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STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: http://www.dps.state.ny.us

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July 23, 2003

Hon. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12 St., SW
Washington, D.C. 20554

RE: Reply Comments of the New York State Department of Public Service in the Matter of the Petition of AT&T Corporation for a Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; WC Docket No. 03-133

Dear Secretary Dortch:

The New York State Department of Public Service submits these Reply Comments in response to Comments filed addressing AT&T's May 15, 2003 Petition For A Declaratory Ruling in the above-named proceeding.

In its petition, AT&T claims that an advertisement or other information, selected by retailers of its prepaid calling cards and placed upon its prepaid call routing platform, constitutes an enhanced or "information service" under the Federal Telecommunications Act.[1] It also claims that this platform is a call endpoint, and that its prepaid calling card calls are therefore two calls, at least one of which is usually interstate.[2]

In response, parties argue that the insertion of an unsolicited advertisement into a call switching platform neither

[1] AT&T Corp. Petition for a Declaratory Ruling at 9.

[2] Id. at 12, 14-17.

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transforms the platform into an information service[3] nor constitutes a call endpoint for jurisdictional purposes.[4] Moreover, they argue that AT&T's requested relief may have the effect of exempting from all switched access charges any call that is preceded by an unsolicited advertisement during the switching function on the grounds that the call is being made to an information service.[5]

The NYDPS respectfully requests that the Commission deny AT&T's petition. We agree that the insertion of a recorded advertisement onto a prepaid calling card platform does not create an information service. AT&T's prepaid calling card customers are not purchasing access to an advertisement or other information. AT&T has simply chosen to identify itself or its retailer as the service provider. This does not change the fact that consumers are solely purchasing the ability to complete a call to a third party, which is a telecommunications service.[6] Indeed, such advertising reasonably can be considered to be a cost the customer must bear to complete those calls, rather than a benefit (i.e. an "information service") sought out by the customer.

In addition, as suggested in the Comments, AT&T's requested relief could have consequences far beyond the prepaid calling card service classification.[7] Should the Commission find that the mere insertion of an unsolicited message into a call via a prepaid card switching or routing platform transforms that "telecommunications service" into an "information service," it

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[3] See e.g., Reply Comments of the Regulatory Commission of Alaska at 3-4, Opposition of Sprint at 7-9, Comments of Verizon at 2, 6-7, Comments of Qwest Services Corporation at 5-7.

[4] See e.g., Opposition of Sprint at 5-6, Comments of Verizon at 2, General Communication, Inc. Opposition to AT&T Corp. Petition for a Declaratory Ruling at 2, 5-7.

[5] See e.g., Reply Comments of the Regulatory Commission of Alaska at 6, Comments of Verizon at 3, Opposition of Sprint at 11-13.

[6] "Telecommunications" is "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153 (43).

[7] See e.g., Reply Comments of the Regulatory Commission of Alaska at 6, Opposition of SBC Communications Inc. at 6-8.

is possible that others would seek to apply this finding to the full range of telecommunications services. Federal and state telecommunications law cannot be circumvented by permitting carriers to bypass access charges when they embed recorded advertisements into their routing or switching functions. Therefore, the NYDPS respectfully urges the Commission to reject AT&T's petition for a declaratory ruling.

Respectfully submitted,

Dawn Jablonski Ryman
General Counsel
John Graham
Assistant Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, New York 12223-1350