

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

Northeast Missouri Rural Telephone Company	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. IC-2008-0285
	)	
AT&T Corp.	)	
	)	
Respondent.	)	

**Legal Memorandum in Support
Of Northeast Missouri Rural Telephone Company's
Motion for Summary Disposition**

Introduction

The dispute between AT&T and local exchange carriers arising from AT&T's attempt to treat all of its "enhanced prepaid calling card" (EPPC) traffic as interstate in jurisdiction at its inception was national in its potential scope. Recognizing this, AT&T asked the Federal Communications Commission for a Ruling as to its responsibility to pay access for EPPC calls. The liability issue has now been determined by the FCC adversely to AT&T. The FCC's decision has been affirmed by the federal courts. One federal court decision expanded AT&T's liability beyond that adjudicated by the FCC.

There is no need to litigate issues that have already been fully and finally addressed by the FCC and the courts. These determinations are binding upon AT&T by virtue of the doctrines of res adjudicate, collateral estoppel, and issue preclusion. This Commission should sustain Northeast's Motion for Summary Disposition, thereby limiting the issues for hearing as being those necessary to quantify the amount of prepaid

calling card traffic misreported by AT&T to Northeast as being interstate in jurisdiction, when they were intrastate in jurisdiction, and the difference between Northeast's intrastate and interstate rates applicable to such traffic.

References

AT&T's May 15, 2003 Petition for Declaratory Ruling will be referred to as "**AT&T's Petition**". The FCC's February 23, 2005 Order and Notice of Proposed Rulemaking will be referred to as the FCC's "**Liability Order**"¹. The FCC's June 30, 2006 Declaratory Ruling and Report and Order will be referred to as the FCC's "**Second Liability Order**"². The DC Circuit's July 14, 2006 Opinion will be referred to as the "**Liability Affirming Opinion**"³. The DC Circuit's December 4, 2007 Opinion will be referred to as the "**Retroactive Liability Expansion Opinion**."⁴

The Traffic in Question

AT&T sold its customers purchased prepaid calling cards by distributing them to retailers such as Wal Mart for sale to the public. The customer purchasing and using the card dialed the 8YY number directed by his or her card. The call was directed to an AT&T "platform", which prompted the caller to enter their personal identification number. After hearing messages from the retailer associated with that card, the caller was prompted to enter the destination number, and the call was completed.

¹ February 23, 2005 Order and Notice of Proposed Rulemaking in the matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, WC Docket No. 03-133, 20 FCCR 4826, copy attached.

² June 30, 2006 Declaratory Ruling and Report and Order in the matter of Regulation of Prepaid Calling Card Services, WC Docket No. 05-68, 21 FCCR 7290, copy attached.

³ AT&T v FCC, et al., 454 F. 3d 329 (DC Cir 2006), copy attached.

⁴ Qwest v FCC, et al., (DC Cir 2007), copy attached.

AT&T arranged systems so that every call went to a platform in a state different from that in which the caller was located. AT&T then treated that component of the call between the caller and the platform as an interstate call. AT&T treated that component of the call between the platform and the called party as a separate interstate call. AT&T thus treated each call as two separate interstate calls, even when the calling and called parties were in the same state. AT&T's treatment of the calls as consisting of two separate interstate calls instead of a single intrastate call, had this treatment been upheld, would have saved AT&T from paying intrastate access charges, which were typically less than interstate access charges.

AT&T EPPC Traffic Variants

AT&T filed its petition for declaratory ruling regarding EPPC traffic on May 15, 2003. AT&T requested that the FCC determine EPPC traffic was jurisdictionally interstate, therefore exempt from intrastate access charges, and was not subject to universal service contributions⁵.

After filing its Petition for Declaratory Ruling with the FCC, by ex parte letter of November 22, 2004, AT&T asked the FCC to address two new variants to its service.⁶ The first variant was labeled as "menu driven EPPC". Here the caller was provided with several options.⁷ The second variant was labeled as "IP transport EPPC", referring to EPPC calls AT&T transported the call over its internet backbone using IP technology.⁸

⁵ See paragraphs 7-9 of the FCC's Liability Order.

⁶ See footnote 2, and paragraph 2 to the FCC's Liability Order.

⁷ See paragraph 11 of the FCC's Liability Order.

⁸ See paragraph 12 of the FCC's Liability Order.

