

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

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90

COMMENTS OF AT&T

The Wireline Competition Bureau (Bureau) seeks comment on a proposed urban voice and broadband rate survey that will be used for two purposes.¹ First, the Commission will use information from this survey to establish a voice rate floor that carriers receiving legacy high-cost model support or high-cost loop support must meet in order to receive their full legacy support amounts beginning in 2014.² Second, the Commission will use these data “to develop reasonable comparability benchmarks for voice and broadband rates that carriers will annually certify their rates do not exceed, with the first certification due July 1, 2013.”³ AT&T Inc. (AT&T), on behalf of its operating affiliates, submits these comments in response to the Bureau’s survey proposal. Before providing specific comments about the proposed survey set forth in Appendix A of the *Public Notice*, we first discuss concerns we have with the scope and potential application of the rate survey to certain providers. Namely, AT&T recommends that

¹ *Wireline Competition Bureau Seeks Comment on Proposed Urban Rates Survey and Issues Relating to Reasonable Comparability Benchmarks and the Local Rate Floor*, DA 12-1199, Public Notice (rel. July 26, 2012) (*Public Notice*).

² *Id.* at ¶ 3. See also *Connect America Fund*, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663, ¶¶ 234-39 (2012) (*USF/ICC Transformation Order*) (describing the purpose of the rate floor and explaining that the Commission will not provide high-cost loop support or high-cost model support to “subsidize local rates beyond what is necessary to ensure reasonable comparability”).

³ *Public Notice* at ¶ 3.

the Commission limit the survey to voice service, which is the only service supported directly by federal high-cost universal service support. If the Commission disagrees, we recommend that it limit the broadband reasonable comparability certification requirement only to Connect America Fund (CAF) Phase II recipients. Furthermore, we ask the Commission to clarify that both the voice and broadband certifications are to cover only high-cost supported geographic areas.

A. The Commission Should Limit Its Urban Rate Survey to Voice Telephony Service.

In its *USF/ICC Transformation Order*, the Commission opted not to make broadband a supported service. *USF/ICC Transformation Order* at ¶ 65 (“we do not, at this time, add broadband to the list of supported services”). AT&T explained previously that, because the Commission decided not to make broadband a supported service, it has no statutory obligation to ensure that broadband rates in rural and urban areas are reasonably comparable.⁴ As a result, there is no reason for the Commission to collect broadband rates for the purpose of establishing a broadband reasonable comparability benchmark. In fact, it seems unlikely that that the Commission could obtain Office of Management and Budget (OMB) approval for such an information collection. Before the OMB can provide its approval for a new information collection, it must determine “whether the collection of information by the agency is necessary

⁴ AT&T Comments, WC Docket No. 10-90 *et al.*, at 27-28 (filed Jan. 18, 2012) (AT&T January 2012 Comments). Specifically, we noted that if the rates for a supported service were not reasonably comparable between rural and urban areas, Congress would expect the Commission to take action by, among other things, making available high-cost funding to those providers offering the supported service in rural areas. Congress would not expect the Commission to make available such support to providers of non-regulated, non-USF-supported services that, nonetheless, charge significantly more for their service in rural areas than in urban areas. The fact that section 254(b)(3) requires rates for information services – which broadband service unquestionably is – to be reasonably comparable does not undermine this interpretation because the Commission has the statutory authority to make broadband service a supported service and thus support it directly with high-cost funding. It would be illogical *not* to limit the reach of section 254(b)(3) to supported services only because what would be the basis for Commission action in the event that providers of enterprise web hosting (another information service), for example, charge customers in rural areas significantly more than customers in urban areas?

for the proper performance of the functions of the agency, including whether the information shall have practical utility.” 44 U.S.C. § 3508. The OMB defines “practical utility” as:

the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account accuracy, validity, adequacy, and reliability, and the agency’s ability to process the information it collects (or a person’s ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion . . . In the case of recordkeeping requirements . . . “practical utility” means that actual uses can be demonstrated. 5 C.F.R. § 1320.3(l).

