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February 9, 2005

Ex Parte

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W., 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:

AT&T hereby responds to BellSouth's January 24, 2005 and GCI's January 28, 2005 *ex parte* letters in this docket concerning enhanced prepaid card ("EPPC") services.[1]

I. AT&T's EPPC Service Is An Information Service

First, BellSouth continues to contend that AT&T's EPPC service cannot qualify for information service status because "an enhanced service must provide the customer with some capability that is offered to the customer and that the customer agrees to purchase . . . ." BellSouth *ex parte* at 4. According to BellSouth, this requirement prevents a carrier from doing what AT&T is purportedly "attempting to do here – artificially characterize a telecommunications service as enhanced without providing some meaningful additional functionality to the consumer of which the customer is reasonably aware." *Id.* This claim is simply a rehash of the arguments that BellSouth previously advanced in its December 8, 2004 *ex parte* (at 1) that "the customer does not intend to purchase an information service." As AT&T explained in its January 14

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1 January 24, 2005 *ex parte* Letter from Stephen L. Earnest, BellSouth to Marlene H. Dortch ("BellSouth *ex parte*"); January 28, 2005 *ex parte* Letter from Lisa R. Youngers, GCI to Marlene H. Dortch ("GCI *ex parte*")

ex parte (at 1-2),[2] neither the statute nor any of the Commission's enhanced services rules or decisions have ever relied on customer intention in determining whether an offering is an information service, and to do so now would call into question the regulatory status of a wide array of services that are conceded today to be information services. BellSouth is simply attempting to revive the *Computer I* "primary purpose" test that the Commission repudiated nearly twenty-five years ago as dangerous, unworkable and antithetical to investment-inducing regulatory certainty.

As AT&T demonstrated (at 2-3), the Commission's enhanced services regulation – which the Commission has repeatedly held to meet the statutory "information service" definition – requires only that a service "provide" the subscriber with "additional, different, or restructured information." 47 C.F.R. § 64.702(a). There is no requirement that a service provider show customer motivation regarding, desire for, or even use of the additional information (or other enhancements) provided to the subscriber, and any such requirement would plainly be impossible to administer and a source of crippling regulatory uncertainty. Indeed, the "primary purpose" test that BellSouth urges was expressly rejected in the Commission's 1980 *Computer II* decision, in which the Commission, in accord with the unanimous views of the entire industry, promulgated its bright-line rule regulation that provides that "[a]n enhanced service is *any* offering over the telecommunications network which is more than a basic transmission service." *Computer II*, 77 F.C.C.2d 384, ¶ 97 (1980) (emphasis added). Notably, the Commission stated that "[a]t the margin, some enhanced services are not dramatically dissimilar from basic services." *Id.* ¶ 130. The Commission expressly rejected claims that it should continue the *Computer I* primary purpose test, stating that such an approach was a "stop-gap measure" and that it cannot "result in regulatory certainty" because it requires unacceptable "*ad hoc* determinations." *Id.* ¶ 107. The Commission stated unequivocally that it defined enhanced services as *any* enhancement of basic services, no matter how slight and regardless of its primary purpose, in order to "draw a clear and, we believe, sustainable line between basic and enhanced services upon which business entities can rely in making investment and marketing decisions." *Id.* ¶ 101.[3]

There is no basis for BellSouth's contention that the Commission has retreated from this bright line test in the intervening years. BellSouth relies on statements in the

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2 *See, e.g.*, January 14, 2005 *ex parte* Letter from Judy Sello, AT&T to Marlene H. Dortch ("January 14 *ex parte*").

3 *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, First Report And Order And Further Notice Of Proposed Rulemaking, 11 FCC Rcd. 21905, ¶ 102 (1997) ("*Non-Accounting Safeguards Order*") ("We conclude that all of the services that the Commission has previously considered to be 'enhanced services' are 'information services,'" although the category of "information services" is broader); *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501, ¶ 33 (1998) ("*Report to Congress*") (same).

