

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

In the Matter of	)	
	)	
AT&T Corp. Petition for Declaratory Ruling	)	WC Docket No. 03-133
Regarding Enhanced Prepaid Calling	)	
Card Service	)	
	)	
Regulation of Prepaid Calling Card Services	)	WC Docket No. 05-68
	)	
	)	

**OPPOSITION OF GCI TO EMERGENCY PETITION FOR  
IMMEDIATE INTERIM RELIEF**

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Dated: May 10, 2005

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General Communication, Inc. (“GCI”) opposes AT&T’s Emergency Petition for Immediate Interim Relief.<sup>1</sup> In its latest filing in the above-captioned dockets, AT&T seeks emergency rules, to be promulgated by May 17, 2005, in order to end what it calls “uncertainty and asymmetries” created after the release of the Federal Communications Commission’s (“Commission” or “FCC”) Order in the above-captioned docket.<sup>2</sup> What AT&T really seeks, however, is a means to excuse its continued withholding of certain required USF contributions or access charges relative to its prepaid calling card services, contrary to the Commission’s *Calling Card Order*. To justify the need for proposed emergency rules, AT&T claims that the law regarding prepaid calling cards is ambiguous and then points the finger to other industry players that AT&T claims – based on AT&T monitoring and AT&T information – are avoiding required USF or access charge payments. As discussed herein, nothing AT&T presents in its Emergency

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<sup>1</sup> Emergency Petition for Immediate Interim Relief, WC Docket No. 05-68 (filed May. 3, 2005) (“Emergency Petition”).

<sup>2</sup> *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133, *Order and Notice of Proposed Rulemaking*, FCC 05-41 (rel. Feb. 23, 2005) (“*Calling Card Order*”).

Petition warrants the type of extraordinary relief AT&T now seeks. As such, the Commission should deny the Emergency Petition.

## **I. INTRODUCTION AND SUMMARY**

The Commission should deny AT&T's Emergency Petition as its latest tactic in the treatment of prepaid calling cards. AT&T's Emergency Petition is nothing more than an attempt to avoid its obligations to make certain required USF and access charge payments on a going-forward basis. AT&T has failed to justify the extraordinary relief it seeks, including the promulgation of emergency rules by May 17, 2005, without the required notice and comment period while the FCC's Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket is pending. Although AT&T would like the Commission to believe that interim rules are necessary because of claimed ambiguity and confusion created as a result of the FCC's *Calling Card Order*, and in order to level the playing field relative to services provided by other competitive prepaid calling card providers, AT&T's story does not bear out. The *Calling Card Order* did not represent a change in law but, rather, was a reaffirmation of clear, existing law which AT&T chose to ignore because it deemed on its own that its prepaid calling card services were "enhanced" and not subject to USF or intrastate access payments. AT&T cannot now claim that there was confusion. This excuse has already failed.

Moreover, the *Calling Card Order* applies to all similarly-situated prepaid calling card providers. As a result, AT&T's finger pointing to other competitors it claims are not following the law does not warrant the imposition of new emergency rules, but enforcement of existing requirements. The same rules apply to all, and the FCC has the authority to address wrong-doing of any service providers through its enforcement and investigative powers.

Finally, while GCI agrees that all prepaid calling card providers should pay the appropriate access and USF payments, there is nothing to support AT&T's alternative proposal to preempt state jurisdiction and preclude the assessment and collection of appropriate intrastate access charges on calls that originate and terminate in the same state. In support of this suggestion, AT&T once again argues that the FCC should treat the calling card call platform as an "end point" in pursuit of its two-call theory in violation of clear Commission precedent. The two-call theory has clearly been rejected in this docket and there is no basis to resurrect it through this Emergency Petition. For all of these reasons, there is no basis to support AT&T's Emergency Petition and AT&T's request for interim rules must be denied.

