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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Dave Harbour, Chair
Kate Giard
Mark K. Johnson
James S. Strandberg
G. Nanette Thompson

In the Matter of the Investigation into)
Unauthorized Telecommunication Intrastate) U-97-120
Debit Card Marketing by AT&T Corp. apart from)
ALASCOM, INC., d/b/a AT&T ALASCOM) ORDER NO. 4

**ORDER ADDRESSING SUBSTANTIVE ISSUES,
REQUIRING PAYMENT OF ACCESS CHARGES,
REQUIRING COMPLIANCE FILING; AND CLOSING DOCKET**

BY THE COMMISSION:

We find that provision of an advertisement in association with an intrastate long distance call is not an enhanced service to the customer and does not change the jurisdictional nature of that call. We direct Alascom, Inc., d/b/a AT&T Alascom (AT&T Alascom) to pay intrastate access charges for its Alaska-to-Alaska pre-paid card calls. We require AT&T Alascom to file a compliance filing to demonstrate that such fees have been appropriately paid. Should dispute occur over the amount of charges to be paid, we will address that issue by separate docket. We close Docket U-97-120.

Background

In response to a complaint filed by ATU Long Distance, Inc., the Alaska Public Utilities Commission opened Docket U-97-120 to investigate whether AT&T

1 Corp. (AT&T) was providing intrastate pre-paid card (a/k/a “debit card”)¹ services
2 without proper authority. We directed AT&T to file an application for registration as an
3 interexchange carrier by July 1, 2003.² AT&T and AT&T Alascom filed a petition for
4 reconsideration of Order U-97-120(1) claiming registration was not necessary for a
5 variety of reasons, including that the service in question was carried over the AT&T
6 Alascom network and AT&T Alascom was a certified subsidiary of AT&T.

7 In response to the petition, we vacated the requirement that AT&T
8 register.³ However, we required AT&T Alascom to provide the following information:

9 a) confirmation that AT&T Alascom was responsible for end-user
10 intrastate services associated with the AT&T prepaid cards;

11 b) confirmation that the intrastate share of the revenues
12 associated from the AT&T cards was included in AT&T Alascom
13 revenues;

14 c) affirmation and verification with sufficient information that AT&T
15 Alascom had appropriately paid regulatory cost charges⁴ for the
16 intrastate share of revenues associated with the prepaid cards;

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20 ¹A prepaid card or debit card is a telephone calling card where the customer
21 pays for service in advance to be able to place a limited amount of long distance calls.
22 Debit cards are often sold through retail outlets. To place a call using such a card, the
23 customer dials a 1-800 or 1-8YY number, a PIN number, and the number to be called.
24 The value of the call is then deducted from the value of the card.

25 ²See Order U-97-120(1), dated January 31, 2003.

26 ³See Order U-97-120(2), dated March 18, 2003.

⁴Regulatory Cost Charges are assessments to a utility’s intrastate revenues to
pay for the operations of the Regulatory Commission of Alaska.

1 d) identification of the intrastate tariff provision governing the
2 AT&T pre-paid cards; and

3 e) affirmation and verification with sufficient information that AT&T
4 Alascom had paid intrastate Access Charges on the intrastate calls
5 associated with the prepaid cards and an explanation of how AT&T
6 Alascom had verified that such was the case.

7
8 In its May 16, 2003, response,⁵ AT&T Alascom stated we lacked
9 jurisdiction over the vast majority of the Alaska-to-Alaska long distance calls placed
10 over the AT&T pre-paid cards as the calls were (a) enhanced services and (b)
11 comprised of two interstate calls. AT&T Alascom asserted there were effectively no
12 intrastate Alaska calls associated with the AT&T cards.

13 As part of its response, AT&T Alascom included an AT&T Petition for
14 Declaratory Ruling filed before the Federal Communications Commission (FCC) on
15 May 15, 2003. AT&T asked the FCC to:

16 a) conclude that AT&T pre-paid card calls were enhanced,
17 interstate services and not intrastate calls;

18 b) issue a declaratory ruling precluding states from assessing
19 intrastate Access Charges, as such payment would lead to higher rates
20 for AT&T debit card services; and
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25 ⁵Alascom's response was originally due on April 17, 2003. The Commission
26 granted an extension of the deadline through Order U-97-120(3), dated April 9, 2003.

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c) declare that only interstate Access Charges apply to the AT&T enhanced debit card services unless either the cardholder, or the called party were in the same state as the enhanced prepaid service platform.

