

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

In the Matter of )  
 ) WC Docket No. 03-133  
AT&T Corp. Petition for Declaratory )  
Ruling Regarding Enhanced Prepaid Calling )  
Card Services )  
\_\_\_\_\_ )

**THE ALASKA EXCHANGE CARRIERS ASSOCIATION, INC.’S COMMENTS IN  
OPPOSITION TO AT&T’S PETITION FOR DECLARATORY RULING**

The Alaska Exchange Carriers Association, Inc. (“AECA”), by and through its counsel, Brena, Bell & Clarkson, P.C., respectfully opposes AT&T Corp.’s (“AT&T”) Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services (May 15, 2003) (“AT&T Petition”).

**I. Introduction.**

AT&T seeks a ruling from the Federal Communications Commission (“FCC” or “Commission”) that would allow telephone calls that originate and terminate within Alaska to be considered interstate calls merely because they may be switched out of Alaska or because they are paid for using a debt card. AT&T’s Petition for Declaratory Order is a transparent attempt by AT&T to avoid intrastate access charges on clearly intrastate telephone calls. AT&T’s arguments, if successful, would (1) undermine the dual federal and state regulation of telephone calls and (2) undermine the existing access charge system for intrastate telephone calls within Alaska. Such arguments should be summarily dismissed and the Petition for Declaratory Ruling denied.

## **II. Background on AECA.**

AECA is an association that administers a common, intrastate access tariff for 18 rural, rate-of-return companies and two average schedule companies in Alaska. As part of its administration, AECA assesses intrastate access charges to be paid by interexchange carriers for the use of the member companies' facilities and services when originating and terminating intrastate long distance calls. The access charges assessed by AECA are based on the actual costs to the local exchange carriers of providing their facilities and services to the interexchange carriers for use in providing long distance service. AECA's member companies file detailed revenue requirements of those costs that are reviewed and approved each year by the Regulatory Commission of Alaska ("RCA").

On behalf of its member companies, AECA collects approximately \$31.8 million per year from the interexchange carriers for their use of member companies' facilities and services in originating and terminating intrastate long distance calls. This amount compensates the member companies for their costs in providing their facilities and services to the interexchange carriers. Should AT&T's request be granted, the interexchange carriers in Alaska may be expected to extensively use debit cards to avoid intrastate access charges. In such an event, the RCA would lose regulatory authority over the integrity of intrastate access charges, and AECA's member companies could no longer be assured to recover the \$31.8 million it costs them to provide their facilities and services to the interexchange carriers. The result would be an intrastate revenue deficiency of \$31.8 million for AECA's member companies. To fully recover their intrastate revenue requirements, AECA's member companies would have no choice but to substantially increase local rates or substantially increase their requests for state universal service support. In either case, customers

would have their intrastate rates substantially impacted merely to allow the interexchange carriers the undercompensated use of the facilities and services of AECA's member companies.

### **III. Argument.**

#### **A. AT&T's Petition for Declaratory Relief Ignores the Dual Federal and State System of Regulation Over Telephone Service.**

There is a dual system of federal and state regulation over telephone service. Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355 (1986). Within this dual system, interstate matters are subject to federal regulation and intrastate matters are subject to state regulation. Whether a telephone call is interstate or intrastate in nature, depends upon its originating and terminating points and not on the particular routing of the telephone call. New York Tel. Co. v. FCC, 631 F.2d 1059, 1066 (2d Cir. 1980) ("The key to jurisdiction is the nature of the communication itself rather than the physical location of the technology."); CC Docket No. 96-98, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 at 10 (Feb. 26, 1999) ("[T]he Commission traditionally has determined the jurisdictional nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers.").

This dual system of federal and state regulation over telephone service has been recognized by the RCA as well. Specifically, this Commission's holdings, that the end points of communication control its jurisdictional classification, are matched exactly by holdings of the RCA. The RCA has held:

The [RCA] has authority to regulate telephone calls which originate and terminate within the State of Alaska. [citation omitted] This is true whether the facilities used to transmit the telephone call are

solely within the State of Alaska or the call is routed outside the State of Alaska on its way to its destination.