Unless the Commission includes broadband on its list of high-cost supported services and is prepared to offer high-cost support to broadband providers to enable them to charge rates in rural areas that are reasonably comparable to urban rates, there does not appear to be any “actual . . . usefulness” to the Commission including broadband rates in its urban rate survey.⁵ Until such time as the Commission begins awarding support directly for the deployment and provision of broadband service (as opposed to conditioning support for voice telephony service on the provider deploying and offering broadband), it is unclear what the significance or consequence would be if a rural broadband provider is unable to certify that its rates are reasonably comparable to urban broadband rates.

The Commission has no authority to compel a broadband provider that does not receive broadband high-cost support to lower its broadband rates. Additionally, because the provider is not receiving support to provide broadband service, the Commission obviously cannot reduce its broadband support for failure to offer broadband in rural areas at rates that are reasonably

⁵ We have explained previously how the Commission has ready access to broadband pricing data. *See, e.g., AT&T 706 Comments, WC Docket No. 11-10 et al.*, at 25-28 (filed March 30, 2011) (noting that broadband pricing data is available from numerous market analysts and other firms specializing in collecting such data). Rather than burdening the fixed broadband industry with the proposed urban rate survey, AT&T recommends that the Commission pursue one of these alternatives to obtain broadband rate information until such time as it makes broadband a supported service.

comparable to rates in urban areas.⁶ If the provider happens to receive support to provide voice telephony service, what would be the basis for the Commission to reduce its *voice* support solely because of the provider’s inability to certify that its *broadband* rates are reasonably comparable to broadband rates in urban areas? Such an action would seem particularly misguided in the case of a frozen high-cost recipient’s support, which was calculated based on it providing voice telephony service, not broadband.

B. The Commission Should Clarify Which Entities Are Required to Make the Reasonable Comparability Certification and for Which Geographic Areas.

In the unlikely event the Commission is able to secure OMB approval for the broadband rate survey, AT&T recommends that the Commission adopt its proposed presumption of reasonable comparability for voice and broadband providers that offer the same rates, terms and conditions to consumers in urban and rural areas. *Public Notice* at ¶¶ 16, 18. According to the Bureau, under such a presumption, voice and broadband providers that offer the same service in both rural and urban areas would *not* need to certify their rates against “urban benchmark[s] derived from the . . . rate survey.” *Id.* at ¶ 16. If a provider is offering the same rates – or “reasonably comparable” rates since the statute does not demand “identical” rates – to its rural and urban customers, then, by definition, it satisfies the statutory standard set forth in section 254(b)(3) of the Telecommunications Act of 1996.⁷ For these voice and broadband providers, the Commission simply should require a certification that they offer the same or reasonably comparable rates for the same service in rural and urban areas.

⁶ See *USF/ICC Transformation Order* at ¶ 618 (“we create a rule that entities receiving [existing high-cost and/or CAF] support will receive reduced support should they fail . . . to provide service at reasonably comparable rates”); 47 C.F.R. § 54.320(c).

⁷ 47 U.S.C. § 254(b)(3). This means, of course, that a provider’s rates could be *higher* than the urban benchmark but, because that provider offers the same service at the same or reasonably comparable rates in rural and urban areas, its rates are nonetheless “reasonably comparable.”

We also ask the Commission to clarify which providers are required to submit a reasonable comparability certification and the geographic scope of that certification. For example, section 54.313(a)(10) of the Commission's rules requires "high-cost recipients" to certify that their voice services are "no more than two standard deviations above the applicable national average urban rate for voice service." 47 C.F.R. § 54.313(a)(10). In addition to being silent on broadband certifications, which we believe is appropriate since such certifications are unwarranted, the rule is unclear about which geographic areas should be covered by this voice certification. AT&T requests that the Commission clarify that a provider's reasonable comparability certification for voice service applies only to those geographic areas where the provider receives high-cost support. For the reasons provided above, it makes little sense to require a provider to make such a certification covering non-supported areas.

