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September 1, 2004

VIA ELECTRONIC FILING

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
Calling Card Service, WC Docket No. 03-133

Dear Ms. Dortch:

Attached please find a letter sent to Chairman Michael Powell on behalf of the Alaska Exchange Carriers Association, Inc. ("AECA") in response to *ex parte* communications filed recently as well as a letter by a Department of Defense official regarding AT&T's above-referenced prepaid calling card petition.

On behalf of AECA, one electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with the Commission's rules.

Sincerely,

Alaska Exchange Carriers Association, Inc.

Attachment



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Michael K. Powell, Chairman
Federal Communication Commission
445 12th Street SW, Suite 844
Washington, DC 20554

TOM MEADE
SECRETARY-TREASURER
ALASKA COMMUNICATIONS
SYSTEMS

Re: AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid
Calling Card Service, WC Docket 03-133

STEVE HAMLEN
UNITED UTILITIES

Dear Chairman Powell:

CHERYL HINKES
NUSHAGAK ELECTRIC AND
TELEPHONE
COOPERATIVE

1. Executive Summary. The Alaska Exchange Carriers Association, Inc. ("AECA") is an association of local exchange carriers ("LECs") in Alaska that administers a common, intrastate access tariff. AECA is writing this letter in response to the various ex parte letters filed in recent weeks as well as the recent letter from Mr. Charles Abell, Department of Defense ("DOD"), Office of the Undersecretary regarding AT&T's above-referenced prepaid calling card petition. In summary, AECA respectfully requests the FCC to immediately deny AT&T's Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Service ("AT&T's Petition" or "Petition"). AT&T should not be permitted to unilaterally avoid or cease payment of otherwise legitimate intrastate access and USF charges.

PAUL KELLY
CORDOVA TELEPHONE
COOPERATIVE

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2. AT&T's Unilateral Actions Harm Rural Companies and Undermine Universal Service. AT&T must not be allowed to unilaterally "bend or ignore the rules" governing the existing access charge and USF systems as established by the FCC. A study by the research firm Atlantic-ACM stated last year, "US pre-paid calling card industry will reach \$6.4 billion by 2008 which was growing 25.4% annually in 1995-2002 and would continue to experience solid growth over the next 5 years."¹ AT&T's unilateral actions

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¹ Communications Daily, 01/24/03.

undermine access charge revenues and USF funding arising from these pre-paid calling revenues.

AT&T's unilateral actions have already resulted in the under collection of access charge revenues and USF funding harming the rural companies that rely upon those revenues. AT&T has knowingly admitted in its May 10, 2004, SEC filing that it has avoided paying over \$215 million in access charges on its enhanced calling card service and withheld \$140 million in universal service contributions.

The under collection of intrastate access charge revenues and USF funding will only become more severe if AT&T's Petition is granted. As Sprint wrote in its letter dated May 27, 2003, to the Universal Service Administrative Company ("USAC"), "[I]f the FCC grants AT&T's petition, then Sprint has mistakenly been overstating the amount of its revenues that are subjected to USF and will request a refund from such prepaid cards as far back as January 1, 1998."² AECA is concerned that, similar to Sprint, all other carriers who have marketed similar prepaid calling cards, will be requesting refunds and USF support will plummet. If the Commission does not deny AT&T's Petition, but instead, calls the prepaid cards "information services" which are not subject to access, this action will undermine universal service.

As may be expected, AT&T's unilateral actions have also had a substantial impact to AECA's member companies. As the overall prepaid calling card market has grown, AECA's member companies have experienced a significant decline in intrastate access minutes and the under collection of their approved revenue requirements. This decline was so significant and dramatic that an audit of the message process system of AT&T Alascom (a wholly owned subsidiary of AT&T) was performed in Alaska. The audit revealed that approximately 94 million or 20% of Alaska's rural LECs' 2003 intrastate access minutes had been excluded by AT&T Alascom.³

The FCC must stop AT&T's unilateral, self-serving interpretation of the access charge regulations. Approving AT&T's Petition will be detrimental not only to universal service, but also to the state access revenues, which LECs depend upon to cover the costs of providing the facilities allocated to the provisioning of intrastate calls. The FCC should immediately resolve the jurisdictional issue of prepaid calling cards and act swiftly to deny AT&T's Petition. To do otherwise will undermine the integrity of the FCC's existing access charge and USF systems.