Frame Relay Order,[4] that whether a service is classified as enhanced must be determined based on the end-to-end communications between or among subscribers and that the communications between a subscriber and the network for call set-up or call routing cannot make a service enhanced. BellSouth *ex parte* at 4. In particular, the Commission there concluded that Frame Relay was not enhanced because the data modifications that occurred in these services were required "for the carriage of the customer's data through the network to the proper termination point, and hence are part of a basic transmission service." *Frame Relay Order* ¶ 30. This holding is an *application* of the bright line test first adopted in *Computer II.*

Similarly, the holding of the *Frame Relay Order* has *nothing* to do with AT&T's EPPC service. In EPPC service, the customer is supplied additional information, in the form of computer-stored *spoken words* that are completely *unrelated* to call set-up or call routing and that are in addition to the information transmitted by the subscriber. As the Commission has explained, "enhanced services include services that involve subscriber use or interaction with information in the network not otherwise used in the provision and management of a customer's service." *Inmate Calling Declaratory Ruling Order* ¶ 28 (citations omitted) (*infra* n.10).[5] Moreover, if BellSouth were correct that communication of computer-stored information to the subscriber could not form the basis of an enhanced service where the communication did not relate to call routing, it would mean that entire categories of services, such as voice mail, "Talking Yellow Pages" and other services that have been recognized for decades as enhanced services, would suddenly be transformed into basic services, contrary to express Commission rulings.[6]

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4 *Independent Data Communications Manufacturers Association, Inc., Petition for Declaratory Ruling that AT&T's InterSpan Frame Relay Service Is a Basic Service and American Telephone and Telegraph Company Petition for Declaratory Ruling that All IXCs Be Subject to the Commission's Decision on the IDCMA Petition*, 10 FCC Rcd. 13, 717 (1995) ("*Frame Relay Order*").

5 47 U.S.C. § 153(20) ("information services" do not extend to "use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service"); *see, e.g.*, *Computer II*, 77 F.C.C.2d 384, ¶¶ 97-98 (1980); *Communications Protocols under Section 64.702*, 95 F.C.C.2d 584, ¶ 28 (1983) ("processing involved in the initiation, routing and termination of calls . . . is inherent in switched transmission and is not within the definition of enhanced service"); *NATA/Centrex Order*, 3 FCC Rcd. 4385, ¶¶ 11-12, 32 (1988) (basic service includes "call setup, call routing, call cessation, calling or called party identification, billing, or accounting").

6 *See Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation*, 7 FCC Rcd. 1619, ¶ 20 (1992) (voice mail) ("*BellSouth MemoryCall Order*"); *Computer II*, 77 F.C.C.2d 384, 421 (1980) (voice mail);

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Nor, despite BellSouth's contentions (*ex parte* at 4), does AT&T have to provide some "additional functionality" or "a variety of advanced features" for EPPC to qualify as an information service. This is vividly illustrated by how the Commission treated AT&T's offering of a time at destination ("TAD") feature. AT&T had wanted to include time at destination as an adjunct to basic service by offering it as a free feature of a tariffed service, useful in completing calls to international destinations by allowing the caller to terminate the call prior to call completion, if the call is at an inappropriate time. Customers placed calls in the usual manner and the time at destination stamp would appear on the line. Nonetheless, the Commission staff told AT&T that it viewed TAD as an enhanced service and directed AT&T to file a waiver request seeking permission to offer TAD as part of a basic service. This staff advice is reflected in the attached waiver petition (fn.3) that AT&T filed October 6, 1995. Indeed, BellSouth in commenting on AT&T's waiver petition acknowledged this fact: "AT&T explains that the need for the waiver arises following informal indications from Commission staff who viewed the proposed feature as 'enhanced' under the Commission's rules and not subject to treatment as an adjunct to basic service."[7] AT&T's time at destination feature – like the advertisement on EPPC – did not require the caller to do anything other than listen to the information provided, yet the staff, applying the enhanced service regulation as written – rather than, as BellSouth proposes, employing an impermissible "primary purpose" test – deemed the service "enhanced."

And BellSouth's bizarre reliance on a 1986 Supplemental Notice that *proposed* changes to the Commission's enhanced service regulation that were *never* adopted only confirms that any order deeming AT&T's EPPC service a basic service would be a change in law and not a permissible application of the Commission's existing enhanced services regulation.[8] In that *Notice* the Commission proposed three alternative changes

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Northwestern Bell Telephone Company Petition for Declaratory Ruling, 2 FCC Rcd. 5986 (1987) ("*Talking Yellow Pages Order*"). In *Talking Yellow Pages*, the Commission held that 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." *See id.* ¶ 20 (emphasis added).

7 *See* BellSouth Comments, CCBPol Docket 95-17, filed November 7, 1995, in *AT&T Corp. Petition for Waiver of Comparably Efficient Interconnection Requirements of Third Computer Inquiry*, Public Notice, DA 95-2179 (Oct. 17, 1995).