Alascom, Inc.<sup>1</sup> v. General Communications Inc., 7 APUC 631, 633 (Nov. 3, 1986) (bracketed material added).

AT&T's Petition for Declaratory Ruling ignores the dual federal and state regulation of telephone service. In essence, AT&T is requesting this Commission reclassify intrastate telephone calls as interstate telephone calls to allow AT&T to avoid the payment of intrastate access charges. AT&T's attempt simply disregards the well-established law concerning the dual federal and state regulation of telephone service.

**B. AT&T's Petition for Declaratory Relief Ignores that Debit Card Telephone Calls That Originate and Terminate Within a Single State are Subject to Intrastate Regulation.**

Through a series of technical arguments, AT&T ignores this Commission's holdings that debit card telephone calls that originate and terminate within a state are intrastate telephone calls. The Commission has specifically addressed this issue in Time Machine, Inc., Request for Declaratory Ruling Concerning Preemption of State Regulation of Interstate 800-Access Debit Card Telecommunications Services, 11 FCC Rcd. 1186 (1995). In that proceeding, the Commission held:

30. In addition, we reject the implication raised in the pleadings that the routing of debit card calls through a remote 800 switch renders them jurisdictionally interstate in nature. [FN69] We have previously held that calls involving 800 switching should be treated for jurisdictional purposes as single, end-to-end communications.[FN70] Thus, we find that a debit card call that originates and ends in the same state is an intrastate call, even if it is processed through an 800 switch located in another state. It follows that we specifically reject AT&T's apparent conclusion that its

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<sup>1</sup> Alascom, Inc. a/k/a AT&T Alascom is an AT&T subsidiary that provides service in Alaska (hereinafter "AT&T Alascom").

Teleticket service does not have an intrastate component except in Wyoming, where its 800 switch is located.[FN71]

Id. at 1189 (emphasis added) (footnotes omitted).

Again, with regard to the treatment of debit card telephone service, the RCA's holdings mirror those of the Commission. In response International Telecom. Inc. ("ITI") attempts to avoid intrastate access charges by arguing that it provided debit card telephone service through "two interstate complete calls," the RCA has held:

Currently, all calls (including debit-card calls) that originate and terminate in Alaska are intrastate calls, regardless of whether the calls were routed outside of Alaska over interstate facilities.

RCA Order No. U-94-71(1) at 7 (Feb. 7, 1995).

AT&T's Petition for Declaratory Ruling ignores this controlling authority and attempts to treat a single call originating and terminating within Alaska as two separate interstate calls or, in the alternative, as a three-way interstate call. AT&T should not be permitted to ignore the controlling authority by this Commission and the RCA and to rely upon such obviously unrelated legal authority. The debit card telephone calls AT&T is requesting this Commission consider as interstate commerce originate and terminate within a single state and are between two people within that same state. AT&T's attempt to have this Commission consider a single, intrastate telephone call as two interstate calls ignores that both parts of the call form a single call from and to the same state. AT&T's attempt to have this Commission consider a single, intrastate telephone call as a three-way interstate call ignores that the call is between two people within the same state. Ignoring the obvious and relying upon the unrelated is not persuasive argument.

**C. AT&T's Arguments in Support of the Interstate Treatment of Debit Card Telephone Calls that Originate and Terminate Within a Single State are Directly Contradicted by Its Own Arguments Before the RCA.**

AT&T has consistently taken the position in proceedings before the RCA that a debit card call that originates and terminates within Alaska is intrastate service subject to intrastate access charges. In fact, AT&T filed a complaint against competitor General Communication, Inc. ("GCI") that established the precedent on this point. AT&T argued that its competitor GCI should have to request a certificate of public convenience and necessity and begin to pay intrastate access charges on intrastate telephone service that are routed and switched outside of Alaska. The RCA agreed with AT&T and held that it has jurisdiction over such calls and ordered GCI to begin to pay intrastate access charges. Alascom, Inc.<sup>2</sup> v. General Communication, Inc., 7 APUC 631 (Nov. 3, 1996).

