broadband Deployment Report, 25 FCC Rcd 9556, ¶ 1 (2010).

Phase I frozen support or CAF Phase I incremental support to construct broadband facilities to serve some segment of the 5 percent of housing units in the study area without broadband. If an ETC were required to report the number of broadband complaints per 1,000 connections under section 54.313(a)(4) for the entire study area, as an example, the majority of such complaints would involve broadband connections not constructed with CAF Phase I support. Thus, the complaint data being reported would tell the Commission nothing about the efficacy of its CAF Phase I program.⁹

The same would be true for information regarding the “number of requests for service ... that were unfilled during the prior calendar year,” which is information that an ETC must report under section 54.313(a)(3). The vast majority of requests for broadband service likely would be in those areas where most households already have access to the service – households to which broadband was deployed using private investment, not CAF Phase I support.

Second, broadband reporting targeted to the precise geographic areas where a price cap ETC uses CAF Phase I frozen support or CAF Phase I incremental support for broadband deployment is impractical. ETCs would have to expend significant resources to modify systems and procedures in order to track and report the information ostensibly required by section 54.313(a)(11) for just those connections constructed with CAF Phase I funds. The expense associated with these modifications required to produce data at such a granular level would be significant. If that was the Commission’s intent, the Commission was obligated to perform a

⁹ The General Accounting Office has questioned the need for the Commission’s collection of data related to the universal service program absent “a specific data-analysis plan for the carrier data it will collect” and a clear indication of how “the FCC plans to use the data.” United States Government Accountability Office, “Telecommunications – FCC Has Reformed the High-Cost Program, but Oversight and Management Could be Improved, at 20 (July 2012). Not only has the Commission failed to explain how it would or could use a carrier’s study area-wide voice or broadband data, for example, to evaluate the efficacy of its high-cost programs, AT&T does not believe it could ever make such a demonstration.

cost/benefit analysis consistent with President Obama’s directives, which the agency failed to do.¹⁰ It also failed to include the time and expense associated with the tracking and reporting of data only for those broadband connections constructed with CAF Phase I funds in its request for OMB approval, which violates the Paperwork Reduction Act (“PRA”).¹¹

Furthermore, extending broadband data reporting requirements under section 54.313(a)(11) to those handful of price cap ETCs electing CAF Phase I incremental support is unnecessary in light of the other reporting requirements that govern such support. Specifically, section 54.313(b) of the Commission’s rules obligates a price cap ETC receiving CAF Phase I incremental support to file annual reports that include certifications to the effect that the ETC has met its deployment and related obligations associated with such support. These section 54.313(b) reports – and not the data ostensibly required under section 54.313(a)(11) – are more than adequate for the Commission to ensure that CAF Phase I incremental support is achieving the Commission’s broadband goals and is being used appropriately.

¹⁰ In January 2011, President Obama released Executive Order 13563 that called on all executive agencies to “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify).” Executive Order, *Improving Regulation and Regulatory Review* (Jan. 18, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>. In July 2011, the President took this burden-reducing initiative a large step further by calling on independent regulatory agencies – including the FCC – to follow these same requirements. Executive Order 13579, *Regulation and Independent Regulatory Agencies* (July 11, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies>.

¹¹ The PRA requires OMB to “minimize” the burden of a proposed information collection and “maximize the practical utility of and public benefit from information collected,” which necessitates that the Commission provide accurate burden estimates associated with any proposed information collection. See 44 U.S.C. §§ 3501(1), (2) & 3504(c)(3), (4); see also 5 C.F.R. § 1320.1 (noting that OMB’s rules aim to “to reduce, minimize and control burdens and maximize the practical utility and public benefit” of information collected by the Federal Government). The term “burden” is broadly defined to include all of the “time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency.” 44 U.S.C. § 3502(2).