As the following legal memorandum suggests, the introduction of these two variants of EPPC was held by the FCC not alter AT&T's liability. The FCC ruled AT&T was liable for intrastate access charges for all EPPC traffic that was intrastate in jurisdiction, the original EPPC traffic, menu-driven EPPC, and IP transport EPPC traffic. Although the FCC ruled AT&T was only prospectively liable for menu driven EPPC traffic, that ruling was reversed by the courts making AT&T retroactively liable for menu driven EPPC calls as well.⁹

Legal History

AT&T's Petition

After the state of Alaska commenced a docket captioned "Investigation into Unauthorized Telecommunication Intrastate Debit Card Marketing by AT&T"¹⁰, AT&T on May 15, 2003 filed AT&T's Petition with the FCC.

In its Petition for Declaratory Ruling, pages 1-2 and 9-14, AT&T argued to the FCC that enhanced prepaid calling card service consisted of two jurisdictionally interstate calls, the customers call to the enhanced service platform, and one from that platform to the called party. In its Petition AT&T requested that the FCC sanction AT&T's rationale for reporting all prepaid calling card traffic as interstate in jurisdiction, even those calls originating and terminating within the same state.

⁹ See the Retroactive Liability Expansion Opinion.

¹⁰ See footnote 6 to AT&T's Petition, identifying the Alaska proceeding.

FCC's Liability Order

In its February 23, 2005 Order and Notice of Proposed Rulemaking, the FCC made the following determinations (citations of authority omitted here) in these enumerated paragraphs of the Order:

8. Both of AT&T's arguments are based on the assumption that the "enhanced" prepaid card services platform engages in its own communication with the cardholder, separate from the communication between the calling party and the called party. This communication occurs even if the called party does not answer, or if the calling party hangs up before reaching the called party. AT&T argues that this first stage of the call creates an endpoint for purposes of the Commission's jurisdictional analysis.

9. AT&T also argues that its "enhanced" prepaid calling card service should be classified as an "information service" within the meaning of the Act and the Commission's rules, and that any underlying telecommunications are jurisdictionally interstate. As with its jurisdictional arguments, AT&T's classification argument is based on the assertion that each time an "enhanced" prepaid calling card is used, the centralized switching platform engages in its own communications with the cardholder by sending the advertising message. AT&T argues that this service falls within the Commission's definition of an information service because it provides "additional, different or restructured information" unrelated to routing or billing and it "involve[s] subscriber interaction with stored information."

14. We find that the "enhanced" calling card service described in AT&T's original petition is a telecommunications service as defined by the Act. AT&T offers "telecommunications" because it provides "transmission, between or among points specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received." And its offering constitutes a "telecommunications service" because it offers "telecommunications for a fee directly to the public."

15. We are not persuaded by AT&T's claim that inserting advertisements in a calling card service transforms that service into an information service under the Act and our rules. As an initial matter, we find that AT&T's service does not meet the statutory definition of an information service because AT&T is not "offering" any "capability" with respect to the advertising message. As noted by Sprint, the packaging materials for AT&T's "enhanced" prepaid calling cards do not even mention their possible use as a device for listening to advertisements. Because the advertising message is provided automatically, without the advance knowledge or consent of the customer, there is no "offer" to the customer of anything other than telephone service, nor is the customer provided with the "capability" to do anything other than make a telephone call.

16. Furthermore, we find that in this case the provision of the advertising message is an adjunct-to-basic service, and therefore not an "enhanced service" under the Commission's rules. Adjunct-to-basic services are services that are "incidental" to an underlying telecommunications service and do not "alter their fundamental character" even if they may meet the literal definition of an information service or enhanced

service. The Commission has found that Congress preserved the Commission's pre-1996 Act treatment of "adjunct-to-basic" services as telecommunications services, rather than information services. We find that the advertising message provided to the calling party in this case is incidental to the underlying service offered to the cardholder and does not in any way alter the fundamental character of that telecommunications service. From the customer's perspective, the advertising message is merely a necessary precondition to placing a telephone call and therefore the service should be classified as a telecommunications service.

21. In sum, we find that the mere insertion of the advertising message in calls made with AT&T's prepaid calling cards does not alter the fundamental character of the calling card service. Accordingly, consistent with the foregoing precedent, we find that AT&T's service is properly classified as a telecommunications service.

