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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, Amy Alvarez, David Lawson of Sidley Austin Brown & Wood, LLP and I met with Christopher Libertelli, Senior Legal Adviser to Chairman Michael Powell, to discuss issues related to the aforementioned proceeding. In particular, we explained that AT&T launched a Promotional Enhanced Prepaid Card service in 1994. AT&T advised the FCC at that time of the service characteristics and, consistent with the Commission's governing enhanced services rules and precedents, AT&T's treatment of the service as an unregulated enhanced service. Indeed, AT&T made a public Cost Allocation Manual filing, which described the service and moved the costs associated with this service into enhanced non-regulated categories. We also discussed the fact that because AT&T provides end users of its enhanced prepaid card service additional non-call-related information (in the form of an advertisement or other message approved by the card distributor) from the card platform to the calling party, AT&T's regulatory treatment of the service has at all time been in complete compliance with – and, indeed, compelled by – the FCC's longstanding regulation defining the term “enhanced service”: “*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. 47 C.F.R. § 64.702(a) (emphasis added).

We explained that the advertisement or other non-call-related information communicated by the platform to the subscriber quite plainly constitutes the provision of “additional, different or restructured information,” and we noted that the Commission has repeatedly held both that “[s]atisfying any *one* of the characteristics [listed in 47 C.F.R. § 64.702(a)] would suffice to classify the service as enhanced,” *US West Petition for Computer III Waiver*, 11 FCC Rcd. 1195 ¶29 (1995) (emphasis added), and that “*all* enhanced services are information services” under the 1996 Act definition. *Non-Accounting Safeguards Order*, 11 FCC Rcd. 21905 ¶ 103 (1996)

(emphasis added). Under these circumstances, we noted, any claim that AT&T and others have not reasonably relied upon Commission rules, statements and conduct in treating their enhanced prepaid card services as enhanced services borders on the frivolous. We also explained that because the communication of non-call-related information between the platform and the subscriber is clearly an interstate communication where the calling party is located in a different state than the platform, the Commission has clear interstate jurisdiction over any such call (or calling session), notwithstanding the presence of additional intrastate communications on the same call (or calling session).

Further, we explained that to the extent the Commission now asserts, despite contrary statutory language, Commission rules and case law, and Commission conduct (including the acceptance of the adjustments in AT&T's 1994 Cost Allocation manual described above), that enhanced prepaid card services should not be treated as an interstate enhanced/information services, that would constitute a change of law for which there plainly should be no retroactive application in light of reasonable reliance upon the Commission's prior statements and actions.

Mr. Libertelli advised that AT&T should have come to the FCC to seek prior permission to categorize this service as an interstate, information service and instead elected to take the risk of a retroactive Commission finding (ignoring completely the cited rules, case law and our 1994 CAM filing). We explained that any such requirement that carriers obtain *ad hoc* service-specific regulatory classification determinations or proceed "at their risk" would be a flat repudiation of the enhanced services rules in effect since 1980 when the Commission rejected the *ad hoc* "primary purpose" test of *Computer I* as an abject failure that produced crippling regulatory uncertainty and replaced it with a bright-line rule: 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." *Computer II*, 77 FCC 2d 384, ¶ 101 (1980). . See also *id.* at ¶ 97 ("An enhanced service is *any* offering over the telecommunications network which is more than a basic transmission service") (emphasis added).

We questioned Mr. Libertelli whether other entities who have entered the communications market to provide services that those providers treat as interstate enhanced services, even in the absence of an express Commission ruling with respect to those services, are subject to potential retroactive liability for USF and access payments, specifically identifying Vonage and other VoIP service providers who are marketing services that they assert (and we agree) are information services. Mr. Libertelli specifically responded that Vonage and other companies who provide enhanced services without seeking prior Commission approval are at risk for retroactive liability, too.

We reiterated again that the type of *ad hoc* approach apparently contemplated was explicitly rejected by the FCC in 1980 and replaced with the bright line approach contained in 47 C.F.R. § 64.702(a) to encourage investment and minimize regulatory uncertainty. We explained how the approach outlined during our discussion would destroy the incentives for such investment.

All of the arguments made during the discussion were consistent with those and other written submissions made by AT&T filed in this proceeding. One electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with the Commission's rules.

Sincerely,

A handwritten signature in black ink, reading "Robert W. Quinn". The signature is written in a cursive style with a large, looping initial "R".