III. THE COMMISSION SHOULD REVISIT THE FIVE-YEAR SERVICE QUALITY IMPROVEMENT PLAN FILING AND RELATED REPORTING REQUIREMENTS FOR NON-CAF PHASE II RECIPIENTS.

For the reasons previously explained by USTelecom and CTIA,¹² AT&T agrees that the Commission should not require an ETC – other than an ETC receiving CAF Phase II support – to file a five-year service quality improvement plan or related progress reports. The Commission’s rules do not require a common carrier designated as an ETC by a state public service commission to have a five-year build-out plan. Furthermore, it is utterly nonsensical to require any ETC whose universal service support is being eliminated in less than five years to: (i) develop a five-year plan detailing “with specificity proposed improvements or upgrades” to its network, including estimates of the “area and population” to be served by such improvements or upgrades; or (ii) file reports at the wire center or census block level “detailing its progress towards meeting its plan targets” and explaining how such support “was used to improve service quality, coverage, or capacity.”¹³ Such requirements would be regulatory overkill and would contravene the stated goals of the Obama Administration and the Commission to reduce regulatory burdens and costs on the private sector.¹⁴

¹² Petition at 15-17; Joint Petition at 10-18; *see also* Comments of AT&T, WC Docket No. 10-90, at 9-13 (filed Feb. 9, 2012) (“AT&T Comments”).

¹³ 47 C.F.R. § 54.202(a)(1)(ii); 47 C.F.R. § 54.313(a)(1).

¹⁴ President Barack Obama, “Toward a 21st Century Regulatory System,” *Wall Street Journal*, January 18, 2011 (stressing the importance of “getting rid of absurd and unnecessary paperwork requirements that waste time and money”) (*available at* <http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html>); Remarks by President Obama to the Chamber of Commerce, U.S. Chamber of Commerce Headquarters, Washington, D.C., February 7, 2011 (emphasizing the commitment to “cutting down on the paperwork that saddles businesses with huge administrative costs”) (*available at* <http://www.whitehouse.gov/the-pressoffice/2011/02/07/remarks-president-chamber-commerce>); *Reporting Requirements for U.S. Providers of International Telecommunications Services*, First Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 7274 (2011) (Statement of Chairman Julius Genachowski) (noting the need to “streamline and modernize the Commission’s rules and reduce unneeded burdens on the private sector”).

Confronted with the loss of all high-cost support in a few years and no expectation that they will ever again receive new high-cost support under the new CAF mechanisms, the Commission should not be surprised if competitive ETCs use an increasing percentage – if not all – of their decreasing frozen support for the “maintenance” of supported facilities. *See* 47 U.S.C. § 254(e). By statute, maintaining supported facilities is an appropriate use of high-cost funding, and nothing in section 254 or the Commission’s rules would preclude a competitive ETC from using high cost support to maintain existing infrastructure rather than to deploy new facilities.¹⁵

Under the circumstances, it would serve no purpose in having a competitive ETC submit a “service quality improvement plan” describing proposed network improvements or upgrades over a five-year period when they are likely to have none. As AT&T has noted previously, one of its competitive ETC affiliates receives only about \$90,000 annually in interstate access support (“IAS”), which it will lose in 20 percent increments each year beginning July 1, 2012.¹⁶ No possible regulatory interest or public benefit would be served by requiring such a competitive ETC to submit a five-year plan when it is likely to use that *de minimis* (and now shrinking) amount toward maintaining existing facilities, rather than investing in network upgrades or improvements.

The same is true for price cap ETCs that stand to lose *all* of their legacy support on a flash-cut basis beginning sometime in 2013.¹⁷ Again, there is no value in having these ETCs

¹⁵ 47 C.F.R. § 54.201(d) (“A common carrier designated as an eligible telecommunications carrier ... shall be eligible to receive universal service support in accordance with section 254 ...”).

¹⁶ AT&T Comments at 10.

