

to resolving these issues, AT&T urges the Commission to obtain further comment as necessary in order to issue CAF Phase II rules by the end of the year establishing, among other things, *all* of the service obligations associated with CAF Phase II support (e.g., broadband testing requirements, the percentage of locations where the recipient must offer broadband at speeds of 6 Mbps downstream/1.5 Mbps upstream),³ the competitive bidding process,⁴ procedures to relieve price cap carriers of their legacy eligible telecommunications carrier (ETC) obligations and existing designations,⁵ and clarification on how the Commission will eliminate a price cap carrier's frozen support if the price cap carrier declines the state-level commitment.⁶

satisfies the “unsubsidized competitor” criteria. *Id.* at ¶ 12. Instead, the Bureau should permit these challengers to rely on their most current service offerings to make that demonstration.

³ In comments filed last August, AT&T described a number of open issues that the Commission should resolve for CAF Phase I incremental support recipients. A number of those issues are equally relevant here: For example, must a CAF Phase II support recipient offer a broadband plan with speeds of exactly 4 Mbps downstream/1Mbps upstream or is it sufficient that the provider offers at least one plan with speeds that exceed those speed thresholds? May a CAF Phase II recipient satisfy its minimum speed service requirement based on its advertised speeds? Commission rule 54.313(e)(1) requires a CAF Phase II support recipient to certify that it is offering broadband “at *actual* speeds of at least 4 Mbps downstream/1 Mbps upstream.” 47 C.F.R. § 313(e)(1) (emphasis added). *See also id.* at 54.313(e)(2) (“actual speeds of at least 6 Mbps downstream/1.5 Mbps upstream”). What does the Commission mean by “actual” speeds? When does a CAF Phase II support recipient's service obligations end? We encourage the Commission to address these issues and others detailed in our previously filed comments. *See AT&T Comments, WC Docket Nos. 10-90, 05-337* (filed Aug. 24, 2012) (AT&T Windstream Comments).

⁴ Included among the competitive bidding issues that the Commission still must address are, the eligibility of a price cap carrier that declines the state-level commitment to participate in the competitive bidding process for census blocks in its study area (*see USF/ICC Transformation FNPRM* at ¶ 1201), the recognition that the eligible areas for the CAF Phase II competitive bidding process may require re-assessment after the state-level commitment election process is completed.

⁵ AT&T Comments, WC Docket No. 10-90 *et al.*, at 3-17 (filed Jan. 18, 2012); AT&T Comments, WC Docket No. 10-90 *et al.*, at 3-9 (filed Feb. 9, 2012).

⁶ *USF/ICC Transformation Order* at ¶ 180 (stating simply that a price cap carrier that declines the state-level commitment “will cease to receive high-cost universal service support” once “the winner of any competitive process receives support under CAF Phase II). *See United States Telecommunications Association Petition for Reconsideration, WC Docket No. 10-90 et al.*, at 5-8 (explaining how the Commission's decision to eliminate a price cap carrier's legacy high-cost support on a flash-cut basis is

In these comments, we describe the criteria the Commission should apply to determine whether a broadband provider should be deemed an “unsubsidized competitor” for purposes of CAF Phase II. Among other things, it is AT&T’s view that this term should be technology neutral so that even a non-terrestrial-based provider could be treated as an unsubsidized competitor as long as it satisfies the applicable service criteria. We also discuss appropriate service criteria for CAF Phase II support recipients and unsubsidized competitors. In response to the Bureau’s request for comment on what an appropriate minimum usage allowance should be for these recipients, we explain how the Commission must decide as a policy matter whether it wants to guarantee customers of CAF Phase II support recipients a large video allowance for entertainment purposes. Doing so likely will preclude some broadband providers from participating in any CAF Phase II competitive bidding process. In addition, we recommend that the Commission adopt a presumption that wireline broadband providers satisfy the Commission’s latency standard, and, finally, we discuss why it is unnecessary for the Commission to establish a broadband pricing benchmark. At most, the Commission should adopt a presumption of reasonable comparability for broadband providers that offer in urban and rural areas the same or similar rates for their broadband service that satisfies CAF Phase II service criteria.

