

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal-State Joint Board on
Universal Service)
_____)

CC Docket No. 96-45

**AT&T OPPOSITION TO PETITIONS FOR RECONSIDERATION FOR CARRYOVER OF
UNUSED FUNDS FOR THE SCHOOLS AND LIBRARIES PROGRAM**

Pursuant to the Commission's Public Notice, DA 01-975, released April 19, 2001, AT&T Corp. ("AT&T") opposes the three petitions for reconsideration submitted on December 20, 1999, June 12, 2000 and September 18, 2000 by Mr. Greg Weisiger, requesting that unused funds from Year One of the schools and libraries mechanism be carried forward for use in subsequent funding years of that program. Specifically, these petitions are addressed to the Commission's Public Notices proposing Universal Service Contribution Factors, respectively, for the First, Third and Fourth Quarters of 2000. See DA 99-2780, released December 10, 1999; DA 00-1272, released June 9, 2000; and DA 00-2065, released September 8, 2000.

At bottom, Mr. Weisiger contends that each of these proposed contribution factors was too low because of the Commission's decision to rely on "unused funds after all disbursements related to the first program year have been made" to reduce the schools and libraries collection requirement for the prospective quarter. DA 00-2065, n.6. Instead,

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Mr. Weisiger contends that these unused amounts should have been carried forward to the following program year and disbursed to program beneficiaries.

With respect to each Public Notice, Mr. Weisiger's pleading was filed during the time frame appropriate for comments on the proposed factors, *i.e.*, 10, 3 and 10 days, respectively, after the Public Notice's release. In allowing the proposed factors to take effect without modification, the Commission implicitly denied Mr. Weisiger's carry forward requests. When 14 days had elapsed after the release of each Public Notice, the contribution factors became final and, as such, subject to reconsideration under the Commission's rules. 47 C.F.R. §§ 1.106 and 1.429. However, because each of Mr. Weisiger's petitions was filed prematurely *before* finality of the proposed factor, the petitions must be denied because the Commission's rules do *not* allow for reconsideration of non-final actions. *In the Matter of DS3 ICB Order Compliance Filing*, 8 FCC Rcd 6295 (1993) ("Under the Commission's Rules, petitions for reconsideration may be entertained only with respect to 'final actions'"); *In the Matter of Bell Atlantic Tariff FCC No. 1*, 7 FCC Rcd 5271 (1992) (dismissal of petition for reconsideration is warranted because the rules preclude reconsideration of interlocutory actions). Similarly, non-final agency orders are not subject to judicial review. *Papago Tribal Auth. v. FERC*, 628 F.2d 235 (D.C. Cir. 1980), *cert denied*, 449 U.S. 1061 (1980); *Maine Public Advocate v. FCC*, 828 F.2d 68 (1st Cir. 1987) (*per curiam*). Mr. Weisiger had not filed for reconsideration after finality of the Commission's action, and the 30-day time limit for doing so has now long expired.

Wherefore, the petitions for reconsideration stemming from non-final
Commission actions should be denied.

Respectfully submitted,

AT&T CORP.

By /s/ Judy Sello
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Its Attorneys

April 26, 2001

CERTIFICATE OF SERVICE

I, Tracy L. Rudnicki, do hereby certify that on this 26th day of April, 2001, a copy of the foregoing "AT&T Opposition to Petitions for Reconsideration for Carryover of Unused Funds for the Schools and Libraries Program" was served by U.S. first class mail, postage prepaid, to the party named below.

Mr. Greg Weisiger
19 Tallwood Trail
Palmyra, VA 22963

(s) Tracy L. Rudnicki
Tracy L. Rudnicki