Approved: February 22, 2011
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 10, 2011, in Room 548-S of the Capitol.

All members were present except:
Sen. Jay Emler, excused

Committee staff present:
Matt Sterling, Office of the Revisor of Statutes
Heather O'Hara, Kansas Legislative Research Department
Ann McMorris, Committee Assistant

Conferees appearing before the Committee:
Christine Aarnes, Kansas Corporation Commission
Toni Wellshear, AARP

Others attending: See attached list.

Chair continued the hearing on:
SB 72 – Telecommunications and Price Deregulation

Opponents
Christine Aarnes, Chief of Telecommunications, Kansas Corporation Commission, discussed the findings in the 2011 KCC Report on Price Deregulation and the recommendations regarding **SB 72.** In conclusion, she noted the absence of solid evidence of effective, sustainable competition and in an effort to preserve and promote the public policy goals embedded in the Telecommunication Act of 1996, the Commission recommended **SB 72** be rejected. (Attachment 1)

Toni Wellshear, AARP, stressed that AARP opposes **SB 72** because it will allow telephone companies to raise rates for service where there is little competition and eliminate necessary consumer protections. Overall, **SB 72** fails to provide a meaningful benefit to consumers. (Attachment 2)

The Chair announced that due to the lack of time to hear the testimony of all the opponents, the hearing on **SB 72** will be left open and continued on Monday, February 14, 2011.

The report on GN Docket No. 09-47; GN Docket No. 09-51; and GN Docket No. 09-137 before the Federal Communications Commission was distributed to the committee. (Attachment 3)

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Ann McMorris
Committee Assistant

Attachments - 3

SENATE UTILITIES
COMMITTEE GUEST LIST
FEBRUARY 10, 2011

NAME	REPRESENTING
STEVE KARRICK	CURB
DINA Fisk	VERIZON
Tim Gaertner	AT&T
Berend Koops	Horn Law Firm
JUDITH GASS	CAP ADVANTAGE
Christine Aarnes	KCC
Michael Schmidt	KCC
Janet Buchanan	KCC
[illegible]	KRITC
[illegible]	AT&T
George Stafford	at&t
PATRICK FUCIK	Sprint
[illegible]	Sprint
[illegible]	NTT
Michelle Butler	Cap-Strategies
Mitzi McKatrick Leah Noakes	ICABC
John Idoux	Centurylink
Mike Hutfles	Independent telecos.
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Thomas E. Wright, Chairman
Ward Loyd, Commissioner

Sam Brownback, Governor

Testimony of
Christine Aarnes, Chief of Telecommunications
Kansas Corporation Commission

Before the Senate Utilities Committee
Regarding SB 72
February 9, 2011

Chairman Apple and Committee Members:

My name is Christine Aarnes and I am the Kansas Corporation Commission's Chief of Telecommunications. Thank you for allowing me to appear before you this afternoon on behalf of the staff of the Commission.

The Commission has the responsibility of ensuring that all telecommunications carriers and local exchange carriers preserve and enhance universal service and provide quality services at reasonable rates. The Commission staff does not believe SB 72 would further those goals, which is why we are opposing SB 72.

The Commission filed its 2011 Report on Price Deregulation on February 3, 2011. This report indicates the Commission is wary of the effectiveness of competition. Rather than move forward with SB 72, Commission staff suggests the Committee consider the recommendations contained in the 2011 Report on Price Deregulation. I will discuss the findings in the Report in more detail later, but in brief, those recommendations are:

- Change the CPI index utilized in the statute;
- Consider requiring a carrier to resume price cap regulation if the weighted average rate for the price deregulated exchange exceeds the inflation-adjusted statewide, weighted average rate for a specified period, such as two, three, or four consecutive years, in the absence of evidence that the carrier has rates in price deregulated exchanges that have increased by an amount equal to or less than the change in the CPI for telecommunications services; and,
- Consider including a "Safe Harbor" provision in price deregulated exchanges for those customers subscribing to stand-alone voice service ("basic local service").

Background

In 1996, both Congress and the Kansas Legislature determined that it was appropriate to encourage the development of competitive markets for telecommunications services. The Federal Telecommunications Act of 1996 and the Kansas Telecommunications Act of 1996 contain provisions to facilitate the transition to a telecommunications industry disciplined by

competition rather than agency regulation. Deciding whether this goal has been met; and thus, deciding that it is appropriate to grant price deregulation is a matter of public policy. The Kansas Telecommunications Act originally specified that the existence of competition was a question of fact to be determined by the Commission in an evidentiary type proceeding with notice and an opportunity to participate provided to interested parties.

The statute, however, was modified in 2006 and 2008 by SB 350 and HB 2637, respectively. Since July 1, 2006, a local exchange carrier electing price cap regulation has been able to request price deregulation of services pursuant to K.S.A. 66-2005(q). Pursuant to this statute, rates for all bundles of services were deregulated, statewide, on July 1, 2006. At this same time, rates for residential and business services in exchanges with 75,000 or more access lines were also deregulated.[1] For smaller exchanges, a price cap carrier would have to demonstrate to the Commission that there are two carriers unaffiliated with the price cap carriers that are providing service to customers. One of the carriers identified in support of such application is required to be a facilities-based carrier, such as a cable provider, and only one identified carrier can be a provider of wireless service. Only AT&T has petitioned for price deregulation under these statutory provisions. To date, 59 exchanges have been deemed price deregulated pursuant to the statute.

The current statute also contains certain protective provisions, including maintaining price cap regulation for Lifeline (low-income) lines, uniform pricing throughout an exchange, and a cap on the allowable annual price increase for basic service which is tied to the consumer price index. All of these protections would be eliminated by SB 72.

Proposed Legislation – SB 72

SB 72 amends K.S.A. 66-2005 and allows any local exchange carrier with a majority of its local exchange access lines in the state price deregulated pursuant to subsection (q) to elect to no longer be regulated as a local exchange carrier and, not withstanding other provisions, instead be regulated as a telecommunications carrier. A local exchange carrier making such election would be referred to as an "electing carrier".

Under the proposed legislation, electing carriers would not be subject to price regulation and any other regulation by the Commission would be no more stringent than the regulation imposed on telecommunications carriers. However, an electing carrier would remain subject to its resale of retail telecommunications services, unbundling and interconnection obligations; intrastate access charge requirements in subsection (c); Kansas lifeline service program (KLSP) requirements; and, remain eligible to receive Kansas Universal Service Fund (KUSF) support.

Senate Bill 72 requires, until July 1, 2014, an electing carrier's rates for single residential lines in rural exchanges to be no higher than the rates for single residential lines in urban exchanges. Senate Bill 72 defines a "rural exchange" as any exchange with fewer than 6,000 access lines and an "urban exchange" as any exchange with 75,000 or more access lines.

[1] The exchanges in Kansas with 75,000 or more access lines are the Kansas City, Topeka and Wichita exchanges, all served by AT&T.

SB 72 also relieves the electing carrier of its obligation to serve as the carrier of last resort with the following exceptions:

- Until July 1, 2014, in exchanges in which there are between 6,000 and 74,999 access lines, the electing carrier will continue to serve as the carrier of last resort for telecommunications services using any technology; and,
- In any rural exchange, exchanges with fewer than 6,000 access lines, the electing carrier shall continue to serve as carrier of last resort.

Price Deregulation for "Electing Carriers"

The current statutory provisions for price deregulation set fairly low hurdles for a company to obtain price deregulation. As indicated above, the carrier must demonstrate that at least one facilities-based wireline carrier and one other carrier, which may be a wireless carrier, provide service to more than one customer in the requested exchange. There is no other evaluation of the competitive landscape.

Under SB 72, an electing carrier's remaining exchanges would be price deregulated merely upon a carrier selecting the electing carrier status. Thus, the already low hurdles are completely eliminated. It is possible that AT&T is unable to meet the requirement to show a facilities-based wireline carrier provides service in its remaining exchanges and proposes this legislation as a means of achieving price deregulation without such a showing. In fact, this is quite possible given that 51 of the 75 (68%) exchanges that have not been price deregulated have less than 1,000 access lines.

The Commission's 2011 Report on Price Deregulation contains data that the Commission believes casts doubt on the effectiveness of competition in those exchange that have already been price deregulated. Thus,it may be premature to move forward with additional pricing freedoms for price-cap regulated carriers. While all the price deregulated exchanges continue to meet the statutory criteria established for price deregulation, the quality of the competition in those exchanges is questionable. On page 20 of the report, you will find market share information showing that AT&T serves more than 50% of the residential customers in 46 of the 58 price deregulated exchanges (or 79.3% of the exchanges). The market share information for business services is on page 21 of the report and shows that AT&T serves more than 50% of the business customers in 31 of the 48 price deregulated exchanges (or 64.6% of the exchanges).

Additionally, the report shows that the Herfindahl-Hirschman Index (HHI) which is a measure of the size of firms in relation to the industry and an indicator of the amount of concentration in the market, is well above that level considered by the U.S. Department of Justice to be indicative of a highly concentrated marketplace in all price deregulated exchanges for both residential and business services. While measuring the level of competition is difficult and the result is likely to be imperfect, it is important to try to gauge the effectiveness of competition in those exchanges that have already been price deregulated before moving on to price deregulation in exchanges for which AT&T has apparently been unable to meet the current statutory requirement for such designation and for which it is less likely that effective competition will exist.

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Commission staff further notes that price deregulation has not brought lower prices in those states where deregulation legislation has passed. In fact, rates have increased dramatically in some states.

According to a recent report released by the Missouri Public Service Commission, AT&T Missouri's statewide weighted average rate increased by 71.13% since 2007. AT&T Mo. has increased its residential rates by 62.27% and its business rates by 22.22% since 2007. CenturyTel of Missouri's statewide weighted average rate has increased by 28.96% since 2007.

In Ohio, where deregulation legislation went into effect in September 2010, AT&T recently implemented a 9% residential rate increase. Although the Ohio legislation still provides some pricing constraints, the 9% rate increase implemented is the maximum allowed under the law.

In Arkansas, where deregulation went into effect in 1997, AT&T recently increased its residential rate in its smallest exchanges by 19%, which is 46% higher than the rate in 2009. AT&T recently increased its business rate for its three largest rate groups to $48, which is a 7% increase over 2010 rates.

In California, residential customers received a 22% rate increase in January 2010 after receiving a 23% rate increase the prior year, and those rate increases occurred under the California Public Utilities Commission's regulatory controls. However, the basic service price controls for California's four largest incumbents, including AT&T, expired on January 1st, 2011.

It should be noted that following several reports and filings that questioned the sufficiency and impact of competition on prices of telecommunications services in California, the California Public Utilities Commission recently determined that it would initiate a new phase of a commission rulemaking opened several years ago to look closely at the impact of deregulation on the pricing of basic service and certain ancillary services.

