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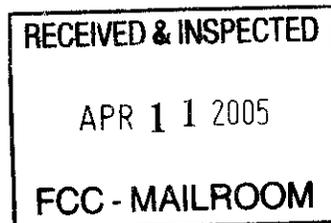
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April 7, 2005

VIA EXPRESS MAIL



Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 - 12<sup>th</sup> Street S.W.  
Room CY-B402  
Washington, D.C. 20554

Re: AT&T Corporation Petition for Declaratory Ruling Regarding  
Enhanced Prepaid Calling Card Services, WC Docket No. 03-133  
Our File No. 734-102

Dear Ms. Dortch:

Enclosed for filing in the above-referenced matter, please find the original and four copies of the Opposition of the Alaska Exchange Carriers Association, Inc. to AT&T's Motion for Stay Pending Appeal. The opposition was filed electronically with the Commission today, e-mailed to Best Copy and Print, Inc. for publication to the FCC website docket and served upon all parties having previously submitted filings under this docket.

Please contact the undersigned should you have any questions.

Very truly yours,

BRENA, BELL & CLARKSON, P.C.

By

A handwritten signature in black ink, appearing to read "Anthony S. Guerriero".

Anthony S. Guerriero

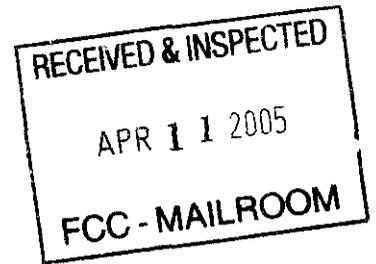
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Enclosures

cc: Ms. Judith A. Colbert

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



In the Matter of )  
 )  
AT&T Corp. Petition for Declaratory )  
Ruling Regarding Enhanced Prepaid Calling )  
Card Services )  
\_\_\_\_\_ )

WC Docket No. 03-133

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**OPPOSITION OF THE ALASKA EXCHANGE CARRIERS  
ASSOCIATION, INC. TO AT&T'S MOTION  
FOR STAY PENDING APPEAL**

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ALASKA EXCHANGE CARRIERS  
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April 7, 2005

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The Alaska Exchange Carriers Association, Inc. (“AECA”),<sup>1</sup> by and through its counsel, Brena, Bell & Clarkson, P.C., opposes AT&T’s Motion For Stay Pending Appeal, Subject To Posting of Security (“AT&T Stay Motion”).

**I. Summary of Argument.**

AT&T seeks a stay of the impact and effect of the recent Order<sup>2</sup> of the Federal Communications Commission (“FCC” or “Commission”) which otherwise requires AT&T to rectify past wrongs, and also to play by the rules in the future. AECA opposes the AT&T requested stay because AT&T has wholly failed to make the required showing that AT&T is likely to prevail on appeal, that AT&T will suffer irreparable harm if the stay is not granted, that the requested stay will not harm others, or that the requested stay is in the public interest.

The holding of the Order is fully justified by, and consistent with prevailing law, and does not constitute a departure therefrom. Furthermore, AT&T has presented no new arguments or authority which would alter the Order’s well-reasoned approach. In sum, AT&T has failed to make a showing that it is likely to succeed on appeal.

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<sup>1</sup> AECA is an association that administers a common, intrastate access tariff for rural local exchange carriers (“LECs”) in Alaska. As part of its administration, AECA assesses intrastate access charges to be paid by interexchange carriers (“IXCs”), like AT&T, for the use of the member LECs’ facilities and services when originating and terminating intrastate long distance calls. The access charges assessed by AECA are based on the actual costs to the LECs of providing their facilities and services to the IXCs for use in providing long-distance service. AECA’s member LECs file detailed revenue requirements of those costs that are reviewed and approved each year by the Regulatory Commission of Alaska (“RCA”).

<sup>2</sup> Order and Notice of Proposed Rulemaking, WC Docket No. 03-133, FCC 05-41, rel. February 23, 2005 (“Order”).