22. As noted above, the Commission previously has found that prepaid calling cards are jurisdictionally mixed, and that calls made with such cards that originate and terminate in the same state are jurisdictionally intrastate under the Commission's traditional end-to-end analysis. We use this same analysis to determine the jurisdiction of calls made using AT&T's "enhanced" calling card service as described in its original petition.

23. We reject AT&T's argument that the communication of the advertising message creates a call endpoint at the switching platform, thereby dividing a calling card communication into two calls. As Verizon and GCI argue, it cannot be the case that communication of the advertising message creates an endpoint because *all* calling card platforms engage in some form of communication with the calling party, and the Commission never has found this communication to be relevant for jurisdictional purposes. Under an end-to-end analysis, communication of the incidental advertising message embedded in the AT&T card here is no more relevant than the typical phrase, "Thank you for using AT&T."

27. We reject AT&T's argument that its service is jurisdictionally interstate because "the underlying telecommunications services . . . retain their basic jurisdictional character even if they are used as 'building blocks' in a larger information service that falls within a different jurisdiction." According to AT&T, if it were to purchase the underlying telecommunications services from non-affiliated carriers (*e.g.*, a wholesale 800 link from WorldCom and Sprint), those services would retain their interstate classification "even if AT&T uses that building block as part of a larger information service that might ultimately be deemed intrastate." AT&T argues that we should reach the same result even if it purchases underlying basic services from itself (*e.g.*, an affiliated carrier). Along the same lines, AT&T argues that any requirement that it pay intrastate access charges on calls that are jurisdictionally intrastate would discriminate against facilities-based providers in favor of resellers that provide service using interstate services purchased from other carriers.

28. The flaw in AT&T's argument is that it is not offering customers an information service that *uses* telecommunications; the service it offers *is* a telecommunications service. Consequently, we determine the jurisdiction of calls made with that service based on an end-to-end analysis, without regard to the routing of the call or the geographic characteristics of the underlying telecommunications. This same analysis applies to facilities-based carriers and to resellers. In either case, the service provided to

the calling card customer is a telecommunications service that is subject to intrastate access charges when calls originate and terminate in different local calling areas within the same state. (underlining added)

29. Finally, we reject AT&T's argument that a ruling denying its petition and subjecting its "enhanced" calling card service to intrastate access charges is presumptively inconsistent with the First Amendment because it penalizes AT&T relative to other information service providers based on the content of the information it provides. As an initial matter, we conclude above that AT&T is providing a telecommunications service, not an information service. Therefore, the relevant comparison is with other calling card service providers, not with information service providers. As noted throughout this order, our treatment of AT&T's "enhanced" calling card service is identical to our treatment of similar telecommunications services. We have applied the same legal analysis for purposes of determining the jurisdiction of calls and, with respect to jurisdictionally interstate traffic, the same Title II regulatory requirements apply. Consequently, our decision here raises no First Amendment concerns.

FCC's Second Liability Order

In its Declaratory Ruling and Report and Order released June 30, 2006, the FCC made the following determinations (citations of authority omitted here) in these enumerated paragraphs of the Order:

1. In this *Order*, we take steps necessary to protect the federal universal service program and promote stability in the market for prepaid calling cards. In particular, we will treat certain prepaid calling card service providers as telecommunications service providers. As such, these providers must pay intrastate access charges for interexchange calls that originate and terminate in the same state and interstate access charges on interexchange calls that originate and terminate in different states. They also must contribute to the federal Universal Service Fund (USF) based on their interstate revenues, subject to the limitations set forth below. We also address a petition for interim relief filed by AT&T and adopt interim rules to facilitate compliance with the universal service and access charge rules. Specifically, on an interim and prospective basis, we require all prepaid calling card providers to comply with certain reporting and certification requirements. (underlining added)

4. On February 16, 2005, the Commission denied AT&T's May 2003 Petition. The Commission found that the service described in the original petition was a jurisdictionally-mixed telecommunications service and that intrastate access charges apply when a call originates and terminates in the same state. The Commission also required AT&T to file revised Forms 499-A to report properly its prepaid calling card revenue so that the Universal Service Administrative Company (USAC) could accurately calculate AT&T's USF obligation and bill AT&T for the time period during which it offered its prepaid calling cards and did not contribute to the fund. (underlining added)