The data for Kansas and other states suggest that caution should be used in moving forward with additional price deregulation. If the Committee moves forward with SB 72, Commission staff makes the following suggestions.

"Electing Carrier" Designation

Under the proposal, a local exchange carrier may choose to be an "electing carrier" if the majority of its access lines are price deregulated. AT&T introduced similar legislation during the 2010 Legislative session in Senate Bill 384, which included a process for selecting the "electing carrier" regulation status. The proposed language read as follows:

> A local exchange carrier may elect such electing carrier status by providing the commission with at least 90 days' written notice of election. The notice of election shall include a verified statement that a majority of the electing carrier's local exchange access lines are price deregulated. The commission shall verify that a majority

of the electing carrier's local exchange access lines are price deregulated.

Commission staff suggests similar language be inserted in SB 72. The current language does not provide a process for selecting such status or for determining whether the majority of the local exchange carrier's lines are price deregulated. The Committee may also with to consider requiring an electing carrier to provide notice to its customers that it is no longer subject to price regulation by the Commission.

Number of Access Lines Served by All Providers in an Exchange

SB72 contains multiple provisions that state the provision is applicable or not applicable based on the number of "local exchange access lines served by all providers." However, "local exchange access lines served by all providers" is not defined nor is it clear as to "who" would make the determination for each exchange.

Commission staff is unsure whether the authors of SB 72 intended for this to include only wireline access lines or if wireless access lines were intended to be included as well. Commission staff suggests the Committee revise the bill to clarify that the number of lines served by all providers includes only wireline lines and providers, and further specify that the Commission would be charged with determining the number of lines for each exchange.

Rural/Urban Rate Comparability for Residential Service

SB 72 proposes that an electing carrier's rates for single residential local exchange access lines in rural areas shall be no higher than its rates in urban areas, until July 1, 2014. For purposes of this subsection "rural exchange" means any exchange in which there are fewer than 6,000 local exchange access lines served by all providers and "urban exchange" means any exchange in which there are 75,000 or more local exchange access lines served by all providers.

First, Commission staff is unsure what this provision means for exchanges with more than 6,000 access lines but less than 75,000 access lines. It is not clear whether there would be a pricing constraint on the electing carrier for these exchanges or if an electing carrier would be allowed to immediately increase its rates for these exchanges.

Second, the provision only affords "protection" for residential lines. SB 72 offers no pricing protection whatsoever for business lines. Given the current economic climate, it seems reasonable, if not necessary, for the state to encourage economic development in rural areas. SB 72 would impede that initiative.

Third, the pricing "protection" provision in SB 72 for residential services does not, in reality, offer much protection. AT&T's urban rates are currently higher than its rural rates. Even under the CPI pricing constraint imposed by the current statute, AT&T has increased its rates in its largest exchanges (Kansas City, Topeka, and Wichita), where one would presumably think AT&T would face the most competition and the most competitive pressure to keep its rates low.

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If an electing carrier is allowed to increase its rates in urban areas without any pricing constraints or adequate competition to keep its rates low, this provision offers only minimal protection for consumers in urban and rural areas of Kansas.

Aside from staff's concerns about the pricing "protection" provision, without adequate competition there will be absolutely nothing to discipline the rates in rural areas of Kansas after the pricing "protection" provision expires in 2014. Given staff's concern that there is limited competition in the exchanges for which AT&T has not yet obtained price deregulation under the existing statutory requirements, it is reasonable to provide additional protection for these customers. If the Legislature believes that customers in rural areas should continue to pay rates similar to those rates paid by customers in urban areas, it may be reasonable to impose additional pricing restrictions until competitive forces are at play in remote areas.

At a minimum, the Legislature should evaluate whether the competitive conditions have improved in 2014 before allowing full price deregulation in rural exchanges.

Regulated as a Telecommunications Carrier

A telecommunications carrier is defined by K.S.A. 66-1,187 as "a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited to, interexchange carriers and competitive access providers, but not including local exchange carriers certified before January 1, 1996."

One might ask what a carrier would accomplish by changing its regulatory status. Besides the obvious pricing freedom to increase or decrease rates without Commission approval, a telecommunications carrier would not be subject to the price floor restrictions applicable to a price cap regulated carrier.

Under SB 72, an electing carrier would no longer be required to maintain prices above a price floor (the long-run incremental cost of a service). All price-cap regulated carriers have been required to maintain prices above the price floor for a particular service. This requirement was based on the theory that if a carrier holds a dominant position in a market, it is possible that such carrier will price services below cost in order to discourage competitors from entering or remaining in the market. Then, once competitors are gone, the dominant carrier is free to raise prices and recoup lost margins. Given the data provided in the 2011 Report on Price Deregulation, it may be reasonable to maintain this provision.

Resale Obligation

Under SB 72, an electing carrier would remain subject to its resale obligation, which staff believes is appropriate and required by the Federal Telecommunications Act.

However, resellers' costs are directly influenced by the retail rate offered by AT&T and CenturyLink, since resellers receive a discount off of the retail rate. Thus, without any control over the rates of electing carriers, any electing carrier rate increases would impact customers served by resellers as well.

Lifeline

In 1996, Congress articulated a national goal that consumers in all regions of the country, including low-income consumers, have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas. The Federal Lifeline program was designed to further this goal.

Likewise, the Kansas Legislature assigned the Commission with a similar charge in creating the Kansas Lifeline Service Program (KLSP). The purpose of the KLSP is to "promote the provision of universal service by local exchange carriers to persons with low income. The KLSP shall be targeted to maintain affordable rates for residential local exchange service." K.S.A. 66-2006

The current statutory language contains a provision intended to protect low-income Kansans served by price deregulated price cap carriers from large local rate increases by keeping rates for lifeline services under price cap regulation. K.S.A. 66-2005(q)(1)(E)

Presumably, an electing carrier would not be subject to this provision under SB 72. Absent this requirement, low-income consumers without competitive options could be forced to pay whatever rate the electing carrier deems appropriate (less the KLSP discount) or forgo telecommunications service.

Given that AT&T provides service to 69% and CenturyLink provides service to 4% (for a grand total of 73%) of the total Lifeline customers in Kansas, Staff does not believe it to be in the public interest to remove pricing protections for these customers.[2] Commission staff suggests the current statutory requirement be retained or other pricing protections should be imposed to protect low-income Kansans from large rate increases.

Commission staff believes it would be appropriate for the Commission to monitor KLSP subscription rates and more specifically, AT&T and CenturyLink KLSP subscription rates, if this bill passes.

Uniform Price Requirement

K.S.A. 66-2005(q)(1)(G) currently requires local exchange carriers to offer a uniform price throughout the exchange for services subject to price deregulation, including packages or bundles of services. Under SB 72, the electing carrier will no longer be required to price uniformly throughout an exchange.

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[2] According to Commission records, AT&T received the KLSP discount for 70% of the KLSP lines between March 2007 and February 2008; 68% of the KLSP lines between March 2008 and February 2009; 67% of the KLSP lines between March 2009 and February 2010; and, 69% of the KLSP lines between March 2010 and December 2010. CenturyLink received the KLSP discount for 5% of the KLSP lines between March 2007 and February 2008; 5% of the KLSP lines between March 2008 and February 2009; 4% of the KLSP lines between March 2009 and February 2010; and, 4% of the KLSP lines between March 2010 and December 2010. AT&T and CenturyLink are eligible to receive KLSP support for retail lines they serve and also lines served by competitive carriers that resell their services.

As you may recall, this provision was included in the statute because the primary source of facilities-based competition, a cable service provider, does not always serve the entire exchange. Therefore, the statute requires uniform pricing throughout an exchange to ensure that consumers without access to the competitive facilities-based service providers will receive the benefits of competition that others in the exchange are able to enjoy. The same is true for competition from wireless carriers. Until the Committee is convinced that ample facilities-based competition is available throughout the entirety of every exchange, it would be reasonable to maintain this provision.

Quality of Service Obligations

Although an electing carrier would be required to continue to abide by the Commission's quality of service standards, the proposed language is silent with regard to the Commission's authority to re-regulate for failure to meet such standards. The current statute allows for the Commission to resume price cap regulation of a local exchange carrier if it violates minimum quality of service standards and has been given reasonable notice and an opportunity to correct the violation and failed to do so. K.S.A. 66-2005(q)(2)(C)(5)

All facilities-based local wireline carriers are subject to the Commission's quality of service standards. Thus, AT&T and CenturyLink are currently treated in the same manner as traditional wireline competitive local exchange carriers.

The Commission collects quality of service information from all facilities-based carriers for the following measures:

Customer Trouble Reports per 100 lines. The benchmark is 6 or fewer.
% Repeat Trouble Reports. The benchmark is less than 20%.
Average Customer Repair Intervals. The benchmark is 30 hours or less.
% of Appointments Met. The benchmark is 90% or greater.

Failing to meet the benchmark for two (2) consecutive months constitutes a *jeopardy condition,* and requires immediate reporting and a corrective action plan to be filed with the report. Failing to meet the benchmark for three (3) consecutive months constitutes a *noncompliance condition* and requires immediate reporting with an updated corrective action plan. Commission rules require its staff to evaluate the provided action plan and current results, and make a recommendation to the Commission regarding the assessment of fines.

In 2008, the Commission's rules were revised regarding the assessment of fines if the condition is deemed *exempt,* in which case no staff analysis or recommendation will be made. An *exempt condition* is defined as an extraordinary condition or event that is clearly outside of the Company's control, such as an "Act of God" or force majeure. In claiming such condition the reporting company is required to comprehensively describe the scope and magnitude of the event(s) including references to governmental declarations (e.g. FEMA, Emergency Management, etc.) as appropriate. A corrective action plan discussing measures being taken to manage the situation is required to be filed.

In 2004, AT&T failed to meet the benchmark of Average Customer Repair Interval for four straight months. After the first two months of sub-standard performance, the company filed its corrective action plan but still did not meet the benchmark. Because the company missed the benchmark in 4 of 6 rolling months, it triggered a non-compliance condition and the company was assessed a penalty of $12,000. During the four months, the average customer repair interval ranged from 33 hours to 41 hours.

In 2005, AT&T failed to meet the benchmark for Average Customer Repair Interval for three months but these were not consecutive months. Therefore, no jeopardy or non-compliance condition was triggered.

In 2006, AT&T met all of the benchmarks for all measures.

In 2007, AT&T again failed to meet the benchmark for Average Customer Repair Interval for four consecutive months and an additional month. After the first two months of sub-standard performance, the company filed its corrective action plan but still did not meet the benchmark. Because the company missed the benchmark in 4 of 6 rolling months, it triggered a non-compliance condition. During sub-standard performance months, the average customer repair interval ranged from 36 hours to 47 hours. The Commission determined that it would not assess a penalty and required Commission staff to submit revised standards for consideration of "Acts of God" when determining whether to penalize a company. As discussed above, this change was adopted in 2008.