As to irreparable harm, AT&T's Stay Motion is also lacking. In fact, its convoluted reasoning makes a strong case against the imposition of a stay. Rationalizing that AT&T might actually have to play by the rules, or complaining that others might not be playing by the rules, are not good reasons to suspend the rules as to AT&T. Others would be harmed by such a result, while AT&T would be free to proceed with business as usual. Nor would this result be favorable to the public interest, for the public interest is served by the enforcement of the law equally, not by the unjustified exception from the impact of the law sought by AT&T's stay request.

Finally, even if a stay was otherwise appropriate, AT&T's offer to post security is far short of liability to others, the collection of which AT&T seeks to avoid.

AT&T's Stay Motion should be denied.

## **II. Legal Standards Applicable to Imposition of Stay.**

The standards for evaluating applications for stay are set forth in Virginia Petroleum Jobbers Ass'n v. F.P.C., 259 F.2d 921, 925, 104 U.S. App. D.C. 106, 110 (D.C. Cir. 1958), where the court enunciated four factors to be considered: (1) whether the petitioner has made a showing that it is likely to prevail on the merits of its appeal; (2) whether there will be irreparable injury if a stay is not granted; (3) whether issuance of a stay will substantially harm other parties interested in the proceeding; and (4) where the public interest lies. Id.

As hereinafter set out, AT&T has failed to make the necessary showings with regard to any of the four factors, let alone all of the factors, thereby negating its bid for a stay of the Order.

## **III. AT&T Has Not Made a Showing That it is Likely to Prevail on Appeal.**

AT&T's so-called "showing" on the issue of its likelihood of success on appeal is nothing more than a rehashing of the issues and cases previously fully briefed and discussed in this docket,

along with a strong dose of FCC bashing. AT&T's case analysis is no more compelling than as previously considered, and warrants no differing result. A plain reading of the well-reasoned Order makes it clear that this was not a close call. To the contrary, the Order serves as a crushing blow to every single argument advanced by AT&T in its attempted bypass of USAC contributions and intrastate access charges, including conclusions that:

(1) The AT&T self-proclaimed "enhanced" prepaid calling card ("EPPC") service is a "telecommunications service," not an "information service" as contended by AT&T;<sup>3</sup>

(2) EPPC calls which originate and terminate in the same state are jurisdictionally intrastate, and subject to intrastate access charges;<sup>4</sup> and

(3) Given prior FCC precedent, and established USAC procedures, AT&T had no reasonable basis to expect to avoid its obligations, and the Order appropriately operates as a statement of existing law.<sup>5</sup>

In so ruling, the FCC left no doubt about the validity of AT&T's positions, or its likelihood of prevailing on appeal. In fact, FCC Chairman, Michael K. Powell felt so strongly about the conviction iterated by the Order that in his statement issued with the Order Mr. Powell accuses companies, like AT&T, of "engag[ing] in misdirection or word games"

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<sup>3</sup> Order, at 5, paragraphs 14-15, 21.

<sup>4</sup> Order, at 8, paragraph 22.

<sup>5</sup> Order, at 11-12, paragraph 32.

and creating ambiguity, all in “efforts to duck their universal service responsibilities.”<sup>6</sup> Mr. Powell went on to describe certain of AT&T’s arguments as shameless.<sup>7</sup>

While the foregoing gives a general flavor of the Order, the total and complete defeat suffered by AT&T through the Order, pursuant to which the FCC methodically and systematically shoots down each and every argument made by AT&T is demonstrated by the strong and unambiguous language used by the FCC.

To the extent that the AT&T Stay Motion raises any question whatsoever regarding the probability of success on appeal, this question is quickly dispatched with a reading of the Order.

**A. AT&T’s EPPC Service Appropriately Characterized as a Telecommunications Service, Not an Information Service.**

In flatly denying the declaratory ruling sought by AT&T, the FCC made the following pronouncements in response to the arguments presented by AT&T that its EPPC service is an information, not a telecommunications service:

To date, calling card services have been regulated by the Commission as telecommunications services because they provide transmission of information, without a change in form or content, for a fee directly to the public. Consistent with this classification, the Commission requires carriers to report revenue from prepaid calling cards on the forms submitted to the

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<sup>6</sup> Statement of Chairman Michael K. Powell Re: AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, FCC WC Docket No. 03-133; Regulation of Prepaid Calling Card Services, WC Docket No. 05-68.

