



February 26, 2004

Lisa R. Youngers
(202) 457-8815
lyoungers@gci.com

EX PARTE – VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*; WC Docket No. 03-133
Notice of Oral and Written Ex Parte Presentation

Dear Ms. Dortch:

On February 25, 2004, Tina Pidgeon and Lisa Youngers, both of General Communication, Inc. (“GCI”), met with Steve Morris and Paul Moon of the Pricing Policy Division of the Wireline Competition Bureau regarding the above-captioned docket. By this letter, GCI respectfully requests that this letter and accompanying attachments be placed in the record of the above-referenced docket.

As GCI explained in its meeting with Commission staff, AT&T’s Petition for Declaratory Ruling is nothing more than an attempt to circumvent the authority of the Regulatory Commission of Alaska (“RCA”) and to avoid payment of intrastate access charges relative to its prepaid calling card services. To highlight this point, GCI provided the following background with respect to the identical issue—AT&T’s provision of prepaid calling card services—that is currently before the RCA:

- In response to a complaint filed by ATU Long Distance, Inc. against AT&T, the RCA opened a docket in January 2003, to determine if AT&T was providing intrastate pre-paid card services without proper authority.
- On March 18, 2003, the RCA directed Alascom, as the party responsible 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, AT&T filed the instant action at the FCC, seeking a declaratory ruling that by placing an unsolicited advertisement into the call set-up of a debit calling card service, AT&T’s service is interstate in nature and not subject to intrastate access charges or the jurisdiction of the RCA.

- The next day on May 16, 2003, AT&T filed its response with the RCA stating that the state commission does not have authority over the vast majority of Alaska-to-Alaska long distance calls placed over the AT&T pre-paid cards because the calls are “enhanced” and comprised of two interstate calls. In its argument, AT&T referenced the then twenty-four hour old Petition for Declaratory Ruling at the FCC. Although AT&T’s original response to the RCA was originally due on April 17, 2003, AT&T had requested and received an extension for its response to the RCA informational request, permitting it to file the FCC Petition before responding to the RCA inquiry.
- On June 24, 2003, the RCA released its Order finding that AT&T’s advertisement in association with its intrastate prepaid card service is not an enhanced service and does not change the jurisdictional nature of the call. The RCA directed AT&T to pay intrastate access charges on its Alaska-to-Alaska pre-paid card calls and to make a compliance filing demonstrating that such fees have been paid. The RCA’s June 24, 2003 order is attached to this ex parte filing.
- On August 1, 2003, in response to AT&T’s request for reconsideration, the RCA stayed the requirement to pay intrastate access charges on AT&T’s Alaska-to-Alaska prepaid card calls until the FCC acts on the instant Petition. The RCA also required Alascom to hold in escrow any unpaid access charges. The RCA determined that all other substantive issues in the proceeding were disposed of. The RCA’s August 1, 2003 Order is attached to this ex parte filing.

As the timeline clearly illustrates, when regulatory light was shed on its improper avoidance of intrastate access charges, AT&T filed the instant petition to manufacture its theory in an attempt to provide a post hoc rationalization of its failure to pay intrastate access charges in Alaska and to avoid the RCA’s jurisdiction all together.

As GCI also explained to the Commission staff, allowing AT&T’s mischaracterization of its prepaid calling card traffic as interstate calls harms the Alaskan market in general, and GCI specifically. In Alaska, the non-traffic sensitive costs are pooled and charged via a “bulk bill” which is divided among the IXCs according to market share. Through AT&T’s misdeeds, a greater percentage of the bulk bill—that which AT&T has shirked—shifts primarily to GCI. Moreover, AT&T’s actions to mischaracterize its prepaid card traffic as interstate leads to excessive intrastate traffic sensitive rates, thus negatively impacting Alaskan carriers, and ultimately, Alaskan consumers, through higher rates.

Further exacerbating the potential for harm, as well as the complexity to address any amounts owed once the Petition is resolved, are recent revelations by AT&T, and Alascom specifically, regarding its problems with the collection of usage data in Alaska. In a recent FCC docket, Alascom requested a waiver of its annual rate revisions as required under its Tariff 11. Incredibly, Alascom blamed part of its inability to make the rate revisions on the retirement of one of its employees and Alascom’s failure to find any employee or other resource capable of

Mr. Marlene Dortch
February 26, 2004
Page 3 of 3

capturing the required data for a 10-month period. Alascom further indicated that there is no way to ever reconstruct the data. (*In the Matter of Alascom, Inc., Tariff FCC No. 11, Petition for Waiver of Annual Filing Requirement*, WC Docket No. 03-18, Comments of Alascom, Attachment A at ¶¶ 9, 29, attached to this ex parte filing). In its Order rejecting the waiver request, the FCC did not find the retirement of an employee persuasive evidence to support the waiver. (*In the Matter of Alascom, Inc., Tariff FCC No. 11, Petition for Waiver of Annual Filing Requirement*, Order at ¶26, attached to this ex parte filing). GCI is now concerned, however, that Alascom's track record with interstate traffic data during that period calls into question its capability of producing any sort of reliable intrastate data for that same period, not to mention other time periods. Indeed, the RCA recognized the data challenges at AT&T relevant to determining the appropriate intrastate access charges, stating that "it is unclear as to how much [AT&T] believes it may have paid, but that amount could be either \$1.7 million or \$9.4 million in terminating intrastate access fees, depending upon interpretation of AT&T's comments". (RCA June 24, 2003 Order at 12.) Without question, these two figures represent a significant and troubling range.

Finally, GCI reiterated its position with FCC staff that pursuant to clear FCC legal precedent, the jurisdictional nature of AT&T's prepaid calling card service within a single state is intrastate. The inclusion of an unsolicited advertisement into the call set-up process as described in AT&T's Petition does not change this jurisdictional finding nor does such an advertisement make the call an "enhanced" service. As GCI noted, the FCC has sufficient legal grounds to deny AT&T's Petition on the jurisdictional precedent alone. In any event, GCI urged the FCC to act expeditiously to deny AT&T's Petition and to stop the on-going harm to carriers in Alaska. AT&T should not be rewarded for its legally unsustainable self-help or its obvious game playing through the filing of this Petition. If AT&T truly seeks intercarrier compensation or USF reforms, as it claims, those matters should be left to the appropriate dockets, not spurious legal theories and expedient self-granted exemptions.

In accordance with the Commission's rules, a copy of this letter with attachments is being filed in the above-captioned proceeding.

If you have any questions, please contact the undersigned at (202) 457-8815.

Sincerely,

/s/

Lisa R. Youngers
Federal Regulatory Attorney

cc: (via electronic mail)
Steve Morris, FCC
Paul Moon, FCC