5. The Commission also adopted a Notice of Proposed Rulemaking (NPRM) to address additional types of “enhanced” prepaid calling cards, including those described in AT&T’s November 2004 letter. In the NPRM, the Commission solicited comment on how to apply the *Calling Card Order and NPRM*’s analysis to AT&T’s two new “enhanced” calling card variations. It also solicited comment “on the extent to which the use of IP technology to deliver calls placed using prepaid calling cards is a relevant factor in determining [a card’s] classification under the Act.” The Commission also sought comment on how best to regulate any new technologies or innovations in the prepaid calling card services market and whether or not to assert exclusive federal jurisdiction over prepaid calling card services. Finally, the Commission sought comment on how best to ensure reasonable calling card rates for soldiers and their families.

6. On May 3, 2005, AT&T filed a petition seeking the adoption of interim rules pending a final decision by the Commission in this docket. AT&T’s Emergency Petition seeks interim rules imposing federal universal service funding obligations on all prepaid calling card services regardless of whether the Commission ultimately decides they are telecommunications services or information services. AT&T also requests that the Commission issue interim rules subjecting all prepaid calling card service providers to the same types of access charges. AT&T proposes two means by which the Commission may ensure parity among all prepaid calling card service providers. First, AT&T proposes that the Commission rule that no prepaid calling card service provider is subject to intrastate access charges. Alternatively, AT&T suggests that the Commission rule that all prepaid calling card service providers are subject to both intrastate and interstate access charges based on the location of the calling and called parties.

8. We conclude that immediate action in this proceeding is necessary to preserve universal service and provide regulatory certainty while the Commission considers systemic reform in the *Contribution Methodology* and *Intercarrier Compensation* proceedings. Any uncertainty regarding the regulatory requirements applicable to prepaid calling cards creates incentives for providers to reduce exposure to charges they may owe or evade them altogether. The actions we take in this *Order* will provide a level regulatory playing field for calling card providers, thereby reducing the potential for continued “gaming” of the system. In the absence of these actions, uncertainty regarding applicability of our rules could stifle continued market innovation and encourage providers to adapt their products solely to evade contribution to universal service funding mechanisms. By leveling the playing field for all providers, we hope to encourage efficient development and innovation in the prepaid calling services industry, which has played a vital role in providing telecommunications services to low-income consumers and members of the armed services. (underlining added)

10. In this *Order*, we address the two prepaid calling card variants described in the *Calling Card Order and NPRM*: (1) menu-driven prepaid calling cards; and (2) prepaid calling cards that utilize IP transport to deliver all or a portion of the call. As we explain below, we find that both types of prepaid calling cards are telecommunications services and that their providers are subject to regulation as telecommunications carriers. In conjunction with the Commission’s prior rulings regarding basic prepaid calling cards and prepaid cards with advertising, all prepaid calling card providers will now be treated as telecommunications service providers. In the future, if prepaid calling card providers introduce new and different card types that they believe should be classified as

information services, they may seek a declaratory ruling, a waiver, or other relief from the requirements that we adopt in this *Order*. (underlining added)

Menu-Driven Prepaid Calling Cards

11. As requested in the *Calling Card Order and NPRM*, several commenters described their menu-driven prepaid calling card offerings. In its comments AT&T described its “newly augmented” prepaid calling card service accessed via toll-free, 8YY, dialing. Upon dialing the 8YY number, the cardholder is presented with the option to make a telephone call or to access several types of information, such as additional information about the card distributor, sports, weather, or restaurant or entertainment information....(balance of this paragraph omitted)

12. “Telecommunications” is defined as the “transmission between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” “Telecommunications” is thus the unaltered transmission of information. Building on the definition of “telecommunications,” the Act defines “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used.” Thus, a “telecommunications service” involves more than the mere transmission of information; it requires the “offering” of pure transmission capability “for a fee directly to the public.”

