

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

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

**REPLY COMMENTS OF iBASIS, INC.**

iBasis, Inc. hereby submits comments in the above-captioned proceeding. iBasis is an innovator on the cutting edge of developing and facilitating new Internet-based voice services. As such, iBasis supports the Commission's continued effort to seek a rational approach to enabling IP-based services to flourish, including those that permit consumers to pay in advance for such services.

The issues being considered here are similarly raised in the Commission's *IP-Enabled Services NPRM*,<sup>1/</sup> in that the FCC is considering the impact of regulation on both providers of prepaid calling cards and those facilitating continued development of new IP technology. iBasis submits that the regulatory classification of IP-enabled prepaid calling card services should be considered as a part of that broader rulemaking proceeding examining all IP-enabled services.

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<sup>1/</sup> *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking (rel. Mar. 10, 2004) ("IP-Enabled Services NPRM"), at Appendix A ¶17.

**I. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL REGULATORY BURDENS ON ANY IP-ENABLED SERVICES THAT PROVIDE ENHANCED FUNCTIONALITY, INCLUDING THOSE PROVIDED THROUGH PREPAID CALLING CARDS.**

**A. The Mere Use of a Prepaid Calling Card to Access IP-Enabled Services Does Not Alter Their Status as Information Services.**

Many IP-enabled prepaid calling card services are information services that are not and should not be subject to universal service funding obligations or any additional regulatory burdens in their current form.

The NPRM asks:

- (i) Whether prepaid calling card services utilizing IP technology should be classified as telecommunications services subject to Universal Service Fund charges;<sup>2/</sup>
- (ii) Whether some such services warrant regulatory treatment different from those that the Commission has found to be “telecommunications services” when they make additional or different use of IP technology;<sup>3/</sup> and
- (iii) To the extent all such calls are deemed “telecommunications services,” whether they nonetheless should be subject to exclusive federal jurisdiction, even if they originate and terminate in the same state.<sup>4/</sup>

iBasis submits that IP-enabled services using prepaid calling cards provide enhanced functionality that distinguishes those services from the AT&T service the Commission found to be a telecommunications service and compels their classification as information services. iBasis agrees with the Commission’s conclusion that information services are subject to exclusive federal jurisdiction.<sup>5/</sup>

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<sup>2/</sup> *In the Matter of Regulation of Prepaid Calling Card Services*, WC Docket No. 05–68, Order and Notice of Proposed Rulemaking (rel. Feb. 23, 2005) (“NPRM”) at ¶¶ 38-43.

<sup>3/</sup> *Id.* ¶ 40.

<sup>4/</sup> *Id.* ¶ 42.

<sup>5/</sup> *Id.* (“To the extent the variant services described . . . are classified as information services, they presumably would be subject solely to federal jurisdiction.”). It is well established that information services are subject to exclusive federal jurisdiction. *See, e.g., In the Matter of Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications*

## 1. The iBasis Experience.

iBasis did not try to retrofit its facilities and network into something that could avoid regulation. Instead iBasis has leveraged the Internet in ways that the FCC found lacking in its *AT&T IP Telephony Order*.<sup>6/</sup> iBasis's IP-enabled services, provided in part using prepaid calling cards, are a function of the Internet itself. In addition, they allow for more robust and less expensive billing, management, provisioning, and customer service offerings.

iBasis was founded in 1996 and set out to tap into the promise of the then brand new notion of a public Internet. Exploring uncharted waters, iBasis learned by trial and error and was willing to accept substantial risk on the chance that it could be one of the leaders to bring about the next generation of global communications.

iBasis' founders started with little more than entrepreneurial spirit and built something new from the ground up. Although its customers today include many of the largest telecommunications carriers in the world, iBasis does not have a single circuit switch. iBasis' services, including its Pingo™ web-based offering, offer dramatically lower international calling rates for individual customers on a prepaid basis. Through its DirectVoIP Broadband™ product, which can provide fast and secure IP interconnections to the iBasis global network for companies like Skype and Vonage, iBasis leads the way in providing international call completion and other support to the rapidly-growing consumer VoIP market.

iBasis owes much of its success to the U.S. regulatory scheme, which has permitted and encouraged innovative product development. Being at the forefront of providing IP-enabled

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*Service*, 19 FCC Rcd. 3307, 3318 ¶ 17 (2004) (*"pulver.com"*) (noting the FCC's broad authority to preempt state regulation of information services, especially given "the states' already limited role with regard to information services").

