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January 25, 2005

Hon. Michael K. Powell  
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Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

**David Honig, Executive Director**  
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Dear Chairman Powell:

RE: WC Docket No. 03-133 (Petition for Declaratory Ruling –  
Enhanced Prepaid Calling Card Services)

In the above-referenced Petition, AT&T requests that the Commission determine that its prepaid calling card services are interstate “information services” and therefore exempt from USF and access charge obligations.

Seldom does MMTC take a position on service definition issues contested by the major telecom companies. This matter, however – triggered by AT&T’s refusal to pay interstate USF and access charge fees for its prepaid calling cards – is an exception, because AT&T’s Petition directly challenges the nation’s universal service compact.

In Telephone Subscribership in the United States (Wireline Competition Bureau, October 2004), the Commission reported that as of July 2004, 6.2% of U.S. households still do not subscribe to local phone service. For Hispanic households, the figure was 9.2%, and for African American households it was a startling 12.6%. These troubling statistics underscore the criticality of preserving the means by which all Americans can afford a dial tone.

Today the USF is at great risk. Increasingly, communications services are offered by cable modem and Internet providers, which are not generally required to contribute to the maintenance of our local phone networks or to the USF. Certainly the USF formulas may need to be recalibrated in light of the impending Brand X decision and in connection with the evolution of VOIP. Nonetheless, it should be axiomatic that if a service is regarded and actually used by consumers as telecommunications, providers of that service should pay their USF and access charge obligations. As the Commission considers how to maintain affordable access to local phone service and preserve the USF, it should begin by rejecting any and all invitations to evade these bedrock regulatory obligations.

AT&T's principal theory is that because the consumer who uses one of its calling cards hears or can hear an advertisement for a retail company like Wal-Mart, the cards are transmogrified from a telecommunications service into an "information service" – thus exempting AT&T from the obligation to pay access charges and contribute to the USF.

That theory is entirely without merit. The Communications Act defines a telecommunications service as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. §153(46). These services are not "information services", which the statute defines as "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." 47 U.S.C. §153(20).

Merely attaching an advertisement to an otherwise typical telecommunications service does not, and should not, magically transform the telecommunications service into an information service. After all, consumers are buying the cards to make telephone calls, not to hear about Wal-Mart. If a brief advertisement transformed a call into an "information service," there would be no end to the creative ruses that companies would devise to opt out of participation in our national telecommunications social compact. Suppose, for example, that a company embedded in its calling cards a two-second expression of James Earl Jones' gratitude for the call. Based on that subterfuge, the calling card provider could avoid altogether access charges and USF contributions that otherwise would be due.

Such a loophole would swallow the rule. Were it permitted, no rational company would provide a telecommunications service, and no carrier would pay USF contributions or access charges anymore. The poor could still make long distance calls, but they would largely be compelled to use pay phones because the cost of a residential dial tone would be prohibitive. Nor would calling card calls be any less expensive. Calling card providers would simply charge the rates competitively established by the marketplace and retain any surplus revenues (including the USF contributions and access charges they formerly had made) as profits for their shareholders. This natural economic phenomenon explains why prepaid calling card rates are essentially uniform today even though one provider, AT&T, has chosen not to pay access charges and USF contributions. AT&T's competitors have made these payments, yet they still maintain comparable rates.

AT&T asserts that its five-year, nearly \$500,000,000 USF and access charge holdback was justified because calling cards are widely used by military personnel and minorities. The record in this docket shows that AT&T has persuaded several well intentioned parties that (1) the FCC secretly intends to raise rates on prepaid calling cards by as much as 20%; (2) since AT&T donates some free calls to military personnel, opposition to its prepaid calling card holdbacks is unpatriotic; and (3) AT&T's access charge and USF holdbacks actually benefit minorities.

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None of these assertions contains even a kernel of truth. As shown below, avoidance of a company's obligations to support the maintenance of local telephone networks and the USF, including its schools and libraries program, is neither patriotic nor is it pro-civil rights. Instead, it is an unseemly exploitation of patriotism and racial pride for the purpose of depriving America's rural and low-income urban communities of the telecommunications services enjoyed by other Americans.

First, by denying the Petition, the FCC would not be raising rates for AT&T's prepaid calling cards. Rather, it would be requiring AT&T to pay what it is legally required to pay under the Act and the Commission's rules, and what AT&T should have been paying all along. The marketplace will contain AT&T's ability to raise rates on its own. For example, another large carrier, Sprint, has made it clear that its rates are comparable to AT&T's even though it contributes to the USF and pays access charges.

Second, AT&T's assertion that withholding USF and access charge payments is patriotic is a cynical abuse of the unwavering support of all Americans for our troops overseas. Contrary to domestic consumer telecom policy and practice, AT&T does not allow other companies to provide calling cards to military personnel. AT&T has even prevented other companies from donating free calls to military personnel.

Third, holding back USF and access charge funds hardly benefits low-income families. Instead, these regulatory programs ensure that all Americans can enjoy the affordable local telephone service that is so vital to full participation in an information society. As the Commission has declared, "telephone service is a necessity in today's world." Extending Wireless Telecommunications Services To Tribal Lands (R&O and Further NPRM), 15 FCC Rcd 11794, 11798 ¶9 (2000). In truth, AT&T's refusal to contribute its fair share of the USF places additional costs – in the form of higher USF pass through charges – on the low income and minority consumers AT&T claims to protect.

The Commission should take this opportunity to preserve the mechanisms upon which consumers depend for affordable telephony. It can do this by stating, simply and unequivocally, that prepaid calling cards are telecommunications services.

Sincerely,



David Honig  
Executive Director

cc: Hon. Kathleen Abernathy  
Hon. Jonathan Adelstein  
Hon. Michael Copps  
Hon. Kevin Martin

/dh