Later, AT&T filed complaints against debit card competitors Talk' N Toss, Inc., World Telecom Group, Inc., and Bottom Line Telecommunications, Inc. for providing debit card telecommunication service without paying intrastate access charges. RCA Order No. U-94-71(1). In pursuing its complaint, AT&T acknowledged that the RCA had jurisdiction over intrastate debit-card calls that originate and terminate in Alaska even though the calls are routed over interstate facilities using an interstate 800 number. Id. at 7.

Additionally, AT&T has filed rather extensive comments with regard to these identical issues within the RCA's regulatory docket on debit card providers:

The Commission found a 907-to-907 call jurisdictional even if the call is routed outside the state on its way to its ultimate destination or if it is routed on interstate facilities. [cite omitted] Practically, if the Commission does not continue to define an intrastate call this way,

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<sup>2</sup> Refer to footnote 1.

it is left without any other meaningful distinctions between intrastate and interstate calls.

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[AT&T] Alascom believes there are no federal or other impediments or limitations to the Commission asserting full jurisdiction over DCSPs that carry 907-to-907 calls.

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The proper level of oversight is defined by existing statutes and regulations. All providers of intrastate interexchange service should play by the same rules. The DSCP's and other interexchange carriers provide basically the same service, only the method of payment is different. Stripped to its essence, debit card service is the same as any other non-facilities-based resale, but with a different mechanism for billing and collection.

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The [RCA] should not treat DCSPs differently depending on their method of marketing. The Commission's jurisdiction and authority derives from the 907-to-907 call using the service, not the marketing efforts that the DCSP employs.

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DCSPs should pay the full non-traffic-sensitive and traffic-sensitive intrastate access charges required by the existing statutes and regulations.

[AT&T] Alascom's Comments in Response to the Notice of Inquiry Regarding Debit Card Service, RCA Docket No. R-94-3 (Sept. 2, 1994) (bracketed material added).

AT&T's consistent position before the RCA, that debit card telephone calls must be regulated by the RCA and be subject to intrastate access charges, directly contradicts its position to the contrary in its Petition for Declaratory Relief before this Commission.

**D. Telecommunications Carriers Should Not be Permitted to Avoid Intrastate Access Charges Merely Because They Arrange for Payment With a Debit Card.**

Reduced to its essence, AT&T is requesting this Commission allow telecommunications carriers to avoid their regulatory obligation to pay intrastate access charges merely because they

choose to pay for intrastate service with a debit card. AT&T should not be permitted to unilaterally modify or eliminate its regulatory obligations as a telecommunications carrier merely because payment for that service is based on a debit card.

AT&T suggests that avoiding intrastate access charges may be justified because intrastate access charges are inflated, and low cost service may be advanced. To state the obvious, federal preemption of state regulatory authority is not based on whether the federal or state jurisdiction has the lowest cost structure. Such a proposition, as a constitutional matter, would render concurrent regulation of telephone service meaningless.

Even assuming the relative cost structures are relevant, intrastate access charges in Alaska are based on the actual cost of providing the service as determined by the RCA each year. AT&T has failed to demonstrate excessive access charges in the intrastate access charge proceedings and should not now be heard to suggest that such access charges are excessive. In fact, for several years now, there have only been marginal changes to the filed revenue requirements of AECA's member companies. Accordingly, any suggestion by AT&T that intrastate access charges in Alaska are not firmly based on the actual cost of providing access service certainly has not been borne out by the annual access charge proceedings in Alaska. Simply stated, intrastate access charges are higher in Alaska because the costs of providing access service are higher.

