

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF VERIZON¹

The Commission should reject AT&T's latest attempt to avoid universal service fund and access charge payment obligations for its pre-paid calling cards. These cards have no relevant differences from the ones the Commission already found to be telecommunications services subject to those obligations. As a result, the Commission again should find that the inclusion of advertisements in a calling card offering "does not in any way alter the fundamental character of that telecommunications service." It also should again reject AT&T's discredited claim that conversion of a call into Internet protocol and then back into circuit-switched voice changes the character of the service.

I. THE PRE-PAID CALLING CARD VARIATIONS DISCUSSED IN THE NPRM ARE TELECOMMUNICATIONS SERVICES.

The *AT&T Calling Card Order* properly concluded that a pre-paid calling card product that inserted an advertisement prior to connecting the call is a telecommunications service, not an information service. *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, Regulation of Prepaid Calling Card Services, Order and Notice of Proposed Rulemaking, WC Docket Nos. 03-133 and 05-68, FCC 05-41, ¶¶ 14-21* (rel. Feb. 23, 2005) ("AT&T Calling Card Order"). The companion Notice of

¹ The Verizon telephone companies and long distance companies (collectively "Verizon") are the affiliated local exchange and interexchange carriers of Verizon Communications, Inc., which are listed in Attachment A hereto.

Proposed Rulemaking (“NPRM”) seeks comment on whether two variations on that service – one in which AT&T presents a menu of choices (including access to advertisements) before connecting the call and one in which a portion of the transport is provided over an Internet Protocol backbone – compel a different conclusion. *Id.*, ¶¶ 39-40. They do not.

A. Presenting a Menu of Choices Does Not Convert a Calling Card Offering into an Information Service.

Under the first variation, AT&T claims that presenting a caller with an initial menu of options for accessing information about the card distributor’s products and services is adequate to convert the entirety of a pre-paid calling card service that allows callers to make voice long distance calls into an information service. Whether or not the customer invokes any of those options, the caller hears an advertising message before the call is connected. *See* letter from Judy Sello, Senior Attorney, AT&T, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-133, at 3 (filed Nov. 22, 2004) (“AT&T Nov. 22 letter”).

Adding a menu of options does not convert the calling service itself into something other than a telecommunications service² for the very same reason that the original version of AT&T’s calling card offering was found to be a telecommunications service. As the Commission found,

The advertising information ... is completely incidental to [the telecommunications] service and therefore not sufficient to warrant reclassification of the service as an information service. As commenters note, subscribers buy AT&T’s calling cards to make telephone calls, not to listen to advertisements.

² The Act defines “telecommunications service” as “the offering of telecommunications for a fee directly to the public ...” 47 U.S.C. § 153(46). “Telecommunications,” in turn, means “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.” *Id.* § 153(43).

AT&T Calling Card Order, ¶ 20; *see also id.*, ¶ 28 (AT&T “is not offering customers an information service that *uses* telecommunications; the service it offers *is* a telecommunications service”). Exposing the customer to still more advertising does not alter the regulatory classification.³ To the contrary, as Commissioner Adelstein observed in his separate statement, “the services appear functionally the same from the perspective of the consumer.” Indeed, just like the cards the Commission addressed in the *AT&T Calling Card Order*, there is no indication that these cards “are being marketed as providing a service other than making telephone calls” or that “customers purchase these cards for any reason other than making telephone calls.” NPRM, ¶ 39.

Moreover, the fact that some subset of card holders may access additional advertising by using the menu options does not convert the underlying long distance calling capability – the *raison d’etre* for purchasing the card – into an information service, for either that subset of customers or for card holders generally. In fact, the Bureau has squarely rejected such an argument in a situation where pre-paid calling card customers indisputably had access to information services. Specifically, in *Time Machine, Inc.*, the Bureau considered AT&T’s “TeleTicket” service, which was “a prepaid card service, available in nine languages, that allows purchasers to access international news, U.S. weather reports, currency exchange information, and interpretation services, as well as to make outbound telephone calls.” *The Time Machine, Inc., Request for a Declaratory Ruling Concerning Preemption of State Regulation of Interstate 800-Access Debit Card Telecommunications Services*, 11 FCC Rcd

³ Indeed, AT&T does not even attempt to argue that a different legal analysis applies. Rather, it relies on the same, now-discredited legal theories pertaining to the original service and states that the variation, “like the original,” merits treatment as an information service. AT&T Nov. 22 letter at 3.

