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

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

REPLY COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

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SUMMARY

In deciding the classification of prepaid card services, the Commission must consider the impact of its decision on the payphone compensation requirement of Section 276 of the Communications Act. 47 U.S.C. § 276(b)(1)(A). The comments, however, make clear that, under applicable precedent, the various prepaid card services under consideration are appropriately classified as telecommunications services, not information services. Such classification ensures that providers of these services will not be able to evade paying compensation based on the fallacious claim that payphone calls accessing information services are somehow "exempt" from payphone compensation obligations.

The comments show that Variant 1 services (in which the caller is given an option to dial digits in order to access "enhanced" offerings before placing any call to an end user) are telecommunications services, because the "enhanced" features are incidental to the main purpose for which Variant 1 services are marketed, *i.e.*, to allow end users to make telephone calls.

The comments also show that, even if some of the enhanced features of Variant 1 services are appropriately classified as information services, that should not transform the basic telecommunications functions of Variant 1 services, which are available separately from any "enhanced" feature, into information services. In prior Commission decisions classifying "integrated" or "hybrid" services as information services, telecommunications was used in the "hybrid" service solely as the vehicle for providing or accessing information service functions. Telecommunications functions were not available to be accessed and used by the customer as a stand-alone basic telecommunications service. Here, by contrast even the parties advocating an information service classification for all Variant 1 services make a point of stating that

the customer does not have to access any of the "enhanced features" in order to use the Variant 1 service to make an ordinary telephone call. Under Commission precedent, the separately available telecommunications functions must be classified as basic telecommunications service, even if all the "enhanced" features are classified as information service.

The comments also support APCC's position that when a caller accesses an enhanced feature and then uses the basic telecommunications functions of Variant 1 services, those are two distinct "calls" for purposes of payphone compensation.

As to Variant 2 services (in which the prepaid card service provider provides transport for the call using IP technology), the comments also show that the telecommunications service classification is appropriate for these services.

Finally, regardless of the regulatory classifications that ultimately apply to prepaid card services, payphone service providers are entitled to compensation for calls using these services. In the event that the Commission classifies some of these services as information services, the Commission must issue a ruling to make it clear that (1) any completed payphone call accessing a prepaid card service provider's "enhanced" offerings is subject to the Commission's payphone compensation rule, and (2) compensation for such calls must be paid by the prepaid card service provider. Such a ruling is necessary to mitigate the danger that a decision classifying certain prepaid card services as "information services" would encourage more widespread noncompliance with the compensation rule.

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The American Public Communications Council ("APCC") hereby submits reply comments in response to the Commission's notice of proposed rulemaking in this matter.[1] In the *Notice,* the Commission seeks comment on the appropriate regulatory classification and jurisdictional status of two categories of prepaid card services. The

1 *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 (rel. February 23, 2005) ("*Notice*"). In addition to APCC, the following parties filed comments: AT&T Corp. ("AT&T"); DJE Teleconsulting, LLC ("DJE"); eKit.com, Inc. ("eKit"); General Communications, Inc. ("GCI"); IDT Telecom, Inc. ("IDT"); Independent Telephone and Telecommunications Alliance, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance ("ITTA et al."); MCI, Inc. ("MCI"); National Association of State Utility Consumer Advocates ("NASUCA"); National Exchange Carrier Association, Inc. ("NECA"); SBC Communications, Inc. ("SBC"); Sprint Corporation ("Sprint"); U.S. Department of Defense ("DOD"); United States Telecom Association ("USTA"); VeriSign, Inc. ("Verisign"); Verizon telephone companies and long distance companies ("Verizon").

first category comprises prepaid card services in which the caller is given an option to dial digits in order to access "enhanced"[2] offerings before placing any call ("Variant 1"). The second category comprises prepaid card services in which the service provider provides transport for the call using internet protocol ("IP") technology ("Variant 2").