¹⁷ *USF/ICC Transformation Order* ¶ 180. USTelecom has requested that the Commission reconsider its decision to adopt a flash-cut approach to eliminating existing legacy support in connection with the implementation of CAF Phase II. Petition at 5-8. That request remains pending before the Commission.

submit a five-year service quality improvement plan next year to document their use of universal service support they may never receive.

In the event a price cap ETC accepts the state-level commitment for CAF Phase II support, it makes sense that it would submit a five-year plan and associated progress reports.¹⁸ However, that is not the case for ETCs whose support is being eliminated, and the Commission should clarify, reconsider, or waive its rules accordingly.

The Commission also should clarify, reconsider, or waive its rules that purport to obligate the handful of price cap ETCs receiving CAF Phase I incremental support to submit a five-year service quality improvement plan. These ETCs will receive a defined amount of support by the end of 2012 in exchange for deploying broadband to a certain number of locations no later than July 24, 2015. 47 C.F.R. §§ 54.312(b)(4), 54.313(b). Because price cap ETCs receiving CAF Phase I incremental support are under no obligation to expend private resources to deploy broadband to additional locations, there would be nothing for these ETCs to report in years 4 and 5 of any five-year plan.

Even if there were a legitimate reason to require ETCs whose support is being eliminated to develop a five-year plan and file related progress reports, which there is not, the Commission failed to seek or obtain necessary OMB approval to impose such requirements on *every* ETC receiving high-cost support. Although the Commission claims that it “sought and has received OMB approval” for “extending section 54.313(a)(1)-(6)’s new reporting requirements to state-

¹⁸ On the other hand, other section 54.313(a) reporting requirements do not make sense even for CAF Phase II support recipients (e.g., requiring a price cap carrier to report on consumer complaints on a study area-wide basis would result in a carrier over-reporting the number of complaints, but requiring the carrier to track and report this information for just those census blocks where the carrier is receiving CAF Phase II support would be extremely expensive and burdensome). Consequently, AT&T recommends that the Commission factor in the concerns we describe above in Section II when finalizing its CAF Phase II rules.

designated ETCs,” *Third Reconsideration Order* ¶ 9, nothing in these rules obligates a state-designated ETC to prepare a five-year “service quality improvement plan” or to submit progress reports for a five-year plan that does not exist. Rather, section 54.313(a)(1) requires a “recipient of high-cost support” to file progress reports with respect to “its five-year service quality improvement plan pursuant to § 54.202(a)” As USTelecom and CTIA correctly point out in their Joint Petition, section 54.202(a) only obligates a common carrier seeking designation by the Commission as an ETC to file a five-year plan.¹⁹

Furthermore, it is abundantly clear from the supporting statement submitted by the Commission to OMB in connection with the proposed information collection that the Commission did not request – and OMB did not approve – any requirement for state-designated ETCs to develop five-year build-out plans. According to the Commission:

The order extends current federal annual reporting requirements to all ETCs, including those designated by states. *Specifically, the order requires that all ETCs must include in their annual reports the information that is currently required by section 54.209(a)(1)-(a)(6) — specifically, a progress report on their five-year build-out plans; data and explanatory text concerning outages; unfulfilled requests for service; complaints received; certification of compliance with applicable service quality and consumer protection standards; and certification of its ability to function in emergency situations. All ETCs that receive high-cost support will file this information with the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.*²⁰

Nowhere in this discussion (or anywhere else in the Commission’s supporting statement) is any mention of a requirement for all state-designated ETCs to develop five-year build-out plans.

Indeed, section 54.209(a)(1)–(6) referenced in the Commission’s supporting statement to OMB

¹⁹ Joint Petition at 11-12 (citing 47 C.F.R. § 54.202(a)(1)(ii)).

