Jack Zinman
General Attorney

AT&T Services, Inc.
1401 I Street NW, Suite 400
Washington, D.C. 20005
Phone 202 326-8911
Fax 202 408-8745

June 20, 2006

VIA ELECTRONIC SUBMISSION
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
Washington, D.C. 20554

Re: Notice of Ex Parte – Regulation of Prepaid Calling Card Services, WC Docket No. 05-68

Dear Ms. Dortch:

AT&T Inc. (AT&T) files this letter to briefly respond to a recent *ex parte* submitted by Qwest on June 14, 2006, regarding the above-captioned Commission proceeding on prepaid calling card services.[1] In its *ex parte*, Qwest argues that AT&T knew that there was a risk that the Commission might not agree with AT&T's argument that its prepaid calling card services are enhanced services. According to Qwest, as a result of this knowledge, AT&T cannot assert that it would be inequitable for the Commission to apply access charge and universal service obligations retroactively to the interactive menu-driven prepaid calling card services that are the subject of this proceeding. In support of its *ex parte*, Qwest attaches a raft of deposition testimony and other documents from a pending lawsuit between Qwest and AT&T that allegedly bolster Qwest's claims in this proceeding.

Despite Qwest's last-second histrionics to delay the Commission from releasing its long-awaited order on prepaid calling card services, nothing in its *ex parte* is remotely relevant to the issues currently pending before the Commission. None of the references to prepaid calling card services in the materials appended to Qwest's *ex parte* concern the new, interactive menu-driven prepaid calling card services, which were the subject of the *Prepaid Calling Card NPRM*,[2] and which are addressed in the pending Commission order on prepaid calling cards that has reportedly been adopted but not yet released.[3] Rather, all of the references to prepaid calling card services in the materials appended to Qwest's *ex parte* concern the *prior* version of AT&T's

[1] Letter from Melissa Newman, Qwest, to Marlene Dortch, FCC, WC Docket No. 05-68 (June 14, 2006) (Qwest *ex parte*).

[2] *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Order and Notice of Proposed Rulemaking, FCC 05-41 (released Feb. 23, 2005) (*Prepaid Calling Card Order & NPRM*).

[3] *See FCC Votes on Prepaid Calling Card Order*, Communications Daily (June 2, 2006).

prepaid calling card service, which this Commission ruled upon over a year ago in the *Prepaid Calling Card Order*.[4]

Indeed, Qwest unwittingly admits the irrelevance of its own *ex parte* when it quotes at length from deposition testimony regarding AT&T's prepaid calling card services – *as they existed in 2002* – and then goes on to argue that "this testimony makes clear that, at least as to this version of AT&T's service, AT&T did not make significant changes to the services to make it 'enhanced.' . . . It remains to be seen whether AT&T's subsequent 'enhancements' provide any incidental benefits to consumers."[5] Qwest's argument merely restates what has been blindingly obvious to anyone who read the *Prepaid Calling Card Order & NPRM* : the Commission has concluded that the features of the prior version of AT&T's prepaid calling cards do "not alter the fundamental character of the calling card service," which is a "telecommunications service," but the new, interactive menu-driven prepaid calling card service has features that "may be significant for purposes of regulatory classification and jurisdiction," which would be more appropriately evaluated in a "comprehensive manner" through a rulemaking proceeding.[6] Nothing in Qwest's *ex parte* should or does prevent the Commission from completing that proceeding by clearly and unambiguously stating that its access charge and universal service rules did not apply to interactive menu-driven prepaid calling card services prior to the effective date of the Commission's forthcoming order.[7]

Qwest's *ex parte* is nothing more than a desperate, eleventh-hour attempt to forestall the release of an order that the Commission has already adopted. To end the regulatory uncertainty that has plagued the calling card industry for far too long, the Commission should reject Qwest's arguments and immediately issue its prepaid calling card order.

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[4] *Prepaid Calling Card Order* ¶ 1 ("We limit our decision in this Order to the calling card service described in AT&T's original petition."). The fact that some AT&T personnel may have thought there was some risk that AT&T's advocacy regarding its prior prepaid calling card services might not be accepted by the Commission is hardly significant in any event. Indeed, service providers always bear some degree of risk whenever the Commission is called upon to evaluate the regulatory classification of new services. *See* Letter from David Lawson, counsel for AT&T, to Marlene Dortch, FCC, WC Docket No. 05-68, at 10-11 (May 26, 2006) (AT&T May 26 *ex parte*). *See also Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Statement of Commissioner Michael J. Copps, Concurring (noting the "calling card confusion from the past" and stating that the Commission had "set straight a messy situation"); *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Statement of Commissioner Jonathan S. Adelstein (expressing concern that the Commission is perpetuating "a marketplace dynamic where success is significantly affected by tolerance for regulatory risk").

[5] Qwest *ex parte* at 3-4.

[6] *Prepaid Calling Card Order & NPRM* ¶¶ 2, 21, 38. *See also Id*. ¶ 38 n.77 (citing November 2004 letter from AT&T describing its new, interactive menu-driven prepaid calling card service). AT&T appealed the Commission's *Order* to the D.C. Circuit. *See AT&T v. FCC*, No 05-1096 (D.C. Cir.).

[7] *See* AT&T May 26 *ex parte*. At the same time, the Commission should make it equally clear that, on a prospective basis, all prepaid calling card services are subject to access charge and universal service obligations. *Id.*

If you have any questions or need additional information, please do not hesitate to contact me. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

/s/
Jack Zinman

Cc: Michelle Carey
Jessica Rosenworcel
Scott Bergmann
Ian Dillner
Dana Shaffer
Tom Navin
Sam Feder