## **II. INTERIM RELIEF IS NOT NECESSARY**

### **A. The AT&T *Calling Card Order* Affirmed Existing Legal Obligations**

AT&T claims that there is a need for interim rules pending the completion of the NPRM in the above-referenced docket, because the Commission has made a "piecemeal" determination with respect to the treatment of calling card services.<sup>3</sup> AT&T also cites "massive regulatory uncertainty" regarding how prepaid calling card services will be classified and what charges will apply to such services as a reason to justify the promulgation of interim rules.<sup>4</sup> Any uncertainty here is that of AT&T's own making. In rejection of AT&T's request for declaratory relief, the *Calling Card Order* affirmed the law as it exists for treatment of calling card services. In its *Order*, the FCC rejected AT&T's request for ruling that the calling card services were "enhanced" services<sup>5</sup> or information services subject to exclusive interstate jurisdiction.<sup>6</sup>

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<sup>3</sup> Emergency Petition at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Calling Card Order* at ¶ 16.

<sup>6</sup> *Id.* at ¶¶ 14-15.

Accordingly, the FCC affirmed that AT&T's services were subject to the appropriate USF<sup>7</sup> and intrastate or interstate access charge payments, depending on the jurisdiction of the call.<sup>8</sup> There was no change of law to create "confusion" that AT&T now claims. The law was and remains clear. AT&T's choice to ignore its clear legal obligations is a different matter than confusion regarding what the law actually requires. As a result, AT&T cannot reasonably support its request for interim rules based on confusion that never existed.

GCI also notes that AT&T's statement that it is now subject to "massive retroactive USF liabilities" as a result of the Commission's *Calling Card Order* is misleading and disingenuous.<sup>9</sup> The unilateral decision to treat its calling card services as "enhanced" was a choice that AT&T made in an effort to avoid certain legal obligations. It cannot now claim surprise. Specifically, AT&T claims it began treating its calling card services as "enhanced" as early as some point in 1994,<sup>10</sup> but not until 1999 did it stop making the required USF payments and then not until 2000 or 2001 did AT&T stop paying intrastate access charges (at least to a noticeable effect).<sup>11</sup> AT&T assumed the risk by failing to pay in accordance with its required legal obligations and admitted to such in its SEC filings – a fact well-documented throughout this proceeding – calling the avoidance of its obligations "savings".<sup>12</sup>

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<sup>7</sup> *Id.* at ¶¶ 30-31.

<sup>8</sup> *Id.* at ¶ 28.

<sup>9</sup> Emergency Petition at 3.

<sup>10</sup> See Letter from Amy Alvarez, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 2, 2004) and Attachment. See also *Calling Card Order* at ¶ 32.

<sup>11</sup> AT&T Corporation, SEC Form 10-Q, *Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the Quarterly Period Ended Sept. 20, 2004*, (filed Nov. 4, 2004) at 16 (stating AT&T had realized \$160 million in "USF contribution savings since the beginning of 1999" as a result of characterizing "enhanced" calling card services as information services and had "saved" \$340 million with respect to intrastate access). See *Calling Card Order* at ¶ 30. See also Opposition of GCI to Motion for Stay Pending Appeal, Subject To Posting of Security, WC Docket No. 03-133, (filed April 4, 2005) at 4.

<sup>12</sup> AT&T 10-Q Filing at 16; *Calling Card Order* at ¶ 30. See also Letter from James W. Olson, Vice President Law & General Counsel, United States Telecom Association ("USTA"), to the Honorable Michael K. Powell, Chairman, FCC, WC Docket No. 03-133, (Nov. 22, 2004) at 3 and n. 5.