<sup>7</sup> Id.

Universal Service Administrative Company (USAC) for purposes of universal service contributions.<sup>8</sup>

\* \* \*

We find that the “enhanced” calling card service described in AT&T’s original petition is a telecommunications service as defined by the Act.<sup>9</sup>

\* \* \*

We are not persuaded by AT&T’s claim that inserting advertisements in a calling card service transforms that service into an information service under the Act and our rules.<sup>10</sup>

\* \* \*

Furthermore, we find that in this case the provision of the advertising message is an adjunct-to-basic service, and therefore not an “enhanced service” under the Commission’s rules.<sup>11</sup>

These statements by the Commission make clear that AT&T’s EPPC service is, and always was, properly classified as a telecommunications service. The Order’s characterizations of, and statements of opinions regarding, AT&T’s arguments are telling of their unpersuasive nature, where the FCC declares,

The cases AT&T cites in support of its argument that the “enhanced” calling card service is an information service **all are distinguishable**. For example, **we reject AT&T’s argument**

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<sup>8</sup> Order at 2, paragraph 4 (footnotes omitted).

<sup>9</sup> Id. at 5, paragraph 14.

<sup>10</sup> Id. at 5, paragraph 15 (footnote omitted).

<sup>11</sup> Id. at 6, paragraph 16.

that we are compelled to follow the Commission's decision in the *Talking Yellow Pages* cases that stored advertisements played from a centralized switching platform create an information service.<sup>12</sup>

\* \* \*

**AT&T's reliance** on the *AT&T CEI Order* also is **misplaced**.<sup>13</sup>

\* \* \*

The *NATA Reconsideration Order* cited by AT&T **also does not support its position**.<sup>14</sup>

\* \* \*

We also **disagree with AT&T's argument** that our *Cable Modem Ruling* stands for the proposition that a service that makes information available cannot be classified as a telecommunications service, even if the information capability is not used.<sup>15</sup>

\* \* \*

In sum, we find that the mere insertion of the advertising message in calls made with AT&T's prepaid calling cards does not alter the fundamental character of the calling card service. Accordingly, consistent with the foregoing precedent, we find that AT&T's service is properly classified as a telecommunications service.<sup>16</sup>

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<sup>12</sup> Id. at 6, paragraph 17 (footnote omitted; bolded emphasis added).

<sup>13</sup> Id. at 7, paragraph 18 (footnote omitted; bolded emphasis added).

<sup>14</sup> Id. at 7, paragraph 19 (footnote omitted; bolded emphasis added).

<sup>15</sup> Id. at 7-8, paragraph 20 (footnote omitted; bolded emphasis added).

<sup>16</sup> Id. at 8, paragraph 21.

The AT&T Stay Motion fails to adequately address the fundamental weaknesses in its position, as flagged in the Order, or to add anything new to the mix. Instead, AT&T focuses on distinctions which have no real outcome-altering impact, and such distinctions do not vault AT&T over the high hurdle of showing that it is likely to succeed on appeal. If AT&T need merely provide hollow criticisms of the Order to prevail, then the AT&T Stay Motion might stand a chance, but when left to substance, the Motion is clearly lacking. While such criticisms are many in number,<sup>17</sup> AT&T fails to cite even one new legal authority which was not available when AT&T filed its Petition for Declaratory Relief, or when it filed its other subsequent *ex parte* briefings to the Commission. AT&T also fails to justify any of its many criticisms of the Order.

**B. EPPC Calls That Originate and Terminate in Same State Appropriately Characterized as Jurisdictionally Intrastate.**

Completely rejecting the novel approach taken by AT&T in the characterization of its EPPC service traffic as jurisdictionally interstate, the FCC ruled that the location of a platform between points of call origination and termination did not make a call interstate.