8 *See Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizing Thereof Communications Protocols under Section 64.702 of the Commission's Rules and*

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to the enhanced services regulation designed to provide a more nuanced regulatory classification of various "protocol processing" services that "permit inter-device communications without changing the content of the information being transferred." *Id.* ¶ 26. The Commission expressly recognized that under its then-existing regulation – which *remains* in place today – "[w]e held that code and protocol conversion are enhanced services even though we conceded that these services perform functions similar to those performed by basic services in that they permit disparate terminals to communicate with each other." *Id.* ¶ 8. That was so, because these protocol processing services satisfied the first of the three independent enhanced services criteria under the regulation: they "employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information." 47 C.F.R. § 64.702(a); *see also* US West Petition for Computer III Waiver, 11 FCC Rcd. 1195, ¶ 29 (1995) ("[s]atisfying any one of the characteristics [listed in 47 C.F.R. § 64.702(a)] would suffice to classify the service as enhanced").

The 1986 *Notice* sought comment on whether "changes are needed in the regulatory treatment of protocol processing," *id.* ¶ 14, to allow carriers to offer some services as basic services, without having to obtain service-specific waivers of the regulation. The Commission proposed to do this either by adding additional language to the regulation to (i) limit enhanced services to processing that "act on a subscriber's transmission" and change the "information content" of that transmission (Alternative A), or (ii) specifically exempt from enhanced services definition only certain listed protocol processing services (Alternatives B and C). *See id.* Appendices A-C. *None* of the proposed changes had anything to do with services that, like EPPC services, do not merely act on the subscriber's transmission, but transmit stored information *in addition* to the information content of a subscriber's transmission, and, in any event, none of the proposed changes was adopted.

More to the point, the Commission properly recognized in the 1986 *Notice* that a formal notice and comment rule change is required if the Commission determines that its existing regulation produces an undesirable regulatory classification of a particular service and that the Commission cannot, as BellSouth urges, simply declare that henceforth particular services will be treated as basic notwithstanding their satisfaction of one more of the regulation's enhanced services criteria. Indeed, the Commission acknowledged that even if it did ultimately decide to change its regulation to define as basic services that satisfied the enhanced criteria of the existing regulation, it would need to consider a transition rule to address "the severe economic impact that might result from the sudden imposition of access charges" upon services that were previously enhanced and not subject to those charges. *Id.* ¶ 46.

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Regulations, CC Docket No. 85-229, Supplemental Notice of Proposed Rulemaking, 1986 FCC LEXIS 3236 at *31, ¶ 33 (1986) ("*Protocol NPRM*").

BellSouth points to the Commission's description of the expected operation of proposed Alternative A. Under that proposal, the first criteria would, as noted, have been changed to require a change in the "information content," and not merely the code of the subscriber's transmission. Moreover, Alernative A proposed "further revisions to the enhanced services definition," such that *each* of the three revised enhanced criteria, including the second clause "provide the subscriber additional information," would have been limited to computer processing applications that "act on a subscriber's transmission." *See id.* ¶ 31. The Commission explained that, as revised, the "*proposed* second clause language . . . would subsume services related to process control functions – such as fire and intrusion detection and alarm systems. This proposal was *not* adopted, and BellSouth is thus plainly wrong in suggesting that the Commission's actual enhanced services regulation is limited to "process control functions." BellSouth *ex parte* at 5.

Indeed, no such claim could be made even if the regulation had been revised as proposed in the 1986 *Notice*, given that the Commission noted only that the "additional information" criteria, as revised, would "subsume" process control functions, making clear that such functions were merely an illustrative example of services encompassed by that criteria. Of course, it is hardly surprising that the Commission used such an example in the context of an NPRM focused on protocol processing functions. The EPPC services at issue here clearly satisfy the additional information criteria of the actual regulation that applies here, as confirmed only one year later in the Commission's 1987 *Talking Yellow Pages Order*, which held that recorded advertisements are enhanced services under the Commission's regulation.