Additionally, AT&T was well aware of its on-going obligations to pay intrastate access charges, at least in Alaska, which was the impetus behind the filing of a Declaratory Ruling in this matter in the first place. Fearing an adverse ruling from the Regulatory Commission of Alaska (“RCA”), AT&T filed its Petition for a Declaratory Ruling in order to avoid the jurisdiction of the RCA and a decision that it was liable for back, unpaid intrastate access charges on prepaid calling card calls that originated and terminated in Alaska.<sup>13</sup> AT&T has admitted this fact recently in its Requests for Stay of the *Calling Card Order* at both the FCC and the D.C. Circuit.<sup>14</sup> The *Calling Card Order* did not create a new obligation to pay, but rather was a response to AT&T’s request for a declaration as to the law following the RCA’s investigation into AT&T’s change in practice regarding the treatment of calling card traffic at some point in 2001 or 2002.<sup>15</sup> As such, AT&T’s on-going characterization and reaction to the

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<sup>13</sup> In response to a complaint filed by another carrier in Alaska, on March 18, 2003, the RCA directed Alascom, an AT&T-owned subsidiary and the party responsible in Alaska for end-user intrastate services associated with AT&T prepaid cards, to provide information verifying that AT&T had appropriately paid regulatory cost charges for the intrastate share of revenues associated with prepaid cards in Alaska. On May 15, 2003, 24 hours before its response was due to the RCA, AT&T filed the Petition for Declaratory Ruling in the instant matter seeking a ruling that by placing an unsolicited advertisement into the call set-up of its prepaid calling card service the service was enhanced and, as such, interstate in nature and not subject to intrastate access charges or the jurisdiction of the RCA. Immediately the next day, on May 16, 2003, AT&T filed a response with the RCA claiming that the RCA did not have jurisdiction over such prepaid calling card calls and that AT&T had filed a Petition for Declaratory Ruling with the FCC to that effect the day before. In a June 2003 Order, the RCA found that the placement of an advertisement into the set-up of a prepaid card call does not make it an enhanced service as AT&T argued. In a subsequent order, the RCA stayed that requirement pending the outcome of the Declaratory Ruling at the FCC. See Letter from Lisa R. Youngers, Federal Regulatory Attorney, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-133 (Feb. 26, 2004), 1-2, and Attachments. The RCA subsequently ruled that as of April 2004, AT&T Alascom and all IXCs must pay current intrastate access rates calculated based on demand that includes Alaska-to-Alaska calling card calls. See Order Establishing Demand Component and Affirming Electronic Rulings, *Consideration of the Access Charge Revenue Requirement of Alaska Exchange Carriers Association, Inc.*, Docket No. U-03-49, Order No. 5, at 9 (Apr. 28, 2005). More recently, the RCA lifted the stay for the period prior to April 2004 and ordered AT&T to pay all unpaid access charges for the prior period. See Order Addressing Scope of Access Charge Obligation, Procedural Issues, and Affirming Electronic Ruling, *In the Matter of Formal Complaint filed by Alaska Exchange Carriers Association, Inc. Against Alascom, Inc., d/b/a AT&T Alascom Concerning Orders U-97-120(4) and (5) and Payment of Access Charges for Alaska-to-Alaska Calling Card Traffic*, Docket No. U-04-07, Order No. 7, at 17 (Apr. 22, 2005).

<sup>14</sup> Motion for Stay Pending Appeal, Subject to Posting of Security, WC Docket No. 03-133 (filed Mar. 28, 2005) at 9; Motion for Stay Pending Appeal, United States Court of Appeals for the D.C. Circuit Case No. 05-1096 (filed April 18, 2005) at 6.

<sup>15</sup> Since AT&T controls most of the information and data necessary to determine when it started mischaracterizing the traffic and the total impact, GCI, AECA, and Alaska Telephone Association (“ATA”) member companies have

*Calling Card Order* as one of surprise or unfairness relative to its calling card services and resulting liabilities is simply not credible and cannot justify the need for emergency interim relief. From the beginning, AT&T has been aware of the liabilities and risks associated with its mid-course failure to pay the required USF or access charge obligations. AT&T's last-minute effort to change the rules of the game through its Emergency Petition is nothing more than an attempt to avoid certain liabilities going-forward.