On the jurisdiction of AT&T's EPPC telecommunications service, the Order had this to say:

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<sup>17</sup> Page 12 of the AT&T Stay Motion alone accuses the Commission's Order of "simply ignor[ing] [a] central, dispositive claim," "affirmatively misrepresenting its earlier holdings," being "contrary to . . . explicit holdings," "giv[ing] a new and unprecedented construction to the statutory definition of 'information services,'" and "ignor[ing] the Commission's own regulations and is otherwise an unexplained departure from the Commission's precedents."

[T]he Commission previously has found that prepaid calling cards are jurisdictionally mixed, and that calls made with such cards that originate and terminate in the same state are jurisdictionally intrastate under the Commission's traditional end-to-end analysis.<sup>18</sup>

\* \* \*

We reject AT&T's argument that the communication of the advertising message creates a call endpoint at the switching platform, thereby dividing a calling card communication into two calls. As Verizon and GCI argue, it cannot be the case that communication of the advertising message creates an endpoint because *all* calling card platforms engage in some form of communication with the calling party, and the Commission never has found this communication to be relevant for jurisdictional purposes. Under an end-to-end analysis, communication of the incidental advertising message embedded in the AT&T card here is no more relevant than the typical phrase, "Thank you for using AT&T."<sup>19</sup>

Picking apart each of AT&T's arguments in support of its jurisdictionally interstate position, the Order, "disagree[d] with AT&T's comparison of its service to three-way calling services," and with regard to the cases cited by AT&T, ruled that "these decisions do not support AT&T's argument that the switching platform should be considered an endpoint for

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<sup>18</sup> FCC Order at 8, paragraph 22 (footnote omitted).

<sup>19</sup> FCC Order at 8-9, paragraph 23 (footnote omitted).

jurisdictional purposes.”<sup>20</sup> The Commission further found flaws with, and rejected, each of AT&T’s jurisdictional arguments.<sup>21</sup>

The jurisdictional arguments advanced by AT&T in its pre-Order briefing are the same as those advanced in the AT&T Stay Motion. Such arguments are without merit and do not evidence a likelihood that AT&T will succeed on appeal.

**C. Order Appropriately Operates As Statement of Existing Law.**

AT&T’s fall-back argument urged that if the FCC rendered a ruling against AT&T, such a ruling would constitute new law and not be entitled to retroactive effect.<sup>22</sup> AT&T Alascom, AT&T’s Alaska subsidiary, has also reiterated this argument to the RCA.<sup>23</sup>

Not only did the Order hold that the subject EPPC services were telecommunication services, as opposed to information services, but the Order also makes it clear that this was always the law, and not merely some new pronouncement being made by the FCC. Specifically, the FCC declares that:

AT&T argues that it should not be subject to retroactive liability because its treatment of “enhanced” prepaid calling cards as information services was consistent with the Commission’s precedent. . . . We **reject AT&T’s arguments and find that retroactive liability** for universal services contributions is

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<sup>20</sup> FCC Order at 9, paragraph 24.

<sup>21</sup> FCC Order at 9-11, paragraphs 22 - 29.

<sup>22</sup> Letter from David L. Lawson, Sidley Austin Brown & Wood, LLP, Counsel for AT&T Corp., to Marlene H. Dortch, Secretary, FCC (July 13, 2004).

<sup>23</sup> AT&T Alascom’s Response To AECA And GCI On Past Liability For Intrastate Access For Enhanced Prepaid Card Service, filed September 20, 2004, in Docket U-04-7, at 5.

warranted in this case. The Commission's prior decisions **had always treated prepaid calling cards as telecommunications services**, and the universal service contributions forms submitted to USAC plainly require revenues from prepaid calling cards to be reported. In this context, we find that **AT&T had no reasonable basis to expect to avoid these obligations** merely by adding an unsolicited advertising message to its prepaid calling card service.<sup>24</sup>

