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VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: ***AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Card Services*, WC Docket No. 03-133**

Yesterday, David Lawson and I, met with Jeff Dygert, and Paula Silberthau of the Office of General Counsel and Steve Morris of the Wireline Competition Bureau. The purpose of this meeting was to discuss issues related to AT&T's enhanced prepaid calling card services. The arguments made were consistent with AT&T's written submissions filed in the above referenced proceeding. The attached document served as the bases of the discussion.

One electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Robert W. Quinn Jr.

AT&T's Enhanced Prepaid Card Service Is An Information Service

"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."

When a customer places a call using an enhanced prepaid calling card, the customer is connected to a computer platform, which retrieves and transmits to the cardholder additional information that is unrelated to management operation or control of the network or service – and the the service thus unquestionably offers a capability for "acquiring," "retrieving," "utilizing," and "making available information via telecommunications." The service also offers a capability for "electronic publishing," which expressly includes the "dissemination [or] provision" of "advertising" to a "person." 47 U.S.C. § 274(h)(1).

The Commission's rules define "enhanced services" as services offered over common carrier transmission facilities that (1) "provide the subscriber additional, different, or restructured information" or (2) "involve subscriber interaction with stored information." 47 C.F.R. § 64.702(a).

The enhanced prepaid card service's provision of stored messages over common carrier transmission facilities plainly satisfies both criteria. It provides the subscriber with additional information (the advertisement or message) and, because the advertisement is stored on a computer platform, the service involves subscriber interaction with stored information.

The Commission has already held that a service in which a customer "makes a phone call and hears a recorded advertisement . . . involves 'subscriber interaction with stored information,' and [thus] falls *squarely* within the definition of 'enhanced service' in Section 64.702(a) of [our] rules." *See id.* ¶ 20 (emphasis added). *Northwestern Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd. 5986 (1987).

"Pursuant to the Commission's Computer II and Computer III decisions, enhanced services are distinguished from basic services by their functional characteristics. Thus, basic telecommunications service is defined as a virtually naked transmission capacity, offered by a common carrier, 'for the movement of information between two points.'"AT&T 900 Dial-It Services, 4 FCC Rcd. 3429 at ¶ 15 (1989).

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Computer II:

"A basic transmission service is one that is limited to the common carrier offering of transmission capacity for the movement of information." ¶ 93.

"An enhanced service is *any* offering over the telecommunications network which is more than a basic transmission service." ¶ 97.

"[W]e conclude that all enhanced services should be accorded the same regulatory treatment and that no regulatory scheme could be adopted which would rationally distinguish and classify enhanced services as either communications or data processing." ¶ 113.

"It is apparent that, over the long run, any attempt to distinguish [among] enhanced services will not result in regulatory certainty. At most, reliance on a definitional approach which uses a primary purpose standard is a stop-gap measure . . . . [and] the need for ad hoc determinations would continue." ¶ 107.

"[W]e are not foreclosing enhanced processing applications being performed in conjunction with 'voice' service," ¶ 98, and "we recognize that some enhanced services may do some of the same things that regulated communications services did in the past," ¶ 132.

"At the margin, some enhanced services are not dramatically dissimilar from basic services or dramatically different from communications as defined in Computer Inquiry I. But any attempt to draw the line at this margin potentially could subject both the enhanced services providers and us to the prospect of literally hundreds of adjudications over the status of individual service offerings. We have noted the danger that such proceedings could lead to unpredictable or inconsistent regulatory definitions. . . . Such proceedings also could consume a very significant proportion of the resources of this agency. The requirement to devote significant resources to try to make individual service distinctions would necessarily reduce the resources available for regulating basic services and ensuring non-discriminatory access to common carrier telecommunciations facilities." ¶ 130.

We have "draw[n] a clear and, we believe, sustainable line between basic and enhanced services upon which business entities can rely in making investment and marketing decisions." ¶ 101.

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Report to Congress:

"The Commission stressed that the category of enhanced services covered a wide range of different services, each with communications and data processing components. Some might seem to be predominantly communications services; others might seem to be predominantly data processing services. The Commission declined, however, to carve out any subset of enhanced services as regulated communications services. It found that no regulatory scheme could 'rationally distinguish and classify enhanced services as either communications or data processing,' and any dividing line the Commission drew would at best 'result in an unpredictable or inconsistent scheme of regulation' as technology moved forward." ¶ 27.