Second, BellSouth (*ex parte* at 1-3) contends that AT&T's incorporation of an enhanced prepaid card in its 1994 Cost Allocation Manual ("CAM") filing[9] does not bind the Commission to a finding that it must treat EPPC as an information service. In support of this proposition BellSouth cites the *Inmate Calling Declaratory Ruling Order,*[10] in which the Commission held that inmate payphones would be treated as nonregulated CPE and that certain inmate calling service features would, if provided in the network, be treated as adjunct to basic. *Id.* ¶ 33. Because the LECs were treating both inmate payphones and specialized service features as part of their basic service offerings, they would *not* have been flagged in their CAMs.[11] Thus, it is not surprising

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9 *See, e.g.*, November 1, 2004 *ex parte* Letter from Amy L. Alvarez, AT&T to Marlene H. Dortch ("November 1 *ex parte*").

10 *See Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force,* 11 FCC Rcd. 7362 (1996) ("*Inmate Calling Declaratory Ruling Order*").

11 As the Commission explained by way of background as to the pre-existing regulatory regime, "the pay telephone service and instrument were found to form an integrated basic communications service to the public. Accordingly, LECs (pursuant to *Computer II* and *Tonka*) continue to provide pay telephones as part

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that the "one fact that the Commission did not consider was whether carriers had classified such services in their CAM as information or enhanced services." BellSouth *ex parte* at 2.[12] In no way did the Commission suggest that it could cavalierly disregard its acceptance of a filed CAM classifying a service as nonregulated – along with its actual regulation and decades of consistent precedents recognizing that services that provide subscribers with additional, non-call-related information satisfy the that regulation. Certainly, there can be no serious argument that the Commission could ignore its and its staff's consistent endorsement that such services are enhanced in considering the equities of *retroactive* treatment of these services as basic.

Nor is there any inconsistency between AT&T's regulatory treatment of EPPC as an information service and the fact that it continued to pay access charges and universal service support for years after its 1994 CAM filing. Contrary to BellSouth's allegations (*ex parte* at 2-3), AT&T still pays access charges for EPPC, albeit interstate access charges, as it has previously explained.[13] The fact that an enhanced service provider elects to purchase access service rather than rely on the ESP exemption is a matter of network configuration and does not undermine the regulatory classification of its service. For the convenience of subscribers, many enhanced service providers purchase 8YY service so that their customers can reach their platforms on a toll-free basis by dialing a nationwide number, rather than deploying (and requiring customers to become familiar with) distinct local numbers throughout the country. The purchase of 8YY service, which includes switched access at the open end, does not affect the regulatory status of the service provided to the end user. Moreover, because universal service contributions were not based on end-user telecommunications revenues until 1998, until that time, the regulatory status of EPPC service was irrelevant to USF contributions.

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of a regulated basic transmission service." *Inmate Calling Declaratory Ruling Order* ¶ 3. It appears that the various specialized inmate calling service features were provided as part of the regulated payphone service, and the Bells wanted to keep it that way. *Id.* ¶ 28.

12 Given that the Commission ruled that inmate-only CPE would be treated as nonregulated, it required the LECs to make conforming prospective CAM and accounting changes to reflect that fact. *Inmate Calling Declaratory Ruling Order* ¶¶ 1, 27, 35. Because the Commission ruled that other features were adjunct to basic, CAM changes were not required.

13 *See, e.g.,* January 14 *ex parte* at 4-10.

II. GCI's Contentions About Forfeitures and Penalties Must Be Rejected

GCI (*ex parte* at 1-2) contends that the "FCC should order AT&T to pay penalties pursuant to section pursuant to section 501 and 503(b)(2)(B) of the Telecommunications Act for its on-going willful violations and refusal to pay appropriate access charges and universal service fund ("USF") contributions as required by law." While AT&T would strongly oppose any forfeiture penalty, suffice it to say, for now, that Section 503(b)(4) provides that "no forfeiture penalty shall be imposed . . . unless and until . . . the Commission issues a notice of apparent liability, in writing, with respect to such person" and the named party "is granted an opportunity to show, in writing, within such reasonable time as the Commission prescribes . . . why no such forfeiture penalty should be imposed." This forecloses imposition of a forfeiture as part of an order on AT&T's EPPC petition. Moreover, the Commission has no authority to impose penalties on a failure to pay intrastate access charges, should it decline to exercise interstate jurisdiction over AT&T's EPCC service.

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

Respectfully submitted,

/s/

Judy Sello

Attachment

cc: Christopher Libertelli
Matthew Brill
Daniel Gonzalez
Jessica Rosenworcel
Scott Bergmann
Jeffrey Carlisle
Michelle Carey
Tamara Preiss
Lisa Gelb
Steve Morris

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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AT&T Corp.	)	
	)	
Petition for Waiver of Comparably Efficient Interconnection Requirements of Third Computer Inquiry	)	File No.

