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

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

REPLY COMMENTS OF SPRINT

Sprint Corporation ("Sprint") hereby respectfully submits its reply to the comments filed in response to the Commission's *Notice of Proposed Rulemaking* (*Prepaid Card NPRM*) in the above-captioned proceeding.[1] Sprint's comments here will necessarily be brief since no matter how hard the providers of so-called "enhanced" prepaid cards, such as IDT and MCI, attempt to characterize their products as coming within the statutory definition of information services and therefore exempt from access charges and universal service fund contributions, they cannot – and do not – refute the rather unremarkable fact that "subscribers purchase a calling card in order to make long distance calls" and that "regardless of whether the use of the service also offers potentially enhanced capabilities – the underlying service is a telecommunications service." Verizon Comments at 4. *See also*, GCI at 4 ("...it is difficult to conceive of any calling card 'option' that would transform the nature of the service from a telecommunications service to an information service."); NECA at 2-3 ("...the addition of [a menu] feature is merely incidental to the main use of the card – placing 'smart and simple' intrastate, interstate and international

[1] The *NPRM* was issued as part of the Commission's *Order* in WC Docket No. 03-133, *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, FCC 05-41 (released February 23, 2005) (*AT&T Prepaid Card Decision*), *petition for review pending sub nom., AT&T v. FCC*, Case No. 05-1096, filed March 28, 2005 (D.C. Cir.).

phone calls."); Wiltel Comments at 4, internal ellipses omitted ("[u]sers buy the card to make telephone calls, not listen to advertisements"); Rural Associations Comments at 2 ("[r]egardless of the incidental 'enhancements' that might be added to confuse the issue, these prepaid card services are purchased by consumers for one predominant purpose: to make telephone calls"); DJE Teleconsulting Comments at 2 (same); NASUCA Comments at 2; USTA Comments at 2-3.

The providers of the so-called "enhanced" prepaid cards would have the Commission ignore this marketplace reality. They argue that the Commission must find that, even if purchasers of these cards do not actually use these cards to pay for information such as news, weather and sports scores that they could otherwise obtain free of charge by simply turning on a radio or television, the fact that these purchasers are "offered" the opportunity to obtain such information when dialing the toll free number to place telephone calls to be paid for by the card is sufficient to classify such telephone calls as information services. *See* IDT Comments at 6-10; MCI Comments at 6-7; AT&T Comments at 4-10. However, as Commissioner Copps stated in his separate statement attached to the *AT&T Prepaid Card Decision*, it is doubtful that the "bright line" between calling card services subject to Title II regulation and those calling card services that are not depends upon "whether they feature an automated voice that coos on the line 'press 1 for more information'." *See also* Sprint Comments at 9-10 ("...the provision of a nonintegrated, incidental information service in conjunction with telecommunications services ...does not contaminate the telecommunications services so as to remove them from Title II regulation under the Act. The distinction between telecommunications and information services is not so easily circumvented"); Verizon Comments at 2-4; GCI Comments at 8-13; Wiltel Comments at 5-8.

The providers of so-called "enhanced" prepaid cards do not contend that they are providing an integrated information and telecommunications service. For example, MCI and IDT concede that the access to information to be paid for by the card is distinct from the provision of the telecommunications services being paid for by the card. Thus, MCI states that holders of its Golden Retriever prepaid cards "need not take advantage of MCI's information services as a prerequisite to making a phone call, and the information services offered evidently are quite distinct from the telecommunications also offered through the card." MCI Comments at 10 fn 5. Although IDT argues that the reasons why individuals purchase cards are not "relevant to whether the calling card service is an information service," IDT Comments at 9, it claims that the integration of telecommunications and information services occurs not at the service level but when the purchaser buys the card, since according to IDT, the ability to obtain and through the card pay for information is "integral to the value received" by the card purchaser. *Id.* at 6. And, for its part, AT&T eschews any attempt to argue that the ability of users to obtain advertising and other information through the card is so integral to the telecommunications services being provided so at to contaminate those services.[2]

