

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**WORLDCOM, INC. d/b/a MCI
REPLY COMMENTS**

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July 24, 2003

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I. Summary

WorldCom, Inc. d/b/a/ MCI hereby responds to comments filed in response to AT&T's Petition for Declaratory Ruling filed May 15, 2003, hereinafter referred to as AT&T's PDR.¹ In its PDR, AT&T asks the Commission to issue a declaratory ruling that its prepaid card service is jurisdictionally interstate and thus subject to interstate access charges rather than intrastate

¹ Seven parties filed comments on June 26, 2003: Sprint Corporation ("Sprint"), BellSouth Corporation ("BellSouth"), SBC Communications Inc. ("SBC"), Qwest Services Corporation ("Qwest"), General Communication, Inc ("GCI"), Regulatory Commission of Alaska ("RCA"), and the Alaska Exchange Carriers Association, Inc. ("AECA").

access charges. One rationale AT&T offers for this conclusion is that its prepaid card service is an information service that uses interexchange telecommunications.²

Commenting parties uniformly reject AT&T's claim that its calling card service includes an information service component. They argue that the calling party must intend to receive the information in order for a service to qualify as an information service and that there is not enough interaction for its service to qualify as an information service. As will be seen below, these arguments stem from a "dire" concern that AT&T and other interexchange carriers are attempting to avoid access charges altogether. Yet, these parties fail to understand that the supposed "arbitrage" attempted by AT&T is one legitimate method of bringing interstate and intrastate access charges closer to their true economic costs. Everyday the existing access regime remains in place is another day that wreaks havoc on the ability of interexchange carriers to fairly compete. Petitions similar to AT&T's PDR will continue to be offered until the Commission establishes a stable, long-term, alternative to the existing access charge regime, and guarantees continued access to bottleneck network facilities as an increasing array of information services are layered on top of telecommunications services. Once that day has arrived, the correct regulatory treatment of a service such as AT&T's largely will become an irrelevant exercise.

The Commission must first sweep away the irrational intercarrier compensation regime, and replace it with an economically rational form of intercarrier compensation that is uniformly and neutrally applied to all forms of communication. Second, it must reject its current model of

² AT&T at 3. "AT&T's prepaid car calls are enhanced services that use underlying basic telecommunications services...."

applying common carrier, Title II, regulation to specific types of services, and instead apply these regulatory requirements to any network facilities invested with the public good over which carriers exercise bottleneck control.

II. AT&T's Prepaid Card Appears To Provide Some Information Service Capability Along With The Ability To Utilize A Telecommunications Service

As MCI indicates below, the question of the appropriate regulatory treatment of the AT&T service is only relevant here because of its ramifications for the existing intercarrier compensation regime. Take away the irrational access charge systems, and the AT&T petition loses much of its impact. While MCI does not here purport to render any conclusive analysis on the precise nature of the AT&T product offering, we do provide some observations on certain aspects of the regulatory classification issue in this context.

In its PDR, AT&T explains that its prepaid card service is a complex service that offers a retailer the capability of storing and then transmitting messages specifically designed to the calling card it distributes; and also offers the calling party the ability to both complete a communications call and receive the information prepared for the retailer by AT&T.³

Commenting parties argue that the calling party must intend to receive the information provided in order for a service to qualify as an information service. Sprint states, "...the prepaid card user placing the call has not requested or otherwise agreed to receive an advertising message."⁴ Similarly, SBC states that "[n]o one is buying the cards to listen to advertising..."⁵

³ *Id.*, at 5-6. ("AT&T provides its distributors with valuable advertising as part of its calling card service...by including an advertisement every time the cardholder uses the card...The platform then communicates to the cardholder an advertisement or other information unrelated to call processing.")

⁴ Sprint at 3.

RAC states that “a recorded, unsolicited advertisement is not a service or capability offered to the end-user customer.”⁶

In this case, the calling party likely is paying for a mix of telecommunications and information. The price of the telecommunications component is inextricably linked to the reception of the advertising message by the calling party. It is impossible to separate the price of the card from the willingness of the calling party to receive the advertising message – i.e. the information service. Contrary to assertions by SBC and others, the calling party has consented to receive the advertising message.⁷ As AT&T explains, AT&T shares its reduced distribution costs with calling parties in the form of lower than normal usage rates.⁸ When calling parties purchase and then use these low-rate calling cards, they are consenting to hear the advertising message in exchange for rates that are lower than would otherwise be the case.

AT&T is also offering its distributors the capability of storing their advertising message and then making this message available to calling parties who use its telecommunications facilities. When AT&T’s distributors pay AT&T for this capability of storing their message, they appear to be paying for an information service.⁹

⁵ SBC at 4.

⁶ RAC at 5.

⁷ SBC at 4. “No one is buying the cards to listen to advertising or retrieve stored information.” See also Qwest at 5, Sprint at 3.

⁸ AT&T at 5. “In this way...AT&T and competing service providers are able to sell cards with extremely low rates....”

⁹ This payment may occur directly or through a negotiated, in-kind, payment involving lower than normal distribution payments by AT&T in exchange for providing advertising messages tailored to each distributor.