² Letter from Richard Juhnke of Sprint to USAC, ¶ 2, dated May 27, 2003.

³ Order Establishing Demand Component and Affirming Electronic Rulings, Order U-03-49(5) (Apr. 28, 2004, Regulatory Comm'n of Alaska).

3. AT&T's Unilateral Actions Harm Other Long Distance Carriers that Comply with Existing Law. Not only do AT&T's unilateral actions harm rural companies, but they have also harmed other long distance carriers that comply with the existing law by affording a cost advantage to those long distance carriers willing to unilaterally "bend or ignore the rules" governing the existing access charge and USF systems as established by the FCC. The FCC should act to ensure that similarly situated competitors are treated in a nondiscriminatory fashion and not allow those competitors such as AT&T who unilaterally "bend or ignore the rules" to unfairly benefit.

4. AT&T's Unilateral Actions Ignore Existing Law. In taking its unilateral actions, AT&T simply ignored the Regulatory Commission of Alaska's ("RCA") and the FCC's clear and repeated prior rejection of the legal principles underlying AT&T's Petition. Consistent with the FCC's prior holdings, the RCA has held that an Alaska to Alaska pre-paid card call placed through an 800 number is an intrastate call.⁴ Section 2(b) of the Communications Act of 1934, as amended (Act), reserves regulation of intrastate services for the states. Whenever an Interexchange Carrier (IXC) utilizes Local Exchange Company's (LEC) network to originate and terminate a call within a state boundary, it should be required to compensate the LECs via state access charges.

The RCA's rulings are consistent with those of the FCC. Previously, the FCC has stated:

We have previously held that calls involving 800 switching should be treated for jurisdictional purposes as a single, end-to-end communication.⁵

The same point was ruled by the FCC in a Teleconnect filing where the FCC stated:

Interstate wire communication is regulated from its inception to its completion by the Communications Act and, within the meaning of the Act, does not end at an intermediate switch.⁶

⁴ See RCA Orders U-86-99(1) (11/03/99); U-94-71(1) (02/07/95); and U-99-74(3), (03/21/00).

⁵ DA 95-2288 MOO released 11/03/1995 ¶ 30.

⁶ Teleconnect, 6 FCC Rcd at 5206 (citing National Ass'n of Regulatory Utility Comm'rs v. FCC, 746 F.2d 1492, 1498 (1984)).

Again the FCC confirmed this fact in stating that:

Switching at the credit card switch is an intermediate step in a single end-to-end communication.⁷

AECA, along with many other communication providers, believe it is evident that the FCC has already ruled on the issue of one call versus two as AT&T requests in its Petition. However, ignoring the plain language of the Commission's previous rulings, it appears now that AT&T wants to "push the envelope" further because it does not agree with those previous rulings.

In effect, AT&T has ignored the RCA and FCC's prior positions and switched the jurisdictional assignment of its calls by asserting that it is providing an "enhanced" service by the insertion of an advertisement message. What AT&T is actually providing is an unsolicited announcement by AT&T or the retailer of AT&T's prepaid calling cards. AT&T provides no evidence to refute that the calling party's intention is to call another party, not to listen to an unsolicited announcement. If AT&T is allowed to simply insert an unsolicited advertisement in the communications path of its prepaid calling card service and by that effort change the jurisdiction and regulatory treatment of the call, then such a ruling could cause complete havoc with access charges and the various USF support funds established by this Commission as it would not be long before all other carriers followed suit.

AT&T has inappropriately assumed, due to the introduction of an electronic voice message, that "intrastate access charges on AT&T's enhanced prepaid calling card services would be unlawful."⁸ What AT&T has done, without seeking regulatory approval, is changed the jurisdiction of these prepaid calls from intrastate to interstate, which also violates the intent of the FCC's Separations Freeze Order. "The five-year interim freeze period will maintain stability in jurisdictional separations, while allowing the Commission and the Joint Board sufficient time to assess and consider further separations reform."⁹ Regulatory procedures have always been in place for providers to obtain rulings, opinions, or waivers. Nevertheless, in this case, AT&T has avoided asking the FCC for a ruling before AT&T made the jurisdictional change and is now asking for "permission" after the fact. For this reason alone, if the FCC does not deny AT&T's petition outright as it should, the agency

⁷ In the Matter of Southwestern Bell Tel. Co., CC Docket No. 88-180, Order Designating Issues for Investigation, 3 FCC Rcd 2339, 2341 (1988).