AT&T ignores who will have to pay the bill it is seeking to avoid. Someone has to pay to maintain and provide the facilities and services AT&T and other interexchange carriers use to originate and terminate their long distance service. There are only three practical sources of revenue to cover the costs of such facilities and services: access charges, local rates, and universal service. Ultimately, the access charges AT&T seeks to avoid will simply be borne through higher local rates

or through higher universal service support. AT&T has not articulated a reasoned public policy that would support allowing it and other debit card interexchange carriers a “free ride” to use the local exchange carriers’ facilities and services when providing their long distance service. Nor has AT&T articulated a reasoned public policy that would support shifting such costs to local rates or to universal service support.

Moreover, AT&T ignores the competitive disequilibrium that would result from permitting some interexchange carriers to avoid paying access charges merely because they use debit cards while requiring others to continue to pay access charges merely because they do not use debit cards. The interexchange carriers that use debit cards would have a competitive and price advantage over other interexchange carriers that do not use debit cards. Once technological bypass of the access charge system were permitted based solely on the use or nonuse of debit cards, one could reasonably expect every interexchange carrier would be driven to use debit cards over time. This shift in market structure would not be driven by the competitive market forces but by the opportunity to arbitrage the regulatory system through avoiding intrastate access charges simply through the use of a debit card. This is exactly the type of arbitrage of the regulatory environment the Commission should be seeking to avoid and not to encourage.

**E. Rational Access Charge Reform Would Be Undermined by Granting AT&T’s Petition for Declaratory Relief.**

This Commission has dedicated a great many resources to considering and effecting access charge reform.<sup>3</sup> Presumably, the Commission has sought and is continuing to seek to strike the right

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<sup>3</sup> Access Charge Reform, First Report and Order, 12 FCC Rcd. 15,982 ¶ 344 (1997); Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, (Access Charge Reform), FCC (continued...)

balance for access charge reform within its broader statutory, public policy, legal, and regulatory goals. For good reason, AT&T does not reveal the potential impact on the access charge system from granting its requests. Over time, one could reasonably expect all interexchange carriers to shift traffic to debit cards, if for no reason other than to avoid paying access charges. Thus, if granted, AT&T's Petition would undermine the Commission's considerable efforts to reform access charges by simply allowing them to be bypassed based on the method of payment alone.

If granted, AT&T's request would lay a new and faulty foundation for technical regulation based on the method of payment and shifting technologies rather than building upon the existing foundation of substantive regulation based on sound public policy. AT&T's request does not distinguish between rate of return and price cap local exchange carriers, does not distinguish between rural and competitive marketplaces, and does not distinguish among the various individual circumstances of the several states. In short, AT&T's request would simply shift access charges away from AT&T and other debit card interexchange carriers and allow them a "free ride" without building upon the substantive public policies currently underlying telecommunications. Simply stated, AT&T's request is regulatory gamesmanship and does not advance substantive regulation based on sound public policy.

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<sup>3</sup> (...continued)  
00-193, released May 31, 2000; and Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 & 98-166, (Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers), FCC 01-304, released Nov. 8, 2001.

#### **IV. Conclusion.**

The use of a debit card in making an intrastate telephone call should not impact the jurisdictional treatment of the underlying telephone call. If the telephone call originates and terminated in Alaska, it should be considered an intrastate telephone call subject to such regulation and fees as the RCA may determine are appropriate. The Commission should decline AT&T's invitation to allow interexchange carriers to avoid access charges merely by arranging payment through a debit card. Regulation should be based upon sound principles of public policy and not upon shifting technologies and regulatory arbitrage, as AT&T proposes. Regulatory reform of access charges, to the degree necessary, should be carefully considered based on a complete factual record within appropriate dockets. Regulatory reform of access charges should respect the dual federal and state regulation of telephone service. AT&T's Petition for Declaratory Relief would have this Commission ignore both the practical and the constitutional framework for regulating telephone service merely to shift the cost of providing access service away from AT&T. For the reasons set forth above, the Commission should deny AT&T's Petition.

DATED this 26<sup>th</sup> day of June, 2003.

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