In 2008, AT&T missed the benchmark for Average Customer Repair Interval in three months, two of which were consecutive months and triggered a jeopardy condition. AT&T cited to weather conditions and a corrective action plan was filed.

In 2009, AT&T missed the benchmark for Average Customer Repair Interval in two consecutive months two times, which triggered two jeopardy conditions. AT&T, again, cited to weather conditions and filed additional corrective action plans.

In 2010, AT&T missed the benchmark for Average Customer Repair Interval in two consecutive months, which triggered another jeopardy condition. AT&T, again, cited to weather conditions and filed a corrective action plan.

As discussed above, all facilities-based carriers providing local service are subject to the Commission's Quality of Service requirements. No other carrier subject to the Commission's Quality of Service standards has triggered a jeopardy condition. Given the past performance of AT&T, it is not unreasonable to expect that there may be service quality issues in the future.

If an electing carrier fails to meet the minimum quality of service standards, the Commission would be left with minimal enforcement ability. Pursuant to K.S.A. 66-138, the Commission is allowed to fine the carrier for non-compliance of not less than $100 and not more than $5,000 per occurrence.

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It is not unreasonable to expect that a carrier might reduce its workforce in an effort to cut costs. In cutting workforce and costs, a carrier's quality of service could suffer. Given the level of penalties that may be imposed, it is possible that it could be more cost beneficial for a carrier to pay a penalty for not meeting the Commission's minimum quality of service standards than to maintain enough staff to meet the standards.

Given the past performance of AT&T, it is not unreasonable to expect that there may be service quality issues in the future. Commission staff believes it would be reasonable to impose the threat of re-regulation to provide an incentive for an electing carrier to maintain service quality.

Under SB 72, quality of service standards are not applicable to all technologies an electing carrier might use to provide carrier of last resort service and may not be meaningful in assisting consumers of those services.

Commission staff further recommends the Committee allow the Commission to have authority over quality of service issues when an electing carrier uses an alternative technology to satisfy its carrier of last resort obligation.

Carrier of Last Resort (COLR)

SB 72 proposes that an electing carrier be relieved of its COLR obligation in exchanges with 75,000 or more access lines. In exchanges with 6,000 to 74,999 lines, an electing carrier would be obligated to serve as the COLR until July 1, 2014. An electing carrier would maintain its COLR obligation in exchanges with less than 6,000 access lines.

In exchanges where the electing carrier is obligated to maintain its COLR status, the electing carrier may provide telecommunications services using any technology that offers voice communications services and may include a technology that does not require the use of any public right-of-way. Such technology may be provided through an affiliate of the electing carrier and the service and affiliate would not be subject to Commission regulation.

Commission staff believes the provisions in SB72 that state an electing carrier remains eligible for KUSF support and the proposed COLR provisions may conflict with federal and state eligible telecommunications (ETC) requirements.

AT&T and CenturyLink were granted ETC designations by virtue of being the incumbent local exchange carrier. All ETCs are required to provide service to all reasonable requests for service. Thus, there is a COLR-like obligation. The Commission adopted AT&T's proposed definition for "reasonable request" for service in an order issued in Docket No. 06-GIMT-446-GIT, which is: "any request for service at a permanent residence or business location within the service areas, by a verifiable party and subject to the normal customer screening processes for a type and quantity of service normally requested by similar customers."

Under the Federal Telecommunications Act, an ETC can be required by a state Commission to provide local service in unserved areas and can relinquish its ETC status and discontinue

providing universal service in an area where there is another ETC only by giving advance notice to a state Commission and by giving the state Commission adequate time (not to exceed one year) to find another carrier to provide services. Again, these obligations may be in conflict with the COLR provisions in SB 72.

At a minimum, Commission staff suggests that the COLR language be modified to indicate that service provided through an alternative technology must be functionally comparable to traditional wireline voice service and comparably priced.

Although the alternative technology may not fall under the Commission's traditional jurisdiction, it may be wise to insert language that the Commission would retain jurisdiction for complaints and quality of service issues when an electing carrier is using alternative technologies to fulfill its COLR obligation.

KUSF Support for "Electing Carriers"

SB 72 explicitly states that electing carriers remain eligible to receive KUSF support. The two price cap carriers, AT&T and CenturyLink, are ETCs and eligible to receive KUSF support. AT&T currently receives approximately $7M per annum in KUSF support and will receive approximately $6.5M per annum beginning March 1, 2011. CenturyLink currently receives approximately $17.6M per annum in KUSF support and will receive approximately $13M per annum beginning March 1, 2011.[3] Commission staff notes that AT&T also receives approximately $700,000 per annum in federal universal service fund support and CenturyLink receives approximately $7.9M per annum in federal universal service fund support.

As discussed briefly above, staff has difficulty reconciling the provisions in SB 72 with the carriers' ETC obligations. It is unclear from SB72 whether an electing carrier would remain an eligible telecommunications carrier (ETC) or become a competitive ETC (CETC). The Commission has imposed specific reporting requirements on CETCs that it has not imposed on ETCs, simply because ETCs are incumbent local exchange carriers and the Commission already has access to much of the required information because of its authority over incumbent local exchange carriers. This issue would need to be addressed.

The COLR provision in SB72 for exchanges with 6,000 to 74,999 access lines allows an electing carrier to fulfill its obligation using other technologies. Commission staff believes an electing carrier would need to file an application with the Commission for CETC designation for the alternative technology, as it requires of other CETCs requesting to provide universal service through an alternative technology.

The Commission requires all ETCs and CETCs to file documentation each year showing that the carrier used its support "only for the provision, maintenance, and upgrading of facilities and service for which the support is intended." If the ETC or CETC does not show that it has used the support appropriately, the Commission can revoke the carrier's ETC or CETC designation.

[3] KUSF years begin in March and end in February. Thus, the current year is March 2010 – February 2011 and the next KUSF year will begin March 1, 2011.

SB 72 merely states that an electing carrier would "remain eligible" to receive KUSF support; therefore, Commission staff believes the Commission we would still have the authority to revoke such designation.

Conclusion

In the absence of solid evidence of effective, sustainable competition and in an effort to preserve and promote the public policy goals embedded in the Telecommunication Act of 1996 -- a ubiquitous first-class telecommunications system, improved infrastructure, excellent service quality, affordable prices, and consumer protection for all Kansans, the Commission staff recommends SB 72 be rejected.

The current provisions for price deregulation are not difficult to meet and at least there are some protections in place should the level of competition be insufficient to discipline price.

Thank you for your consideration of these comments. I am available for questions at the appropriate time.

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February 8, 2011

The Honorable Pat Apple, Chair
Senate Utilities Committee

Reference: SB 72 – AT&T Kansas 2011 Modernization Legislation

Good afternoon Chairman Apple and members of the Senate Utilities Committee. My name is Ernie Kutzley and I am the Advocacy Director for AARP Kansas. Thank you for this opportunity to express our comments on SB 72, the Proposed 2011 Modernization Legislation. AARP opposes SB 72 because it will allow telephone companies to raise rates for service where there is little competition and eliminate necessary consumer protections. Overall, SB 72 fails to provide a meaningful benefit to consumers.

AARP has more than 340,000 members living in rural and urban Kansas who rely on phone service to meet basic needs. Senate Bill 72 will disproportionately impact AARP members and other aged 50-plus Kansans who live on fixed and low incomes, as well as other lower-income households who rely on basic stand alone telephone service. Telephone communication is a basic necessity that allows older people to maintain social contact, preserve health and safety, and gain assistance in an emergency. Even as more people use wireless phones and "cut the cord," people age 65 and older are more likely than any other age group to have traditional wireline telephone service. Older households (age 65 and older) spend about twice as much of their income (4 percent) as younger households (2 percent) just to use the average amount of telephone service.

Basic Local Phone Service is Not Competitive

While Senate Bill 72 provides a 3-year transition to the elimination of rate regulation for electing carriers, the bill is premised on the notion that a competitive market will in fact exist in 2014 that could keep a lid on price increases and ensure that consumers continue to have access to service. We do not agree. Residential customers have a limited choice of providers, especially in rural areas. And the choices available to residential customers

HEALTH / FINANC

esident
Chief Executive Officer

exist only for consumers who are interested in purchasing a package of multiple services, such as phone service with additional features, including video and Internet. Those who rely on stand alone basic service have little or no price-comparable options, and we have no indication that this will change by 2014.

While some wireless carriers may be marketing their service as a competitive local service alternative, and some consumers are "cutting the cord," the high majority of consumers use wireless much more as a supplement to, not an alternative for, wireline local service. Research suggests that about 17.5% of consumers have cut their wireline cord, with most of these being age 30 or under. In contrast, only 2.8% of persons aged 65 and older live in households with only wireless phones. It's important to bear in mind that, in contrast to basic local telephone service, wireless service is generally more expensive, the service quality is not nearly as good, and consumers are charged for incoming as well as outgoing calls.

Similarly, Voice over Internet Protocol (VoIP) service is not a true competitor to basic local phone service. VoIP is inherently more expensive than local telephone service, since a consumer must first have and pay for a monthly broadband connection in order to subscribe to VoIP. Consumers also have to put up with additional hassles that are not an issue for wireline subscribers, such as the risk that VoIP service will not function during a power outage, a nuisance that does not happen with wireline service.

Senate Bill 72 Will Result in Rate Increases

Because Senate Bill 72 eliminates rate regulation for electing carriers, we are confident that rates will increase if this bill passes, because that's just what has happened in other states that have adopted similar measures. A 2008 survey conducted by the National Association of State Utility Consumer Advocates found rate increases in all but two of the surveyed jurisdictions (no rates were reduced). These rate increases ranged from $2-$3.22 per month for basic service to increases as high as 185% for non-basic services (which include features such as Caller ID and Call Waiting). In 2010, AT&T raised basic

service rates in California by 22% following a 23% increase in 2009. Charges for non-basic service also increased by as much as 226%.

Senate Bill 72, if passed, will hit low-income Lifeline customers especially hard. The Lifeline discount that is meant to keep phone service affordable for lower income households reduces phone bills by applying a discount to the current rate. The discount does not rise as phone bills increase. As basic service rates rise, the discount will become less significant and we expect that even Lifeline rates will become unaffordable for some consumers.

Moreover, rates in rural parts of the state will almost certainly rise after 2014. Prior to that time an electing carrier must price stand-alone basic service in rural areas no higher than in urban parts of the state. However, this ceiling on rural states is somewhat meaningless without a rate cap.