I. Identifying “Unsubsidized Competitors”

In its rules, the Commission defines an unsubsidized competitor to be “a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost

illogical and violates the Administrative Procedure Act because the Commission failed to seek comment on this proposal).

support.” 47 C.F.R. § 54.5.⁷ At least two parties, ViaSat and NTCH, challenged the Commission’s decision to limit the definition of “unsubsidized competitor” to “fixed voice and broadband service” providers in petitions for reconsideration.⁸ To date, the Commission has failed to act on those requests. AT&T filed comments in support of these parties’ request that the Commission make the definition of “unsubsidized competitor” technology neutral.⁹ It continues to be our view that, as long as a provider satisfies the service standards, it should not matter that the provider is doing so using some non-terrestrial-based service. In its *Public Notice*, the Bureau asks whether mobile providers should be permitted to participate in the challenge process, “giving them the opportunity to qualify as unsubsidized competitors” and thereby excluding their served areas from support. *Public Notice* at ¶ 11. The answer, of course, is yes. The Commission also should grant ViaSat and NTCH’s requests to reconsider and amend the definition of “unsubsidized competitor” by deleting “fixed.”¹⁰

A service obligation for recipients of CAF Phase II support is to offer broadband at speeds of at least 4 Mbps downstream/1 Mbps upstream (4/1). *USF/ICC Transformation Order* at ¶ 160. Thus, a broadband provider must offer broadband service at speeds of 4/1 in order to

⁷ In its *USF/ICC Transformation Order*, the Commission describes the term to mean “a facilities-based provider of residential *terrestrial* fixed voice and broadband service.” *USF/ICC Transformation Order* at ¶103 (emphasis added).

⁸ ViaSat and WildBlue Petition for Reconsideration, WC Docket No. 10-90 *et al.*, at 9-11 (filed Dec. 29, 2011); NTCH Petition for Reconsideration, WC Docket No. 10-90 *et al.*, at 13 (filed Dec. 29, 2011).

⁹ See AT&T Petition for Reconsideration Comments, WC Docket No. 10-90 *et al.*, at 34-35 (filed Feb. 9, 2012).

¹⁰ The amended rule should state, “An ‘unsubsidized competitor’ is a facilities-based provider of residential voice and broadband service that does not receive high-cost support.” Alternatively, the Commission could amend this definition to provide that an “unsubsidized competitor” “is a facilities-based provider of residential voice and broadband service that satisfies applicable performance criteria and does not receive high-cost support.”

be deemed an unsubsidized competitor. *Id.* at ¶ 170. Recognizing that data on where 4/1 broadband service is offered is not yet widely available, the Bureau requests comment on what speed proxy it should use for 4/1 to assist in identifying unsubsidized competitors and, thus, eligible CAF Phase II areas. *Public Notice* at ¶ 9 & n.15. Until such time as the SBI begins gathering data on providers offering broadband at 4/1, AT&T recommends that the Commission adopt USTelecom's proposal for identifying CAF Phase II eligible census blocks, which it described in comments filed last month at the Commission.¹¹ USTelecom proposed that the Commission enlist the assistance of state mapping authorities, which would pose a few targeted questions to broadband providers that had previously filed data with them.¹² This information would enable the state mapping authority (or the Bureau) to remove from the list of model-identified *ineligible* high-cost census blocks those census blocks served by a broadband provider that does not satisfy the Commission-defined service obligations. If a broadband provider does not respond to the state mapping authority's information requests, it could still participate in the Commission's challenge process but it would have the burden of demonstrating that its broadband service satisfies the Commission's performance criteria.¹³

If the Commission declines to adopt USTelecom's proposal, AT&T does not object to the Bureau using as its proxy SBI data showing the availability of broadband at 3Mbps downstream/768 kbps upstream (3/768) for cable broadband providers. We also do not object to

¹¹ United States Telecom Association Comments, WC Docket No. 10-90, at 5-7 (filed Feb. 19, 2013).

¹² The suggested questions were, does the broadband provider offer voice service? Does the broadband provider offer broadband service at speeds of at least 4/1 in the state? Does the broadband provider offer sufficiently low latency to enable real-time applications, such as VoIP? And, what is the usage allowance without overage charges associated with the provider's service that is at least 4/1 and enables the use of real-time applications? *Id.* at 5.

¹³ *Id.*

the Bureau adopting its rebuttable presumption for cable providers discussed in the *Public Notice*.¹⁴ We expect that a cable provider offering 3/768 is almost always capable of offering at least 4/1 and satisfying the other service criteria. However, the same cannot be said for fixed wireless providers. Instead, AT&T supports the Bureau’s proposal that these providers should be required to use the challenge process to demonstrate that they are providing broadband service in a given area at speeds of at least 4/1 and otherwise satisfying the relevant service criteria.