PETITION OF AT&T CORP. FOR WAIVER OF THE COMMISSION'S COMPUTER INQUIRY III RULES

Pursuant to the Commission Orders in the Third Computer Inquiry,[1] AT&T Corp. ("AT&T") hereby petitions for a waiver of the Commission's Third Computer Inquiry ("CI-III") rules to the extent necessary to enable AT&T to offer its customers a "time at destination stamp" for calls placed from the United States to foreign countries as part of its International Redial Service.[2] AT&T also requests prompt resolution of its Petition or, in the alternative, temporary authorization to offer the time at destination stamp as part of its International Redial Service until the Petition is adjudicated.

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1 Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 F.C.C.2d 958 (1986) ("Phase I Order"), modified on reconsideration, 2 FCC Rcd 3035 (1987) ("Phase I Reconsideration Order"), second further recon., 3 FCC Rcd 1135 (1988) ("Phase I Further Reconsideration Order").

2 The sole basic service component utilized by the time at destination stamp is 1+ international calls.

I. INTRODUCTION

AT&T's time at destination stamp feature utilizes the delay during international call setup to notify an AT&T customer calling a party outside the United States of the local time in the country being called. Using this information, the calling party may terminate the call prior to call completion if the calling party determines that the call is not being made at an appropriate time. For example, a person placing a call from New York to Tokyo, Japan, at 11:00 A.M. local New York time would hear a message that the time in Tokyo is 1:00 A.M. The caller would then be able to use this information to decide if the called party should be disturbed at 1 o'clock in the morning, or if the call should be placed at a different time.[3]

Section 1.3 of the Commission's Rules provides that the provisions of the Commission's rules may be waived "if good cause therefor is shown."[4] An applicant requesting a waiver must demonstrate that the rule is not in the public

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[3] AT&T planned to offer this feature initially as part of its International Redial service, a tariffed service that offers subscribers the ability to have AT&T's network automatically attempt to complete an international call for 30 minutes if the called party's line is busy or there is no answer. However, prior to filing the International Redial tariff that included the time at destination feature, AT&T was notified by the Commission staff that in the staff's view the time at destination stamp was not an adjunct to basic service, as AT&T intended to treat it, but rather an enhanced service. Therefore, the staff advised that time at destination could not be included in the tariff. AT&T subsequently filed the International Redial tariff, without the reference to time at destination. The tariff is currently effective.

[4] 47 C.F.R. § 1.3.

interest when applied to its particular case, and that grant of a waiver will not undermine the public policy served by the rule.[5]

AT&T is seeking relief from the Commission's comparably efficient interconnection ("CEI"), cost allocation, and unbundling rules as well as all other CI-III requirements that would otherwise prevent AT&T from providing this feature as an integrated part of its International Redial Service. Application of the CI-III rules in this instance would not further the Commission's goal of encouraging a competitive marketplace for enhanced services. Rather, as shown below, imposition of these rules would stifle innovation and deprive customers of a useful new calling feature. Of greatest significance, the imposition of a CEI requirement on AT&T would be so burdensome as to render the offering of this new feature prohibitive. It was clearly not the Commission's intention in promulgating the CI-III rules, nor is it consistent with the public interest, to impose such onerous obligations on carriers as to render their offering of innovative features uneconomic, and thereby preclude the introduction of such features into the market. However, absent a waiver, that would be the result in this case.

Moreover, imposing the CI-III rules in this instance would not promote the continued development of competition in the enhanced services

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5 See Petition of the American Telephone and Telegraph Company for Waiver of Comparably Efficient Interconnection Requirements of the Third Computer Inquiry, Memorandum Opinion and Order, 2 FCC Rcd 6723 (1987) (waiving CEI requirements for AT&T's provision of sub-account billing services).

marketplace.[6] As discussed below, there is simply no market for this feature on a stand-alone basis; accordingly there can be no adverse impact on enhanced service providers. Finally, to the extent that the Commission is concerned about the effects on other long distance carriers of offering this feature as part of a tariffed service, those carriers could, as well, make this feature available as part of their network offering (with a waiver); thus all international long distance carriers could offer a competitive service to their customers.