**B. Activities of Other Providers Does Not Excuse Compliance with the Law**

AT&T also cites throughout its Emergency Petition that interim rules are necessary in order to “produce a level playing field applicable to all providers of prepaid calling services.”<sup>16</sup> But undercutting this argument is the fact that the *Calling Card Order* is fair in that it treats all similarly-situated card providers the same. Indeed, the FCC specifically instructed that all prepaid calling card providers offering similar services to those of AT&T must file updated revenue information with USAC in order to properly report revenues consistent with the FCC's *Calling Card Order*.<sup>17</sup> Should a party fail to comply with the law, the FCC has the appropriate enforcement and investigative authority to address any alleged wrong-doing of other carriers. Claimed industry practice cannot excuse AT&T from complying with the law. If other carriers choose to follow AT&T's course of not complying with its legal obligations, such providers face liability for those actions. As such, the finger pointing to other alleged wrong-doers does not justify the imposition of interim rules.<sup>18</sup>

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only been able to estimate monies owed based on what AT&T tells us. This is not an ideal arrangement for protecting one's interest.

<sup>16</sup> Emergency Petition at 2.

<sup>17</sup> *Calling Card Order* at ¶ 31.

<sup>18</sup> GCI notes that AT&T may be inviting the arbitrage of other carriers that it describes in the Declaration of Adam Panagia. Emergency Petition at 13. It is actually not relevant, as AT&T would have the Commission believe, that some prepaid card calls may be routed through foreign countries such as Japan and Chile and are then being delivered to AT&T's network. Emergency Petition at 13. It is unclear why AT&T does not take steps to exclude domestic arbitrage calls from its low international rates through its contracts with international carrier customers.

### C. AT&T Provides No Justification for Avoidance of the APA

AT&T claims that the “[p]romulgation of interim rules without formal notice and public comment is both necessary and proper when there is ‘good cause’ for concluding that ‘notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.’”<sup>19</sup> But, should the FCC deem it necessary to pursue interim rules, AT&T has failed to demonstrate a “good cause” or “emergency” warranting departure from the notice and comment requirements of the Administrative Procedures Act (“APA”). AT&T simply got its hand caught in the cookie jar and is looking for additional relief to avoid making certain USF and access payments going forward. AT&T’s proposals to change the rules applicable to prepaid calling card providers represent departure from existing legal precedent, thus highlighting the need for the required input from interested parties through the traditional notice and comment processes.

The FCC precedent offered by AT&T to support the promulgation of interim rules without the appropriate notice and comment period is not helpful to AT&T’s case. For instance, in the *Triennial Review* case, the circumstances surrounding the adoption of interim rules were very distinct from AT&T’s request here. Once adopted, the interim rules in the *Triennial Review* case were to be in effect only for a fixed set of time (six months) and were adopted in order to keep otherwise vacated rules in place – not change the entire rules of the game.<sup>20</sup> AT&T’s request, however, would have the FCC adopt entirely new rules for an undefined amount of time

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While intercarrier compensation reform may address, in part, this type of issue raised by AT&T, the Emergency Petition will not fix this issue at all.

<sup>19</sup> Emergency Petition at 6 (citing 5 U.S.C. §553 (b)(3)(B)).

<sup>20</sup> *Unbundled Access to Network Elements; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd. 16783, ¶ 28. AT&T also cites an order in which the FCC determined that individual licensing of radio equipment on recreational vessels and aircraft was no longer necessary. The FCC held that all authorizations would be granted by operation of rule. *Amendment of Parts 80 and 87 of the Commission’s Rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses*, 11 FCC Rcd. 6353, ¶ 13. Clearly an example such as this where there are no losers and all parties seeking a radio license would be granted such authorization, is not analogous to the current situation where notice and comment is needed to protect the interest of opposing parties that may have much to lose through an adverse ruling.

