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ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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June 16, 2004

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BJD ALBRIGHT, STAFF DIRECTOR

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

Re: AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, WC Docket No. 03-133

Dear Chairman Powell:

I ask the Federal Communications Commission (the "Commission" or "FCC") to act immediately upon a Petition for Declaratory Ruling filed by AT&T more than one year ago.¹ Until the Commission acts, AT&T will continue its apparent practice of improperly withholding payments it should be paying into the Universal Service Fund ("USF"), as well as withholding appropriate payments of intrastate access charges.

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." In addition, AT&T argues that these prepaid calling card services are information services, as opposed to telecommunications services, by virtue of the fact that the user of the calling card will hear a recorded advertisement while in the process of placing the call.

Aside from the patent absurdity of these claims, I am troubled by the implications of the relief AT&T seeks. First, AT&T seeks to avoid its obligation to pay lawful intrastate access charges in connection with prepaid calling card services on calls in which the calling and called parties are located within the same state. A decision in AT&T's favor would upset the present balance which permits lower consumer phone rates. Second, a ruling that AT&T's prepaid calling card services are information services would not only free AT&T of any obligation to

1 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").

contribute to the USF in connection with these services, but would also create an enormous loophole for other carriers to avoid supporting universal service. The consequences of a decision to grant AT&T's petition are serious, and I urge the Commission to take swift and clear action on it.

What is particularly disturbing about the Commission's inaction is that, once again, AT&T has engaged in self-help in advance of a Commission decision. On May 7, 2004, AT&T filed its Form 10-Q with the Securities and Exchange Commission for the first quarter of 2004. In Note 10 to its Consolidated Financial Statements, AT&T described the Petition and confirmed that it *currently* pays only *interstate* access charges on calls to and from its "prepaid card platform." AT&T also indicated that it does not make USF contributions for these same calls because, it claimed, its prepaid card calls constitute an "enhanced service." Hence, AT&T publicly disclosed for the first time that it has "saved" approximately \$215 million in intrastate access charges since the third quarter of 2002, and \$140 million in USF contributions since the beginning of 1999.

Based on its own admission, AT&T has for nearly two years been engaged in the very conduct – paying only interstate access charges in connection with its prepaid calling card service – for which it seeks permission in the Petition. Notably, AT&T does not notify the Commission of its already in-place course of conduct in the Petition; instead, it merely requests that it be allowed to act in such a fashion. Worse yet, AT&T has never sought permission to withhold USF contributions for its prepaid calling card services, much less inform the Commission that it has been withholding such contributions since 1999.

Moreover, AT&T's unilateral decision to withhold \$140 million worth of USF payments since 1999 and its avoidance of \$215 million in intrastate access charges is not the first time it has engaged in such a self-help scheme. In 2002, AT&T filed a petition seeking to exempt its phone-to-phone IP telephony calls from the application of terminating access charges. In that situation, it unilaterally ceased paying terminating access charges to local exchange companies on such calls without Commission approval. As you are aware, the Commission in April rejected AT&T's petition, but did not require AT&T to make retroactive payments for access charges it had withheld. In each of these cases, AT&T's behavior has undermined our policy of ensuring affordable local phone service and adversely affected those companies that properly adhere to Commission rules and procedures.

For the reasons described above, I am requesting that the Commission expeditiously rule on the AT&T Petition. AT&T's unilateral decision to withhold access charge payments should not be permitted to continue due to the inaction of the Commission. And when the Commission finds – as it must – that AT&T's actions have violated the Commission's rules, it should require not only that AT&T pay intrastate access charges and make USF payments in connection with its prepaid calling card services on a going-forward basis, but also that AT&T 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 pay 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.

Lastly, the Commission should impose forfeitures on AT&T that are sufficient to deter it from further efforts to evade the cost of complying with the Commission's rules. If AT&T is permitted to profit by unilaterally reinterpreting the Commission's rules to its own advantage without any consequence, it will undermine the ability of the Commission and the states to maintain our national policy of universal service that benefits all Americans.

I would appreciate having your views on this troubling matter. I would also appreciate comments and answers to the following:

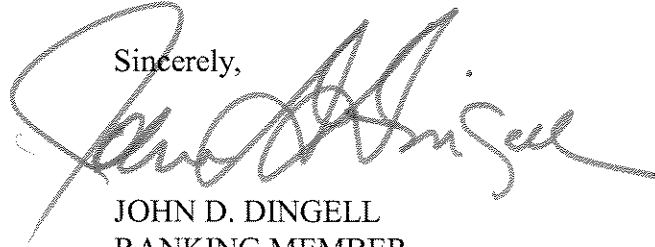
1. Please provide a timetable for when the Commission will rule on the AT&T Petition.
2. Does AT&T cite in its Petition a particular FCC Order or refer to a section of the Communications Act of 1934 that permits it to unilaterally withhold payments of intrastate access charges prior to Commission action on its petition?
3. Is there any precedent where the FCC permitted an interexchange carrier to unilaterally determine without a prior ruling from the Commission that it would not pay access charges on an existing telecommunications service?
4. If an interexchange carrier is permitted to withhold unilaterally payments of intrastate access charges without relying on a formal FCC decision or a specific section of the Communications Act, would not such a precedent encourage other carriers to similarly withhold access charge payments?
5. Please comment on the disclosure contained in AT&T's Form 10-Q that its prepaid calling card services constitute an "enhanced service" and is therefore not included in the calculation of AT&T's USF contribution obligations. In your response, comment on whether you believe playing a brief advertisement before a call is completed is, in and of itself, sufficient to transform a telecommunications service into an information service and, therefore, exempt such a service from USF contribution obligations. Finally, provide your best estimate of what the effect would be upon the solvency of the USF if all carriers were permitted to exempt from USF contribution obligations calls that contain brief advertisements.
6. In your view, does the Commission have the authority to impose penalties and forfeitures on AT&T if it finds that AT&T unlawfully withheld payments of intrastate access charges? Does the Commission have the authority to impose penalties and forfeitures on AT&T if it finds that AT&T has unlawfully failed to count revenues from

its prepaid calling card service for purposes of calculating its USF contribution obligations?

7. Do you believe that AT&T deceived the Commission by failing to disclose in the Petition that it was already engaging in the conduct it was asking the Commission to ratify? Would this lack of candor normally be considered in determining the amount of any penalty and forfeiture imposed by the Commission?

I ask that a copy of this letter be placed in the Record of the above referenced proceeding. I would further ask that you respond by Wednesday, July 7, 2004. If there are any questions, please contact me or have your staff contact either Gregg Rothschild or Pete Filon, Minority Counsels to the Committee, at (202) 226-3400.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell", written over a large, stylized, light-colored scribble or watermark.

JOHN D. DINGELL
RANKING MEMBER

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

Commissioner Kathleen Q. Abernathy

Commissioner Jonathan S. Adelstein

Commissioner Michael J. Copps

Commissioner Kevin J. Martin