Sprint

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EX PARTE PRESENTATION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

Sprint is dismayed by the prospect of a further delay in Commission action on AT&T's year-old petition regarding so-called "enhanced" prepaid cards.

The underlying legal issue, which has been thoroughly briefed on the record by Sprint and others, is as simple as they come. It strains credulity to argue, as AT&T does, that a prepaid calling card, marketed and sold for the sole purpose of making telephone calls, can be turned into an "information" or "enhanced" service by injecting a commercial message during call set-up – a message that consumers don't ask to hear and that only serves the purpose of delaying connections to the parties they are calling. When AT&T first raised this issue informally with the then-Common Carrier Bureau staff roughly a decade ago, it was given the short shrift its argument deserves. AT&T now admits that it has avoided $140 million in contributions to the Federal Universal Service Fund since 1999, and has avoided payments of $215 million in intrastate access charges during just the past two years. See AT&T Corp. Form 10-Q, filed with the Securities and Exchange Commission on May 10, 2004.

AT&T's apparently conscious avoidance of its USF and access charge obligations has harmed both the public and the industry. Customers of other carriers have had to make up the USF contributions that AT&T has failed to make, local exchange carriers (both incumbent and competitive) have been deprived of access charges to which they are lawfully entitled, and Sprint – which competes directly with AT&T on prepaid cards – has suffered competitive harm by AT&T's behavior. Particularly with respect to the stability and integrity of the Universal Service Fund, it is difficult to envision – and impossible to quantify – the full range of impacts on USF that would be engendered by endorsing the logic of AT&T's argument or accepting its "act now, request for

forgiveness later" approach. But to provide just two examples: Sprint transmits continuous time-of-day information to its wireless customers – the same sort of "interaction with stored information" AT&T is relying on – and could easily program its wireline long distance switches to interject some irrelevant piece of information ("The temperature in downtown Djakarta is now 105°."). On the basis of AT&T's argument, Sprint could legitimately cease all future USF contributions on both wireless and (with the switching change mentioned above) direct-dialed voice services, and could seek refunds of all prior wireless-related contributions as well. Surely, this inventive industry would find ways to inject information into all telecommunications services in order to transmogrify them into USF-exempt "information" services.

Notably -- notwithstanding the fears aroused by AT&T's publicity campaign – AT&T's unlawful practices have **not** translated into marked savings for its customers. In its July 20, 2004 ex parte letter in this proceeding (from Robert W. Quinn, Jr.), AT&T touts price points for its so-called "enhanced" cards available through Sam's Club and Wal-Mart ranging from $.0296 to $.0787 per minute. Sprint currently distributes cards through major retailers at rates that are at the lower part of the range cited by AT&T: a $.04 per minute price at Safeway, and a price of $.0333 per minute at Dollar General stores. Additionally, within the past year, Sprint also presented a bid to Sam's Club with an assumed retail rate identical to the lowest rate cited by AT&T, $.0296 per minute. These facts belie AT&T's contention that low-cost alternatives would not be available if AT&T had to play by the rules – a contention which in any event is bankrupt as a matter of law, public policy and business ethics.

Another AT&T ex parte letter of July 20 (from Mark P. Evans) makes a special point of the burden that a denial of its petition would place on military personnel using its cards. Sprint is not privy to the terms of AT&T's contracts to provide calling capabilities to military personnel or the prices it charges on its military cards. But judging from AT&T's retail pricing behavior in the civilian sector, as detailed in the preceding paragraph, the Commission should not assume that AT&T would be forced to raise its prices on those cards if it began paying intrastate access charges (which, of course, would not even arise from overseas calls back to the U.S.) and making USF contributions (which, on a hypothetical 3.5 cent-per-minute card would only add three-tenths of one cent in costs for each minute).

Sprint does know, however, that AT&T refused to allow military personnel to use free calling cards in Iraq and elsewhere that Sprint had distributed to our troops overseas. And Sprint has many large business partners who would be more than willing to distribute large volumes of Sprint prepaid cards to our overseas troops if they could be assured that the cards would be accepted. Sprint would welcome a commitment by AT&T to support our troops overseas by unblocking Sprint's cards (and cards given away by other carriers, too).

Nor is there any basis for AT&T's fallback position that if the Commission denies its petition, the denial should only be given prospective affect. A denial of AT&T's petition would be a simple and straight-forward application of pre-existing law. There was never any reasonable basis for AT&T to believe that its actions were well grounded in law. Indeed, it was only after the Alaska Regulatory Commission began investigating AT&T's avoidance of intrastate access charges that AT&T formally sought a ruling from this Commission. To be sure, these are challenging times for long-distance carriers, but it would appear from AT&T's 10-Q filing that AT&T has been engaging in this conduct since at least 1999, during the heady days of the industry. Allowing AT&T to keep its ill-gotten gains would a terrible signal for government to send to the industry: "make up any fanciful theory to support improper conduct, wait until you are caught, then plead before the FCC, and the FCC, in good time, will absolve you of liability for past misdeeds." It is precisely during difficult times for the industry that the FCC needs to send a clear message that carriers who evade the rules do so at their peril, and carriers who play by the rules can be assured of swift and decisive action against those who do not.

This letter is being filed electronically in accordance with Section 1.1206 of the Commission's Rules.

Sincerely,

cc: Chairman Powell
Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Commissioner Adelstein
Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Dan Gonzalez
Scott Bergmann
William Maher
Tamara Preiss
Steve Morris