until the pending rulemaking is completed. In the *Triennial Review* case, the harm to carriers as a result of changing the rules entirely was far more significant than keeping the rules in place pursuant to which all carriers operated for several years. The Commission can only change its rules after conducting a notice and comment rulemaking pursuant to the APA.<sup>21</sup> The APA provides an exception from notice and comment procedures more typically for rule changes to agency practice and procedure.<sup>22</sup> This is not the case here. AT&T's proposal would turn the rules and legal obligations relevant to prepaid calling card services entirely on their head causing great harm to other carriers. By rejecting AT&T's request for interim rules, existing legal obligations remain in effect, causing harm only to those who unilaterally decide not to comply with the law.

AT&T has also failed to take into account that the public interest in this matter actually disfavors the promulgation of interim rules. Any change of rules at this stage of the game from clear legal precedent requiring payment of USF or intrastate access charges only provides further harm to other carriers. For instance, any failure to make appropriate USF payments means that other interexchange carriers will absorb those amounts through higher USF assessments.

Similarly, AT&T's claimed "savings" by not paying intrastate access charges means that local exchange carriers and/or other interexchange carriers will absorb those costs. Specifically, in Alaska, AT&T Alascom's underreporting and avoidance of its intrastate minutes (by excluding 907-to-907 calling card calls) has a dual effect. First, the access minute demand will be set too low for the following year, and the rate per minute that IXCs pay will be too high.<sup>23</sup> If the minutes are later corrected, AT&T Alascom will pay the LECs the higher intrastate rate for

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<sup>21</sup> *In re Alcatel USA, Inc.*, 15 FCC Rcd. 4388 (Feb. 28, 2000) at ¶ 23.

<sup>22</sup> *See* 5 U.S.C. 553 (b)(3)(B). *See also In re Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd. 13, 486, 13, 493 (Jul. 8, 2003).

<sup>23</sup> GCI Opposition to Motion for Stay at 11.

the underreported minutes, and GCI will not receive a refund, even if the LECs overrecover. For intrastate bulk bill (Alaska's version of carrier common line recovery), GCI pays the amount that AT&T Alascom "avoids", because it is a "keep-whole" pool—whatever revenue requirement the LECs report have to paid by someone, and the payment obligation is divvied up by relative market share assessed by the IXCs' respective reported intrastate minutes.<sup>24</sup> In an effort to avoid this precise type of harm, the RCA has required since April 2004 that AT&T Alascom (and all IXCs) pay Alaska Exchange Carrier Association ("AECA")<sup>25</sup> intrastate access rates calculated based on demand that includes estimated demand for 907-907 calling card calls as applied to all intrastate access minutes, including 907-907 calling card calls. As such, interim rules that would allow prepaid calling card carriers to avoid payment of intrastate access would leave rural carriers holding the bag when lower rates calculated based on intrastate calling card demand are collected on a reduced pool of minutes. Such harm is significant. For instance, AT&T Alascom itself has estimated in a filing with the RCA that its obligation for unpaid intrastate access charges for debit calling cards in Alaska alone is \$13,264,754 plus interest, for the period from July 1, 2002 through March 31, 2004.<sup>26</sup> As such, the public interest does not support emergency interim rules that change the rules of the game mid-stream, as some of AT&T's proposals suggest.

Furthermore, the public interest is served by swift and sure enforcement of the law, as it stands. Any failure to do so or attempts to recast the rules now just emboldens and prolongs the bad acts of some, while competitively disadvantaging those that comply with its legal

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<sup>24</sup> *Id.*

<sup>25</sup> AECA is the intrastate access tariff pooling organization of the Alaska rural LECs.