Senate Bill 72 Eliminates the "Carrier of Last Resort" Obligation

Carrier of last resort (COLR) is a protection that has existed for decades which ensures that consumers will always have access to telecommunications service. Senate Bill 72 removes the COLR obligation in urban areas and provides a 3-year transition period for larger, non-rural exchanges. For the larger, non-rural exchanges, the bill would allow an "electing carrier" to meet its COLR obligation with the use of "any technology". Any technology could presumably include wireless or even broadband service, the shortcomings of which have been previously addressed. Moreover, there would be no control over the price of this back up voice service. Consumers could be left without access to viable or affordable phone service. Meanwhile, the state's phone companies would continue to receive hundreds of millions of dollars of universal service support.

Conclusion

The deregulation permitted in this bill is not justified by current market conditions and will have a detrimental impact on consumers, especially those who live on lower and fixed incomes. If this bill passes, our members and others who rely on basic service are sure to see significant price increases. AARP urges you to vote against Senate Bill 72. At a minimum, the current cap on price increases for basic local service should be maintained and the COLR obligation should not be eliminated in urban and larger, non-rural exchanges unless there is a corresponding reduction in the electing company's draw from the universal service fund.

Thank you for the opportunity to offer comments in opposition to Senate Bill 72.

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DAVID LAZARUS

Getting hung up on basic phone rate increases

David Lazarus

January 27, 2010

AT&T customers saw their monthly rate for basic residential phone service jump 22% this month to $16.45. The increase followed a 23% rate hike last year.

And you know what? That's the good news.

The bad news is that, beginning in January 2011, AT&T and other phone companies will be permitted to jack up basic rates as much as they want -- no regulatory limits will apply.

"If you want to know what will happen then, look at how much their rates went up for directory assistance and call waiting and other services that were deregulated in 2006," said Denise Mann, who oversees telecom matters for the California Public Utilities Commission's consumer-watchdog division.

"It will make your head spin like Linda Blair," she said.

That's putting it mildly. AT&T's charge for an unlisted number has soared more than 345% since rates were deregulated four years ago, from 28 cents to $1.25, according to the PUC's Division of Ratepayer Advocates.

The company's charge for directory assistance has climbed 226%. The cost for call waiting is up 85%.

So far, however, rates for basic residential service charged by AT&T, Verizon and other phone companies have remained under state regulators' control.

Regulators threw a bone -- a small one -- to consumer advocates during the deregulation process. Rate increases for basic phone service were temporarily limited to no more than $3.25 a year. Basic service includes local and 911 emergency calls.

"For the working poor, keeping residential service affordable can make all the difference," Mann said. "This was the one thing that we really worked hard to protect. We laid our bodies on the tracks for this."

Sen. Fran Pavley (D-Agoura Hills) introduced a bill that would have required at least 60 days' notice of changes to phone customers' service, and for the changes to be featured prominently on monthly statements -- not unreasonable requirements.

So what happened?

The Senate Energy, Utilities and Communications Committee voted down the legislation this month.

Pavley told me that AT&T and Verizon lobbied aggressively to torpedo the measure, arguing that it would be, well, too much hassle to have to provide more than the currently required 30 days' notice or to make changes to their bills.

AT&T's Diamond said phone companies "simply explained why the bill was not necessary."

Verizon's Davies echoed that sentiment. "Sixty days seems kind of excessive," he said. "And apparently the members of the committee felt the same."

Pavley said the phone companies cited PUC data showing that hardly anyone has complained about the telecom giants' notification procedures.

"I just have to wonder how many people know who to complain to," Pavley said, "or even that they have a right to complain. This bill was intended to help protect consumers."

Sen. Ellen Corbett (D-San Leandro) was the sole committee member to vote in favor of the legislation.

Voting against the bill were Chairman Alex Padilla (D-Pacoima), Vice Chairman Bob Dutton (R-Rancho Cucamonga), Dave Cox (R-Fair Oaks), Jenny Oropeza (D-Long Beach), Joe Simitian (D-Palo Alto), Tony Strickland (R-Thousand Oaks) and Roderick Wright (D-Inglewood).

Abstaining were Christine Kehoe (D-San Diego) and Alan Lowenthal (D-Long Beach).

Keep these folks in mind the next time you think your phone company is pulling a fast one on you.

David Lazarus' column runs Wednesdays and Sundays. Send your tips or feedback to david.lazarus@latimes.com.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion	)	GN Docket No. 09-137

COMMENTS – NBP PUBLIC NOTICE #25

COMMENTS OF AT&T INC. ON THE TRANSITION FROM THE LEGACY CIRCUIT-SWITCHED NETWORK TO BROADBAND

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December 21, 2009

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INTRODUCTION AND SUMMARY

AT&T strongly supports a Commission Notice of Inquiry regarding the transition from the circuit-switched legacy network to broadband and IP-based communications. That transition is underway already: with each passing day, more and more communications services migrate to broadband and IP-based services, leaving the public switched telephone network ("PSTN") and plain-old telephone service ("POTS") as relics of a by-gone era. That transition creates substantial pressure on cornerstones of the regulatory framework that governs much of today's communications, including in particular universal service and intercarrier compensation. But it also creates enormous opportunity. The Commission has been charged by Congress with formulating a National Broadband Plan that will result in broadband availability for 100% of the United States. That auspicious goal is within reach, but only if the Commission marshals its resources and those of other stakeholders to develop and execute a strategy that enables the deployment of the enormous amount of infrastructure necessary to reach it. As we explain in these comments, a key component of that strategy is the orderly transition away from, and retirement of, the PSTN.

Part I of these comments discusses the importance of that transition, explaining that Congress's goal of universal access to broadband will not be met in a timely or efficient manner if providers are forced to continue to invest in and to maintain two networks. Broadband is dramatically changing the way Americans live, work, obtain health care, and interact with the government. Congress and the Commission have rightly made universal broadband access a core national priority. But achieving this goal will take an enormous investment of capital. Private investment from network operators has brought broadband access to over 90% of Americans, and these operators will continue to play a pivotal role in bringing broadband to the

remaining 8-10% of citizens who do not currently have broadband access. It is accordingly crucial that the Commission pursue forward-looking regulatory policies that remove disincentives to private investment and encourage operators to extend broadband to unserved areas.

Any such forward-looking policy must enable a shift in investment from the legacy PSTN to newly deployed broadband infrastructure. While broadband usage – and the importance of broadband to Americans' lives – is growing every day, the business model for legacy phone services is in a death spiral. Revenues from POTS are plummeting as customers cut their landlines in favor of the convenience and advanced features of wireless and VoIP services. At the same time, due to the high fixed costs of providing POTS, every customer who abandons this service raises the average cost-per-line to serve the remaining customers. With an outdated product, falling revenues, and rising costs, the POTS business is unsustainable for the long run. Yet a web of federal and state regulations has the cumulative effect of prolonging, unnecessarily, the life of POTS and the PSTN.

Due to technological advances, changes in consumer preference, and market forces, the question is *when*, not *if*, POTS service and the PSTN over which it is provided will become obsolete. In the meantime, however, the high costs associated with the maintenance and operation of the legacy network are diverting valuable resources, both public and private, that could be used to expand broadband access and to improve the quality of broadband service. It is for that reason that one of the most important steps the Commission can take to facilitate an orderly transition to an all-broadband communications infrastructure is to eliminate the regulatory requirements that prolong the life of POTS and the PSTN. A smooth transition to an all-broadband world is essential to attaining the goal of universal broadband service.

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In Part II of these comments, we discuss legal and policy issues surrounding the retirement of POTS and the PSTN, and in doing so identify actions the Commission should take now to facilitate the transition to broadband. We explain, first, that perhaps the single most important feature of Commission action at this time is the establishment of a firm deadline at which point the transition will be complete, and we advise the Commission to seek comment on when that deadline should be, taking into account Commission experience in managing the transition to digital broadcasting as well as the retirement of analog cellular networks. Part II also identifies issues that are ripe for decision *today* – including the scope of federal authority over broadband and IP-based services, as well as intercarrier compensation and federal universal service reform – that the Commission must resolve in order to establish the preconditions for a successful transition to broadband. Finally, Part II identifies additional topics of inquiry – including in particular the actions necessary to ensure that legacy state requirements do not impede the transition to broadband – that the Commission should examine as it puts in place a plan to manage the inevitable transition from the PSTN to broadband.

DISCUSSION

I. PHASEOUT OF CIRCUIT-SWITCHED POTS SERVICE AND THE PSTN IS ESSENTIAL TO ACHIEVING UNIVERSAL ACCESS TO BROADBAND

A. Universal Broadband Access Is a Critical National Priority

As this Commission emphasized in the Public Notice and elsewhere, Congress has made broadband deployment a core national objective.[1] The American Recovery and Reinvestment

[1] *See* Public Notice, *Comment Sought on Transition from Circuit-Switched Network to All-IP Network*, NBP Public Notice #25, DA 09-2517 (rel. Dec. 1, 2009) ("Public Notice") (citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2), 123 Stat. 115 (to be codified at 47 U.S.C. § 1305)); *see also* FCC News Release, *FCC Chairman Genachowski Commends NCTA's Adoption Plus (A+) Program, available at*

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Act of 2009 directs the Commission to create a national broadband plan that seeks to "ensure that all people of the United States have access to broadband capability,"[2] and indeed the promotion of broadband deployment has been a longstanding congressional and Commission objective. Section 706(a) of the Telecommunications Act of 1996, for example, directs the Commission to "encourage the deployment . . . of advanced telecommunications capability to all Americans" by, among other things, "methods that remove barriers to infrastructure investment."[3] The Commission previously has recognized that this provision creates a "statutory responsibilit[y]" to "accelerate broadband deployment."[4]

Congress's and this Commission's objective of robust broadband deployment is well-founded. Widespread deployment of broadband and IP-based services holds enormous potential. As the Commission has explained, "[n]ew, innovative broadband products and applications . . . are fundamentally changing not only the way Americans communicate and work, but also how

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http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294940A1.pdf (Chairman Genachowski) ("Ensuring that all Americans have access to affordable broadband service is a national priority – one that the Commission is actively working on as part of our National Broadband Plan.").

[2] 123 Stat. at 516 (to be codified at 47 U.S.C. § 1305). Congress has also declared that it is "the policy of the United States . . . to promote the continued development of the Internet and other interactive computer services and other interactive media." 47 U.S.C. § 230(b). Robust broadband deployment directly advances the goal of promoting advanced communications services that depend on broadband Internet access to thrive.

[3] 47 U.S.C. § 157 note.