<sup>6/</sup> *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, WC Docket No. 02-361, 19 FCC Rcd 7457 (rel. Apr. 21, 2004) at ¶ 17.

services, iBasis has been privileged to serve as an informal U.S. ambassador providing IP-enabled services to 115 countries. iBasis has brought the very powerful U.S.-backed message that in the interest of opening foreign markets, Internet-based services should not be subject to traditional telecommunications regulation. In so doing, it has blazed a trail bringing substantial competitive pressure overseas.

This investment has begun to pay off for iBasis and for consumers. iBasis carried approximately five billion minutes of international VoIP traffic in 2004, and is one of the largest providers of international VoIP traffic in the world.<sup>7/</sup> For three consecutive years, service providers named iBasis the best international wholesale provider in ATLANTIC-ACM's annual International Wholesale Carrier Report Card.<sup>8/</sup> Last quarter, iBasis announced a profit for the first time. The iBasis experience demonstrates that the Internet and its vast span of redundancy and self-healing capabilities allow for high-availability, high-reliability, and unlimited consumer options and personalization as compared to TDM-based services.

## **2. Information Services Warrant Different Regulatory Treatment.**

IP-enabled services, including those provided using prepaid calling cards, should not be subject to USF obligations or other burdensome obligations that could stifle their emergence. The FCC has consistently pursued a general policy of deregulating information services.<sup>9/</sup> Beginning with its *Computer Inquiry* proceedings, the FCC found that information services must remain free of regulations to promote the competitive growth of Internet-based services.<sup>10/</sup> The

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<sup>7/</sup> Figure is based on Telegeography 2005 data compared to iBasis 2004 traffic volume.

<sup>8/</sup> ATLANTIC-ACM, *International Wholesale Carrier Report Card* – 2002, 2003, & 2004.

<sup>9/</sup> *See, e.g., California v. FCC*, 39 F.3d 919, 931-33 (9th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1995).

<sup>10/</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Report and Order, 104 F.C.C.2d 958 (1986) (subsequent history omitted).

Commission's approach is reinforced by the Congressional imperative of the 1996 Telecommunications Act to declare that "the policy of the United States is . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*"<sup>11/</sup>

VoIP and other IP-enabled services are precisely the type of "interactive computer services" whose development Congress wished to promote through regulatory restraint. VoIP technology and services enable users to send communications in IP format. The Internet -- "at bottom, a collection of IP platforms" -- is valuable and vibrant precisely because of the wide range of products and services linked to its underlying platforms.<sup>12/</sup> The Commission should refrain from imposing USF funding obligations, access charges, or any other burdensome regulatory obligations in their current form on VoIP services.

If the Commission determines that some prepaid calling card services are telecommunications services that are subject to traditional regulatory funding mechanisms, it should not impose retroactive liability for past periods. Because VoIP services have not yet been classified -- and if anything, the FCC has signaled its openness to a different regulatory treatment for IP-based services -- many VoIP carriers reasonably believe they are information service providers. They should not be penalized for the lack of regulatory clarity to date. In addition, many such providers operate on an extremely tight budget, and would not be able to continue in

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<sup>11/</sup> 47 U.S.C. § 230(b)(2) (emphasis added); *see pulver.com* ¶ 16. *See also* 47 U.S.C. § 157 nt (requiring the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing . . . regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.").

<sup>12/</sup> *See* Petition of SBC Communications Inc. for a Declaratory Ruling, WC Docket 04-29 (filed Feb. 5, 2004) at 25-32 (arguing against creating "artificial distinctions based on whether an IP service provider is a network-based or an application-based provider").

service if such liability were imposed, which would lessen competition and the availability of advanced services, in direct contrast to the Commission and Congress's stated goals.

In any event, the Commission should not impose any such requirements on IP-enabled calling card services alone. These issues are more properly considered -- and are being considered -- as part of the Commission's larger examination of IP-enabled services. Singling out one particular type of VoIP service for special regulatory burdens would skew the marketplace in favor of particular business plans, a result the Commission should avoid.

## **B. Light Touch Regulation Promotes Innovation and Competition.**

Strong policy reasons support refraining from imposing any additional regulatory burdens on IP-enabled services without clear demonstration of an urgent need. As iBasis's experience demonstrates, the Commission's current policy of regulatory restraint is enabling new and exciting IP offerings for consumers.