13. Menu-driven calling cards, such as those described above, are marketed to consumers, in large part, as a transmission service. Each card allows the user, by choosing the appropriate entry from the menu, to have the calling card provider transmit “between and among points specified by the user . . . information of the user’s choosing, without change in the form or content of the information as sent and received.” These menu-driven prepaid calling cards also may provide the user with an option to access additional information, but the information service features and telecommunications service are not engaged or used simultaneously. Thus, we find that these services are only minimally linked to one another....(balance of paragraph omitted)

16. Our finding here is consistent with the Commission’s conclusions in the *Calling Card Order and NPRM*. The prepaid calling card services we address in this *Order* offer consumers the ability to make telephone calls, just like the AT&T card that the Commission addressed in the *Calling Card Order and NPRM*. Just as the Commission found in that order that the addition of an advertising message does not convert a telecommunications service into an information service, we now find that the addition of an option to access other types of information does not convert the telecommunications service offered by these prepaid calling cards into an information service for regulatory purposes, even if standing alone the information processing capability would meet the statutory definition of an information service. In short, these menu-driven calling cards offer customers a telecommunications service that enables them to make telephone calls, and the ability to obtain sports scores, stock quotes, and other information through the same card does not alter that conclusion.

Prepaid Calling Cards that Utilize IP Technology

18. In the *IP-in-the-Middle Order*, the Commission addressed AT&T’s use of IP technology to transport interexchange telephone calls dialed on a 1+ basis. The

Commission found that “an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology” is a telecommunications service. The Commission limited its ruling in the *IP-in-the-Middle Order* to calls that meet all of the above criteria and are placed using 1+ dialing.

19. In its November 2004 filing, AT&T stated that it had developed a new prepaid calling card that uses IP technology to transport part or all of the call. AT&T requested a ruling that this service was not a telecommunications service because it did not use 1+ dialing and therefore was not like the service addressed in the *IP-in-the-Middle Order*. In the *Calling Card Order and NPRM*, the Commission did not decide the appropriate classification of this new calling card variant, but instead requested comment on how such an offering should be classified. AT&T reiterated its position that these cards should be treated as information services. Other parties, however, argue that the Commission’s analysis in the *IP-in-the-Middle Order* applies equally to the card described by AT&T and other cards that use IP transport. Other commenters state that the absence of 1+ dialing is inconsequential to the regulatory status of a prepaid calling card.

20. Other than the use of 8YY dialing instead of 1+ dialing, prepaid calling cards that use IP transport appear to be identical to the services addressed by the Commission in the *IP-in-the-Middle Order*. We see no reason why the use of a different dialing pattern to make calls, without more, should result in a different regulatory classification. These cards are used to originate calls on the circuit-switched network using standard customer premises equipment, factors that the Commission previously has used to distinguish telecommunications services from information services. Consequently, we find that the use of IP transport in the provision of a prepaid calling card service does not alone convert that service from a telecommunications service to an information service. (underlining added)

21. As a result of our finding that providers of the two types of prepaid calling cards described in the previous section offer telecommunications services, these providers are now subject to all of the applicable requirements of the Communications Act and the Commission’s rules, including requirements to contribute to the federal USF and to pay access charges. In this section, we set forth some additional requirements that will apply, at least on an interim basis, to all prepaid calling card providers. We find that these interim requirements are necessary to provide regulatory certainty and ensure compliance with our existing access charge and USF contribution requirements while we consider broader reform of those rules. (underlining added)

27. As a result of this Order, providers of prepaid calling cards that are menu-driven or use IP transport to offer telecommunications services are obligated to pay interstate or intrastate access charges based on the location of the called and calling parties. As noted above, the Commission previously has found that these same access charge obligations apply to basic prepaid calling cards and prepaid calling cards with unsolicited advertising....(balance of paragraph omitted)

41. In contrast to the new reporting and certification rules we adopt in this *Order*, which we will apply to all prepaid calling card providers on a prospective basis, our decision to classify prepaid calling cards that use IP transport and menu-driven prepaid calling cards as telecommunications services is a declaratory ruling, which is a form of adjudication. Generally, adjudicatory decisions are applied retroactively when they involve “new applications of existing law, clarifications, and additions.” Retroactivity will be denied, however, when applying the decision to past conduct or to prior events would work a “manifest injustice.” The classification decisions that we are making here fall into the category of new applications of existing law, clarifications, and additions. Consequently, in deciding whether to apply our decisions retroactively, we must determine whether retroactive application would result in a manifest injustice. As we explain below, we see no reason to depart from the general rule with respect to calling cards using IP transport, but we decline to give retroactive effect to our ruling on menu-driven cards to avoid a manifest injustice. (underlining added)