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[2] Sprint is unaware of any precedent which holds that "contamination" works only to remove telecommunications services from the scope of Title II regulation. Given that all available marketplace evidence and common sense confirm that the purpose of these cards is to enable purchasers to pay low rates for making intrastate and interstate telephone calls, the information services also being made available for purchase through the card could be said to be "contaminated" by the telecommunications services so as to require USF contributions on the revenues received from such services and the payment of access charges. Sprint strongly doubts that any of the providers of these so-called "enhanced" prepaid cards would be so bold as to offer a card that did not provide the ability to pay for long distance calls and instead was limited to ability to pay for information that was otherwise available from other sources for free. In this regard, Teleconnect's Talking Yellow Pages, the Commission's decision on which IDT and other proponents of the notion that the telecommunications services paid for by their so-called "enhanced" prepaid cards are contaminated by the offering of information services

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In short, as Sprint and others have recommended, the Commission should put an end to notion that the prepaid cards providers can exempt themselves from their USF obligations and from paying access charges on the telecommunications service they provide to users of their prepaid cards because they also provide the purchasers of their cards with the capability to use their cards to pay for information.[3] Moreover, the Commission must act quickly. Speed is of the essence since as AT&T explains "current prepaid card marketplace ... is anything but competitively neutral" because "some providers make universal service contributions while others do not;,some pay intrastate access while others pay interstate access for the very same calls." AT&T Comments at 1. Thus, the Commission needs to act quickly to halt "the increasingly rapid erosion of competitive neutrality in [prepaid card] market" and thereby "avoid permanent damage this important marketplace." *Id.* at 2.[4]

(*Northwestern Bell Telephone Company*, 2 FCC Rcd 5986 (1987) (*Talking Yellow Pages I*)) was either never offered in the marketplace or was offered in a configuration that did not entitle Teleconnect to the enhanced service exemption. Indeed, the Commission vacated as moot its *Talking Yellow Pages I* decision. See *Northwestern Bell Telephone Company Petition for Declaratory Ruling and WATS Related and Other Amendments of Part 69 of the Commission's Rules,* 7 FCC Rcd 5644 (1992).

[3] MCI's Golden Retriever prepaid card does not even offer the capability for users of the card to interact with information stored in the network. Rather, as MCI explained to the Commission, upon reaching the prepaid card platform and pressing the number 1 to access information, the user is connected to an operator who in turn obtains the information being requested, perhaps by accessing the Internet, and then reading it to the caller. *See Ex Parte* letter dated February 2, 2005 from Larry Fenster MCI to Marlene Dortch in WC Docket No. 03-133, Attachment at 3 in which MCI states that "[a]ll features will be fulfilled with a live operator, enhancing the consumer experience." MCI also informs the FCC that it will not pay either USF or access charges on these calls to its live operators. MCI does not demonstrate that obtaining information from a live operator is an "information service." Sprint suggests that the Commission inform MCI in short order that all of the interstate revenues derived from its Golden Retriever card are subject to USF contributions.

[4] In support of its call for rapid action on the part of the Commission, AT&T has attached its Motion to Stay the Commission's decision in WC Docket No. 03-133 in which AT&T, *inter alia*, accuses Sprint of "not paying USF or intrastate access charges," Motion for Stay at 4. In an

