

Kathleen Grillo  
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May 23, 2006

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

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

On May 22, 2006, Susanne Guyer and Michael Glover of Verizon met with Commissioner Jonathan Adelstein and Scott Bergmann, Legal Advisor to Commissioner Jonathan Adelstein, regarding the above-referenced proceeding. Verizon stated that the Commission should make clear that all prepaid calling card providers are subject to the same access charge and universal service obligations going forward. Verizon also stated that the Commission should ensure that any order addressing the obligations of prepaid calling providers has solely prospective effect. Given that in this proceeding, the Commission's own Notice recognized the uncertainty with respect to the regulatory treatment of interactive calling cards with features similar to those of AT&T, its ruling with respect to those cards should be prospective only.

The positions expressed were consistent with Verizon's filings in this proceeding. See *Ex Parte* Letter from Edward Shakin to Marlene Dortch (filed Apr. 20, 2006); *Ex Parte* Letter from Kathleen Grillo to Marlene Dortch (filed April 27, 2006)(attached).

Pursuant to Section 1.1206(b) of the Commission's rules, one electronic copy of this notice is being filed in the above-referenced proceeding.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Grillo".

Kathleen Grillo

Attachments

cc: Scott Bergmann

Edward Shakin  
Vice President & Associate General Counsel



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April 20, 2006

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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*.<sup>1</sup> 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

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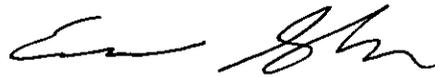
<sup>1</sup> *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4826 (2005) ("*AT&T Prepaid Calling Card Order*"), petition for review pending, *AT&T Corp. v. FCC*, No. 05-1096 (D.C. Cir. argued Feb. 13, 2006).

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

Kathleen Grillo  
Vice President  
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April 26, 2006

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

**RE: In the Matter of Regulation of Prepaid Calling Card Services,  
WC Docket No. 05-68**

The Commission should make clear that any order addressing the obligations of prepaid calling providers has solely prospective effect. Unlike in the previous calling card proceeding, where the Commission correctly determined that its ruling should not have solely prospective effect because the rules in place were clear and unambiguous,<sup>1</sup> in this docket, the Commission was itself uncertain as to the regulatory classification of the prepaid calling card variants in its notice of proposed rulemaking. In the Notice, the Commission explicitly sought comment from the industry as to the proper regulatory treatment of these types of services and asked about potentially “significant” differences between these services and the type of calling cards addressed by the Commission’s order.<sup>2</sup> Under these unique circumstances, the Commission may and should limit its ruling to purely prospective application.

There are strong policy reasons for clarifying that any ruling in this proceeding have a solely prospective effect. As the Commission recognizes, the industry clearly needs regulatory certainty on these issues so that all providers will know and understand the rules going forward and can operate on a level playing-field. The last thing the industry needs, however, is the specter of additional litigation over how these services were treated in the past. Disputes, either at the Commission or in the courts, will overshadow the real benefit of such a ruling – to make sure *all* providers have consistent duties going forward.

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<sup>1</sup> Order and Notice of Proposed Rulemaking, *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, 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).

<sup>2</sup> See *Ex Parte* Letter from Edward Shakin to Marlene Dortch (filed Apr. 20, 2006).

Marlene H, Dortch

April 26, 2006

Page 2

In short, given that in this proceeding, the Commission's own Notice recognized the uncertainty with respect to the regulatory treatment of interactive calling cards with features similar to those of AT&T, the Commission should make clear that its ruling with respect to those cards is prospective only.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Grillo". The signature is written in a cursive, slightly slanted style.

Kathleen Grillo

cc: Dan Gonzalez  
Ian Dillner  
Jessica Rosenworcel  
Scott Bergmann  
Dana Shaffer  
Tom Navin