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November 22, 2004

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TW-B204
Washington, DC 20554

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

Dear Ms. Dortch:

I write on behalf of AT&T Corp. ("AT&T") to advise the Commission of a new variant of enhanced prepaid card ("EPPC") service that AT&T has developed and that is relevant to the Commission's consideration of AT&T's Petition for Declaratory Ruling in this matter.[1] We accordingly amend this Petition and respectfully request a ruling from the Commission that this new variant of EPPC, like the EPPC variant described in the Petition, is an interstate "information service" not subject to universal service assessments or intrastate access charges. Also, we seek a ruling regarding the regulatory treatment of EPPC (which does not use 1+ dialing) when transport is provided using VoIP technology.

AT&T showed in its Petition, Reply Comments and subsequent *ex parte* submissions to the Commission,[2] that the variant of EPPC described in the Petition (which will continue to be offered), fits squarely within the Communications Act's

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[1] AT&T Corp. Petition for Declaratory Ruling, filed May 15, 2003 ("Petition").

[2] *See* Reply Comments of AT&T Corp., filed July 24, 2003 ("AT&T Reply") and May 11, 2004 *ex parte* Letter from David Lawson to Marlene H. Dortch.

"information service" definition. *See* 47 U.S.C. § 153 (20) (defining"information service" as any service that includes "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications"). The EPPC cardholder dials an 8YY number and is connected to a computer platform, which, after the cardholder enters her prepaid card PIN number, retrieves and transmits to the cardholder additional stored information that is not of the user's choosing and that is entirely unrelated to call routing or processing. Under the plain language of the 1996 Act, the Commission's pre-1996 Act enhanced service definition, and more than two decades of consistent Commission precedents, this communication of the stored advertising message (which is almost always an interstate communication) makes the EPPC service, as originally described in the Petition, an information service.[3] And the incumbent local exchange carriers that oppose this straightforward application of the law have been unable to point to *any* contrary suggestion in the statute, rules or Commission precedents.

The new variant of the EPPC service that AT&T has developed has several new capabilities that AT&T makes available to meet customer needs, and likewise falls squarely within the information service definition because it makes available to the subscriber additional, non-call-related information. Like the EPPC variant described in the Petition, a cardholder that uses the new EPPC variant dials an 8YY number, is connected to a computer platform, and enters her prepaid card PIN number. At that point, rather than immediately making available a single stored, non-call-related advertising message associated with the card, the computer platform transmits to the cardholder an announcement message that offers several options, such as (i) additional information about the card distributor's business, (ii) additional information about the card distributor's web site, and (iii) additional information about travel, photo processing or other services available from the card distributor.

For example, for cards purchased at "ABC Stores", a typical message would be, "If you want to learn more about ABC Stores' programs, press 1." If the cardholder presses 1, she is offered a menu of options, such as the following:

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[3] *See, e.g.*, July 13, 2004 *ex parte* Letter from David Lawson to Marlene H. Dortch; July 12, 2004 *ex parte* Letter from Amy L. Alvarez to Marlene H. Dortch; May 11, 2004 *ex parte* Letter from David Lawson to Marlene H. Dortch; 47 C.F.R. § 64.702(a) (defining "enhanced services" as services offered over common carrier transmission facilities that "provide the subscriber additional, different, or restructured information" or "involve subscriber interaction with stored information"); *Northwestern Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd. 5986 ¶ 20 (1987) (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").

- "To learn more about your ABC Store benefits, press 1."
- "To learn more about abcstore.com, press 2."
- "To learn more about the amazing ABC Store travel services, press 3."
- "To learn how to add more minutes to your card at any ABC Store, press 4."
- "To place a call, press the star (*) key."

If the caller selects an option, the computer platform transmits the information associated with that option. If the caller does not press 1 or select an option (or at the completion of any message), she is invited to dial a destination number to complete a telephone call. In either case, before a call is connected, the computer platform retrieves and transmits to the cardholder a non-call-related informational advertising message (in the same manner as the EPPC variant described in the Petition).

This new variant of AT&T's EPPC service (like the original) is thus an information service because it plainly involves the "generating," "acquiring," "retrieving," "utilizing," and the "making available" of "information via telecommunications" as well as "electronic publishing." 47 U.S.C. § 153(20); *id.* § 274(h)(1) (electronic publishing includes the "dissemination [or] provision" of "advertising" to a "person"). The new variant of AT&T's EPPC service (like the original) is also quite plainly an "enhanced service" under Section 64.702(a) of the Commission's Rules (and thus, like *all* enhanced services, an information service under the Act). The AT&T service both "provide[s] the subscriber additional, different, or restructured information" and "involve[s] subscriber interaction with stored information." 47 C.F.R. § 64.702(a). Finally, the new variant of AT&T's EPPC service (like the original) is clearly within the Commission's interstate jurisdiction by virtue of the interstate communication that occurs in connection with virtually every call when the computer platform (which is almost always in a different state than the calling party) transmits the non-call-related advertising message to the cardholder.[4] AT&T respectfully urges the Commission to so find in considering these revised circumstances and ruling on AT&T's amended Petition.

AT&T also asks the Commission to rule on a further refinement in the provisioning of the EPPC service that AT&T is considering implementing. Specifically, AT&T asks the Commission to rule that the EPPC service, both as originally offered and

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[4] *See* October 12, 2004 *ex parte* Letter from Judy Sello to Marlene H. Dortch, showing that the Commission unquestionably has authority to assert interstate jurisdiction over EPPC services and that there are numerous compelling reasons for it to do so.

with the variations described above, will be treated as an interstate information service not subject to universal service assessments or intrastate access charges, if transport were provided over AT&T's Internet backbone network, using Internet Protocol ("IP") technology. In its Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* 19 FCC Rcd. 7457 (2004)("*IP Telephony Order*"), the Commission held that "phone-to-phone" VoIP services which utilize 1+ dialing and are provided to customers as traditional interexchange calls, do not become exempt from access charges applicable to circuit-switched interexchange calls by virtue of the fact that the calls are converted to an IP format for transport and then converted back to TDM for termination over local business lines. In so holding, the Commission expressly limited its decision only to calls that utilize 1+ dialing and declined to address any other application of VoIP services. *Id.* at ¶ 13 and n.58. AT&T's EPPC calls are *not* 1+ calls because a caller must first dial an 8YY number to reach the EPPC platform, and then dial the called party's number. Accordingly, the limitations adopted in the *IP Telephony Order* do not, by the terms of that Order, apply to EPPC calls. AT&T understands that other prepaid card providers (for example, Net2Phone and IDT) are, in fact, utilizing VoIP for transport of platform-based prepaid card services, and treating such calls as subject to the ESP exemption from access charges or paying, at most, interstate access charges. AT&T respectfully requests that the Commission also address this issue and rule that if AT&T provides its EPPC services in this manner using its Internet backbone, AT&T's service will likewise be treated as an interstate information service.

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

Respectfully submitted,

/s/

Judy Sello

cc: Christopher Libertelli
Matthew Brill
Daniel Gonzalez
Jessica Rosenworcel
Scott Bergmann
Jeffrey Carlisle
Tamara Preiss
Steve Morris
Paul Moon