

Edward Shakin
Vice President & Associate General Counsel



1515 North Court House Road
Arlington, VA 22201

Phone: 703.351.3099
Fax: 703.351.3676
edward.h.shakin@verizon.com

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Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68

Dear Ms. Dortch:

As the Commission resolves this docket, and determines whether to apply its determination prospectively only or also retrospectively, it is important to recognize the significant distinctions between the issues presented here and those addressed in the *AT&T Prepaid Calling Card Order*.¹ In that earlier order, the Commission correctly determined that its ruling should not have solely prospective effect because the Commission was applying clear, previously articulated legal principles. Here, in contrast, the Commission itself has engendered significant uncertainty about the regulatory classification of the prepaid calling card variants at issue here, as a result of the Commission's decision to issue a notice of proposed rulemaking as to those variants at the same time that it ruled on the prepaid calling card offering at issue in the *AT&T Prepaid Calling Card Order*. In these unique circumstances, it is appropriate for the Commission to limit its ruling to purely prospective application. Moreover, the most important consideration is that the Commission issue an order forthwith that resolves the status of these prepaid calling card offerings, so that all parties know what the rules are and, on a going-forward basis, will operate on a level playing field.

In the *AT&T Prepaid Calling Card Order*, the Commission considered AT&T's claim that, because it required consumers to listen to unsolicited, canned advertising before completing a call, its prepaid calling card offering was not a telecommunications service subject to access charge and universal service fund requirements. Because AT&T's claims flew in the face of prior Commission decisions and Supreme Court precedent, the Commission found that AT&T had "no reasonable basis" under the "Commission's prior decisions" to "expect to avoid [those] obligations" by

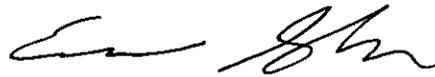
¹ *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4826 (2005) ("*AT&T Prepaid Calling Card Order*"), petition for review pending, *AT&T Corp. v. FCC*, No. 05-1096 (D.C. Cir. argued Feb. 13, 2006).

unilaterally imposing advertising “spam” on the long-distance customers using its prepaid calling cards. *AT&T Prepaid Calling Card Order* ¶ 32. Because the law was clear on these points, the Commission correctly found that applying its determination “retroactive[ly]” was “warranted.” *Id.*

This proceeding involves what the Commission recognized are “new variants” of prepaid calling card offerings, which can incorporate interactive features. *Id.* ¶ 2. In initiating this rulemaking, the Commission explained that the differences between these two offerings and the one discussed above “*may be significant* for purposes of regulatory classification and jurisdiction.” *Id.* (emphasis added). The Commission also asked numerous questions about how its analysis in the *AT&T Prepaid Calling Card Order* applies to these two variants. *See AT&T Prepaid Calling Card Order* ¶¶ 39-40, 42-43. The Commission’s own recognition that its “prior decisions” did not resolve the questions presented by the interactive features of the new variants — and its statement that those differences “*may be significant*” for classification purposes — were sufficient to give rise to sufficient uncertainty about the proper treatment of such prepaid calling card offerings that carriers had a “reasonable basis” for concluding that those offerings would be subject to different regulatory treatment than the offering at issue in the *AT&T Prepaid Calling Card Order*. *Id.* ¶¶ 2, 32. Indeed, even in light of the Commission’s conclusion that “the public interest would best be served by” a “comprehensive” rulemaking in which it could “gather information about all types of current and planned calling card services,” *id.* ¶ 38, there would have been no reason or need to defer a ruling on the new AT&T variants unless reasonable questions about the regulatory classification and jurisdiction of those offerings existed. In these circumstances, it would be appropriate for the Commission to apply its determinations about the prepaid calling card offerings at issue here prospectively only.

Finally, it bears repeating that the most important aspect of this proceeding is that the Commission complete it expeditiously in a way that avoids further litigation. All parties in the industry need to know what the rule is so that all concerned can comply with that rule on a going forward basis and can compete on a level playing field.

Sincerely,



Edward Shakin

cc: Ian Dillner
Jessica Rosenworcel
Scott Bergmann
Dana Schaffer
Daniel Gonzalez
Thomas Navin
Samuel Feder