Discussion

The primary issue before us concerns the jurisdictional nature of the pre-paid card services. If the services in question are not subject to our jurisdiction then all other issues associated with Docket U-97-120 become moot.

Enhanced Services

AT&T Alascom asserted that the pre-paid services are enhanced services because during the course of the call, an advertisement is provided to the customer. For example, the customer dials 1-800-375-3229 and listens to automated prompts to enter a PIN number and the number dialed. After the last prompt and before the customer's call is completed, the customer hears a short advertisement for Best Buy stores.

We disagree that the presence of the advertisement qualifies the call as an enhanced service. The FCC defines "Enhanced Service" as:

For the purpose of this subpart, the term "enhanced service" shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under Title II of the Act.

47 C.F.R. 64.702(a).

The Communications Act of 1934 as modified by the Telecommunications Act of 1996 (the Act) defines information services as:

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The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.⁶

Under either definition, the advertisement and pre-paid calls would not qualify as an enhanced service:

- a) a recorded, unsolicited advertisement is not a service or capability offered to the end-user customer;
- b) the provision of the advertisement does not act on the format, content, code, protocol or similar aspect of the subscriber's information (i.e., the voice phone call);
- c) the advertisement provides the subscriber with no meaningful additional information or benefit requested by the customer;
- d) the customer does not interact with the stored information (i.e., the advertisement), merely listens to it; and
- e) the direct beneficiaries of the advertisement are not the callers, but the carrier who receives advertising revenue and the advertiser who receives brand exposure.

To the extent there is any ambiguity over whether the calls are a telecommunications service or an enhanced service, it is clarified under the Act. The Act defines "telecommunications" as:

⁶47 U.S.C. 153(20).

1 the transmission, between or among points specified by the user, of
2 information of the user's choosing, without change in the form or content
of the information as sent and received.⁷

3 and "telecommunications service" as:

4 the offering of telecommunications for a fee directly to the public, or to
5 such classes of users as to be effectively available directly to the public.
6 regardless of the facilities used.⁸

7 Given the above, we conclude that the pre-paid card calls are
8 telecommunications services based on the intent and plain wording of federal law.
9 Our decision is consistent with the fact that historically pre-paid services of this nature
10 have been viewed as telecommunications services. Adding an unsolicited
11 advertisement to the information prompts heard by the customer does not change the
12 basic nature of the service sold.

13 *Interstate vs. Intrastate Jurisdiction*

14 AT&T Alascom also argued that even if these calls were not enhanced
15 services, they would be interstate services as each call is comprised of two interstate
16 calls. Under this interpretation, the first interstate call (dialed using an 800 or
17 comparable number) links the cardholder customer to the out-of-state AT&T platform
18 that provides the billing and call routing functions. The second interstate call would be
19 from the platform to the dialed party. AT&T Alascom stated that the only possible time
20 a call might be intrastate in nature would be if the call platform was in the same state
21 as where the call originated and terminated.

22 The FCC has previously rejected the above interpretation. The FCC
23 stated:

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25 ⁷47 U.S.C. 153 (43).

26 ⁸47 U.S.C. 153 (46).

1 In addition, we reject the implication raised in the pleadings that
2 the routing of debit card calls through a remote 800 switch renders them
3 jurisdictionally interstate in nature. We have previously held that calls
4 involving 800 switching should be treated for jurisdictional purposes as
5 single, end-to-end communications. Thus, we find that a debit card call
6 that originates and ends in the same state is an intrastate call, even if it
7 is processed through an 800 switch located in another state. It follows
8 that we specifically reject AT&T's apparent conclusion that its Teleticket
9 service does not have an intrastate component except in Wyoming,
10 where its 800 switch is located.⁹

11 Similarly, the FCC has also stated:

12 1. As many incumbent LECs properly note, the Commission
13 traditionally has determined the jurisdictional nature of communications
14 by the end points of the communication and consistently has rejected
15 attempts to divide communications at any intermediate points of
16 switching or exchanges between carriers. In *BellSouth MemoryCall*, for
17 example, the Commission considered the jurisdictional nature of traffic
18 that consisted of an incoming interstate transmission (call) to the switch
19 serving a voice mail subscriber and an intrastate transmission of that
20 message from that switch to the voice mail apparatus. The Commission
21 determined that the entire transmission constituted one interstate call,
22 because "there is a continuous path of communications across state
23 lines between the caller and the voice mail service." The Commission's
24 jurisdictional determination did not turn on the common carrier status of
25 either the provider or the services at issue; *BellSouth MemoryCall* is not,
26 therefore, distinguishable on the grounds that ISPs are not common
carriers.