43. Applying these factors to prepaid calling cards that use IP transport functionality but are not menu-driven, we conclude that the retroactive application of our classification decision to these cards is appropriate. These calling cards offer the customer no capability to do anything other than make a telephone call, and therefore they are just like basic prepaid calling cards that the Commission always has treated as telecommunications services. Just as the Commission found in the *Calling Card Order* and *NPRM* that the addition of unsolicited advertising was insufficient to justify an expectation that the service would be treated as an information service and that, therefore, retroactive application was warranted, in this *Order* we make a similar finding with respect to calling cards that use IP transport but provide the caller with no additional capabilities. Moreover, the Commission previously found, in the *IP-in-the-Middle Order*, that the use of IP transport, without more, did not change the regulatory classification of the service at issue. That decision provided ample notice that merely converting a calling card call to IP format and back does not transform the service from a telecommunications service to an information service, and, consequently, it undermines any alleged reliance by prepaid card providers on any contrary interpretation of our rules. Thus, our decision in this *Order* is not a “departure from well established practice,” and retroactive application does not result in a “manifest injustice.” (underlining added)

45. We reach a different conclusion, however, with respect to menu-driven prepaid calling card services....(portions omitted)... For these reasons, we conclude that our decision that menu-driven calling cards offer telecommunications services and that their providers are subject to regulation as telecommunications carriers shall have prospective effect only. (underlining added)

46. To give prepaid calling card providers sufficient time to implement this new regulatory regime, this *Order* will take effect 90 days after it is published in the Federal Register. The certification requirements set forth in paragraphs 38 and 39 are effective according to the timeframe outlined in paragraph 40.

In summary the FCC's Liability Order and Second Liability Order establish that the FCC has issued adjudicative decisions that EPPC calls across the platform to the called party were single calls subject to intrastate access charges when the calling and called party were in the same state. This decision was retroactive for all EPPC calls, except for the menu driven EPPC calls, which adjudication was prospective only.

Liability Affirming Opinion

AT&T appealed the FCC's Liability Order. On July 14, 2006 the United States Court of Appeals for the District of Columbia Circuit denied AT&T's appeal. The Opinion reflects that AT&T conceded that the Commission's classification ruling regarding EPPC was reasonable. AT&T challenged the propriety of the FCC making its decision retroactive.

The Court denied AT&T's challenge, ruling that the FCC's decision did not change settled law, and did not represent a departure from prior policy, and was therefore not unjust.

Retroactive Liability Expansion Opinion

The FCC's decision not to apply AT&T's liability retroactively for menu-driven EPPC was the subject of a related proceeding. As a result of the request for declaratory ruling, and propose rulemaking, as considered in the Liability Order and Second Liability Order, other carriers participated in those proceedings. Qwest and prepaid calling card provider iBasis were also parties. Qwest appealed the Second Liability Order,

challenging the FCC's decision not to retroactively apply its adjudication that menu-driven EPPC calls were also subject to access charges.

Hearing this appeal, the United States Court of Appeals for the District of Columbia Circuit reversed the FCC's decision not to retroactively apply the adjudication to menu-driven EPPC calls, and vacated the FCC Second Liability Order to that extent.

Conclusion

The question of AT&T's liability for intrastate access charges, instead of interstate access charges, for EPPC calls originating from Northeast and terminating in the state of Missouri, or originating elsewhere in the state of Missouri and terminating to Northeast, has been fully and finally litigated before the FCC and the United States Court of Appeals for the District of Columbia. There is no genuine issue of material fact that would lend itself to a different result here.

WHEREFORE, on the basis of the facts set forth in Northeast Missouri Rural Telephone Company's Motion for Summary Disposition, and for the reasons set forth herein, Northeast Missouri Rural Telephone Company respectfully requests that the Commission enter an order disposing of the issue of AT&T's liability to Northeast. AT&T should be determined to be liable to Northeast for payment of the difference between the amount AT&T should have paid for such prepaid calling card traffic originating or terminating to Northeast that were intrastate in jurisdiction and the amount AT&T actually paid Northeast based upon AT&T's attempted classification of that traffic as being interstate in jurisdiction. By so entering such an Order, the Commission will reduce the factual issues for hearing to quantification of the amount of such traffic, the

difference in interstate and intrastate rates applicable to such traffic, and whether AT&T is responsible for late fees on such traffic.

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CERTIFICATE OF SERVICE

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