1186, ¶ 24 n.55 (1995) (“Time Machine”). It held that, while the “enhanced services provided through Teleticket are non-regulated services,” the “long distance calling capability using the Teleticket debit card ... is a basic debit card interstate calling capability” *Id.* at ¶ 39.

The same holds true here. Where subscribers purchase a calling card in order to make long distance calls – regardless of whether the use of the service also offers potentially enhanced capabilities – the underlying service is a telecommunications service. And where subscribers purchase a service that separately offers long distance calling capabilities and access to stored information, as in *Time Machine*, then the long distance calling capability remains a telecommunications service subject to access charges and universal service contribution obligations.⁴

B. Internet Protocol Transport Does Not Convert Calling Card Offerings into Information Services.

Almost exactly one year ago, the Commission rejected the same claim that AT&T repeats here – that a phone-to-phone long distance call that originates on the circuit-switched network, is converted to Internet Protocol in the middle, and then is re-converted to circuit-switched format before termination, is an information service. *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004) (“Phone-to-Phone IP Order”). In so doing, the

⁴ The NPRM (at ¶ 42) asks whether, to the extent pre-paid calling card services are classified as telecommunications services, the Commission “should assert exclusive federal jurisdiction,” even if it can be definitively determined that “the calls originate and terminate in the same state.” In this case, the answer is no. There is nothing about the services described by AT&T that would warrant abandoning decades of precedent that looks at the origination and termination points in determining the jurisdiction of a call. See *AT&T Calling Card Order*, ¶ 5 & n.6, ¶¶ 22-29; *Southwestern Bell Tel. Co.*, 3 FCC Rcd 2339 (1988); *Time Machine*, 11 FCC Rcd at ¶¶ 29-31.

Commission explained that the service “consists of an interexchange call that is initiated in the same manner as traditional interexchange calls,” uses “ordinary customer premises equipment,” “originates and terminates on the PSTN,” and “undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology.” *Id.*, ¶ 1.

Each of these considerations applies as forcefully here. AT&T has not suggested that IP-in-the-middle calling card calls require special customer equipment, originate and terminate outside the public switched telephone network, or involve net protocol conversions or enhanced functionality due to the Internet protocol transport. Rather, the *only* distinction AT&T asserts between IP-in-the-middle calling card calls and IP-in-the-middle non-calling card calls – that the former category does not involve 1+ dialing – is irrelevant. *See* AT&T Nov. 22 letter at 4.

The specific dialing plan utilized in making a long distance call has no direct bearing on whether the communication is a telecommunications service or an information service. Where – as here – the call originates and terminates in the same protocol, then the offering is a telecommunications service. For more than twenty years, in fact, the Commission has held that so-called internetworking protocol conversions, which occur when traffic is handed off between networks employing different transmission protocols but which do not perform a net user-to-user protocol conversion, are “basic” telecommunications services and not “enhanced” information services.⁵ And the *Phone-to-Phone IP Order* falls squarely within this line of precedent:

⁵ *See, e.g., Petitions for Waiver of Section 64.702 of the Commission’s Rules and Regulations to Provide Certain Types of Protocol Conversion Within their Basic Network*, ENF-84-15 *et al.*, FCC 84-561 (rel. Nov. 28, 1984); *Amendment of Section 64.702 of the Commission’s*

[e]nd-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through AT&T's traditional [pre-paid calling card] service; the decision to use its Internet backbone to route certain calls is made internally by AT&T. *To the extent that protocol conversions associated with AT&T's specific service take place within its network, they appear to be "internetworking" conversions, which the Commission has found to be telecommunications services.*

Id. at ¶ 12 (emphasis added).