II. Usage Allowance and Latency Standards That Should Apply to CAF Phase II Recipients and Unsubsidized Competitors.

The Bureau seeks comment on the minimum usage allowance and specific numerical latency standard it should apply to CAF Phase II recipients and unsubsidized competitors. For the minimum usage allowance, the Bureau suggests a number of approaches: establish 60 or 100 GB as a reasonable upper bound for a minimum usage allowance based on potential user activities; set the minimum based on current average usage, which could range from about 17 to 32 GB; or establish a sliding scale based on projected increases in usage. *Public Notice* at ¶¶ 22-24. In selecting the minimum usage allowance, the Bureau must decide as a policy matter whether it is essential to guarantee customers of CAF Phase II broadband providers a large video entertainment allowance. While the Bureau offers usage estimates for “online college coursework,” “secondary schooling,” and “online medical consultations” (*id.* at ¶ 22), there can be no question that the primary driver of consumer broadband usage is video entertainment.¹⁵ If

¹⁴ *Public Notice* at ¶ 11 (proposing to deem ineligible for CAF Phase II support any census block served by a cable broadband provider that provides service meeting the defined speed threshold). For such providers, the Bureau would presume that the cable provider also satisfies the other performance criteria for unsubsidized competitors. *See id.* at n.19.

¹⁵ In a report issued last fall, Sandvine concluded that a single entity – Netflix – accounts for one-third of peak period downstream traffic in North America. *See* Press Release, Sandvine Global Report (Nov. 7, 2012), available at http://www.sandvine.com/news/pr_detail.asp?ID=394.

the Bureau requires a large usage allowance for entertainment purposes, it likely will disqualify broadband providers using certain technologies from participating in CAF Phase II.

The Bureau also requests comment on whether it should establish a specific numerical latency standard for CAF Phase II recipients and unsubsidized providers. *Public Notice* at ¶ 26. AT&T believes that for wireline broadband providers, the answer is no; instead the Commission should establish a presumption that wireline broadband providers meet the latency requirements. Setting a numerical standard and then requiring wireline broadband providers to undergo testing would be a gross misuse of carrier and Commission resources. It is appropriate to assume that wireline networks capable of delivering speeds of 4/1 and greater will meet the latency requirements for real-time applications, such as VoIP. Just as the Bureau proposed a rebuttable presumption that cable providers meet certain performance metrics (*id.* at 11), it should presume that all wireline broadband providers meet the latency standard. As long as a CAF Phase II wireline provider certifies that its broadband service is capable of supporting real-time communications such as VoIP (*see* 47 C.F.R. § 54.313(e)), AT&T does not believe that it is necessary for the Bureau to establish any further requirements for those providers, including latency testing.¹⁶ If the Bureau is uncomfortable establishing a blanket presumption that *all* wireline broadband providers satisfy the latency standard, AT&T recommends that the Bureau limit the presumption to those wireline broadband providers that are monitored through the

¹⁶ The Bureau proposes detailed tests in the event it adopts a numerical latency standard. *Public Notice* at ¶ 26 (testing conducted over a two-week period during peak hours for at least 50 randomly selected customer premises). Accurate latency measurements from customer premises to the peering point are not currently supported in current network practices and CPE. Such testing generally will not be supported until standard work (such as that being pursued by Broadband Forum (BBF)/Internet Engineering Task Force (IETF)) is completed and sufficient time has lapsed to permit service providers to deploy within their networks and at customer premises the hardware and software incorporating the yet-to-adopted standard. While it is true that latency sampling is performed through programs such as SamKnows, this approach is costly and considered not scalable, particularly given the CAF Phase II context.

Commission's "Measuring Broadband America" program. In the Commission's most recent Measuring Broadband America report, it noted that "across all terrestrial technologies during peak periods, latency [of participating terrestrial providers] averaged around 29.6 ms compared to the July 2012 Report figure of 31 ms."¹⁷ The Commission's own report should give the Bureau a high degree of confidence that at least the participating wireline broadband providers are offering broadband service with "latency suitable for real-time applications, including Voice over Internet Protocol." 47 C.F.R. § 54.313(e)(1), (e)(2).