2. Similarly, in *Teleconnect*, the Bureau examined whether a
call using Teleconnect's "All-Call America" (ACA) service, a nationwide
800 travel service that uses AT&T's Megacom 800 service, is a single,
end-to-end call. Generally, an ACA call is initiated by an end user from a
common-line open end; the call is routed through an LEC to an AT&T
Megacom line, and is then transferred from AT&T to Teleconnect by
another LEC. At that point, Teleconnect routes the call through the LEC
to the end user being called. **The Bureau rejected the argument that**

⁹ *In the Matter of Time Machine, Inc., Requesting for a Declaratory Ruling Concerning Preemption of State Regulation of Interstate 800-Access Debit Card Telecommunications Services*, Memorandum Opinion and Order, paragraph 30, released November 3, 1995, DA 95-2288.

1 the (ACA) 800 call used to connect to an interexchange carrier's
2 (IXC) switch was a separate and distinct call from the call that was
3 placed from that switch. The Commission affirmed, noting that
4 "both court and Commission decisions have considered the end-to-
5 end nature of the communications more significant than the
6 facilities used to complete such communications. According to
7 these precedents, we regulate an interstate wire communication under
8 the Communications Act from its inception to its completion." The
9 Commission concluded that "an interstate communication does not end
10 at an intermediate switch. . . . The interstate communication itself
11 extends from the inception of a call to its completion, regardless of any
intermediate facilities." In addition, in *Southwestern Bell Telephone
Company*, the Commission rejected the argument that "a credit card call
should be treated for jurisdictional purposes as two calls: one from the
card user to the interexchange carrier's switch, and another from the
switch to the called party" and concluded that "switching at the credit
card switch is an intermediate step in a single end-to-end
communication."¹⁰

12 (Emphasis added.)

13 Our predecessor agency and we have also rejected the argument that an
14 Alaska-to-Alaska pre-paid card call placed through an 800 number is an interstate
15 call.¹¹ In response to an AT&T Alascom complaint against GCI Communication Corp.
16 (GCI) that GCI provided unauthorized intrastate calling through an 800 number and
17 other means, we concluded that we had authority over Alaska-to-Alaska calls, even if
18 the calls were routed out-of-state.¹² In Docket U-94-71,¹³ AT&T Alascom alleged that

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20 ¹⁰ CC Docket No. 96-98 and 99-68, Declaratory Ruling in CC Docket No. 96-98
21 and Notice of proposed Rulemaking in CC Docket No. 99-68, at 10-11, released
22 February 26, 1999.

23 ¹¹ See Orders U-86-99(1), dated November 3, 1999; U-94-71(1), dated
24 February 7, 1995; and U-99-74(3), dated March 21, 2000. Dockets U-86-99 and
25 U-94-71 were held before the Alaska Public Utilities Commission, the predecessor
26 agency to the Regulatory Commission of Alaska.

¹²Order U-86-99(1).

¹³That proceeding is entitled: *In the Matter of the Formal Complaint, as Amended, Filed by ALASCOM, INC., Against TALK 'N TOSS, INC.*

1 various carriers offered unauthorized intrastate pre-paid card services in Alaska and
2 had failed to appropriately pay intrastate access charges.¹⁴ At that time, AT&T
3 Alascom stated that the Commission had jurisdiction over intrastate pre-paid card calls
4 that originate and terminate in Alaska even though the calls were routed over
5 interstate facilities using an interstate 800 number.¹⁵ The Commission essentially
6 agreed with AT&T Alascom and asserted jurisdiction over such intrastate pre-paid card
7 service and intrastate carriers.¹⁶ We note that in both Dockets U-86-99¹⁷ and U-94-71
8 and in, AT&T Alascom's position regarding the extent of our jurisdictional authority
9 would appear somewhat at odds with its current position regarding the pre-paid card
10 services in the pending docket.

11 Last and most recently, through Order U-99-74(3),¹⁸ we directly rejected
12 the argument of International Telecom, Inc., that its Alaska-to-Alaska pre-paid calls
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21 ¹⁴See Docket U-94-71.

22 ¹⁵See n 14.

23 ¹⁶See n 14.