As with its “telecommunications service” versus “information service” analysis, discussed above, the FCC made it clear that the FCC’s jurisdictional characterizations (EPPC calls which originate and terminate in the same state are “intrastate”) were not new law, but application of existing and tested law. In this regard, the Order characterizes its end-to-end analysis as “traditional,” and indicates that “the Commission has **never found** this communication [the insertion of an advertising message between end points] to be relevant for jurisdictional purposes.”<sup>25</sup> The Order also points out the obvious – that is, that subjecting intrastate calls to intrastate access charges, is required by existing law.<sup>26</sup>

In so ruling, the Order rightfully demands compliance from AT&T with regard to its USAC contributions filing and payment obligations “for the entire period that AT&T provided such calling card services.”<sup>27</sup> The FCC also acknowledges AT&T’s previous admission that since the beginning of 1999, AT&T has “saved” \$160 million in USAC

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<sup>24</sup> FCC Order, at 11-12, paragraph 32 (footnotes omitted).

<sup>25</sup> FCC Order at 8, paragraph 23 (bolded emphasis and bracketed language added).

<sup>26</sup> FCC Order at 13, paragraph 36.

<sup>27</sup> FCC Order at 11, paragraph 31.

contributions due to its traffic mis-characterizations.<sup>28</sup> Of course these “savings” do not even consider other avoided USAC contributions which could go back as far as 1996,<sup>29</sup> nor do they consider \$400 million in bypassed intrastate access charge liabilities.<sup>30</sup>

**IV. AT&T Has Failed to Demonstrate That it Will Suffer Irreparable Harm Without Stay.**

AT&T’s primary “irreparable harm” argument is that it will actually be required to pay USAC contributions which it has been found to owe, and which were always owed, under existing law. This is simply not irreparable harm, but only the enforcement of existing law in response to the declaratory relief request made by AT&T.

According to Virginia Petroleum Jobbers:

Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

*Supra*, at 925.

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<sup>28</sup> FCC Order at 11, paragraph 30.

<sup>29</sup> In AT&T Stay Motion, at 9, AT&T admits that “AT&T did not pay USF support on its revenues from this service [EPPC] after the 1996 Act was passed.” (Bracketed language added)

<sup>30</sup> AT&T Stay Motion, at 1-2. (“AT&T has estimated that the total claims for retroactive liabilities for USF and intrastate access charges will be as much as \$553 million – with more than \$150 million of this amount attributable to universal service charges that are within the Commission’s jurisdiction to assess.”) \$553 million total avoided charges, less \$150 million in USF-avoided charges, leaves \$400 million in avoided access charges.

Just because AT&T does not like the outcome of its own petition, such outcome does not provide AT&T with an excuse not to pay. Furthermore, AT&T has failed to provide any actual evidence that the harm it claims it will suffer is a certainty, but only refers to such harm as “a risk of unrecoupable losses.” This “risk” does not rise to the level of the required showing of “substantial irreparable harm.” Additionally, AT&T’s rigid application of USAC’s overpayment refund policies does not take into account corrective relief which would be available to AT&T, thereby minimizing the risk of harm, if any. An example of such relief would be in the form of a court order requiring full restitution of any overpayments made by AT&T, if justice so required.

AT&T’s own argument proves the twisted manner in which its has concocted its reasoning. In this regard, AT&T suggest that its “risk of unrecoupable losses,” is compounded “if the Commission were to lower the assessment factors in response to the increase in the revenue assessment base that results from the Order.”<sup>31</sup> In other words, AT&T argues that the Commission should stay its obligations to pay USAC contributions which are owing under existing law, while requiring others to continue to pay such contributions at a higher assessment factor than might otherwise be charged if AT&T were paying its fair share. This reasoning simply does not get AT&T where it needs to be in terms of the “irreparable harm” showing, but instead underscores the actual irreparable harm caused to others as a direct result of AT&T’s failures to pay legitimate USAC payments.

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<sup>31</sup> AT&T Stay Motion, at 23.