II. THE CI-III REQUIREMENTS

In removing structural separation requirements for the enhanced services operations of AT&T (and the BOCs), the Commission imposed CEI and four nonstructural safeguards as the principal conditions on the provision of unseparated enhanced services.[7] As relevant here, the CEI standards require that a carrier's basic services used in offering unseparated enhanced services must be available to other ESPs and users on an unbundled and functionally equal basis.[8] AT&T (and the BOCs) may provide a particular enhanced service upon: the filing and approval of a CEI plan meeting the Commission's filing requirements, the submission of reports assuring the nondiscriminatory provision

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6 Phase I Order at 1026.

7 Phase I Order at 964; 1068-69. Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 1150, 1158-68 (1988). The four nonstructural safeguards are nondiscrimination reports, customer proprietary network information ("CPNI"), network disclosure, and cost allocation.

8 Phase I Order at 964.

of basic services, the submission of a detailed cost allocation plan, adherence to the Commission's requirements relating to network disclosure and adherence to CPNI disclosure requirements.[9] Underlying these rules is the basic tenet that the enhanced service may not be tariffed.[10] As demonstrated below, waiver of the CEI, cost allocation and unbundling requirements in this instance is warranted.[11]

A. CEI Requirements

Although the Commission imposed service-by-service CEI requirements for AT&T's integrated or collocated enhanced services, it also recognized that CEI would not be appropriate in all instances, and provided for waiver procedures to consider CEI on a service-specific basis.[12] The Commission's rationale for applying the CEI requirements to AT&T is that comparably efficient interconnection is necessary to foster competition in the

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9 Id. at 964-965. The specific requirements of a CEI plan include requirements of interface functionality; unbundling of basic services; purchase of basic services at tariffed rates; availability of equal technical characteristics, installation and repair; and equal availability of CEI to competing ESPs. Id. at 1039-1042.

10 Competition in the Interstate Interexchange Marketplace, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 4562, 4580 (1995).

11 AT&T's network disclosure and CPNI obligations would not be implicated by this waiver. Moreover, as discussed below, because AT&T would not offer the time at destination feature as a separate enhanced service, the reporting requirement would not be triggered.

12 Phase I Reconsideration Order, 2 FCC Rcd at 3048, nn.161 and 175.

enhanced services marketplace.[13] However, because it is unlikely that any ESPs would offer a time at destination service, CEI is neither necessary to encourage competition for this feature nor warranted from a cost efficiency standpoint.[14]

First, the separate provision of the time at destination stamp, and the accompanying CEI requirements, would be of little, if any, utility to ESPs. To AT&T's knowledge, no ESP currently offers a time at destination feature. Moreover, it is unlikely that any ESP would offer this service on a stand-alone basis, because of the limited utility of such a feature if it is not being offered contemporaneously with the placement of an international call. In this regard, AT&T has conducted research that indicates that while customers find the feature very useful in connection with their placement of international calls, they would not be willing to purchase it on a stand-alone basis.[15] Thus, the feature has no marketplace viability except as an adjunct to an international call.[16]

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13 Phase I Order at 1026.

14 In the Phase I Reconsideration Order, the Commission recognized that "in exceptional circumstances," a carrier may be unable to provide a particular enhanced service if CEI were required, thus necessitating a complete waiver of the CEI requirements. Phase I Reconsideration Order at 3048, n.175; Phase I Order at 1039. Time at destination stamp represents such an "exceptional" circumstance.

15 See Affidavit of A. Helen McGrath, Attachment A.

16 ESPs will, of course, be able to purchase under tariff AT&T's International Redial Service, which would include the time at destination feature as part of the service offering.

Second, to provide CEI, AT&T would be forced to incur costs that it would not be able to recover. AT&T estimates that it would cost approximately $1 million to configure its basic network to enable ESPs to offer a similar service. However, as noted above, AT&T would have no practical vehicle to recover such costs from end users. Moreover, because no ESP is expected to provide this feature, AT&T cannot reasonably expect to recover any CEI costs from other ESPs. The substantial costs that AT&T would incur by requiring such "grossly inefficient over-engineering" of AT&T's network -- which could not be directly recovered -- would likely lead AT&T not to offer the feature.[17] This result is clearly not in the public interest, as consumers would be denied the ability to use a feature that they have expressly stated they would find very useful.

