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

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FEDERAL COMMUNICATIONS COMMISSION  
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Schools and Libraries Universal Service )  
Support Mechanism )  
\_\_\_\_\_ )

CC Docket No. 02-6  
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**AT&T COMMENTS ON SCHOOLS & LIBRARIES NPRM**

Pursuant to the Commission's Notice of Proposed Rulemaking and Order, FCC 02-8, released January 25, 2002 ("NPRM") and published in 67 Fed. Reg. 7327 (February 19, 2002), and Section 1.415 of its rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments on the disposition of unused funds amounting to almost \$1 billion that the Commission has collected in its universal service program that provides support to schools and libraries. In the NPRM, the Commission seeks comment on: (1) whether these unused funds should be used to reduce the universal service contribution factor prospectively<sup>1</sup> or (2) whether these funds should be distributed to schools and libraries even if it means that disbursements would exceed that program's annual cap. NPRM ¶ 70. For the reasons indicated below, AT&T favors option one.

<sup>1</sup> The universal service contribution factor set quarterly is used to calculate carriers' contribution to the Universal Service Fund ("USF").

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Specifically, per the NPRM's first option, the Commission should modify its rules to require expressly that unused funds from the schools and libraries mechanism (beginning with Funding Year 2) be credited back to contributors through reductions in the contribution factor. As the Commission explained, "consumers may benefit from reducing the contribution factor with unused funds because it will decrease the contribution amounts that carriers recover from consumers." NPRM ¶ 70. Given that the universal service fund contribution base (interstate and international end-user telecommunications revenues) has decreased by approximately \$1 billion between the computation of the contribution factors for the first and second quarters of 2002, driving the contribution factor from 0.068086 to 0.072805,<sup>2</sup> application of these unused funds to reduce the factor would avoid carriers having to increase their USF line-item recovery rate against customers. Under the current mechanism, AT&T's USF line-item recovery rate for residential customers is already set at 11.50% even before application of the new factor. Accordingly, consumers would benefit if AT&T did not have to increase it yet further in response to a higher FCC USF contribution factor.

The Commission inquires whether, as an alternative to crediting the unused funds to contributors, it should modify its rules to require the distribution of the unused funds in subsequent years of the schools and libraries program, even if it would mean that disbursements would exceed the annual cap. The NPRM notes that "disbursing unused funds

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<sup>2</sup> *Compare Proposed First Quarter 2002 Universal Service Contribution Factor*, DA 01-2823, rel. December 7, 2001, *with Proposed Second Quarter 2002 Universal Service Contribution Factor*, DA 02-562, rel. March 8, 2002.

in subsequent funding years of the schools and libraries mechanism would provide additional resources for applicants, thereby assisting efforts to provide affordable telecommunications and information services to schools and libraries.” NPRM ¶ 70. While AT&T does not disagree with this observation, the schools and libraries program already has a very generous \$2.25 billion per year funding cap and accounts for 40% of the entire USF program which also includes programs for high-cost, low-income and rural health care support.<sup>3</sup>

Neither law nor policy dictates application of the unused funds to the schools and libraries program. As the Commission explained, Section 54.507(a) of the Commission’s rules establishes the annual \$2.25 billion cap on the schools and libraries support mechanism.<sup>4</sup> It also provides that “all *funding authority* for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand.”<sup>5</sup> Although the rule addresses *funding authority*, it is silent as to the treatment of unused *funds*, *i.e.*, funds that the Administrator had available for disbursement, but that were not disbursed in that funding year. Thus, the rule does not direct how unused schools and libraries funds should be applied. The Commission established a policy in the *Twelfth Order on Reconsideration* that unused funds from Funding Year 1

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<sup>3</sup> See *Proposed Second Quarter 2002 Universal Service Contribution Factor*, DA 02-562, rel. March 8, 2002 (\$562.9 million for schools & libraries over a \$1.385.2 total USF program collections).

<sup>4</sup> NPRM ¶ 69; 47 C.F.R. § 54.507(a).

<sup>5</sup> *Id.* (emphasis added).

should *not* be used to exceed the annual funding cap of \$2.25 billion in subsequent funding years.<sup>6</sup> NPRM ¶ 74.

Moreover, in its January 25, 2002 Order that is the companion to the NPRM, the Commission denied petitions for reconsideration requesting that unused funds from prior years be distributed to schools and libraries program recipients in subsequent years. Instead, it affirmed its earlier actions determining that unused funds from Funding Year 1 would be used to *reduce* the contribution factor for Funding Years 2 and 3. The Commission found that its actions directing that unused funds reduce a future contribution factor were consistent with Section 54.709(b) of its rules that addresses the disposition of unused funds from quarter-to-quarter and expressly provides that “if the contributions received by the Administrator in a quarter exceed the amount of universal service support program contributions and administrative costs for that quarter, the excess payments will be carried forward to the following quarter. The contribution factors for the following quarter will take into consideration the projected costs of the support mechanisms for that quarter and the excess contributions carried over from the previous quarter.” *Id.* ¶ 79.

Consistent with the Commission’s prior determinations and policies and Section 54.709(b), AT&T believes that the current unused fund amount should be applied to reduce the contribution factor. As the Commission has previously observed, the cost of its USF programs needs to be balanced against its impact on consumers. For example, the

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<sup>6</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Order on Reconsideration in CC Docket No. 96-45, 64 Fed. Reg. 30440, ¶ 9 (1999) (“*Twelfth Order on Reconsideration*”).

Commission has cautioned against expanding the list of services subsidized by the USF because "supporting an overly expansive definition of core services could adversely affect all consumers by increasing the expense of the universal service program and, thus, increasing the basic cost of telecommunications services for all."<sup>7</sup> Similarly here, given the impact of the USF funding requirement on consumers, the Commission should do everything it can to reduce the contribution factor.

*Wherefore*, the Commission should credit the unused funds collected in the schools and libraries program to reduce prospectively the USF contribution factor.

Respectfully submitted,

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<sup>7</sup> *Federal-State Joint Board On Universal Service*, 12 FCC Rcd 8776, ¶ 64 (1997).