In any event, AT&T also is incorrect in suggesting that IP-in-the-middle calling card calls are not initiated on a 1+ basis. Such calls are initiated in the same manner as IP-in-the-middle non-calling card calls: by dialing "1" plus a ten-digit number. That the pre-paid card call is initiated by dialing 1 plus a toll-free number, rather than 1 plus a toll number, is irrelevant to the regulatory classification. In both cases (toll-free and toll), the call constitutes "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.'" *Phone-to-Phone IP Order*, at ¶ 12 (footnotes omitted). Consequently, the Commission's conclusion in

Rules and Regulations (Third Computer Inquiry), 2 FCC Rcd 3072, ¶ 71 (1987); *Southwestern Bell Tel. Co. Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations to Provide and Market Asynchronous Protocol Conversion on an Unseparated Basis*, 5 FCC Rcd 161, ¶ 13 (1990) ("data can be transmitted through the network as part of a basic service in any protocol so long as the entry and exit protocols are the same"); *Independent Data Communications Manufacturers Association Petition for Declaratory Ruling that AT&T's InterSpan Frame Relay Service is a Basic Service*, 10 FCC Rcd 13717, ¶ 16 (1995) ("internetworking protocol conversions – those conversions taking place solely within the network that result in no net conversion between users – should be treated as basic services"); *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, ¶¶ 50, ¶ 89 n.188 (1998) ("certain protocol processing services that result in no net protocol conversion to the end user are classified as basic services; those services are deemed telecommunications services").

the *Phone-to-Phone IP Order* – that “AT&T’s specific service constitutes a telecommunications service,” *id.* – holds equally true for IP-in-the-middle calling card calls.

II. THE COMMISSION SHOULD ACT EXPEDITIOUSLY.

Promptly confirming that the menu and Internet protocol transport variations do not convert the underlying long distance calling capability into an information service is necessary to avoid wreaking havoc on intrastate access charge revenues and universal service contributions. AT&T has acknowledged that it avoided \$160 million in universal service contributions and \$340 million in intrastate access charges through its initial “enhanced” pre-paid calling card service, *see AT&T Calling Card Order* at ¶ 30; AT&T Corp., Form 10-Q, Notes to Consolidated Financial Statements (Unaudited), Section 10 (filed Nov. 5, 2004).⁶ The mere pendency of this further proceeding aggravates the risk that some carriers may look for creative ways of tweaking their pre-paid calling card offerings to evade universal service and access charge obligations, with potentially disastrous consequences for consumers and for the industry as a whole. *See AT&T Calling Card Order*, Separate Statements of Commissioners Copps and Adelstein. Indeed, AT&T apparently is transferring its calling card traffic to the variations discussed above, with the evident intent of continuing to withhold access charge and universal service fund payments. AT&T Motion for Stay at 10. The Commission must put an end to such circumvention as quickly as possible.

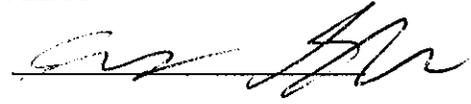
⁶ AT&T recently stated that the “total claims for retroactive liabilities for USF and intrastate access charges will be as much as \$553 million” AT&T Motion for Stay Pending Appeal, Subject to Posting of Security, WC Docket No. 03-133, at 1 (filed Mar. 28, 2005) (“AT&T Motion for Stay”).

III. CONCLUSION

The Commission should expeditiously declare that the two “variations” of pre-paid calling card offerings identified in AT&T’s November 22 letter, as well as all similar offerings, are telecommunications services and thus are subject to interstate and intrastate access charges and universal service contribution obligations.

Respectfully submitted,

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THE VERIZON TELEPHONE COMPANIES AND LONG DISTANCE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

The Verizon long distance companies are the interexchange carriers affiliated with Verizon Communications Inc. These companies are:

Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance
NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions
Verizon Select Services Inc.