### **1. IP-Enabled Prepaid Products Benefit All Americans.**

Unlike carriers looking to offer their most exciting new services to select groups of subscribers, iBasis is committed to ensuring that *all* Americans can take full advantage of the promise and potential of the many forms of VoIP – even those users without broadband connections. Prepaid cards represent an important vehicle to enable non-broadband households to begin taking advantage of VoIP. For example, half of all households with incomes below \$20,000 have used prepaid calling cards.<sup>13</sup> A high percentage of Hispanic households (43%) and African American households (70%) have used prepaid cards. Senior citizens represent one of the fastest-growing segments of prepaid card users.<sup>14</sup> These users may not be able to benefit

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<sup>13/</sup> Consumer research report from The CPR Group, "Prepaid Phone Usage from the Customer's Perspective," [http://www.intelecard.com/factsandfigures/03factsandfig.asp?A\\_ID=97](http://www.intelecard.com/factsandfigures/03factsandfig.asp?A_ID=97).

<sup>14/</sup> *Id.*

from broadband-enabled consumer VoIP services today, but they can benefit from IP-enabled services offered via prepaid cards.<sup>15/</sup>

These calling cards are not just a lifeline to families; they represent a critical stepping-stone to greater mobility and advancement in Internet-based voice communications. When VoIP is combined with VoiceXML technology, a variety of new services are possible. For example, Yahoo's Phone card allows a user to place a VoIP call using its instant messenger software on a computer. Users can also call an 800 number and use the voice-activated dialer to place calls to contacts in their Yahoo! Address Book by simply either saying the recipient's name (*e.g.*, "call Michael's cell phone") or speaking the telephone number. In a few years, IP-enabled services offered via calling cards may make possible a complete remote office where a phone number is assigned to a card and a user can dial a central number to retrieve voicemail, place calls, surf the web, listen to e-mail, or take advantage of basic cost savings that IP-enabled routing affords.<sup>16/</sup>

**2. These Innovations Would Not Have Been Possible and Cannot Continue Without Appropriate Regulatory Restraint.**

iBasis could not have achieved its current success -- and Americans would not be receiving the benefits of its and other innovative carriers' offerings -- if the Commission had not created a hospitable regulatory environment that allowed for innovation and experimentation. This environment must be sustained so that these services continue to grow and expand and new offerings can emerge in the marketplace.

Fueled by the Commission's light regulatory approach to date, IP-enabled service providers have spent hundreds of millions of dollars on IP infrastructure to provide a wealth of

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<sup>15/</sup> *Id.*

<sup>16/</sup> See <http://phonecard.yahoo.com> and <http://web.net2phone.com/about/press/releases/20020220.asp>, <http://www.portaone.com/services/voicexml.html>, and <http://www.audiocodes.com/objects/Calling%20Card%20Application%20Description.pdf>.

IP-enabled services, including voice services to consumers, harnessing the value and efficiency of the Internet, and bringing tremendous savings to consumers, including dramatically decreasing international telephone calling prices for U.S. consumers. Indeed, Internet-based networks like that of iBasis provide a critical input to facilitate the type of enhanced offerings that the FCC has already identified in its *Vonage Order*.<sup>17/</sup> But as the Commission has often recognized, continued investment in new services depends on a favorable regulatory regime.<sup>18/</sup>

Without favorable regulatory treatment, the US also may not remain a vibrant player in the world IP market. The United States plays a vital role in the interface between legacy systems and the new world. Imposing a new realm of regulatory burdens on IP-enabled services will hinder innovation and deployment, endangering our ability to continue in this role.

Further, yesterday's regulations are simply not suited to services incorporating the true capabilities of emerging IP technology. The existing "telecommunications service" regulations were designed for a 100 year-old phone network and cannot easily be applied to new Internet voice technologies, including those Internet voice communications accessed through a pre-paid card. The growth and success of the Internet and Internet-based services (including VoIP) has

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<sup>17/</sup> See generally, *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order.

<sup>18/</sup> See, e.g., *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico*, 18 FCC Rcd 6722, ¶ 34 (2003) ("Broadband services should exist in an environment that eliminates regulations that deter investment and innovation"); see also *In the Matter of Modification of Parts 2 and 15 of the Commission's Rules for unlicensed devices and equipment approval*, 19 FCC Rcd 13539 (2004)(concurring statement of Chairman Michael K. Powell) (noting that regulatory flexibility stimulates investment while regulatory encumbrances hamper the deployment of new advanced technologies).

depended and continues to depend on Internet services being largely free of traditional telecommunications regulation.

