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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") in response to *ex parte* letters filed by a number of rural local exchange carriers ("LECs") who have undertaken a letter-writing campaign by which they seek to influence the Commission's decision in this docket. By AT&T's count, some 46 *ex parte* letters, all virtually identical, with a "fill-in-the-blank" format for a company name, were filed in this docket between January 14 and February 1, 2005, by various rural LECs.¹

The letters raise three principal arguments, none of which refutes AT&T's showing in its Comments, Reply, and numerous *ex parte* letters submitted in this docket, that under well-established law, AT&T's Enhanced Prepaid Card ("EPPC") offering is an "enhanced" or "information" service that is not subject to intrastate access charges or to Universal Service Fund ("USF") assessments that the rural LECs urge the Commission to impose on AT&T.

First, these letters assert that the rural LECs are small companies that will be unable to meet their revenue requirements unless the Commission imposes intrastate access charges on AT&T's EPPC. Even if this claim were true, it would provide no basis

¹ A list of the companies submitting letters to date is attached hereto.

for imposing intrastate access charges on a service, which pursuant to longstanding Commission regulations and the 1996 Act, is jurisdictionally *interstate* and thus not subject to such charges. It is well settled that where it is impractical separately to regulate the individual intrastate and interstate communications that may take place in a single call or session, the service as a whole, is to be regulated as interstate. *GCI v. ACS*, 16 FCC Rcd. 2834 (2001). As AT&T has explained in detail in several prior *ex parte* letters, EPPC is such a service because it includes communication between the enhanced services platform and the cardholder via the interstate transmission of computer-stored non-call-routing related messages as well as the transmission of communication between two parties, who may or may not be located within the same state. *See e.g., ex parte* Letter dated January 14, 2005, from Judy Sello to Marlene H. Dortch, WC Docket No. 03-133 at 4-5, and cases cited therein. Therefore, EPPC is a jurisdictionally *interstate* service and is not subject to state access charges.

Furthermore, it is significant that not one of the 46 carriers who submitted form *ex parte* letters has provided *any* data to show that it is, in fact, not meeting its intrastate revenue requirement, much less that such hypothetical shortfall has resulted from usage of AT&T's EPPC. Indeed, to AT&T's knowledge, rural carriers typically earn at or above the rate of return authorized in the interstate jurisdiction and not one of these rural carriers has shown this is not true for the intrastate jurisdiction as well. And to the extent any carrier experiences a shortfall in its intrastate revenue requirement, relief is available from the appropriate state commission. It would be impermissible to assign an interstate service such as EPPC to the intrastate jurisdiction to recover any intrastate revenue shortfall, even if one existed.

Second, the claim that the entire Universal Service system is placed in jeopardy because AT&T has not made USF contributions in connection with EPPC is both wrong and entirely beside the point because EPPC is an enhanced service that simply is not subject to USF charges. The argument that the Fund would benefit from a broader assessment of the USF charge could be made as readily with respect to *any* enhanced service because contributions to the Fund will obviously be spread across a larger funding base, the more broadly the charge is assessed. But unless there is a legal basis for applying the USF charge to a service—which there is not for EPPC—the mere fact that the USF would benefit from a broader funding base does not, of itself, justify the imposition of the charge to a particular enhanced service. In all events, there is no risk to the USF because it will continue to be fully funded by assessments on those services that are legally subject to that charge. And the claim that AT&T has somehow failed to meet its obligation to support the USF is flatly refuted by the facts. As AT&T has previously shown, AT&T is the single largest contributor to the USF, having paid more than \$9 billion, or more than 30% of the total federal USF costs since 1998.²

² *See ex parte* Letter dated October 4, 2004, from Judy Sello to Marlene H. Dortch, CC Docket No. 96-45 and WC Docket No. 03-133.

The rural LECs' third argument, that EPPC is not an information service and is thus subject to USF payments, is flatly wrong. AT&T has shown in numerous prior pleadings³ and *ex parte* submissions⁴ that the plain statutory text of the 1996 Act and decades of Commission precedent establish that EPPC is an enhanced or information service which is not subject to USF payments. The rural LECs' bald assertions to the contrary do not refute this showing.⁵

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

Attachment

³ AT&T Corp. Petition for Declaratory Ruling, filed May 15, 2003, at 18-21, WC Docket No. 03-133; Reply Comments of AT&T Corp., filed July 24, 2003, at 8-22, WC Docket No. 03-133.

⁴ *See, e.g., ex parte* Letter dated November 23, 2004, from Judy Sello to Marlene H. Dortch, WC Docket No. 03-133 and CC Docket No. 96-45; *ex parte* Letter dated May 11, 2004, from David L. Lawson to Marlene H. Dortch, WC Docket No. 03-133.

⁵ One rural carrier (Surewest Communications) cites to AT&T's long-standing treatment of its traditional calling card as a telecommunications service to support its claim that EPPC too is a telecommunications service rather than an enhanced service. This claim fails because of the obvious—and critical—distinction that every EPPC call involves a non-call-routing related communication between the enhanced services platform and the EPPC user, while traditional calling card services offer only bare transmission between two parties.

Rural Carriers Filing *Ex Parte* Letters

All West Communications
Beggs Telephone Company
Butler-Bremer Mutual Telephone
Carnegie Telephone Company
Central Utah Telephone
Citizens Telephone Company of Kecksburg
Clarks Telecommunications
Clear Lake Independent Telephone Company
Commonwealth Telephone Enterprises, Inc.
Consolidated Telecom
Craigville Telephone Company
Darien Telephone Company
D&E Communications
Dell Telephone Cooperative
Epic Touch Co.
Frontier and Citizens Communications
Granby Telephone Company
Grand Telephone Company, Inc.
Granite State Telephone
Hartington Telecommunications Company
HickoryTech
Hinton Telephone Company
Hood Canal Telephone Company, Inc.
Huxley Communications Cooperative
Industry Telephone Company
K&M Telephone Company
Kalona Cooperative Telephone Company
Lakedale Communications
Lincolnvile Telephone Company/Tidewater Telecom
Mashell Telecom DBA The Rainier Group
Monon Telephone Company
Monroe Telephone Company
New Ulm Telecom
North Pittsburgh Telephone Company
Oneida County Rural Telephone
Palmetto Rural Telephone Cooperative
Pennsylvania Telephone Company
Pinnacles Telephone Co
Smart City Telecommunications
SureWest Communications
Table Top Telephone
The Toledo Telephone Company
Valor Telecommunications
Warwick Valley Telephone
Webster-Calhoun Cooperative Telephone Association
Western New Mexico Telephone