If the Bureau nonetheless believes it is necessary to adopt a specific latency standard, AT&T recommends it base that number on the current industry-wide standard for VoIP, which is 100 ms one-way (i.e., from the source to a destination), or 200 ms for a round-trip (i.e., from the source to the destination and back to the original source).¹⁸ The Commission's proposed 60 ms round trip latency standard is just 30 percent of the ITU's round-trip standard of 200 ms, and should not be adopted. Even if the Commission does set a specific numerical latency standard, it should still establish a presumption that wireline providers meet this standard and not subject them to testing or reporting on this performance metric.

¹⁷ 2013 Measuring Broadband America, February Report, A Report on Consumer Wireline Broadband Performance in the U.S., at 11, *available at* <http://transition.fcc.gov/cgb/measuringbroadbandreport/2013/Measuring-Broadband-America-feb-2013.pdf>. This report also noted that the highest average round-trip latency for an individual terrestrial service tier was 67.7 ms (*id.*), far beneath industry standards.

¹⁸ *See* Int'l Telecomm. Union, Y-1541, Series Y: Global Information Networks Infrastructure, Internet Protocol Aspects and Next-Generation Networks; Internet protocol aspects – Quality of service and network performance (Dec. 2011). Figure 1 of that document shows a 100 ms one-way allowance that applies to the IP network between User-Network Interfaces (UNI to UNI). The 2003 standard cited by the Bureau in its *Public Notice* (G.114) is consistent but slightly different in that the specifications in G.114 are again one way, but represent a "mouth to ear" allowance of 150 ms, which includes the LAN and other terminal equipment in addition to the UNI-UNI network allowance of Y.1541. *See Public Notice* at n.37.

III. It Is Unnecessary to Establish a Broadband Pricing Benchmark for CAF Phase II Recipients and Unsubsidized Competitors.

The Bureau states that it “need[s] to specify pricing . . . that will apply to price cap carriers that make a statewide commitment” and it also requests comment on whether it should “establish an interim reasonable comparability benchmark that a competitive provider would need to meet in order to be deemed an unsubsidized competitor.” *Public Notice* at ¶ 16. For several reasons, the Bureau neither needs to specify broadband pricing applicable to CAF Phase II support recipients nor needs to establish a broadband pricing benchmark applicable to unsubsidized competitors. First, the Commission failed to establish broadband as a supported service. As a consequence and contrary to the inference made in the *Public Notice*, it has no statutory obligation to ensure that broadband prices in rural and urban areas are reasonably comparable.¹⁹ 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 is no basis or authority for the Commission to establish a reasonable comparability pricing benchmark for broadband service.²⁰ Second, even if the Commission disagrees with AT&T, it should adopt a presumption of reasonable comparability for voice and broadband providers that offer in urban and rural areas the same or similar rates for their broadband service that satisfies CAF Phase II

¹⁹ See *id.* at ¶ 14 (requesting comment on whether a particular presumption would “be a reasonable way to implement the statutory goal of reasonably comparable rates”).

²⁰ In comments that we submitted last fall in response to the Commission’s proposed urban rate survey, we also explained how there is no actual usefulness to the Commission including broadband rates in this survey. See AT&T Comments, WC Docket No. 10-90, at 2-4 (filed Sept. 28, 2012). For that reason, it seems unlikely that the Commission could obtain approval from the Office of Management and Budget for such an information collection. Moreover, we explained how the Commission has ready access to broadband pricing data from market analysts and other firms; rather than burden the fixed broadband industry with the proposed urban rate survey, the Commission should pursue one of these alternatives to obtain broadband rate information until such time as it makes broadband a supported service. *Id.* at n.5.

service criteria in lieu of establishing a broadband rate benchmark. *Public Notice* at ¶ 14. This presumption should apply to providers offering service on a national basis as well as to providers only offering service within a single state. *Id.* at ¶ 15. Additionally, because the statute specifies “reasonably comparable” rates between urban and rural areas, not identical rates, the Commission should allow for a reasonable difference in broadband rates between urban and rural areas. In sum, for CAF Phase II recipients and unsubsidized competitors, the most that the Commission should require with respect to broadband pricing is a simple certification that the provider offers in rural and urban areas the same or reasonably comparable rates for their broadband service that satisfies CAF Phase II performance criteria.

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AT&T respectfully requests that the Bureau adopt requirements consistent with the recommendations set forth above in these comments.

Respectfully Submitted,

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