Applying the current USF charges regime to IP-enabled services simply because prepaid calling cards are used to access them would open the door to broader regulation of Internet applications and communications. It also could stifle one form of VoIP in favor of another that may not bring the same benefits to *all* consumers. The Commission should ensure that USF contributions are collected, and compensation is paid, on a nondiscriminatory basis rather than imposing regulations on a piecemeal basis on specific types of IP-enabled services. To do otherwise would create significant disincentives for additional investment in IP-enabled networks and services, and ultimately harm American consumers.

## **II. AT&T'S "EMERGENCY" PETITION SHOULD BE REJECTED**

AT&T's May 3 Emergency Petition for Immediate Interim Relief should be rejected because it fails to meet the Commission's standards for granting emergency relief as set forth in *Virginia Petroleum Jobbers*.<sup>19/</sup> To prevail under the *Virginia Petroleum Jobbers* standard, a petitioner must demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if the relief is not granted; (3) other interested parties will not be harmed if the

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<sup>19/</sup> The Commission previously has stated that *Virginia Petroleum Jobbers* is "the relevant standard for determining whether interim injunctive relief or other request for emergency relief should be granted." *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, 19 FCC Rcd 10777, ¶ 25 (2004); see also *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958), as modified by *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

relief is granted; and (4) the public interest favors granting the relief.<sup>20/</sup> AT&T has not met this burden.

First, it is far from clear that AT& T will prevail on the merits of its request that the Commission treat all prepaid calling card services the same. As iBasis has demonstrated above, there may be differences between prepaid calling card services that warrant different regulatory treatment. While the Commission currently is considering the proper treatment of such services in this and in the IP-Enabled Services dockets, it is impossible to predict how the Commission will ultimately decide these issues. Indeed, given the Commission's direction from Congress to *refrain* from regulating Internet-based technologies to the greatest extent possible, the wisest course would be to avoid imposing any new regulations until the Commission has had the opportunity to evaluate these issues fully, after review of a complete docket.

Second, AT&T has failed to demonstrate that it will suffer irreparable harm if its Petition is not granted. The application of universal service to prepaid calling card services is not an issue unique to AT&T and AT&T is not alone in paying universal service charges. While AT&T may be right that other carriers that should be paying into the fund are not doing so, the Commission has full authority and can remedy that situation now for those not affected by this proceeding, and for those who are specifically affected, at its close. As such, AT&T has not pointed to any irreparable harm.

AT&T also has failed to -- and cannot -- demonstrate that other interested parties will not suffer if the Commission grants the Petition. Grant of the relief AT&T seeks would have wide-ranging effects on the entire prepaid calling card industry. Many providers that the Commission may eventually determine are not subject to universal service payment obligations would suffer

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<sup>20/</sup> *Virginia Petroleum Jobbers*, 259 F.2d at 925.

financial harm. Further, that AT&T seeks to impose such regulations only on an “interim” basis does not alleviate this harm. Many such providers operate with very little margin for unexpected costs.

Finally, the public interest would not be served by grant of AT&T’s petition. As the Commission previously has found, “narrowly focused adjudications are often inappropriate forums for the considered resolution of industry-wide [] questions of general applicability.”<sup>21/</sup> Rather, “rulemaking is generally [a] better, fairer, and more effective method of implementing a new industry wide policy than the uneven application of conditions in isolated proceedings.”<sup>22/</sup> AT&T’s desire for a quick resolution of the issues raised in the NPRM is not sufficient reason to override these well-established standards and procedures.

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<sup>21/</sup> *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237, ¶ 19 (2001).

<sup>22/</sup> *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983).

## CONCLUSION

VoIP is not another flavor of telephone service, but a new and improved frontier in communications that requires forward-thinking approaches. iBasis encourages the FCC to continue its enlightened approach of applying a “light regulatory touch” for all forms of VoIP services, including IP-enabled services provided through the use of prepaid calling cards.

Respectfully submitted,

[iBasis, Inc.](#)

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May 16, 2005

CERTIFICATE OF SERVICE

I, Jonathan Draluck, hereby certify that on this 16th day of May 2005, a copy of the foregoing "Reply Comments of iBasis, Inc." was served on the following:

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