<sup>26</sup> Notice of Filing Original of AT&T's Corporate Guarantee Renewal, *In the Matter of the Investigation into Unauthorized Telecommunication Intrastate Debit Card Marketing by AT&T Corp. apart from AT&T Alascom*, Docket No. U-97-120 at Attachment (Oct. 19, 2004) (Letter from Thomas W. Horton, Senior Executive Vice President and Chief Financial Officer, to the RCA, Oct. 5, 2004).

obligations. To change the rules now would be telling providers that it is acceptable to evade the law; that during that time, an individual entity's interpretation of law and policy trump that of the agency's, and that there is only upside in doing so, because the ill-gotten gains will never be disgorged. It is impossible to see the public interest in adopting policies whereby the Commission cedes authority over matters during the time that a provider is actually breaking the law.

### **III. GCI AGREES CALLING CARD PROVIDERS MUST MAKE APPROPRIATE USF AND ACCESS CHARGE PAYMENTS**

#### **A. USF Payments Are Appropriately Due On Calling Card Calls**

In the Emergency Petition, AT&T proposes that all prepaid calling card providers should be required to contribute to the USF.<sup>27</sup> To be clear, this is consistent with current legal requirements that all telecommunications providers must contribute to the federal USF<sup>28</sup> because the provision of prepaid calling card services is the provision of a telecommunications service. If a prepaid card provider, or any other service provider, believes that it is offering something that it has self-determined is an information service and is exempt from the requirements to pay into USF, that is a risk that carrier may (wrongly) assume. Finally, GCI notes as an overall matter that it is in support of fundamental contribution reform to broaden the base of USF contributions and supports proposals that will curb incentives to avoid contribution by gaming traffic or jurisdictional classifications.

GCI does not agree with AT&T's proposal that the FCC exclude from USF obligations the revenues associated with certain military calling cards by creating an exemption for prepaid calling card services sold by, to, or on behalf of military exchanges or the Department of Defense

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<sup>27</sup> Emergency Petition at 9.

<sup>28</sup> 47 U.S.C. § 254(d).

to members of the military and their families.<sup>29</sup> While GCI recognizes the importance of free or reduced calling card minutes provided to the military, a fact highlighted in the FCC's *Calling Card Order*,<sup>30</sup> it is not clear that the tracking and separation of such revenues normally attributable to military prepaid calling cards is possible from a technical standpoint. AT&T has provided no proposal for how this would occur. Nor can it be ensured that the purchase of such cards would be limited to the use of members of the military or their families. Given that there is no evidence even showing a detrimental impact of USF assessments on interstate calling card revenues (a requirement with which calling card providers like Sprint have complied all along), there is no basis to adopt by interim rule a potentially unworkable solution to solve a problem that has not even been shown to exist.

**B. Jurisdiction Still Determined by End Points of the Call; Appropriate Access Charges Are Due**

AT&T suggests as one of its proposals that the FCC should rule that "enhanced" prepaid calling card providers are subject to both interstate and intrastate access charges based upon the location of the parties.<sup>31</sup> GCI agrees that prepaid calling card providers should pay appropriate interstate and intrastate access charges and the FCC's decision in the *Calling Card Order* requires that very outcome. The law is clear that the jurisdiction of a debit card call is determined by the end points of the call.<sup>32</sup> Hence, the location of the parties is already relevant

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<sup>29</sup> Emergency Petition at 9.

<sup>30</sup> *Calling Card Order* at ¶¶ 35-36 and Appendix B (listing information regarding several calling card donation programs for the military).

<sup>31</sup> Emergency Petition at 15. GCI also concurs with AT&T's proposal to require prepaid calling card providers to report monthly total number of long distance calling card minutes to the FCC including interstate minutes. Emergency Petition at 18. Presumably this would make the total number of intrastate minutes also available. GCI would add to AT&T's proposal that to make this data as usable and efficient as possible, the inclusion of intrastate minutes should be broken down by state. GCI would welcome such reporting by AT&T.