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In fact, Sprint respectfully suggests that there is no reason for delay. This proceeding does not involve complicated factual, legal or policy questions. This is so because, notwithstanding the characterizations of so-called "enhanced" prepaid cards proffered by their providers, these cards are functionally equivalent to the ones examined in the *AT&T Prepaid Card Decision*. They provide the means for users to pay low rates for interstate and intrastate long distance telephone calls. *See* Separate Statement of Commissioner Addelstein attached to the *AT&T Prepaid Card Decision* in which he explained that the AT&T card at issue in that proceeding and the ones at issue here "appear to be functionally the same from the perspective of the customer." Thus, the only conclusion the Commission needs to reach here is to reaffirm its findings the *AT&T Prepaid Card Decision*. Expedition would also eliminate the need for the Commission to begin yet another round of comments on AT&T's recently filed Emergency Petition seeking the prescription of interim rules establishing competitive neutrality for all prepaid card services. Again, Sprint agrees with AT&T on the need to ensure "a genuinely level

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Ex Parte Letter filed April 5, 2005, Sprint explained that AT&T's charges against Sprint were without foundation. Indeed, AT&T subsequent *ex parte* response does not challenge the points made by Sprint. Rather it asks the Commission to devote its scarce resources to an investigation as to how Sprint ensures that it correctly assigning its prepaid card traffic to the intrastate and intrastate jurisdiction. A copy of Sprint's letter is attached.

playing field applicable to all providers of prepaid card calling services," AT&T Emergency Petition at 2; but this is easily accomplished by applying the findings set forth the *AT&T Prepaid Card Decision* to the "enhanced" prepaid cards at issue in this proceeding.

Respectfully submitted

SPRINT CORPORATION

Michael B. Fingerhut
Richard Juhnke
401 9th Street NW, Suite 400
Washington, D.C. 20004
(202) 585-1909
michael.b.fingerhut@mail.sprint.com

Its Attorneys

May 16, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT** was filed by electronic mail and copies sent as indicated on this the 16th day of May 2005 to the parties on the attached list.

Christine Jackson

Christine Jackson

May 16, 2005

SENT VIA E-MAIL
Tamara Preiss, Esq.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

SENT VIA E-MAIL
Michelle Carey, Esq.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

SENT VIA E-MAIL
Lisa Gelb, Esq.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

SENT VIA E-MAIL
Ms. Jane Jackson
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

SENT VIA E-MAIL
Richard Lerner, Esq.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

SENT VIA E-MAIL
Best Copy and Printing
Portals II
Room CY B-402
445 12th Street, SW
Washington, DC 20554

SENT VIA U.S. MIAL
DJE Teleconsulting, LLC
9122 Potomac Ridge Road
Great Falls, VA 22066

SENT VIA E-MAIL
Alan Buzacott, Esq.
Curtis L. Graves, Esq.
MCI, Inc.
1133 19th Street, NW
Washington, DC 20036
Alan.buzacott@mci.com

SENT VIA E-MAIL
Mark D. Schneider, Esq.
Jenner & Block, LLP
Suite 1200S
601 13th Street, NW
Washington, DC 20005
mschneider@jenner.com

SENT VIA U.S. MIAL
Adam Kupetsky
Director of Regulatory
Regulatory Counsel
WilTel Communications, LLC
One Technology Center TC 15-H
Tulsa, OK 74103

SENT VIA E-MAIL
Tina Pidgeon , Esq.
Lisa R. Youngers, Esq.
General Communications, Inc.
Suite 410
1130 17th Street, NW
Washington, DC 20036
tpidgeon@gci.com

SENT VIA U.S. MIAL
David W. Carpenter, Esq.
Sidley Austin Brown & Wood, L.L.P.
Bank One Plaza
10 South Dearborn Street
Chicago, IL 60603

SENT VIA U.S. MIAL
Leonard J. Cali, Esq.
Lawrence J. Lafaro, Esq.
Judy Sello, Esq.
AT&T Corp.
Room 3A229
One AT&T Way
Bedminster, NJ 09721

SENT VIA U.S. MIAL
David L. Lawson, Esq.
James P. Young, Esq.
Sidley Austin Brown & Wood, L.L.P.
1501 K Street, NW
Washington, DC 20005

SENT VIA E-MIAL
Russell M. Blau, Esq.
Michael P. Donahue, Esq.
Counsel for IDT Telecom, Inc.
Swidler Berlin LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
RMBlau@swidlaw.com
MPDonahue@swidlaw.com