24 ¹⁷That proceeding is entitled: *Alascom, Inc. v. General Communication, Inc.*

25 ¹⁸That proceeding is entitled: *In the Matter of the Tariff Revision, Designated as TA3-455, Filed by INTERNATIONAL TELECOM, INC., to Offer Various Intrastate Interexchange Services and Reduce Rates for 800 Access Service.*
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1 were interstate calls as they were comprised of two interstate
2 connections.¹⁹

3 AT&T in its petition before the FCC provides significantly more detail and
4 argument than AT&T Alascom concerning why AT&T believed the debit card calls
5 were interstate calls. AT&T relied primarily on the two-call argument, but with the
6 complexity that the debit card call was processed by what AT&T terms as an
7 “Enhanced Service Platform”. AT&T believed that because the advertisement was
8 provided during the processing of the call, it distinguished this case from the previously
9 cited decisions where the FCC ruled against the two-call argument. AT&T stated that
10 active communications of information (i.e., the advertisement) unrelated to call routing
11 between the platform and the calling party created an “end-point”, effectively dividing
12 the debit card call into two interstate calls. We view this as effectively saying that the
13 Enhanced Service platform engaged in its own communication with the calling party,
14 creating multiple interstate calls.

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¹⁹ We note that the Act confirms that the term “interstate” specifically excludes
17 calls between points in the same state regardless of the communications path:

18 (22)The term "interstate communication" or "interstate transmission"
19 means communication or transmission (A) from any State, Territory, or
20 possession of the United States (other than the Canal Zone), or the District of
21 Columbia, to any other State, Territory, or possession of the United States
22 (other than the Canal Zone), or the District of Columbia, (B) from or to the
23 United States to or from the Canal Zone, insofar as such communication or
24 transmission takes place within the United States, or (C) between points within
25 the United States but through a foreign country; but shall not, with respect to the
26 provisions of subchapter II of this chapter (other than section 223 of this title),
include wire or radio communication between points in the same State,
Territory, or possession of the United States, or the District of Columbia,
through any place outside thereof, if such communication is regulated by a
State commission.

(Emphasis added.) 47 U.S.C. 153(22).

1 We disagree that the advertisement creates a meaningful distinction as it
2 relates to the previously discussed two-call argument. AT&T's argument ignores a
3 key aspect of the definition of "telecommunications". Under the Act
4 "telecommunications" means the transmission, between or among points specified by
5 the user, of information of the user's choosing. In this case, the user has not asked
6 for the advertisement and it is not a telecommunications service ordered by the
7 consumer. Indeed, the imposition of an advertisement increases customer "wait time"
8 for call completion and could be viewed as a lowering of the quality of service. The
9 advertisement is not an enhanced service provided to the customer. The imposed
10 advertisement is simply a solicitation. If the advertisement is not a
11 telecommunications service or an enhanced service, then AT&T's arguments are
12 without foundation.

13 AT&T also asserted that the advertisement was, in effect, an interstate
14 call, making the entire communications interstate in nature. While we do not agree,
15 even if the advertisement led to a conclusion, an interstate call was being made, that
16 call would only last for seconds and would end when the advertisement ended. The
17 communications between the Alaska cardholder and the Alaska called party would
18 then continue as an intrastate call.

19 We conclude that AT&T Alascom has failed to make a case that the
20 Alaska-to-Alaska pre-paid calls in questions are not subject to our jurisdiction. As the
21 calls are subject to our jurisdiction, then the pre-paid card calls are also subject to
22 intrastate access charges in accordance with applicable tariffs.

23
24 Access Charges

25 We initially opened this Docket to determine whether AT&T was
26 providing unauthorized pre-paid card services in Alaska. We will accept AT&T

1 Alascom's representations that it is the service provider of AT&T-branded services in
2 Alaska, including the "AT&T" labeled pre-paid cards at issue in this Docket. The only
3 remaining issue, therefore, is whether AT&T Alascom has appropriately paid access
4 charges for the Alaska-to-Alaska pre-paid calls.