Finally, if the Commission disagrees with AT&T on the issue of broadband certifications, AT&T requests that the Commission expressly limit any broadband reasonable comparability certification to those providers that receive CAF Phase II support. Paragraph 593 of the *USF/ICC Transformation Order* states that "ETCs receiving any other [i.e., non-Mobility Fund Phase I] support will submit a self-certification that the pricing of their broadband service is within a specified reasonable range." That sentence could be read to mean that competitive ETCs receiving frozen high-cost support and price cap carriers receiving legacy interstate access support (IAS), high-cost model support or CAF Phase I incremental support, will be required to file broadband certifications. In its order adopting the urban rate survey methodology, the Commission should clarify that this was not its intent.

Elsewhere in this order, the Commission made clear that competitive ETCs whose support is being eliminated are not subject to the new broadband obligations, of which the

broadband reasonable comparability certification is one. *USF/ICC Transformation Order* at ¶ 583. The Commission should clarify that this remains the case. Additionally, legacy IAS recipients do not use their legacy high-cost support for broadband build-out. Rather, in accordance with the Commission’s rules, they use that support to lower interstate access charges.⁸ Consequently, it would serve no purpose to require such a carrier to certify that its non-supported broadband service rates in rural areas are reasonably comparable to urban broadband rates. It would be equally inappropriate to require a legacy high-cost model support recipient to submit a broadband reasonable comparability certification. Beginning in 2014, the Commission’s rules will require these carriers to certify that they used a percentage of their support to “build and operate broadband-capable networks used to offer the *provider’s own retail broadband service.*” 47 C.F.R. § 54.313(c)(2)-(4) (emphasis added). Under the rule, these support recipients’ obligation will be to offer their own retail broadband service – at their own retail broadband service rates. Thus, it should not matter that the provider’s own retail broadband service may be offered at rates in excess of the broadband urban rate benchmark.

Like CAF Phase II support, CAF Phase I incremental support is new high-cost support conditioned on the recipient deploying broadband services at a Commission-defined speed. However, CAF Phase I incremental support recipients were required to notify the Commission on July 24, 2012, whether and to what extent they accepted incremental support. These providers had to make this decision in the absence of any broadband urban rate benchmark. It would be inequitable for the Commission to apply such a benchmark retroactively to these

⁸ *USF/ICC Transformation Order* at ¶ 152 (explaining that a price cap carrier’s frozen IAS “will be treated as IAS for purposes of our existing rules”); 47 C.F.R. § 54.312(a)(3) (“A carrier receiving frozen high cost support under this rule shall be deemed to be receiving Interstate Access Support and Interstate Common Line Support equal to the amount of support . . . to which the carrier was eligible under those mechanisms in 2011.”).

incremental support recipients because doing so could result in the provider being required to alter the terms of its planned service offerings (i.e., by having to lower the price of its broadband service). These alterations could adversely affect the provider's business case that made accepting the Commission's incremental support possible in the first place.⁹ AT&T thus recommends that the Commission apply the benchmarks prospectively only (i.e., to CAF Phase II support awarded after the Commission adopts its benchmarks).

C. Specific Comments on the Proposed Fixed Voice Survey.

The proposed fixed voice service survey requests rates in three broad categories: unlimited or flat-rate local voice service; unlimited or flat-rate, all-distance service; and measured/metered local voice service. *Public Notice*, App. A at 8. The Commission further requests this rate information for "PSTN" and VoIP offerings, to the extent that each is offered. For purposes of the reasonable comparability certification, AT&T recommends that the Commission rely solely on unlimited, all-distance service. *Public Notice* at ¶ 13 (seeking comment on developing the urban rate average "based solely on urban data for unlimited, all-distance service, as determined from the survey").¹⁰ We agree with the Commission that the unlimited, all-distance service "best reflects the varied ways – in terms of call frequency, duration, and distance – that households typically communicate using voice services." *Id.* There can be no question that unlimited, all-distance voice service is the irreversible trend in voice services, including fixed voice services. Additionally, non-incumbent local exchange carriers

⁹ In comments that we filed one month ago, we detailed our concerns with the Commission imposing obligations retroactively on incremental support recipients. See AT&T Comments, WC Docket Nos. 10-90, 05-337 (filed Aug. 24, 2012).