Finally, AT&T argues that the Order's jurisdictional ruling puts it in the position of dealing with claims which will be made by LECs to collect intrastate access charges. Again, similar to the USAC payment discussion above, AT&T's proposed stay of such claims has a flip side. That is, to the extent that AT&T is stayed from the obligation to pay its fair share of access charges, the burden created by such shortfall is borne by others. This downside of the requested stay is discussed further below, and solidifies the fact that the "risks of harm" alleged by AT&T are not outweighed by the actual harms that such stay would cause to others.

Furthermore, a stay of the Order will not necessarily have the impact of stopping the collection of past due obligations (what AT&T refers to as its "retroactive" liabilities) owed for intrastate access charges. This is so because, as pointed out in the Order, there is plenty of law which can be relied upon by LECs to support such past due obligations, with or without a stay of the Order.

In any event, AT&T has failed to meet its burden of showing that it will suffer irreparable harm in the absence of a stay of the Order.

**V. AT&T Has Grossly Understated Substantial Harm to Others if Stay Granted.**

**A. Security Offered by AT&T is Inadequate.**

While AT&T is asking that a stay cover the pursuit of any claims against AT&T for unpaid intrastate access charges which may be filed in the appropriate court or state

commission,<sup>32</sup> AT&T completely fails to offer the posting of any security whatsoever to those who would be subject to this seemingly far-reaching stay. Meanwhile, the actual scope of the stay requested in the AT&T Stay Motion is not clear. Such lack of clarity emanates from AT&T's statements which speak in terms of its capacity to pay **retroactive** intrastate access fees,<sup>33</sup> whereas AT&T's obligation to pay such access charges is not necessarily premised upon the Order, but more appropriately upon the specific state tariffs which mandate their payment. Therefore, AECA questions AT&T's apparent assertion that a stay of the Order would have the impact of stopping collection actions on access charges.

If, as AT&T apparently contends, that a stay of the Order would stop access charge claims, not only would such stay negatively impact those presently owed hundreds of millions in unpaid access charges owed by AT&T,<sup>34</sup> but AT&T's access charge obligations would continue to grow by the day. All that AT&T can muster in the face of such obligations is the bare assurances of AT&T's lawyers that,

. . . neither the USAC nor the incumbent carriers seeking retroactive intrastate access fees will be harmed by entry of a stay. They are sure to obtain full compensation if the

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<sup>32</sup> In the AT&T Stay Motion, at 2, AT&T argues that "absent a stay, incumbent carrier litigation will go forward against AT&T across the country in state regulatory and court proceedings . . . ."

<sup>33</sup> AT&T Stay Motion, at 2-3, 25.

<sup>34</sup> \$400 million by AT&T's own estimates. *See* footnote 30.

Commission is affirmed. There can be no reasonable question about AT&T's capacity to pay. . . .<sup>35</sup>

While the AT&T Stay Motion offers a form of security against “federal liabilities”<sup>36</sup> and “significant federal harms”<sup>37</sup> for its USAC obligations, it fails to mention any like security for access charge obligees that it seeks to stay, again providing bold and unfounded representations that “there can be no reasonable question about AT&T's capacity to pay any retroactive intrastate access fees that it may be found to owe . . . .”<sup>38</sup> AECA does question AT&T's capacity to pay, and should not be compelled to take it on blind faith that AT&T will pay someday. The posting of security is commonly utilized as part of a stay proceeding for the purpose of compensating those who may be harmed by the stay.<sup>39</sup> How, in this case, AT&T can request and expect the imposition of a stay against the collection of intrastate access charges of such magnitude, without the posting of security, is beyond comprehension, and certainly beyond the bounds of that contemplated in AT&T's Stay Motion.

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<sup>35</sup> AT&T Stay Motion, at 2 - 3.

<sup>36</sup> AT&T Stay Motion, at 2.

<sup>37</sup> AT&T Stay Motion, at 25.

<sup>38</sup> AT&T Stay Motion, at 25.

<sup>39</sup> For example, Rule 18(b) of the Federal Rules of Appellate Procedure provides that “[t]he court may condition relief on the filing of a bond or other appropriate security.”