"[U]nder the regulatory structure in place in 1996, a service could fall into either the 'basic' or the 'enhanced' category, but not both. An entity offering a service with both communications and computer-processing components was deemed to providing an enhanced service, not a basic one." ¶ 34.

"[H]ybrid services are information services, and are not telecommunications services. . . . [I]f we interpreted the statute as breaking down the distinction between information services and telecommunications services, so that some information services were classed as telecommunications services, it would be difficult to devise a sustainable rationale under which all, or essentially all, information services did not fall into the telecommunications service category." ¶ 57.

"Computer II provided a framework for classifying such services, under which the offering of enhanced functionality led to a service being treated as 'enhanced' rather than 'basic.' An offering that constitutes a single service from the end user's standpoint is not subject to carrier regulation simply by virtue of the fact that is involves telecommunications components." ¶ 58 .

Under the 1996 Act definitions, "if the user can receive *nothing* more than *pure* transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service." ¶ 59.

The "Adjunct to Basic" Limitation Cannot Apply To AT&T's Prepaid Card Service

"[T]he Commission has found that services it had previously classified as 'ajdunct-to-basic' should be classified as telecommunications services. These are services that fall within the literal definition of an 'enhanced service' set forth in the Commission's rules, but are basic in purpose and facilitate the completion of calls through utilization of basic telephone service facilities. They include, inter alia, speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller identification, call tracing, call blocking, call return, repeat dialing, and call tracking, as well as certain Centrex features. The Commission found that such 'adjunct to basic' services *facilitated the establishment of a transmission path over which a telephone call may be completed*, without altering the fundamental character of the telephone service." *Implementation of Section 255 of the Telecommunications Act of 1996*, 13 FCC Rcd. 20391 at ¶ 39 (1998). *See also id.* ¶ 40 (Directory assistance is "adjunct to basic, rather than enhanced service, because directory assistance provides only that information necessary for a subscriber to place a call. . . . In contrast, reverse directory assistance (where a customer knows a telephone number and seeks to learn the name of the number holder) supplies information that is not necessary to complete a call, and is therefore an enhanced service").

"Although [adjunct to basic] services may fall within the literal reading of the enhanced services definition, they facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service. Similarly, we conclude that 'adjunct to basic' services are also covered by the 'telecommunictaions management exception' to the statutory definition of information services, and therefore are treated as telecommunications services." *Non-Accounting Safeguards Order* at ¶ 107.

"[T]he computer processing applications employed in the Centrex features and residential telephone services classified as basic services in the NATA/Centrex order, *like other adjunct services*, are *all* the result of communications between subscribers and the network for call setup, call routing, call cessation, calling or called party identification, billing or accounting." *North American Telecommunications Association*, 3 FCC Rcd 4385 at ¶ 32 (1988). *See also id.* ¶ 43 (The "CDAR" feature allows "Centrex customers to store and retrieve customer business information that the telephone companies do not use in the provision and management of the customers' telephone service. This storage and retrieval function constitutes the provision of 'different, additional, or restructured information within the scope of clause 2 of our definition of enhanced service. The information CDAR provides the subscriber is both quantitatively and qualitatively distinct from the information the subscriber otherwise would receive").

If "an automated information retrieval computer need not be accessed remotely over communications circuits . . . [to] still have value and utility," that provision of information via telecommunications would necessarily be an enhanced service. *Third Computer Inquiry*, Notice of Proposed Rulemaking, CC Docket No. 85-229, 1985 FCC LEXIS 2770, n.64 (1985).

AT&T's Single Integrated Servie Cannot Be Treated As Two Distinct Services

"We recognize that the question may not always be straightforward whether, on the one hand, an entity is providing a single information service with communications and computing components, or, on the the other hand, is providing two distinct services, one of which is a telecommunications service. . . . We noted recently . . . that '[t]he issue is whether, functionally, the consumer is receiving two separate and distinct services.'" Report to Congress ¶ 60.

"[W]e believe that Internet access providers do not offer subscribers separate services – electronic mail, web browsing, and others – that should be deemed to have separate legal status." Report to Congress ¶ 75.