¹⁰ AT&T does not take a position at this time on whether the Commission should adopt its proposal to establish the 2014 local rate floor using only urban flat local rate data. *Public Notice* at ¶ 11.

(ILECs) are unlikely to offer “local, flat rate voice service,” which the Commission refers to as “R-1” service (*USF/ICC Transformation Order* at ¶ 236). If the Commission intends to use non-ILEC voice rate information to develop its average urban rate, then it most likely will have to look to unlimited, all-distance rate information to create its reasonable comparability benchmark.

We further recommend that the Commission establish separate benchmarks for “PSTN” and VoIP unlimited, all-distance service. Currently, there is a healthy difference in the price of the average “PSTN” (or TDM) based unlimited, all-distance service and its VoIP counterpart. The gap is a product of the services’ dramatically different regulatory histories as well as inefficiencies inherent in PSTN-based networks that are absent from IP-based networks. Additionally, PSTN-based services are services in decline. Consumers are leaving PSTN-based services for VoIP or wireless service offerings at an accelerating pace. AT&T has documented this significant and irreversible trend in prior Commission filings.¹¹ Unfortunately, a PSTN-based provider’s costs do not proportionally decrease as its customer base shrinks. As a result, its costs per customer can increase, prompting it to increase its end-user rates. Moreover, PSTN-based providers of all-distance services charge customers a subscriber line charge (SLC), which can be as high as \$6.50/month for residential customers, whereas VoIP providers do not. For these reasons, the average non-discounted, non-promotional PSTN-based unlimited, all-distance rate is likely to be higher (perhaps, significantly higher) than the average VoIP competitor’s unlimited, all-distance rate. Combining the average PSTN and VoIP rates into a single unlimited, all-distance benchmark will give new VoIP entrants an advantage over their PSTN-based competitors. These latter providers will have to certify that their rural rates are reasonably

¹¹ See, e.g., AT&T Reply Comments, WC Docket No. 10-90 *et al.* at 21, Figure 4 (filed March 30, 2012) (showing the rapid decline in the percentage of households that obtain residential voice service from ILECs).

comparable to urban rates in accordance with section 54.313(a)(10) but, simply because of the technology that they use to provide service, they may have no hope of being able to make that certification.¹² Until the transition to IP-based services is complete, AT&T recommends that the Commission maintain separate benchmarks for the two technologies.

If the Commission agrees with AT&T that it should require respondents to provide unlimited, all-distance service rates, AT&T recommends that the Commission make clear in its survey instructions that respondents should include rates for unlimited, all-distance service that the respondent provides either by itself *or* with an affiliate. Providers commonly offer unlimited, all-distance service jointly with an affiliate. This is true for AT&T's operating affiliates that offer this service. If the Commission limits the survey to a single legal entity, many respondents will populate the unlimited, all-distance service column with "N/A" because they provide local service only.

The Commission proposes to include various taxes, fees, and non-recurring charges in its fixed voice survey. *Public Notice* at ¶ 5 & Appendix A at 8-9. AT&T respectfully submits that requiring respondents to provide this information is at odds with the Commission's desire to minimize burdens on respondents and make the survey as simple as possible. *Id.* at ¶ 9. To further those goals, AT&T recommends that the Commission modify the survey by striking service initiation charges and non-mandatory monthly taxes and fees. It is unclear what value there is to including non-recurring charges in the survey and thus we question the "practical utility" of this information.¹³ Additionally, the variance in the taxes and fees listed in the

¹² To make matters worse, the Commission has stated that it will reduce a carrier's support if it is unable to certify that its rates are reasonably comparable. *USF/ICC Transformation Order* at ¶ 618.