[4] *See* Report and Order and Further Notice of Proposed Rulemaking, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 5101, ¶ 1 (2007), *aff'd, Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008); *see also* Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, ¶¶ 3 n.8, 8 (2005) ("*Wireline Broadband Order*") (the 1996 Act provides the Commission with "express directives . . . to encourag[e] broadband deployment, generally, and promot[e] and preserv[e] a freely competitive Internet market, specifically"), *aff'd, Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

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they are educated and entertained, and care for themselves and each other."[5] Beyond that, broadband is an engine of investment and economic growth in its own right – even in the current downturn[6] – as well as a platform for innovation and growth in other sectors of the economy. "Especially in otherwise isolated areas, high-speed Internet access puts people in contact with resources that are physically out of reach, improving individual welfare by increasing access to educational, medical, commercial, and professional resources. Positive externalities resulting from broadband such as increased economic growth and improved government services also improve the community's overall welfare, benefiting both Internet users and nonusers."[7]

The full realization of the enormous benefits of broadband will require aggressive action in both the public and private spheres. The Commission's deregulatory policies with respect to broadband Internet access service have been remarkably successful in driving the deployment and adoption of broadband services. Between 1999 and 2007, the number of broadband

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[5] Notice of Inquiry, *In re A National Broadband Plan for Our Future*, 24 FCC Rcd 4342, ¶ 4 (2009).

[6] AT&T alone expects to invest $17-18 billion in its networks in 2009. *See* AT&T News Release, *AT&T to Invest More than $17 Billion in 2009 to Drive Economic Growth* (Mar. 10, 2009), *available at* http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26597.

[7] John M. Peha, The Brookings Institution, *Bringing Broadband to Unserved Communities*, at 5 (July 2008), *available at* http://www.brookings.edu/~/media/Files/rc/papers/2008/07_broadband_peha/07_broadband_peha.pdf; *see also* Comments of AT&T Inc., *In re A National Broadband Plan for Our Future*, GN Docket No. 09-51, at iii (filed June 8, 2009) ("*AT&T NBP Comments*") (Broadband "can enable the transportation system to run more smoothly, deliver new efficiencies to the electric grid, expand access to the health-care system while improving its quality, provide new work options that enable us to cut travel and reduce emissions, connect students to expanded educational resources, bring increased effectiveness to government, and otherwise improve the lives of citizens in countless ways that we have only begun to understand.").

connections in the United States increased from fewer than 3 million to more than 121 million.[8] Today, broadband services are available to approximately 90% of American households, and 66% of households currently subscribe to a broadband service.[9] Even as usage has expanded, moreover, broadband speeds have increased and prices have fallen.[10]

At the same time – and despite much effort – the national goal of universal broadband service remains elusive. Eight to ten percent of households still do not have access to broadband, and many more than that have access but choose not to subscribe. As the *CITI Report* makes clear, those figures are the result of realities – such as the high cost of bringing broadband to certain parts of the country, and the correlation between low income and low broadband subscribership – that will not change on their own.[11] Rather, sustained government action is necessary to expand broadband availability in high-cost areas of the country, and to narrow and eventually eliminate the gap between broadband availability and subscription.[12]

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[8] *See* FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of December 31, 2007*, at Table 1 (Jan. 2009) ("*High-Speed Services for Internet Access, Dec. 31, 2007*"), *available at* http://hraunfoss.fcc.gov/edocs_public/ attachmatch/DOC-287962A1.pdf (showing 121,165,311 high-speed lines as of December 2007).

[9] *See* Robert C. Atkinson & Ivy E. Schultz, Columbia Inst. For Tele-Info., *Broadband in America: Where It Is and Where It Is Going*, at 25-26 (Nov. 11, 2009) ("*CITI Report*"), *available at* http://www.broadband.gov/docs/Broadband_in_America.pdf; *see also AT&T NBP Comments*, at 4-5.

[10] *See* Federal Trade Commission Staff Report, *Broadband Connectivity Competition Policy*, at 10-11 (2007), *available at*, http://www.ftc.gov/reports/broadband/v070000report.pdf; *AT&T NBP Comments*, at 80.

[11] *See CITI Report*, at 7, 70.

[12] *See* Comments of AT&T Inc. on the Report of the Columbia Institute for Tele-Information, *International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act*, GN Docket Nos. 09-47, 09-51, and 09-137, at 9-12 (filed Dec. 4, 2009) ("*AT&T Comments on CITI Report*").

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These actions, however, will be expensive. Congress's goal of universal broadband access cannot be achieved without massive new investments in infrastructure. The customers who are easiest to serve already have access to broadband; the remaining unserved customers overwhelmingly live in sparsely populated, high-cost areas that cannot economically be served absent government support. Indeed, Commission staff has estimated that it will take an investment of approximately $350 billion to make available 100 mbps broadband service to all American consumers.[13] Demand-side measures – such as digital literacy programs, free or subsidized computers, and broadband service subsidies – will likewise require the outlay of public funds. Especially in an era of budget deficits and fiscal belt-tightening, universal broadband service is simply too costly to be achieved through government funding alone. Investment from service providers is critical, both for upgrading current networks and providing universal service. As Commission staff observed just last week, a "[g]uiding principle[]" for the Commission as it formulates the National Broadband Plan is that "[p]rivate sector investment is essential."[14] It is the responsibility of this Commission – as well as state regulators – to pursue

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[13] *See* FCC National Broadband Plan, *September Commission Meeting: 141 days until Plan is due*, at 45 (Sept. 29, 2009), *at* http://www.fcc.gov/Daily_Releases/Daily_Business/2009/db0929/ DOC-293742A1.pdf; *see also* FCC Transcript, *National Broadband Plan Workshop: Technology/Fixed Broadband*, at 20:1-4 (Aug. 13, 2009), *at* http://www.broadband.gov/docs/ws_ 05_tech_ fixed_transcript.pdf (Adam Drobot, CTO, Telcordia) ("[W]hoever pays the bill to wire up the nation at high broadband speeds, in our estimation, is something that would be well north of $300 billion."); FCC Transcript, *National Broadband Plan Workshop: Deployment – Wired*, at 57:22-58:5 (Aug. 12, 2009), *at* http://www.broadband.gov/docs/ws_02_deploy_wired_ transcript.pdf (Craig Moffett, VP and Sr. Analyst, U.S. Telecommunications, Cable and Satellite, Sanford Bernstein) ("[I]f I were to just scale up to what Verizon's doing, I'm talking about $300 billion-plus for the country. Scaled for sort of geographically adjusted, I'm at probably a half a trillion dollar project or somewhere in that range, maybe more to do something like that.").

[14] FCC Staff Presentation, *National Broadband Plan Policy Framework*, at 5 (Dec. 16, 2009) ("*NBP Policy Framework*"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295259A1.pdf.

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regulatory policies that will remove disincentives to private investment and encourage operators to extend service to remaining customers who still lack access to broadband.

B. POTS Service and the Legacy PSTN Are Diverting Critically Needed Funds that Could Be Used for Broadband Deployment

Foremost on the Commission's agenda for enabling private investment to facilitate widespread deployment of broadband infrastructure should be the elimination of regulatory requirements that divert resources from broadband to the PSTN.

1. If broadband and IP-based services represent the future of telecommunications, the PSTN and POTS are now relics of an earlier era. The business model that sustained circuit-switched voice service over the last century is dying. For decades, POTS was the primary if not the exclusive option for voice communications, and nearly all households subscribed. But in recent years technological change and market forces have made POTS and the PSTN increasingly obsolete. Those same forces make a full transition to broadband inevitable.

Consumers today have more options for voice services than ever before. Over 99% of Americans live in areas with cellular phone service, and approximately 86% of Americans subscribe to a wireless service.[15] Many of these individuals see no reason to purchase landline service as well. Indeed, the most recent data show that more than 22% of households have "cut the cord" entirely.[16] And, as industry analysts have found, this trend away from landline service

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[15] Thirteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 24 FCC Rcd 6185, ¶ 2 (2009).

[16] Stephen J. Blumberg & Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, CDC, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January - June 2009*, at 1-2 (Dec. 16, 2009) ("Blumberg & Luke"), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200912.pdf (statistics as of June 2009).

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"is accelerating, as secular and cyclical impacts force consumers to rethink the relevance of wireline."[17]

Demand for VoIP service – from both cable companies and over-the-top providers such as such as Vonage, Skype, and many others – is also booming. At least 18 million households currently use a VoIP service,[18] and it is estimated that by 2010, cable companies alone will be providing VoIP to more than 24 million customers; by 2011, there may be up to 45 million total VoIP subscribers.[19]

In view of the range of alternatives for voice service – many of which offer distinct advantages over traditional landline service – it is not surprising that the POTS business model is in a precipitous decline. The numbers speak for themselves. Today, less than 20% of Americans rely exclusively on POTS for voice service.[20] Approximately 25% of households have abandoned POTS altogether, and another 700,000 lines are being cut *every month*.[21] From 2000

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[17] Jason Armstrong, et al., Goldman Sachs, *The Quarter in Pictures: 3Q2009 North America Communications Services Review*, at 20 (Nov. 2009); *see also* Blumberg & Luke, at 1 (in addition to the 22.7% of customers who have already abandoned wireline service, another 14.7% of households now make all or nearly all of their calls on wireless phones).

[18] The National Cable Television Association estimates that 16 million customers obtain VoIP service from a cable company, and Vonage alone serves an additional 2.6 million customers. *See* Comments of AT&T, *In re High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, at 26 (filed Nov. 26, 2008) ("*AT&T Universal Service Comments*").

[19] *See* Jessica Reif Cohen, et al., Bank of America/Merrill Lynch, *Battle for the Bundle: The Internet Goes Negative*, at 13, Table 12 (Aug. 19, 2009) (estimating 24.2 million subscribers at YE10); *see also AT&T Universal Service Comments*, at 28 (citing estimates of 45 million VoIP customers by 2011).

[20] *See Ex Parte* Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, GN Docket No. 09-51, at 6 (filed Nov. 24, 2009) ("AT&T *ex parte* filing") (citing National Center for Health Statistics data).

[21] *See* Craig Moffett, Bernstein Research, *Weekend Media Blast: The Wireline Problem*, at 2 (May 15, 2009) ("Moffett, *Weekend Media Blast*").

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to 2008, the number of residential switched access lines has fallen by almost half, from 139 million to 75 million.[22] Non-primary residential lines have fallen by 62% over the same period; with the rise of broadband, few customers still need a second phone line for dial-up Internet service. Total interstate and intrastate switched access minutes have fallen by a staggering 42% from 2000 through 2008.[23] Indeed, perhaps the clearest sign of the transformation away from POTS and towards a broadband future is that there are probably now more broadband connections than telephone lines in the United States.[24]

And the customers who keep POTS are using it less. Wireless phones, email, instant messaging, blogs, and social networking sites have greatly reduced the need for legacy voice services, even for customers who retain POTS service. Between 2000 and 2008, aggregate switched access minutes *per line* declined by 13.2%.[25]

These trends are exacting a substantial toll on ILEC revenue from POTS service, which fell from $178.6 billion in 2000 to $130.8 billion in 2007, a 27% decrease.[26] This revenue trend, moreover, is irreversible for the reasons identified above. One industry analyst has noted that

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[22] *See* AT&T *ex parte* filing, at 4 (citing Table 8.2 of the *Trends in Telephone Service* report, supplemented with AT&T model data).