III. Calling Parties Do Interact With Stored Information

Commenting parties also argue that there must be a “significant” amount of interaction by the calling party with the stored information in order for the service to qualify as an enhanced service. Sprint, citing the Commission’s *Talking Yellow Pages Order*,¹⁰ contends that there must be subscriber interaction with stored data in order for a service to qualify as an information service.¹¹ GCI makes the same argument.¹² While it is true that the interaction with stored data in the current case is limited to listening to the stored message, it is nevertheless interaction with stored data. Commenting parties point to the interaction involved *Talking Yellow Pages*, as if this were the minimum amount of interaction to render a service enhanced. But it would be a simple matter for AT&T to provide additional interaction to its prepaid calling card platform. Users might be instructed to punch “1” to learn the history of ABC corporation, or punch “2” to learn about the health benefits of a product sold at “ABC” stores.

IV. Bundling Information Services With Telecommunications Services Does Not Extinguish The Underlying Telecommunications Service

Commenting parties uniformly attempt to argue that no part of AT&T’s service qualifies as an information service. They take this position because they fear allowing AT&T’s prepaid card to be considered an information service would undermine the existing access charge regime. GCI states that granting AT&T’s PDR “...would wreak havoc on the access charge system

¹⁰ *Northwestern Bell Telephone Company, Petition for Declaratory Ruling (Talking Yellow Pages)* 2 FCC Rcd 5986 (1987)

¹¹ Sprint at 7. “...the customers must have been able to choose categories of information they wish to hear about...customers would have had to have meaningfully ‘interacted’ with the stored information....”

¹² GCI at 8. “Enhanced services involve interaction with information.”

established in the State of Alaska.”¹³ Likewise, Sprint states that in view of the exemption of “enhanced” or “information” services from interstate access charges, AT&T could purchase facilities other than switched access feature groups to terminate these calls and thereby avoid paying terminating interstate access charges on these calls.¹⁴

The discussion above shows that undoubtedly there is an information service *component* to AT&T’s enhanced prepaid card service. However, the presence of an information service does not transform the underlying telecommunications capability into an information service, and AT&T has made no such claim.¹⁵ The fact that a carrier might bundle an information service with an underlying telecommunications service does not make the telecommunications service magically disappear. The Commission has long held, at least for carriers who control bottleneck facilities, that merely bundling an information service with a telecommunications service does not cause the telecommunications service to lose its common carrier characteristics.¹⁶

¹³ GCI at 9.

¹⁴ Sprint at 12. See Also AECA at 8. “AT&T suggests that avoiding intrastate access charges may be justified because intrastate access charges are inflated, and low cost service may be advanced,” and SBC at 6. “The Commission must protect the integrity of the access charge...regime....”

¹⁵ AT&T at 18 citing the Commission’s *ONA Order*. “...the addition of specified types of enhancements ... to a basic service neither changes the nature of the underlying basic service when offered by a common carrier, nor alters the carrier’s tariffing obligations, whether federal or state, with respect to that service.”

¹⁶ “[A]n otherwise interstate basic service...does not lose its character as such simply because it is being used as a component in the provision of a[n enhanced] service that is not subject to Title II. *GTE Telephone Operating Cos. GTOC Tariff No. 1, 13 FCC Rcd 22466 (“GTE DSL Tariff Order”)* (1998), & 20.

V. The Commission's Regulations Must Promote Competition And A Competitively Neutral Intercarrier Compensation Regime

Many of the commenting parties bemoan the possibility that treating AT&T's prepaid card service as an enhanced or information service would allow it to avoid excessively high intrastate access rates. If the Commission were to disavow its "contamination theory," whereby the bundling of information service with an underlying basic telecommunications service caused the basic service to lose its common carrier characteristics, the existing interstate access charge system would be undermined.

These parties fail to understand that the supposed "arbitrage" attempted by AT&T is one legitimate method of bringing interstate and intrastate access charges closer to their true economic costs. Everyday the existing access regime remains in place is another day that limits the ability of interexchange carriers to fairly compete. The existing access charge regime is broken and harms interexchange carriers on a daily basis.

Petitions similar to AT&T's PDR will continue to be offered until the Commission establishes a stable, long-term, alternative to the existing access charge regime, and guarantees continued access to bottleneck network facilities as an increasing array of information services are layered on top of telecommunications services. To remedy this situation, the Commission must immediately take two important steps. First, it must sweep away the irrational intercarrier compensation regime, which adversely affects in particular certain categories of communications (namely basic toll services), and replace it with an economically rational form of intercarrier compensation that is uniformly and neutrally applied to all forms of communication. Second, the Commission must reject its current model of attempting to apply common carrier, Title II, regulation to specific types of retail services, and instead focus on applying these regulatory

requirements to any network facilities invested with the public good over which carriers exercise bottleneck control.

VII. Conclusion

For the reasons stated herein, MCI urges the Commission to adopt the positions advocated in these Reply Comments.

Respectfully submitted,

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Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on July 24, 2003

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CERTIFICATE OF SERVICE

I, Elizabeth Bryant hereby certify that on this 24th day of July, 2003, copies of the foregoing were served by regular mail or E-mail on the following:

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