<sup>32</sup> *Calling Card Order* at ¶ 22 (holding that cards that originate and terminate in the same state are jurisdictionally intrastate under the Commission's traditional end-to-end analysis). See also *The Time Machine*, Memorandum Opinion and Order, 11 FCC Rcd at 1186, 1190, ¶ 30 (holding that a debit card call that originates and terminates in the same state is intrastate even if it is processed through a switch in another state).

to the jurisdiction of the call. As affirmed in the *Calling Card Order*, where the call is intrastate, intrastate access charges will apply.<sup>33</sup> For calling card providers offering a similar service to that offered by AT&T in the *Calling Card Order*, intrastate access charges clearly apply. A provider that avoids appropriate intrastate access charges by unilaterally characterizing its service as “enhanced” and, as such an interstate service, it will assume the risk for failing to pay its legal obligations.

### **C. No Justification for Preemption of State Jurisdiction**

GCI opposes AT&T’s alternative proposal that the FCC assume exclusive jurisdiction of all “enhanced” prepaid calling card calls as interstate calls in preemption of state jurisdiction.<sup>34</sup> There is nothing in the record upon which to base such a significant legal determination. At a minimum, the Commission would bear the burden of demonstrating that any federal preemption is narrowly tailored to impact only such state law or regulation as would actually negate the Commission’s legitimate exercise of interstate regulation of calling card services.<sup>35</sup> AT&T has not even begun to make such a showing.

Moreover, to support its preemption proposal, AT&T trots out, again, in several places in its Emergency Petition the two call theory which has been repeatedly rejected by the FCC. As it attempts its second bite at the apple, AT&T now claims that the Commission’s traditional end-to-end jurisdictional analysis does not necessarily apply to the types of services at issue in the NRPM and that there is an interstate communication between the cardholder and the service platform.<sup>36</sup> But it is clear that the end-points of a call determine the jurisdiction of the call.

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<sup>33</sup> *Calling Card Order* at ¶ 28.

<sup>34</sup> Emergency Petition at 10.

<sup>35</sup> *National Association of Regulatory Utility Commissioners v. FCC*, 880 F.2d 422, 429-430 (D.C. Cir. 1989). *See also* Comments of the New York State Department of Public Service, WC Docket No. 03-133 (filed Apr. 15, 2005) at 2.

<sup>36</sup> Emergency Petition at 12, 14, an 15.

Intermediate points, such as calling card platforms, do not change this determination.<sup>37</sup> The *Calling Card Order* affirmed that calls that originate and terminate in the same state are subject to intrastate jurisdiction and access charges. The rehashing or re-litigation of the same two-call argument is clearly inappropriate through this Emergency Petition. To the extent AT&T now seeks a change from the FCC's long-standing precedent relative to AT&T's "new variants" of calling cards, is an outcome that can only be achieved via a notice and comment proceeding supported by clear and reasoned decision-making.<sup>38</sup> AT&T has offered no persuasive reasons to justify a departure from legal precedent now through its requested emergency interim rule.

#### **IV. CONCLUSION**

As described herein, AT&T has failed to demonstrate why the Commission should grant AT&T's Emergency Petition for the adoption of interim rules by May 17, 2005. The Commission's *Calling Card Order* is the law of the land and reaffirms clear, legal precedent that applies to all similarly-situated calling card providers. For carriers that chose not to follow the law, they did so at their own risk. The FCC may pursue any wrong-doers through its enforcement and investigative authority. GCI concurs with AT&T's statements that prepaid calling card providers should pay appropriate USF and access charge payments. There is no basis, however, to change through interim rules to what USF and access charges apply or to

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<sup>37</sup> *Calling Card Order* at ¶¶ 22-23.

<sup>38</sup> *In re Alcatel USA, Inc.*, 15 FCC Rcd. 4388 ( ) (

preempt the jurisdiction of states over intrastate calling card calls. For all of these reasons, the Commission should reject AT&T's Emergency Petition.

Respectfully submitted,

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Dated: May 10, 2005