⁸ AT&T Corp. Petition for Declaratory Ruling at 3.

⁹ FCC 01-162; CC Docket 80-286 released 05/22/01.

should make it clear any “new” rule will only be applied prospectively from the date of the FCC’s decision.

5. AT&T Alascom’s Positions Before the RCA Directly Contradict AT&T’s Petition Before the FCC. When other intrastate long distance carriers in Alaska were not reporting and paying access charges for calls originating and terminating within Alaska because the other carriers’ calls were routed through facilities outside of Alaska, AT&T Alascom filed complaints with the RCA to force those other carriers to pay intrastate access charges on those calls. AT&T Alascom asserted that the RCA has jurisdiction over intrastate prepaid cards calls that originate and terminate in Alaska even though the calls were routed over interstate facilities using an interstate 800 number. *See e.g., RCA Docket U-94-71.*

Within its petition, it states, “At least one state commission, however has begun to seek information of these services, apparently as a prelude to permitting imposition of intrastate access charges on these services, on the assumption that such calls are intrastate calls.”¹⁰ The one state commission AT&T is referring to is the RCA.¹¹ It is in the best interest of every state regulatory commission to require AT&T to comply with their existing access charge system.

6. AT&T’s Comments Relating to Military Personnel. AECA trusts that the FCC will disregard AT&T’s insensitive allegations that military personnel and their families will be harmed should AT&T’s Petition be denied. AECA fully supports our military and their families. However, AECA is appalled by AT&T’s action informing military consumers through its advertising message that there could be an increase in prices for the prepaid calling cards if AT&T’s petition receives a negative vote by the FCC. Since it was AT&T that unilaterally priced its cards without obtaining regulatory approval and marketed these cards to the military, it is disingenuous of AT&T to now use those dependent families as a defense for its illegal decision. Perhaps AT&T should be required to show it has used an appropriate allocation of both interstate and intrastate minutes in developing its pricing strategy before being allowed to raise its rates.

¹⁰ AT&T Corp. Petition for Declaratory Ruling, WC Docket No. 03-133 (May 15, 2003, FCC).

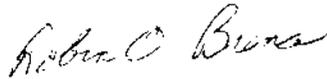
¹¹ Re Investigation into Unauthorized Telecommunication Intrastate Debit Card Marketing by AT&T Apart from AT&T Alascom, Docket No. U-97-120 (Regulatory Comm’n of Alaska).

Chairman Michael K. Powell
September 1, 2004
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7. Conclusion.

AECA respectfully requests the FCC to immediately deny AT&T's Petition. Unless the FCC immediately denies AT&T's Petition, AT&T will be improperly rewarded for unilaterally "bending or ignoring the rules" established by the FCC and state regulatory commissions while rural companies that rely upon access charge revenues and USF funding and other long distance carriers that comply with the existing law will continue to be harmed.

Sincerely,



Alaska Exchange Carriers Association, Inc.

c:

To the following at the
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554:

The Honorable Michael K. Powell
The Honorable Kathleen Q. Abernathy
The Honorable Jonathan S. Adelstein
The Honorable Michael J. Copps
The Honorable Kevin J. Martin

Christopher Libertelli, Senior Legal Advisor
Office of Chairman Michael K. Powell

Matthew Brill, Senior Legal Advisor
Office of Commissioner Kathleen Q. Abernathy

Scott K. Bergmann, Legal Advisor
Office of Commissioner Jonathan Adelstein

Jessica Rosenworcel, Legal Advisor
Office of Commissioner Michael J. Copps

Daniel Gonzalez, Senior Legal Advisor
Office of Commissioner Kevin J. Martin

and to

Tamara Preiss, Chief
Pricing Policy Division
Wireline Competition Bureau
445 12th Street, SW
Room 5-A225
Washington, DC 20554