²⁰ Supporting Statement, 3060-0986 (March 2012) at 4 (available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201201-3060-006; *see also id.* at 6 (“All ETCs must include in their annual reports the information that is currently required by section 54.209(a)(1)-(a)(6) — specifically, a progress report on their five-year build-out plans ...”).

did not obligate ETCs designated by the Commission to prepare a five-year build-out plan; rather that obligation is contained in section 54.202(a)(1)(ii), which plainly applies only to Commission-designated ETCs.

In short, the Commission sought and received OMB approval to require all ETCs to file annual reports that included the information previously required under section 54.209(a)(1)-(a)(6), which would include a progress report on an existing five-year build-out plan. However, the Commission did not seek and OMB did not approve any requirement that all state-designated ETCs prepare for the first time a five-year build-out plan. Accordingly, in the absence of PRA compliance, the Commission must clarify, reconsider, or waive this requirement.

IV. THE COMMISSION SHOULD CLARIFY THE REPORTING AND CERTIFICATION REQUIREMENTS FOR ETCs RECEIVING IAS.

As explained in the Joint Petition, carriers receiving IAS use that support to lower interstate access charges in accordance with the Commission's *CALLS Order*.²¹ As the Commission has found, the purpose of IAS "is to provide explicit support to replace the implicit universal service support in *interstate* access charges," and thus "provides support to carriers serving lines in areas where they are unable to recover their permitted revenues from the newly revised SLCs."²²

Because IAS is used to lower SLC rates consistent with Commission requirements, the Commission could not lawfully impose its new reporting and certification requirements on ETCs whose only high-cost support is in the form of IAS. For example, requiring an ETC that receives

²¹ Joint Petition at 18-19; *see also Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, ¶ 30 (2000) ("*CALLS Order*").

²² *CALLS Order* ¶¶ 185 (emphasis in original), 195.

only IAS to submit a five-year plan on July 1, 2013, that “describes with specificity proposed improvements or upgrades to [its] network throughout its ... service area” ignores the purpose of IAS, which is to support universal service by lowering SLC rates, not fund network improvements or upgrades.²³ Similarly, requiring such ETCs to report outage information, number of unfulfilled service requests and, among others, customer complaints per 1,000 connections for both voice and broadband cannot be reconciled with the purpose of IAS.

Importantly, in its *USF/ICC Transformation Order*, the Commission did not direct IAS recipients to cease using this support in accordance with its rules promulgated in the *CALLS Order*. To the contrary, the Commission stated in the section titled, “*No Effect on Interstate Rates*” that, “for purposes of calculating interstate rates” a price cap carrier’s frozen IAS “will be treated as IAS for purposes of our existing rules.”²⁴ Thus, the Commission’s reporting requirements cannot reasonably be extended to ETCs receiving only IAS, since this support mechanism is not intended, for example, to enable the Commission to “achiev[e] [its] broadband goals.”²⁵

Furthermore, although not intended for that purpose, unless IAS is excluded from the Commission’s new certification requirements, 47 C.F.R. § 54.313(c)(2)-(4), ETCs receiving only IAS would be compelled to begin allocating increasingly larger portions of that support to broadband deployment. Under such circumstances, the Commission should expect these carriers “to raise their SLCs, presubscribed interexchange carrier charges, or other interstate rates,”

USF/ICC Transformation Order ¶ 152, because, as USTelecom correctly notes, these carriers

²³ 47 C.F.R. § 54.202(a)(1)(ii) (referenced in section 54.313(a)(1)). *See also USF/ICC Transformation Order* at ¶ 587 (requiring “all ETCs to file a new five-year build-out plan in a manner consistent with 54.202(a)(1)(ii)”).

²⁴ *USF/ICC Transformation Order* ¶ 152.

²⁵ *Third Reconsideration Order* ¶ 7.

cannot be directed to spend this money twice: once for broadband deployment and once for access charge replacement. Petition at 19.

V. CONCLUSION

For the foregoing reasons, the Commission should grant the Petition for Clarification and Reconsideration or, in the Alternative, for Waiver.

Respectfully Submitted,

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