**B. Continued Exclusion of AT&T EPPC Traffic Intrastate Access-Charge Calculation Will Continue to Damage Others.**

Aside from the issue of the adequacy of the security offered in conjunction with its stay request, there are other more fundamental harms which will be suffered by others if a stay of the Order is granted. These harms are real, and have been the subject of dispute between AECA and AT&T Alascom before the RCA.<sup>40</sup> This dispute was mentioned in the AT&T Stay Motion in an apparent attempt to bolster its claim for a stay on the Order, where AT&T claims that the filing of its Petition in this Docket prompted the RCA to “stay its subsequent intrastate access charge assessments on the condition that AT&T provide a corporate guarantee to cover any amounts due from Alascom.”<sup>41</sup> While accurate on its face, this is only half the story.

As it turns out, the stay imposed by the RCA was subsequently limited to cover unpaid AT&T Alascom access-charge obligations incurred prior to April 1, 2004. **In fact, AT&T Alascom has been order by the RCA to report and pay access charges on its EPPC traffic from and after April 1, 2004.**

If the requested stay is granted, AT&T attempts to delay claims for access charges owing for past periods, and will likely continue to fail to report and pay intrastate access

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<sup>40</sup> In the Matter of the Investigation Into Unauthorized Telecommunication Intrastate Debit Card Marketing by AT&T Corp. Apart from Alascom, Inc., d/b/a AT&T Alascom, RCA Docket U-97-120.

<sup>41</sup> AT&T Stay Motion, at 9.

charges on its EPPC traffic in the future.<sup>42</sup> Such failures will continue to wreak havoc upon access-charge determinations at the local level. The problems caused by the failures of AT&T Alascom to report and pay its access charge obligations are discussed in the Opposition of GCI To Motion For Stay Pending Appeal, Subject to Posting of Security, at 11-12, filed in this Docket on April 5, 2005, and illustrated in the Prefiled Testimony of Emily Thatcher attached thereto.

Upon re-evaluation of the stay granted to AT&T Alascom pursuant to RCA Order U-97-120(5), the RCA considered AT&T Alascom's clear obligation to pay access charges under existing law, the needs of AECA's member LECs and the impact upon other IXCs such as GCI. The RCA discussed the matter as follows:

By Order U-97-120(4), dated June 24, 2003, we concluded that the AT&T Alascom debit card minutes at issue are jurisdictionally intrastate. By Order U-97-120(5) we stayed that portion of our previous order that required AT&T Alascom to pay intrastate access charges on these minutes until the FCC makes a final decision on AT&T Alascom's Petition for Declaratory Relief.

We uphold our previous decision in Order U-97-120(4). However, we lift the stay ordered in Order U-97-120(5) effective April 1, 2004 and require AT&T Alascom to report and pay access charges on those minutes. We lift this stay prospectively. That is from date of our decision in Order U-97-120(4) to April 1, 2004, the stay remains in effect. AT&T Alascom must maintain its corporate guarantee to ensure

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<sup>42</sup> Even if a stay is not granted, AT&T raises the question of whether it intends to pay intrastate access charges on its EPPC traffic in its statement that "AT&T is moving its enhanced prepaid calling card traffic to a new platform that was not addressed in the Order." (AT&T Stay Motion, at 10).

payment of any unpaid access charges associated with the disputed debit card minutes for that period. However, from April 1, 2004, until such date as the FCC issues a ruling on the Petition for Declaratory Ruling, these minutes will be included in the traffic sensitive demand calculation. . . . We reach this conclusion for the following reasons.

We attempt to balance the needs of all entities affected. We must be concerned with establishing just and reasonable rates for AECA's member companies. It is important that these companies be given the opportunity to earn their approved revenue requirements. We have previously concluded that the AT&T Alascom minutes in question are intrastate in nature and as a result, it would be unreasonable to exclude them from the rate development process.