B. Cost Allocation Rules

AT&T also seeks a waiver of the cost allocation rules imposed on enhanced service offerings. The cost allocation procedures are designed to prevent improper cost-shifting from unregulated to regulated offerings, which may have an adverse impact on ratepayers by increasing the prices paid for regulated services.[18] In the instant case, inclusion of the costs of this feature in the regulated accounts does not raise subsidization or competitive concerns.

As a practical matter, competition in the interexchange market and the price cap rules that currently apply to AT&T each independently forecloses

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[17] Phase I Reconsideration Order at 3048.

[18] Phase I Order at 1074-1075.

these concerns. Even as a theoretical matter, moreover, the costs of adding the feature to the existing network platform are minimal, because no significant development is required if the feature is implemented as part of the basic service offering.[19] Therefore, there will be no discernible financial impact on the customers of the regulated service. Furthermore, because customers have indicated that they would have no desire for this feature as a stand-alone service, including it as part of a regulated service (which itself may be purchased for resale by ESPs) would have no adverse impact on the development of a competitive service. Accordingly, once this feature is offered as part of a tariffed service, the need for allocating its costs to unregulated accounts no longer exists.

C. Unbundling of Enhanced Services

Finally, for the time at destination feature, AT&T requests a waiver permitting it to refer to the feature in the International Redial tariff. Permitting this feature to be provided as part of a tariffed service would harm neither AT&T's customers nor its competitors.

As noted above, AT&T's regulated services customers would not be burdened by including this feature as part of a tariffed service. International customers have specifically indicated their desire for this feature as an integrated, non-chargeable aspect of their international calling. Because this is

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[19] As noted above, the costs of additional network development to comply with the CEI rules would be prohibitive.

a feature that simply has no economic viability except as part of a tariffed service offering, and AT&T thus would not be able to offer this feature at all as a stand-alone service, customers are benefited only if AT&T is allowed to reference this feature in the tariff.

Competition among ESPs will not be affected, because AT&T's research reveals that no ESP would have any economic incentive to offer a similar, stand-alone service. Finally, to the extent that the Commission is concerned about the effect of this waiver on interexchange competition, there will likewise be no impact. Because the time at destination feature does not rely on facilities or technology unique to AT&T, other basic services network providers could offer this type of feature in their own networks as part of their tariffed offerings.

CONCLUSION

Given the nature of the time at destination feature (i.e., to facilitate completion of international calls), its limited utility except as part of AT&T's International Redial Service offering, and its obvious unattractiveness as a stand-alone offering to customers or to ESPs, AT&T should be permitted to offer this feature as an integrated part of its basic International Redial service. In the

absence of a waiver, AT&T would incur costs that it would not be able to recover, making it likely that AT&T would not offer the feature at all. Accordingly, AT&T has demonstrated good cause for its Petition to be granted.

Respectfully submitted,

AT&T CORP.

By /s/ Ava B. Kleinman

Mark C. Rosenblum
Ava B. Kleinman
Seth S. Gross

Its Attorneys

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October 6, 1995

AFFIDAVIT

STATE OF NEW JERSEY)
) ss:
COUNTY OF MORRIS)

A. HELEN MCGRATH, being duly sworn, deposes and says:

1. I am a Division Manager in the Global Consumer Communications Services business unit at AT&T. I have been in this position since January, 1993. In this position I am responsible for developing new products for AT&T's long distance customers. I submit this affidavit in support of AT&T's Petition for Waiver of the Commission's Computer Inquiry Rules.

2. I was responsible for heading the team that developed the "time at destination" stamp for international long distance calls. This feature uses the delay during a call setup to notify an AT&T customer calling someone outside the United States of the local time in the country they are calling. By notifying the caller of the time at the destination being called, the calling party has the option to terminate the call prior to call completion.

3. I was responsible for evaluating the results of four consumer studies designed to learn whether customers would find the time at destination stamp a

useful feature. These studies, conducted between July 1992 and September 1994, showed that customers would like this feature to be available on international calls. The studies also showed, however, that customers would not be willing to purchase this feature separately.

4. AT&T does not anticipate that offering the feature on a stand alone basis will generate the revenue needed to cover the expenses associated with designing, implementing, marketing, and provisioning the feature. Therefore, AT&T will not offer the feature on a stand alone basis.

The foregoing statements are true and correct to the best of my knowledge, information and belief.

A. Helen McGrath

Sworn to and subscribed to
before me this 2nd day of
October, 1995

Elaine Elizabeth Sheh
Notary Public

ELAINE ELIZABETH SHEH
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 29,1998