[23] *See id.* at 3 (citing Tables 10.1 and 10.2 of *Trends in Telephone Service* report, supplemented with AT&T model estimates).

[24] *See AT&T NBP Comments*, at iv & n.5 (citing *High-Speed Services for Internet Access, Dec. 31, 2007*, at Table 1 (showing 121,165,311 high-speed lines as of December 2007, with an annual rate of increase over 30 percent); FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2007*, at Table 1 (Sept. 2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf (showing 158,436,758 end-user switched access lines as of December 2007, with an annual rate of decrease over 5 percent)).

[25] *See* AT&T *ex parte* filing, at 3 (citing Tables 10.1 and 10.2 of *Trends in Telephone Service* report, supplemented with AT&T model estimates).

[26] *See id.* at 2 (citing Table 2 of the Telecommunications Industry Revenue Report, released Sept. 2009).

"wireline voice revenues are likely to decline into perpetuity with the only question being at what pace."[27] Another was more blunt: focusing on consumers' increasing reliance on wireless and cable VoIP, he predicted that within five years only 36% of households will subscribe to POTS, and described the resulting revenue loss as "a death sentence."[28]

The decline in POTS *revenues* is of course only half the picture, but the other half is equally grim. While POTS revenues are plummeting, costs are not. Every time a household or business cuts its landline, the fixed costs of providing POTS must be spread over a smaller customer base, thus raising the average cost of serving the remaining customers. "[P]erhaps more than any other business in the world, the wireline TelCo is a fixed cost business."[29] According to one estimate, the average per-line cost of maintaining the legacy network has risen from $43 per year in 2003 to $52 per year today.[30]

2. These trends have profound implications for broadband deployment. The legacy PSTN network – which is rapidly hemorrhaging customers and revenue – is now diverting much-needed funds from investments in broadband networks. By one estimate, in 2008, traditional ILECs spent in the aggregate approximately $28 billion on capital expenditures, with over fifty percent of this sum (52.2%) going to the legacy network.[31] In other words, a huge proportion of the capital resources available to some of the largest telecommunications providers in the

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[27] Greg MacDonald, et al., National Bank Financial, *U.S. Telecom Services*, at 14 (Oct. 1, 2009) (emphasis omitted).

[28] Moffett, *Weekend Media Blast*, at 2.

[29] *Id.*

[30] *See* Saul Hansell, *Will the Phone Industry Need a Bailout, Too?*, N.Y. Times (May 8, 2009), *available at* http://bits.blogs.nytimes.com/2009/05/08/will-the-phone-industry-need-a-bailout-too/.

[31] *See CITI Report*, at 29-30.

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country is being directed, not towards improving broadband speeds or bringing broadband to more customers, but rather towards maintaining an increasingly obsolete network that is no longer capable of providing the services and features that American consumers and policymakers demand.

The collapsing POTS business model and the related diversion of funds from broadband efforts raise questions of public, not private, priorities. In most industries, a dramatic fall in demand for an outdated product would lead firms to stop producing the old product and focus their investment and resources on newer ones. No one prevented horse-drawn carriage manufacturers from switching to automobiles the moment it became clear that the antecedent technology was obsolete. But many network operators do not have this luxury. ILECs were historically parties to a regulatory compact that involved exclusive franchises in exchange for a commitment to offer service to all customers in a serving area at reasonable rates. That commitment was codified in an overlapping regime of federal and state regulations, including tariff requirements, obligation-to-serve rules, and carrier-of-last-resort obligations.[32] And, while the exclusive franchises that formed the *quid* of that regulatory *quid pro quo* have long since vanished, the core obligations on ILECs largely remain in place and preclude service providers from abandoning POTS in response to technological change and market demand. The combined effect of these legacy regulations is to require ILECs to dedicate substantial resources to an antiquated network and outdated service, thus hindering their ability to make the investments necessary to achieve ubiquitous broadband deployment.

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[32] *See* Notice of Proposed Rulemaking, *In re High-Cost Universal Service Support*, 23 FCC Rcd 1495, ¶ 23 (2008) ("Historically, only incumbent LECs received universal service support and had the obligation to serve customers subject to rates and terms specified by state regulatory authorities: so-called "carrier of last resort" obligations.").

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The Commission has faced a similar dilemma before. In 2002, the Commission phased out longstanding rules that required wireless carriers to provide service in accordance with certain analog standards. In abandoning those rules, the Commission explained:

> [T]he analog requirement places a financial burden on cellular licensees who would prefer to use their spectrum and other resources on digital technology rather than setting aside a portion to support their analog facilities. Cellular licensees that deploy digital technologies must also maintain a minimum scale analog network. These cellular licensees incur operation and maintenance costs for two mobile telephony networks in order to comply with Commission rules. Also, by maintaining two networks, operation and maintenance costs associated with the digital network may be higher because the carrier is not able to optimize the system as efficiently as it would if there was only one network. . . . The analog requirement prevents cellular licensees from choosing to efficiently utilize their spectrum by installing an all-digital network and potentially providing additional advanced services.[33]

The same considerations apply here. ILECs are presently forced to maintain two networks, driving up costs and diverting resources from the advanced broadband network that is undoubtedly the future of communications. It makes no sense to require service providers to operate and maintain two distinct networks when technology and consumer preferences have made one of them increasingly obsolete. For precisely this reason, a coalition of independent LECs has already recognized the inevitability of a transition to broadband and the retirement of the PSTN, and it has formulated a strategy for accomplishing that transition with minimal disruption.[34] The Commission should promptly do the same.

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[33] *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, 17 FCC Rcd 18401, ¶ 12 (2002) ("*CMRS Analog Sunset Order*").

[34] *See* Letter from Stuart Polikoff, OPASTCO, to Marlene H. Dortch, FCC, GN Docket No. 09-51, at 2 (filed Oct. 5, 2009) (proposing a seven-year transition of high-cost universal service support from POTS to broadband, after which "the public switched telephone network is fully converted to a broadband network").

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II. THE COMMISSION SHOULD TAKE SEVERAL STEPS TO FACILITATE THE TRANSITION TO BROADBAND

As the above discussion makes clear, market forces and innovation are *already* making POTS and the PSTN obsolete; the only question is whether the transition will be accomplished efficiently and with minimal disruption, or whether instead POTS and the PSTN (and the obligation to maintain that network) will continue to drain resources from broadband investment for years to come. The Commission can play a crucial role in this transition by establishing a date-certain for the sunset of the PSTN and setting the ground rules for an orderly transition to an all-broadband communications infrastructure. In this Part, AT&T outlines key actions that the Commission should take now in order to effectuate a smooth transition to broadband.

A. Setting a Firm Deadline for Sunset of the PSTN

Perhaps the most important question relating to the logistics of phasing out the PSTN involves setting a deadline for the sunset of the PSTN and POTS. To that end, the Commission should issue a Notice of Inquiry that explains the importance of a firm deadline for the phaseout of POTS service and the PSTN, and it should ask what that deadline should be.

The Commission's past use of deadlines in effecting similar transitions should provide a wealth of data for comments. The transition from analog to digital broadcasting, for example, was "decades in the making and . . . s[aw] a number of [purported] deadlines come and go."[35] In October 2005, however, Congress finally set a firm deadline of February 2009 for the completion of the transition.[36] Many commenters believed at the time that this deadline was too ambitious,

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[35] John Eggerton, *Ready or Not, Here Comes DTV*, Broadcasting & Cable (Feb. 18, 2008), *at* http://www.broadcastingcable.com/article/112503-Ready_or_Not_Here_Comes_DTV.php.

[36] *See* Digital Television Transition and Public Safety Act of 2005, Pub. L. No. 109-171, §§ 3001-3002, 120 Stat. 4, 21-22 (2006).

and that the transition would be plagued with logistical problems.[37] But the use of a firm deadline galvanized all stakeholders, and the transition was widely regarded as a success. As then-Acting Chairman Copps explained the day after the transition: "Five years ago, no one knew when the DTV transition would end. And yet yesterday broadcasters, cable and satellite providers, consumer electronics manufacturers and retailers – and, most importantly, consumers – were by-and-large ready to turn off full-power analog signals for good."[38] Just four years after Congress established a firm date for the transition – and with only one minor extension of the deadline[39] – all Americans now have access to digital television, and the Commission has reclaimed billions of dollars worth of valuable spectrum.

The transition from analog to digital commercial mobile radio service ("CMRS") standards is also instructive. To facilitate competition and provide uniform standards for the nascent cellular phone market, in the early 1980s, the Commission required all wireless carriers to provide service in accordance with an analog standard known as "Advanced Mobile Phone Service." By 2002, the Commission concluded that those rules were no longer necessary to promote competition and, indeed, were actually deterring investment in advanced digital

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[37] *See, e.g.*, Edmund L. Andrews, *Digital TV, Dollars and Dissent: The Political Battle Grows Over the Use of New Broadcast Technology*, N.Y. Times (Mar. 18, 1996).

[38] Remarks of Acting FCC Chairman Michael J. Copps in the Wake of the Digital Television Transition (June 13, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291388A1.pdf; *see also* Statement of Commissioner Jonathan S. Adelstein on the Digital Television Transition (June 13, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/ attachmatch/DOC-291389A1.pdf ("Things went about as smoothly as we could have hoped."); *id.* ("[T]he Commission's outreach effort has been vast, comprehensive and effective, reaching from every public housing unit in urban areas and to every farm in rural parts of America.").

[39] *See* DTV Delay Act, Pub. L. No. 111-4, § 2, 123 Stat. 112 (2009) (extending transition date to June 12, 2009).

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networks.[40] After deciding to abandon the analog standard, the Commission established a five-year phaseout period to eliminate the obsolete standard quickly while also ensuring that public safety officials, persons with disabilities, and small and rural carriers would have adequate time to adjust to the new technology.[41] The Commission should invite comments on the extent to which this transition, too, could provide a model for the broadband transition.

In addition to the need for inquiry regarding the existence of a firm deadline for the phaseout of the PSTN, the *length* of the transition period is also a critical consideration. As explained above, the POTS business is in terminal decline. For that reason, it is almost certainly the case that the longer the PSTN must be maintained, the more resources will be diverted away from much-needed investments in broadband. The Commission should therefore seek comment on how quickly the transition can be accomplished. Even if a proposed deadline appears a stretch at first glance, the success of the analog-to-digital transitions for CMRS and broadcast television would appear to support the conclusion that, with proper leadership from the Commission, service providers, consumers, government agencies, equipment manufacturers, the public safety community, and other stakeholders can work together to make the transition happen smoothly and in a timely manner.