SENT VIA U.S. MIAL
Edward Shakin, Esq.
Verizon
Suite 500
1515 North Courthouse Road
Arlington, VA 22201-2909

SENT VIA U.S. MIAL
Jeffrey S. Linder, Esq.
Counsel for Verizon Telephone Companies
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006

SENT VIA U.S. MIAL
Janine Migden-Ostrander, Esq.
David C. Bergmann, Esq.
NASUCA Telecommunications Committee
The Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215

SENT VIA U.S. MIAL
NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910

SENT VIA U.S. MIAL
Gerard J. Duffy, Esq.
Blooston, Mordkofsky, Dickens, Duff & Prendergast
Counsel for Western Telecom Alliance
2120 L Street, NW, Suite 300
Washington, DC 20037

SENT VIA U.S. MIAL
David W. Zesiger, Esq.
Independent Telephone & Telecom Alliance
Suite 800
888 16th Street, NW
Washington, DC 20006

SENT VIA U.S. MIAL
L. Marie Guillory, Esq.
Daniel Mitchell, Esq.
NTCA
4121 Wilson Blvd., 10th Floor
Arlington, VA 22203

SENT VIA U.S. MIAL
Stuart Polikoff, Esq.
Organization for the Promotion and
Advancement of Small Telecom Companies
21 Dupont Circle NW, Suite 700
Washington, DC 20036

SENT VIA U.S. MIAL
James W. Olson, Esq.
Indra Sehdev Chalk, Esq.
Robin E. Tuttle, Esq.
United States Telecom Association
1401 H Street, NW, Suite 600
Washington, DC 20005

SENT VIA U.S. MIAL
Dawn Jablonski Ryman, Esq.
John C. Graham, Esq.
Public Service Commission of the State of
New York
Three Empire State Plaza
Albany, NY 12223

SENT VIA U.S. MIAL
Jack Zinman, Esq.
Gary L. Phillips, Esq.
Paul K. Mancini, Esq.
Suite 400
SBC Communications, Inc.
1401 Eye Street, NW
Washington, DC 20005

SENT VIA U.S. MIAL
Richard A. Askoff, Esq.
Colin Sandy, Esq.
NECA
80 South Jefferson Road
Whippany, NJ 07981

SENT VIA U.S. MIAL
Albert H. Kramer, Esq.
Robert F. Aldrich, Esq.
Counsel for American Public
Communications Council
2101 L Street, NW
Washington, DC 20037

SENT VIA E-MAIL
Anthony M. Rutkowski, Esq.
VeriSign Communications Services Div.
21355 Ridgetop Circle
Dulles, VA 20166
trutkowski@verisign.com

SENT VIA E-MAIL
Tom Gage, Esq.
VeriSign Communications Services Div.
21355 Ridgetop Circle
Dulles, VA 20166
tgage@verisign.com

SENT VIA E-MAIL
David Meredith, Esq.
VeriSign Communications Services Div.
222 W Oglethorpe Ave.
Savannah, GA 31401
DMeredith@versign.com

SENT VIA E-MAIL
Brian Cute
Director, Government Relations
1666 K Street, NW, Suite 410
Washington, DC 20006
bcute@verisign.com

SENT VIA U.S. MAIL
Hillary J. Morgan, Esq.
Deputy General Counsel
Regulatory and International Law
Defense Information Systems Agency
P.O. Box 4502
Arlington, VA 22204

SENT VIA U.S. MAIL
Charles S. Abell
Principal Deputy
Under Secretary of Defense
4000 Defense Pentagon
Washington, DC 20301

SENT VIA E-MAIL
Thomas K. Crowe, Esq.
Counsel for EKIT.COM, INC.
1250 24th Street, NW, Suite 300
Washington, DC 20037
firm@tkcrowe.com