\* \* \*

The new factor that we consider in this proceeding is the effect on other intrastate access charge ratepayers. We did not consider the effect on these ratepayers in Docket U-97-120. In fact, GCI and other intrastate access charge ratepayers were not parties to that proceeding. Based on the new information adduced in this case, we conclude that other intrastate access charge ratepayers are adversely affected if we continue to stay of payment of intrastate access charges on the (907) to (907) debit card minutes. Specifically, the traffic sensitive demand charges paid by these ratepayers are increased by the exclusion of these minutes from the access charge demand calculation. Similarly if the debit card minutes are not included when determining market share for common line billing, then material shifts can occur in access charge payment obligations between the interexchange carriers.

Our ruling that AT&T Alascom must report and pay intrastate access charge minutes on its debit card traffic necessitates lifting the stay imposed by Order U-97-120(5).<sup>43</sup>

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<sup>43</sup> In the Matter of the Consideration of the Access Charge Revenue Requirement of Alaska  
(continued...)

The harm to AECA's member LECs and other IXC's, and evidenced by the Thatcher Testimony, and as considered by the RCA, is real, and will be suffered if the requested stay is granted.

Here, such harm is demonstrated on two levels. First, if interested parties are stayed from using the Order to support the process of enforcing AT&T's access-charge payment obligations, LECs and other reporting and paying IXC's will suffer from the exclusion of such access charges from the rate formulation process, all as described above. Second, even if a stay were otherwise appropriate, AT&T has offered no security to ensure the payment of its access-charge liabilities in the event that its appeal is unsuccessful. Either is reason enough to deny AT&T's stay request.

#### **VI. Public Interest Not Served by Stay.**

Through its distorted reasoning, AT&T claims that the public interest will be advanced by the granting of a stay, when in actuality, the only interest which would be served by a stay is that of AT&T. AT&T claims that it will be sued by those that it owes as a result of the Order, and that the requested stay somehow translates into service of the public interest. Welcome to the world. Perhaps AT&T should consider the alternative of avoiding these suits altogether by paying what is owed, rather than continuing to cling to its ill-gotten gain. The public interest is simply not served by permitting an obligor such as AT&T to avoid valid obligations at the expense of creditors. Nor is AT&T's argument made any

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<sup>43</sup> (...continued)  
Exchange Carriers Association, Inc., RCA Order U-03-49(5) - (04/28/04), at 7-12.

stronger by pointing to others that may also be cheating the system. The public interest is served by compelling compliance by all, including AT&T, in the payment of USAC contribution and intrastate access-charge obligations.

## **VII. Conclusion.**

AT&T has failed to make an adequate showing on any of the factors necessary to the granting of the requested stay of the Order.

The Commission correctly ruled that (1) AT&T's EPPC service is a telecommunications service, not an information service as contended by AT&T, and as such is subject to USAC contributions, (2) EPPC calls which originate and terminate in the same state are jurisdictionally intrastate, and subject to intrastate access charges, and (3) AT&T had no reasonable basis to expect to avoid its USAC and access-charge obligations, and the Order appropriately operates as a statement of existing law. The validity of the Commission's rulings negate AT&T's claim of substantial likelihood of success on appeal.

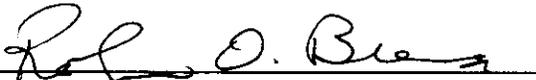
Furthermore, AT&T was unable to show that it would suffer any actual irreparable harm if a stay was not granted, and cannot refute the harm that will be caused to others if a stay is imposed.

Finally, the public interest is harmed, not promoted, by the imposition of a stay.

For the foregoing reasons, AT&T's Stay Motion should be denied.

DATED this 7<sup>th</sup> day of April, 2005.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2005, I caused true and correct copies of the foregoing Opposition fo the Alaska Exchange Carriers Association, Inc., to AT&T's Motion for Stay Pending Appeal to be served on all parties by mail, postage prepaid, to their addresses listed on the attached Service List.

DATED this 7<sup>th</sup> day of April, 2005, at Anchorage, Alaska.

A handwritten signature in cursive script, reading "Avonna L. Murfitt", written in black ink. The signature is fluid and includes a long horizontal flourish at the end.

Avonna L. Murfitt

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