¹³ See 44 U.S.C. § 3508; 5 C.F.R. § 1320.3(l).

proposed survey among municipalities can be so large that certain providers may be unable to certify that their rates are reasonably comparable due to the various taxes and fees over which they have no control.¹⁴

Finally, based on the form that respondents will populate and submit electronically, it is unclear how a provider that offers both PSTN and VoIP service in the same market could complete just one form. AT&T recommends that the Commission subdivide each row of the survey by “PSTN” and “VoIP” to enable a respondent to provide different rates for PSTN and VoIP service, where appropriate, on a single form.

D. Specific Comments on the Proposed Fixed Broadband Survey.

The fixed broadband portion of the proposed survey requests respondents to provide rate information based on four “service ranges.” These four categories range from 4 Mbps downstream/1Mbps upstream (Service Range 1) to 25 Mbps or above downstream/3 Mbps or above upstream (Service Range 4). *Public Notice*, Appendix A at 10. There is no “practical utility”¹⁵ to the Commission obtaining broadband rate information for offerings that are in excess of (or beneath) the speed tier that the Commission has conditioned voice telephony service support on the recipient providing. To date, the only broadband speeds that any current high-cost recipient must eventually provide as a condition of its voice telephony service support are 4 Mbps downstream and 1 Mbps upstream.¹⁶ Thus, the Commission should limit its fixed broadband survey to that single tier and direct respondents to provide rate information for their

¹⁴ As an example, the range of residential E-911 rates in Michigan varies between \$0.19/month to \$3.90/month, depending on the customer’s billing location. This is a difference of almost 2000 percent.

¹⁵ See 44 U.S.C. § 3508.

¹⁶ See 47 C.F.R. § 54.313(b)(2); *USF/ICC Transformation Order* at ¶ 147 (requiring incremental support recipients to provide broadband at 4 Mbps downstream/1 Mbps upstream at the end of the three year build-out period, or July 24, 2015).

closest comparable offering in the likely event that a respondent does not offer a 4 Mbps downstream/1 Mbps upstream service. A respondent would provide the downstream and upstream speeds of its closest comparable offering on the form.

If a CAF Phase II recipient opts only to offer broadband in high-cost supported areas at speeds that are “substantially faster” “than the minimum required under the Commission’s public interest obligations” (*Public Notice* at ¶ 18) and that provider does not offer the same or reasonably comparable rates in rural and urban areas (and, thus, cannot rely on the presumption of reasonable comparability), then the Commission could consider modifying the survey to increase its number of service ranges. Until that time, which is likely to be three or more years away, there is no “actual,” as opposed to “merely . . . theoretical or potential, usefulness of [this] information.” 5 C.F.R. § 1320.3(l). The burdens imposed by such a far-reaching survey plainly outweigh any benefit, of which AT&T can think of none. For these reasons, AT&T recommends that the Commission scale back the survey to a single range: 4 Mbps downstream/1 Mbps upstream and direct respondents to populate the form based on their closest comparable service offering.

Finally, just as we recommended for the fixed voice section of the survey, AT&T suggests that the Commission strike from the survey non-recurring charges and taxes and fees outside the control of the provider. Again, we question the utility of this information and the equity of requiring a provider to certify that its rates are reasonably comparable when its E-911 fee, for example, is ten times higher than the national average E-911 fee. Also, like all-distance voice providers, broadband providers frequently provide their service offerings using affiliates. To avoid returned forms that are replete with “N/A”s, AT&T recommends that the survey

instructions be clear that a respondent should provide the requested information if it provides broadband together with an affiliate.

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For the reasons provided above, AT&T recommends that the Commission limit its urban rate survey to fixed voice service. If the Commission disagrees, we ask that the Commission limit the broadband reasonable comparability certification requirement to CAF Phase II recipients. And, in any event, the Commission should clarify that any reasonable comparability certification covers only high-cost supported geographic areas and that no provider shall be required to certify the reasonable comparability of its rates in areas where it receives no support. We also recommend, among other things, that the Commission develop separate PSTN and VoIP unlimited, all-distance average urban rate benchmarks for purposes of the reasonable comparability certification and simplify its fixed broadband survey by only requesting rate information about the respondent's closest comparable service to 4 Mbps downstream/1 Mbps upstream.

Respectfully Submitted,

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