B. Creating the Preconditions for a Successful Transition Through the Resolution of Several Longstanding Issues

There are additional concrete steps the Commission can and should take now to facilitate the transition to broadband. A central goal of telecommunications regulation at the state and federal level has long been – and remains today – the provision of universal service at affordable rates. Today, that goal is served by a complex morass of state and federal regulatory

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[40] *See CMRS Analog Sunset Order* ¶ 12.

[41] *See id.* ¶¶ 17, 22-30.

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requirements that creates enormous inefficiencies in the industry. The retirement of the PSTN and the transition to broadband and IP-based services represents an opportunity not only to bring the benefits of broadband to all Americans, but also to replace that regulatory morass with a more coherent regulatory framework that enables the Commission to achieve its policy goals. After the transition, implicit subsidies that now enable widespread availability of POTS – while at the same time creating substantial opportunities for arbitrage and consuming resources of providers and regulators alike – will be replaced with explicit support mechanisms that ensure the widespread availability of broadband. The current intercarrier compensation regime – with all the arbitrage and inefficiencies associated with that regime – will be replaced with the unregulated IP-based model that currently characterizes the exchange of Internet traffic. And overlapping (and at times competing) jurisdictional domains will be replaced with coherent federal regulation that is consistent with the any-distance nature of communications today.

Critically, the Commission *already* has before it proceedings that will enable it to take significant strides towards each of these goals. These proceedings are fully briefed and ripe for decision *today*, and they must be addressed promptly. Indeed, the resolution of these proceedings, while not sufficient to completing the transition to broadband, is an indispensable first step: unless these issues are resolved promptly, the industry will be ill-prepared to move seamlessly and efficiently to a broadband future.

Commission Jurisdiction. The boundaries of state and federal jurisdiction over communications have historically been predicated on the ability to discern the end points of individual telephone calls and to determine whether those calls are intrastate or interstate. That distinction has long been tenuous, and the rapid migration to IP-based and wireless services has pushed it beyond the breaking point. The integrated packages of capabilities and features that

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increasingly comprise the communications marketplace undermine the historical understanding that a "call" has only two end points. Customers today can access information and reach individuals in numerous places simultaneously, using numerous applications that are typically offered as part of a single integrated service package. And mobility – long a defining characteristic of wireless service – is increasingly becoming a feature of other business and consumer applications as well, rendering it increasingly impossible to determine where communications begin and end.[42]

The Commission's assertion of its own jurisdiction has not kept pace with these rapid technological developments. In the *Vonage Order*,[43] the Commission articulated the importance of a procompetitive, deregulatory environment for the provision of VoIP and concluded that legacy state common-carrier regulation is incompatible with the federal interest in permitting competitive forces to drive the development and deployment of the service (as well as the broadband facilities over which it rides). But, although the Commission made clear in that order that the federal jurisdictional principles it applied in that order would apply not only to nomadic service but also to facilities-based VoIP,[44] it has not yet followed through on that statement and

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[42] Moreover, the prospect of using telephone numbers to distinguish the end points of a call by assuming they are physically tethered to a particular geographical location is less valid with every passing day, especially since mobile wireless numbers now exceed wireline numbers. *See* FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2007*, at Tables 1, 14 (Sept. 2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf (showing 158,436,758 end-user switched access lines and 249,235,715 wireless subscribers as of December 2007).

[43] Memorandum Opinion and Order, *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004) ("*Vonage Order*"), *petitions for review denied, Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

[44] *See id.* ¶ 25 n.93 (stressing that the "integrated capabilities and features" of VoIP "are inherent features of most, if not all, IP-based services having basic characteristics found in DigitalVoice, including those offered or planned by facilities-based providers"); *id.* ¶ 32

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expressly foreclosed the states from asserting jurisdiction over such offerings. As a result, states continue to express uncertainty regarding the scope of their jurisdiction over new and evolving IP-based services, thus undermining the regulatory certainty and stability that is necessary to foster deployment of VoIP and the broadband facilities over which it rides.[45]

The Commission should act promptly to resolve that uncertainty and to expressly establish its jurisdiction over broadband and IP-based services, including facilities-based VoIP. As AT&T and others have explained in detail,[46] the historical jurisdictional division between state and federal jurisdiction is fundamentally incompatible with IP-based technology and the multiple, simultaneous communications that IP-based technology enables. Recognition of that principle, now, is critical to establishing a proper understanding of the respective roles of this Commission and the states as the industry transitions to broadband and retires the PSTN.

Intercarrier Compensation and Universal Service. The transition away from POTS and the PSTN also implicates important policy questions with respect to universal service. Despite Congress's express admonition that implicit subsidies should be eliminated and replaced with explicit universal service funding mechanisms, implicit subsidies remain endemic in today's communications marketplace, particularly in the intercarrier compensation regime, distorting competition and creating numerous opportunities for arbitrage. At the same time, the federal

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(explaining that *all* services, including facilities-based services, sharing Vonage's "basic characteristics" – including "a requirement for a broadband connection from the user's location; a need for IP-compatible [customer premises equipment]; and a service offering that includes a suite of integrated capabilities and features, able to be invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically" – would be equally exempt from state regulation).

[45] *See* Letter from Robert W. Quinn, AT&T, to Chairman Kevin Martin, FCC, WC Docket Nos. 04-36 and 06-122, CC Docket No. 96-45, at 2 (July 17, 2008) (providing illustrative examples of state proceedings).

[46] *See, e.g., id.* at 3-10.

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contribution mechanism for the federal Universal Service Fund is badly broken. Due to the downward spiral of the POTS business model, assessments for universal service – which are based on interstate telecommunications revenues – are being drawn from a constantly shrinking revenue base. The contribution factor will shortly exceed 14%, and this number will only increase as POTS revenues continue to fall.[47] Meanwhile, the high-cost Universal Service Fund is being used to support legacy voice services even as universal broadband access remains an elusive goal.

Universal service remains a critically important mechanism for ensuring that all consumers have access to the nation's telecommunications network. The difficulty, however, is that the network they have access to is increasingly obsolete. The challenge, then, is to transition universal service alongside the transition to a broadband telecommunications infrastructure – *i.e.*, to make universal service policies "flexible enough to adjust to changes in technology and demand for broadband services."[48] Customers who rely on universal service today should not be left behind as the nation moves to broadband and IP-based services. But the nation *is* moving, and the Commission must therefore act to ensure that universal service remains relevant and achievable. These considerations raise several issues on which the Commission should act now, in order to establish the groundwork for a complete migration to broadband and away from the PSTN.

First, the Commission should reform intercarrier compensation. On this topic perhaps more than any other, the time for platitudes is over. As AT&T has explained at length in prior

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[47] *See* Public Notice, *Proposed First Quarter 2010 Universal Service Contribution Factor*, DA 09-2588, CC Docket No. 96-45, at 3 (Dec. 11, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-2588A1.pdf.

[48] *NBP Policy Framework*, at 10.

comments, the current intercarrier compensation regime is plagued with inefficiencies and distortions that are undermining competition and deterring investment.[49] One of the many benefits of a transition to broadband and IP-based services would be the mooting of nearly all issues pertaining to intercarrier compensation. If voice service becomes just another application on a high-speed, packet-switched network, then switched access charges, reciprocal compensation, and any other forms of intercarrier compensation will presumably disappear – along with the inefficiencies, regulatory disparities, and arbitrage opportunities that currently accompany these charges. But the Commission needs to start that transition now. If it does not begin the hard work now of moving carriers away from implicit subsidies and arbitrage-based business models through comprehensive intercarrier compensation reform, it will be next to impossible to shift to an IP-based framework for the exchange of all traffic down the road.

Second, the Commission should make clear that it has statutory authority under 47 U.S.C. § 254 and/or Title I to begin an immediate transition of high-cost universal service support from POTS to broadband. Section 254 makes clear that the Commission does possess such authority.[50] Two of the enumerated universal service principles instruct the Commission to promote universal access to "advanced telecommunications *and information services*"[51] –

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[49] *See AT&T Universal Service Comments*, at 1-7 ("Under today's intercarrier compensation framework, designed for a pre-Internet and pre-competition era, identical functionalities are priced at dramatically different levels depending upon jurisdiction, technology, and regulatory status. Those regulatory disparities distort competition and investment while promoting arbitrage and sometimes outright fraud."); *see also AT&T NBP Comments*, at 83-93.

[50] The Joint Board has already concluded that "[broadband] should be eligible for support under section 254, with the goal of making it available to all." *In re High-Cost Universal Service, Report of the Federal-State Joint Board on Universal Service*, 22 FCC Rcd 20477, ¶¶ 55-62 (2007).

[51] 47 U.S.C. § 254(b)(2)-(3) (emphasis added).

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evincing Congress's expectation that the Commission's universal service priorities would not be limited to legacy voice services. And the definition of "universal service" in Section 254 also rejects a static focus on legacy technologies and services: "Universal service is an *evolving* level of telecommunications services that the Commission shall establish periodically . . . taking into account advances in telecommunications and information technologies and services."[52] The current list of supported services – which only includes POTS-based features such as access to the PSTN, access to interexchange service, and access to operator and directory services – does not adequately reflect the technological innovations of recent years: "[M]any of the Commission's nine supported functionalities and services are obsolete in a broadband world where voice is simply one of many applications."[53] The Commission should therefore clarify that it has the authority to fund broadband, including broadband information services, pursuant to its authority under Section 254, and it should establish a framework that does so in a meaningful manner.

Third, and relatedly, the Commission should alter its methodology for distributing universal service funds to focus on broadband, thereby facilitating broadband deployment and in the process preparing stakeholders for a complete shift to broadband and away from the PSTN. AT&T has offered a detailed proposal – similar to the programs suggested by the Joint Board – for transitioning high-cost universal service support from legacy services to broadband.[54] That

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[52] *Id.* § 254(c)(1) (emphasis added).

[53] Comments of AT&T, Inc., *In re A National Broadband Plan for Our Future*, NBP Public Notice #19, at 15 (filed Dec. 7, 2009) ("*AT&T NBP Public Notice #19 Comments*"); *see also* 47 C.F.R. § 54.101(a) (listing supported services).

[54] *See* Comments of AT&T Inc., *In re High-Cost Universal Service Support*, WC Docket No. 05-337, at 19-25 (filed May 8, 2009); Comments of AT&T Inc., *In re High Cost Universal Service Support*, WC Docket No. 05-337 (filed April 17, 2008).

proposal entails the creation of two new funds to promote universal broadband access: a Broadband Incentive Fund for wireline service and an Advanced Mobility Fund for mobile wireless services. Ultimately, all high-cost support would be awarded through these programs, with service providers submitting applications for funds to construct new broadband facilities in unserved areas. Participation in the program would be voluntary, thereby ensuring that funding is adequate to support the planned projects and to ensure that all consumers have access to service. AT&T's proposal would lay the groundwork for a successful transition of the Universal Service Fund to broadband, and it should be adopted without delay.