5 As part of its response, AT&T Alascom provided the following breakdown
6 of the pre-paid card revenues for 2002:²⁰

	Non- Jurisdictional Revenues	Intrastate Revenues	Interstate Revenues	International Revenues
Enhanced	\$ 51	\$2,412,325	\$3,507,602	\$1,083,152
Regulated	-	\$ 6,719	\$ 51,413	\$ 237,680
Total Prepaid	\$ 51	\$2,419,044	\$3,559,015	\$1,320,832

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12 AT&T Alascom stated that its table above was in error and should have
13 shown intrastate non-regulated revenues (i.e., the \$2,412,325) as interstate non-
14 regulated revenues. As previously indicated, we disagree with AT&T Alascom and
15 find that the intrastate revenues are subject to our jurisdiction and believe that
16 intrastate access charges are due for the calls associated with these revenues.

17 AT&T Alascom stated that while it has not paid intrastate originating
18 Access Charges on the pre-paid calls, in some cases it has been paying intrastate
19 terminating Access Charges. AT&T Alascom is unclear as to how much it believes it
20 may have paid, but that the amount could be either \$1.7 million or \$9.4 million in
21 terminating intrastate access fees, depending upon interpretation of AT&T Alascom's
22 comments. AT&T Alascom indicated that payment has occurred because some local
23 carriers have not updated various factors used to assess access charges even though
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25 ²⁰Alascom Informational Filing Response, Exhibit B, May 16, 2003.
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1 AT&T had submitted changes to these factors consistent with its position that the debit
2 card calls as largely enhanced, interstate services.²¹

3 Based on the above, we believe AT&T Alascom owes an undetermined
4 amount in intrastate access charges associated with the Alaska-to-Alaska pre-paid
5 card calls. AT&T Alascom shall make appropriate payment of these access charges.

6 We direct AT&T Alascom to contact the intrastate access charge
7 providers in Alaska, including the AECA to determine appropriate payments due and
8 pay any amount owing for intrastate access fees consistent with the findings of this
9 Order. By August 13, 2003, AT&T Alascom shall file a report regarding its compliance
10 with this requirement, indicating any dispute concerning the amount of payment due,
11 and documenting appropriate payment of fees.²² Should this compliance filing indicate
12 that an access provider and AT&T Alascom cannot agree to the amount of payment
13 due, we may open a separate docket to deal with that dispute. It is not our intent to
14 resolve such dispute through Docket U-97-120.

15 This decision is a final order resolving issues associated with Docket
16 U-97-120. This decision may be appealed to the superior court no later than thirty
17 days after the date of this Order. If a party petitions for reconsideration under
18 3 AAC 48.105, the time to appeal is extended for thirty days after we issue an order on
19

20 _____
21 ²¹Alascom stated that ACS of Anchorage, Inc.; ACS of Fairbanks, Inc.; and ACS
22 of Alaska, Inc., did not update their PIU (percent interstate usage) factors in light of
23 AT&T updates. Alascom also implied that GCI and Matanuska Telephone
24 Association, Inc., applied the updated AT&T factors but only to calls of "unknown"
jurisdiction. Alascom stated that the Alaska Exchange Carriers Association, Inc.
(AECA), accepted AT&T's PIU factors and AT&T has paid interstate terminating
access for prepaid volumes to AECA companies.

25 ²²Such filing should be directed to the attention of the Commission's Common
Carrier Section and not filed directly in Docket U-97-120.
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1 the petition for reconsideration or thirty days after the date when a petition for
2 reconsideration is automatically denied under 3 AAC 48.105.

3 With this decision all substantive and procedural issues in this
4 proceeding have been disposed of, and there are no allocable costs under
5 3 AAC 48.157 and AS 42.05.651. Therefore, this Docket should be closed.

6
7 **ORDER**

8 THE COMMISSION FURTHER ORDERS

9 1. Alascom, Inc., d/b/a AT&T Alascom shall pay intrastate access
10 charges due on Alaska-to-Alaska calls associated with the "AT&T" branded pre-paid
11 card services.

12 2. Alascom, Inc., d/b/a AT&T Alascom shall contact the intrastate
13 access charge providers in Alaska to determine payments due and arrange for such
14 payments as required by Ordering Paragraph No. 1 above, consistent with the findings
15 of this Order.

16 3. By 4 p.m., August 13, 2003, Alascom, Inc., d/b/a AT&T Alascom shall
17 file a report regarding its compliance with Ordering Paragraph Nos. 1 and 2 above as
18 further explained in the body of this Order.

19 4. Docket U-97-120 is closed.

20
21 DATED AND EFFECTIVE at Anchorage, Alaska, this 24th day of June, 2003.

22 BY DIRECTION OF THE COMMISSION
23 (Commissioners James S. Strandberg and
24 G. Nanette Thompson, not participating.)

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