

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

In the Matter of

Petition for Clarification or, in the Alternative,
Waiver of Section 54.514 (a) of the
Commission's Rules by

AT&T Corp.

Schools and Libraries Universal Service
Support Mechanism

CC Docket No. 02-6

**OPPOSITION OF AT&T INC. TO
STATE E-RATE COORDINATORS ALLIANCE
PETITION FOR RECONSIDERATION**

I. INTRODUCTION

AT&T Inc. (AT&T) respectfully submits the following comments in opposition to the State E-rate Coordinators Alliance's (SECA's) Petition for Reconsideration ("Petition") of the Commission's March 13, 2007 *Order*¹ granting AT&T's Petition for Clarification filed in this docket nearly four years ago.²

SECA has chosen an odd path for its challenge to AT&T's on-line reimbursement process for discounted E-rate services. AT&T asked the Commission, on July 17, 2003, to clarify that the process it developed to provide E-rate discounted billing to applicants – one that accommodated its complex legacy billing systems in order to avoid unnecessary and expensive changes to the system -- complied with Commission rules and requirements. The Commission

¹ *Petition for Clarification or, in the Alternative, Waiver of Section 54.514 (a) of the Commission's Rules by AT&T Corp. Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order (Rel. March 13, 2007) (*Order*).

² *See* AT&T Petition for Clarification or, in the Alternative, Waiver, CC Docket No. 02-6, filed July 21, 2003 (*AT&T Petition*). The Commission granted the petition for clarification and, accordingly, did not address AT&T's alternative waiver request. *See Order* at 1.

sought comment on the *AT&T Petition* in a Public Notice dated August 4, 2003.³ Oppositions, as set by the Notice's deadline, were due 15 days from August 4, 2003; replies were due within 10 days thereafter.

SECA intimates in its Petition that it has long opposed AT&T's alternative discount billing process. This may be true. However, it does not appear that SECA ever raised that challenge in the specific proceedings at bar pursuant to the August 4, 2003 Public Notice. Rather, as it notes in its Petition, SECA made its views known collaterally -- *i.e.*, by submitting "formal comments . . . in this docket⁴ on October 18, 2005 explicitly oppos[ing] the granting of the AT&T Petition,"⁵ and by otherwise "steadfastly advocat[ing] that applicants must be given the choice of receiving discounts on bills or filing for reimbursement of the E-rate discounts" in various filings in CC Docket No. 96-45.⁶

Perhaps the Commission has kept track of SECA's collateral attacks on the *AT&T Petition* in Docket Nos. 02-6 and 96-45. That would be some feat, though, considering that, as of today, there are over 2,700 filings in 02-6 alone, not to mention the large volume of filings in 96-45. SECA is asking a bit much of the Commission, as a procedural matter, to reverse a ruling made after all this time. This is particularly true if SECA failed, as appears to be the case (and SECA makes no contention to the contrary), to ensure that its opposition to the *AT&T Petition* was squarely before the Commission.

In any event, SECA, though it may have failed to contribute to the record established for, and germane to, these specific proceedings in 02-6, has not raised any new issues, or presented any new, material facts in this Petition. It can point to no material error or omission made by the

³ Report No. 2618, Public Notice, August 4, 2003 (*Notice*).

⁴ By "this docket", SECA presumably means CC Docket 02-6; we were unable to locate any comments lodged in these specific proceedings, however.

⁵ Of course, this would have been two years after oppositions and replies were due as per the Notice.

⁶ Petition at 2, and n. 2.

Commission in granting the *AT&T Petition*. As a matter of law, the Commission should deny the relief sought, and affirm its *Order*.

II. ARGUMENT

Petitions for reconsideration are not to be granted lightly. The standard of review for such petitions is appropriately rigorous:

Reconsideration is appropriate *only where the petition either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner's last opportunity to present such matters*. Section 1.106 (d) of the Commission's rules provides that a petition for reconsideration must state with particularity the respects in which the petitioner believes the action taken by the Commission should be changed. Additionally, the petition must specifically state the form of relief sought.⁷

SECA's Petition presents no proof of any such "material error or omission," nor does it raise "additional facts not known or existing" in 2003 (or, for that matter, in 2005 when SECA claims to have opposed the *AT&T Petition* in "formal comments in this docket"). SECA's Petition clearly does not warrant the reconsideration that SECA seeks.

The essence of SECA's Petition is captured at page three of its Petition. There, SECA declares that the Commission's "premise for granting" the *AT&T Petition* (*i.e.*, that applicants are not required to pay more than the non-discounted portion of services" *etc.*) "is wrong."⁸ SECA then devotes several pages to an elaborate discussion of what amounts to mere disagreement with the Commission's thinking. SECA presents a "strenuous objection," perhaps, but not a case for reconsideration.

For example, SECA contends that AT&T's commitment to ensuring that applicants have their refunds prior to the date on which their payments to AT&T would be due is an "empty one." SECA argues, essentially, that AT&T's payments may become delayed, and that

⁷ See *In the Matter of American Distance Education Consortium Request for an Expedited Declaratory Ruling and Informal Complaint*, Petition for Reconsideration, File No. SAT-PDR-19990803-00077, Memorandum Opinion and Order, 15 FCC Rcd 15448, 15450-51 (2000) (citations omitted) (emphases added). See 47 C.F.R. § 1.106 (d) (1) and (d) (2).

⁸ Petition at 3.

applicants may find themselves up against a payment deadline without the funds having been advanced and in pocket. This is neither a “fact” (it is speculation) nor even a credible suggestion of an additional fact “not known or existing” during the relevant period for consideration of the *AT&T Petition*. In any event, it cannot be claimed that the Commission materially erred for failing to deny the *AT&T Petition* on the basis of such speculative contentions.

SECA further claims that the Commission erred in construing the applicable rule – 47 C.F.R. § 54.515 (a) – as being consistent with AT&T’s proposed on-line discount billing system.⁹ The Commission did not err. To the contrary, the Commission properly concluded, as a pre-requisite to its further conclusion that the system was compliant, that AT&T’s on-line reimbursement process ensures that “applicant[s] [are] not required to pay more than the non-discounted portion of the requested services to USAC from its own funds because AT&T covers the amount of the discounted portion pending reimbursement from USAC.”¹⁰ Thus, despite SECA’s “concerns” about the process, it has not shown, nor can it show, that the Commission “materially erred” in this finding, or in its further conclusion that its rules’ requirements (*i.e.*, that applicants have “a right to choose a payment method” that will ensure them the affordable telecommunications access to which the program entitles them) were met.¹¹

Finally, SECA sounds the alarm that other providers may “impose” (*i.e.*, choose) similar discount billing methods in reliance upon the Commission’s *Order*.¹² It is unclear what the intent of this argument is. The point of a clarification is that all concerned may proceed in accordance with the clarification. Presumably some, but not all, providers – especially those with billing system issues like AT&T’s – may take the opportunity that the *Order* provides to develop a process that meets their needs. However, such providers must do so in ways that are

⁹ Petition at 5.

¹⁰ *Order* at 3.

¹¹ *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9216-29 (2003).

¹² Petition at 7-8.

consistent with the *Order*. The *Order* clearly affirms the right of applicants (who cannot pay the providers' bills up front) to a "method [for paying] the non-discounted portion" without such up-front payments.¹³ The fact that others will comply with the law as clarified is certainly not grounds for reconsideration of the Commission's *Order*.

III. CONCLUSION

For the foregoing reasons, the Commission should deny the Petition.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Theodore C. Marcus".

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¹³ *Order* at 3.