Fourth, the Commission must fix the universal service contribution regime. As noted above and explained in detail elsewhere, the current methodology – which is based on interstate telecommunications revenues – is not sustainable, forward-looking, or competitively neutral. The Commission should replace it, now, with a telephone numbers and connections-based framework that would fund universal service "in a manner that more closely reflects the changing cast of providers who benefit from the shift to broadband."[55]

C. Seeking Comment on a Range of Legal and Policy Questions Related to the Transition

At the same time as it moves promptly to resolve longstanding issues that will establish the preconditions for a successful transition to broadband, the Commission should also set its sights further down the road, to anticipate potential challenges to that transition and to ensure that, after the retirement of the PSTN, the Commission is able to continue to fulfill the policy goals established by Congress. We explained above the importance of establishing a firm deadline for the retirement of the PSTN and recommended including that topic in a Notice of

[55] *AT&T NBP Public Notice #19 Comments*, at 3-5.

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Inquiry. In this section, we address other issues on which the Commission should seek comment in that Notice of Inquiry.

1. Carrier-of-Last-Resort and Other Potential Legacy Obstacles to the Transition

The Notice of Inquiry should seek comment on whether and the extent to which legacy state legal requirements are an obstacle to universal broadband access. As noted above, incumbent LECs historically provided service pursuant to an exclusive franchise that was coupled with extensive "carrier of last resort" ("COLR") and other legacy requirements that imposed an obligation to serve all customers, at regulated rates, within a particular area. The exclusive franchise portion of that regulatory compact has long since vanished, but ILECs in many cases remain obliged to provide basic voice service throughout their service areas, including in rural and high-cost areas, often at rates significantly below cost.[56] Because these state requirements are not generally imposed on cable companies or competitive providers of voice and data service, they permit competitive providers to focus on the customers who are easiest to serve, while leaving ILECs bound by COLR rules to serve the highest-cost and most-difficult-to-serve customers. Under these circumstances, ILECs may have little incentive to upgrade their networks or invest in broadband in high-cost areas. This investment will continue to lag as long as ILECs are forced to keep providing legacy services at below-cost rates.[57]

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[56] *See, e.g.*, General Order, *In re Possible amendments to the "Local Competition Regulations"*, Docket No. R-29564, at 22, App. A § 601(A) (La. P.S.C. Dec. 14, 2006) (ILECs "are obligated to provide basic local service to all customers upon request for such service within the ILECs' historically designated service areas until relieved of this obligation by the Commission"); *see also AT&T NBP Public Notice #19 Comments*, at 19-20 (providing overview of COLR requirements).

[57] *Accord United States Telecom Ass'n v. FCC*, 290 F.3d 415, 424-25 & n.2 (D.C. Cir. 2002) ("low UNE prices" that result from TELRIC have the "direct effect" of "reduc[ing] the

Equally important, to the extent these requirements require the continued availability of POTS service, they may serve as a legal obstacle to the retirement of the PSTN and, thus, as an impediment to the transition to broadband.

The Commission accordingly should seek comment on whether and the extent to which legacy COLR and related obligations conflict with the federal policy objective of universal broadband deployment and whether such obligations could reasonably coexist with a phaseout of POTS and the PSTN.[58] In AT&T's view, the transition away from the PSTN to broadband and IP-based services cannot occur successfully without transitioning away from the legacy state regulatory requirements that force continued investment in and maintenance of the PSTN. That transition will require the elimination not only of all legacy state requirements that mandate the continued provision of POTS, but also any such requirements that hinder the retirement of physical network assets used to provide POTS. The Commission should accordingly seek comment on how best to accomplish that transition. It should ask, for example, whether and the extent to which the Commission must foreclose state regulation of all broadband and IP-based services; what steps the Commission can take to encourage states voluntarily to eliminate legacy requirements that impede the transition; and whether the Commission should make federal

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incentives for innovation and investment in facilities" and "inherently tend to expand" that effect).

[58] *Accord Vonage Order* ¶ 21 & n.78 (noting FCC's "long-standing national policy of nonregulation of information services" and its unwillingness to apply "public-utility type" regulations to such services); *Vonage Holdings Corp. v. Minnesota Pub. Utils. Comm'n*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003) (acknowledging "the recognizable congressional intent to leave the Internet and information services largely unregulated"), *aff'd on other grounds*, 394 F.3d 568 (8th Cir. 2004); *see also Geier v. American Honda Motor Co.*, 529 U.S. 861, 873 (2000) (state law may not "stand[ ] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

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universal service funding for broadband conditional on states removing legacy POTS obligations.

2. ILEC Obligations under Section 251 of the 1996 Act

The Commission should also use a Notice of Inquiry to seek comment on how the pro-competitive, de-regulatory regime set forth in Section 251 of the 1996 Act would apply after the transition to broadband.

First, the Commission should invite comment regarding the role of unbundling under 47 U.S.C. § 251(c)(3) after the sunset of the PSTN and POTS. In light of the development of a competitive broadband market, the Commission has refused to impose unbundling and other legacy common-carrier regulations on next-generation loop architecture.[59] That deregulatory policy has resulted in an enormous amount of investment in broadband and made the goal of universal broadband within reach.[60] The Commission should seek comment on the best ways to build upon those successes as the industry transitions to broadband and phases out the PSTN.

Second, the Commission should solicit comment on the proper role of state commission-approved interconnection agreements in connection with the transition from the PSTN to

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[59] *See* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 ¶¶ 272-280, 288-295 (2003) (subsequent history omitted); *see also* Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798 (2002), *aff'd in part, vacated in part, and remanded, Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9th Cir. 2003), *rev'd and remanded, National Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *Wireline Broadband Order*; Declaratory Ruling, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901 (2007); Memorandum Opinion and Order, *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, 21 FCC Rcd 13281 (2006).

[60] *See, e.g.*, Comments of AT&T Inc. on Berkman Center Report, at 28-29, GN Docket Nos. 09-47, 09-51, and 09-137 (filed Nov. 16, 2009); *AT&T Comments on CITI Report*, at 9-10.

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broadband. Those agreements establish terms and conditions for access to legacy facilities and services that will be retired as the industry transitions to broadband. The Commission should seek comment on how best to ensure that the existence of these agreements does not serve to impede the transition by preventing providers from retiring legacy facilities and services.

3. Public Safety, Law Enforcement, and Accessibility Issues

The Commission should also seek comment on how the transition from the PSTN to broadband will affect a broad range of social policy programs that the Commission administers. In the VoIP context, the Commission has consistently demonstrated its ability to ensure that federal social policy interests – including, for example, law enforcement, privacy, and disabilities access – are not compromised in the course of introducing new technology.[61] The retirement of the PSTN and the transition to broadband will present similar challenges. As the PSTN declines into oblivion and broadband takes its place, consumers are increasingly relying for their communications needs on services and applications that may fall outside the Commission's traditional regulatory authority. That inevitable migration, which is already underway, requires the Commission to give thought to how best to pursue federal social policy goals in an era when many if not most communications occur using non-traditional services. It makes little sense, for example, to put in place a regulatory structure to serve the needs of law enforcement and public safety but to exclude from that structure IP-based applications that increasingly supplant traditional communications services – doing so would create a law-enforcement-free zone of

[61] *See, e.g.*, First Report and Order and Notice of Proposed Rulemaking, *In re IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 5 (2005) (requiring interconnected VoIP providers to provide E911 service but granting these firms "flexibility to adopt a technological solution that works best for them"), *aff'd, Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); First Report and Order and Further Notice of Proposed Rulemaking, *Communications Assistance for Law Enforcement and Broadband Access and Services*, 20 FCC Rcd 14989, ¶ 8 (2005).

communications that could frustrate national security and public safety, while at the same time compromising competitive neutrality. The Commission should accordingly seek comment on how best to ensure competitive neutrality and sufficiently broad coverage to serve the needs of the public and law enforcement, including how the Commission can meet the needs of law enforcement and public safety in circumstances where most communications occur as applications that run over a broadband network.

The Commission should likewise seek comment on disability issues. As the Commission has recognized, "[p]ersons with disabilities can benefit, perhaps more than any other group of Americans, from advanced services. Advanced services can bring this population significant educational, employment, and recreational opportunities."[62] The Commission accordingly should invite comment on the ways in which persons with disabilities will benefit from the transition to an all-broadband network and steps that would help to ensure a smooth transition for these individuals.

The Commission also should seek comment on how the schools and libraries and rural health care programs would be affected by the phaseout of the PSTN. In particular, comments should address how schools, libraries, and rural health care providers would benefit from the transition, as well as the steps that would have to be taken to ensure a minimally disruptive transition for these entities.

Likewise, the Notice of Inquiry should address how to ensure that the phaseout of the PSTN does not leave individuals who do not use computers without service. There is every reason to believe that such individuals can be accommodated easily in a transition away from the

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[62] Second Report, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 15 FCC Rcd 20913, ¶ 234 (2000); *see also AT&T NBP Comments*, at 51-52.

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PSTN; there are, for example, already inexpensive devices that allow VoIP customers to plug traditional telephones directly into broadband connections.[63] AT&T expects that comments will demonstrate myriad ways to ensure that the transition to broadband does not negatively affect consumers without computers.

4. Eliminating the PSTN Regulatory Superstructure

Finally, the Commission should seek comment on how best to facilitate the transition in light of the plethora of state and federal regulations pertaining to POTS service and the PSTN. As explained above, AT&T's view is that the assertion of federal jurisdiction over broadband and IP-based services is critical to the success of the transition, and that assertion will itself serve to eliminate certain vestigial aspects of federal and state telecommunications regulations (including, for example, separations-related requirements). But certain state and federal public-utility style regulations may remain – *e.g.*, service quality requirements, reporting, recordkeeping, data collection, accounting, and other requirements – that could impede the transition.[64] For example, depreciation and amortization rules may hinder the transition by limiting how quickly carriers may write off retired equipment. The Commission should ask for comments to identify such regulations and to describe whether and how those regulations could obstruct the transition. And, to the extent that such legacy regulations are incompatible with a

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[63] Vonage provides its customers with a small, portable device that allows existing cord or cordless phones to be plugged into any broadband connection. *See* Vonage, *Phone Adapter*, *at* http://www.vonage.com/how_vonage_works_adapters/?lid=adapter_link.

[64] *See, e.g.*, *Vonage Order* ¶ 10 (describing Minnesota public utility regulations a state commission sought to apply to Vonage's VoIP service); Memorandum Opinion and Order, *Petition for Declaratory Ruling That pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, 19 FCC Rcd 3307, ¶ 15 (2004).

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transition away from the PSTN, comments should address how to ensure that such regulations are phased out or displaced so as not to impede that process.

CONCLUSION

The Commission should promptly take the steps discussed above to facilitate a prompt and efficient transition to broadband and retirement of the PSTN.

Respectfully submitted,

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