

**Congress of the United States**  
**Washington, DC 20515**

January 13, 2005

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Suite 844  
Washington, D.C. 20554

Dear Chairman Powell:

I write to ask the Federal Communications Commission ("FCC") to act expeditiously on the Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services ("AT&T Petition" or "Petition") filed by AT&T on May 15, 2003.<sup>1</sup>

In its Petition, AT&T asks the Commission to declare that its so-called "enhanced" prepaid calling card services are interstate communications subject to interstate, rather than intrastate access charges, even in instances where the calling and called parties are located in the same state. In addition, AT&T argues that these prepaid calling card services are information services, rather than telecommunications services, simply because the user of the calling card hears a recorded advertisement while placing a call. Based on these curious arguments, AT&T unilaterally decided to withhold several hundred million dollars worth of universal service and intrastate access payments, seemingly in clear violation of FCC regulations and statutory law.

As you may recall, on June 16, 2004, I forwarded to you a letter asking the FCC to act immediately on the AT&T Petition. On July 2, 2004, you responded, noting that you "share" my concern that "the Commission resolve this Petition expeditiously." You stated that universal service is "a cornerstone of this agency's mission" and claimed that you "take seriously any allegation that carriers are not complying with their contribution requirements." Finally, you acknowledged "the critical need for the Commission to resolve the issues raised by AT&T and provide clarity to the industry regarding the regulatory treatment of these services." I simply ask that you act on the AT&T Petition in the expeditious manner described in your letter, and that your decision manifest the same appreciation for sound enforcement of those rules which safeguard and preserve universal service.

---

<sup>1</sup> AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, WC Docket No. 03-133, filed May 15, 2003 ("AT&T Petition" or the "Petition").

The Honorable Michael K. Powell

Page 2

I assume that you are aware of a paragraph tucked away in the Conference Report that accompanied H.R. 4818, the "Consolidated Appropriations Act, 2005," which refers obliquely to the AT&T Petition by noting that the conferees directed the FCC to avoid actions that might increase the cost of prepaid phone cards used by military personnel or their families. As you may know, this language was not part of the statute and, therefore, is non-binding upon your agency. It was added minutes before the bill was filed in the House and was neither discussed nor debated in either chamber. Indeed, I and most of my colleagues were not made aware of its existence until after the House voted on the bill.

Ever since your response to my June 16th letter, AT&T has conducted a lobbying campaign intended to divert attention from its own failure to pay the required universal service and access charges and to pressure the FCC to refrain from acting on the Petition. AT&T's campaign seeks to justify its failure to pay intrastate access charges and to make USF contributions on the fact that some of its prepaid calling cards are used by U.S. military personnel stationed in Afghanistan and Iraq. AT&T's campaign, including obtaining the non-binding report language, seeks to generate opposition to any effort by the FCC to require AT&T to comply with the Commission's regulations based on concerns that doing so would increase costs to U.S. military personnel, an outcome that all Americans would choose to avoid.

Of course, I do not favor increasing the cost of making telephone calls for U.S. forces stationed overseas. That issue, however, is largely irrelevant to Commission action on the AT&T Petition. Whatever the outcome of that proceeding, if it truly wishes to help the troops, AT&T can offer military personnel pre-paid calling cards at discounted rates or it could offer calling card services to such personnel for free, as another company has attempted to do.<sup>2</sup> AT&T's cynical campaign should in no way cause the FCC to turn a blind eye to AT&T's unilateral decision to exempt itself from the FCC's regulations and shortchange universal service. I very much doubt that the Internal Revenue Service would ignore AT&T's actions if it unilaterally decided not to pay its taxes because doing so would increase costs for military personnel using its services. In my view, AT&T's decision to withhold payments required by the FCC is no different, and the Commission should not permit AT&T's lobbying campaign to cloud the issue.

For the reasons described above, I reiterate my prior request that the Commission expeditiously rule on the AT&T Petition. Should the Commission find that AT&T's actions have violated its rules, AT&T should be required to pay intrastate access charges and make USF payments in connection with its prepaid calling card services on a going-forward basis, as well as require AT&T to make such payments retroactively to the date on which it implemented its self-help, cost-avoidance scheme. In addition, AT&T should be required to make an appropriate interest payment to compensate the USF and affected local exchange carriers for the loss of funds that resulted from AT&T's withholding of payments.

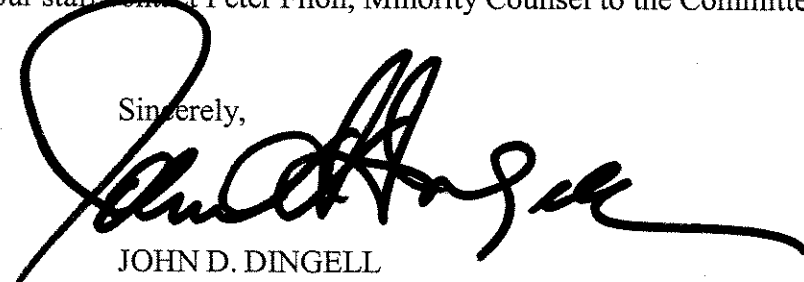
---

<sup>2</sup>See Ex Parte Presentation of Sprint Corp. "AT&T [has] refused to allow military personnel to use free calling cards in Iraq and elsewhere that Sprint had distributed to our troops overseas." Filed August 2, 2004.

The Honorable Michael K. Powell  
Page 3

I ask that a copy of this letter be placed in the proceeding record, and further request that you respond to this letter by no later than Monday, January 31, 2005. If there are any questions, please contact me or have your staff contact Peter Filon, Minority Counsel to the Committee, at (202) 226-3400.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "John D. Dingell". The signature is written over the word "Sincerely," and extends across the width of the page.

JOHN D. DINGELL  
RANKING MEMBER  
COMMITTEE ON ENERGY AND COMMERCE

cc: The Honorable Joe Barton, Chairman  
Committee on Energy and Commerce

The Honorable Kathleen Q. Abernathy  
Federal Communications Commissioner

The Honorable Jonathan S. Adelstein  
Federal Communications Commissioner

The Honorable Michael J. Copps  
Federal Communications Commissioner

The Honorable Kevin J. Martin  
Federal Communications Commissioner