I. INTRODUCTION

In its comments, APCC pointed out that the Commission, in deciding these issues, must take account of the impact on the payphone compensation requirement of Section 276 of the Communications Act. 47 U.S.C. § 276(b)(1)(A). Prepaid calling cards are one of the primary methods by which telephone calls are made from payphones, and conversely, payphones are a primary location for the use of prepaid cards. Although PSPs are entitled to compensation for such calls under the Commission's dial-around compensation rule (47 CFR §§ 64.1300 *et seq.*) it has proven very difficult for PSPs to collect such compensation from the hundreds of reluctant payers that make up the prepaid card service industry. APCC Comments at 3-5.

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[2] The term "enhanced" is used here in the non-legal sense and as such is placed in quotation marks here and elsewhere in these comments. Although the service addressed in the *Order* is branded "Enhanced Prepaid Card ('EPPC') service," the Commission determined that that service did not satisfy the legal definition of "enhanced service." It remains to be determined which of the variant offerings discussed in the *Notice*, if any, satisfy the legal definitions of "enhanced service" or "information service." Therefore, the term "enhanced" is placed in quotation marks in order to remind the reader that it has no legal significance as used. Because the legal definitions of "enhanced service and "information service" are very similar, the term "information service" is generally used in these comments to refer services that satisfy the legal definitions of "enhanced service" and "information service," thereby minimizing any confusion with the "Enhanced" brand name.

In its comments, APCC proposed a regulatory classification model that does not conflict with past precedent and that also avoids encouraging false beliefs in an information services "loophole" in the compensation rules. As discussed below, the comments strongly support APCC's position that Commission precedent supports classifying Variant 1 and 2 service offerings as telecommunications services.

APCC also urged the Commission to make it clear that, regardless of the regulatory classification applied to any particular prepaid card service, (1) any completed payphone call using a prepaid card service is subject to the Commission's payphone compensation rule, and (2) compensation for such calls must be paid by the prepaid card service provider. Nothing in the comments conflicts with these propositions.

II. DISCUSSION

A. Variant 1-Type Services Should Be Classified As Telecommunications Services

The comments strongly support APCC's position that Commission precedent supports classifying Variant 1 service offerings as telecommunications services.

1. The enhanced features of Variant 1 are incidental to the telecommunications functions of the service

A number of commenters provide convincing evidence that the Variant 1 service offerings described in the *Notice* are marketed as telecommunications services and are purchased by consumers for the purpose of making convenient, inexpensive telephone calls. *See, e.g.,* Sprint Comments at 6-9 & Appx. A. The "enhanced" features of these offerings, such as the provision of information about discounts offered on other

products by the prepaid card retailer, or the option to donate minutes to overseas military personnel, are clearly incidental to the main purpose of the service, which is to enable the card holder to make telephone calls.[3]

Therefore, the Commission could reasonably decide that, even though these end users can access a Variant 1 card's "enhanced" features without making use of the basic telecommunications service offered by the prepaid card service provider, the "enhanced" features play such a minor role in the marketing of the card and consumer decisions to purchase the card that they represent incidental uses. Accordingly, the Variant 1 service offerings in their entirety could reasonably be classified as a telecommunications service.

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[3] If the information or function that the caller can access by dialing digits is closely related to the telecommunications service(s) offered at the platform (for example, the number of minutes remaining on the card), precedent dictates even more strongly that the service must be classified as an "adjunct-to-basic" or telecommunications service. *See, e.g., The Time Machine*, Memorandum Opinion and Order, 11 FCC Rcd 1186, 1192-93 ¶ 40 (Com. Car. Bur. 1995)(*"Time Machine"*)(provision of information regarding the time remaining on the card is "incidental to the provision of basic communications services, and therefore is not an enhanced service"); *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Report and Order and Request for Supplemental Comment*, 7 FCC Rcd 3528, 3531 at 19 (1992)(validation and screening services are "incidental" to the provision of local exchange service and therefore subject to Title II regulation); *North American Telecommunications Association Petition for Declaratory Ruling Under § 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, ENF 84-2, Memorandum Opinion and Order, 101 FCC 2d 349, 359-61 (1985) (*"NATA Order"*), *recon.*, 3 FCC Rcd 4385 (1988) (*"NATA Reconsideration Order"*)(services that facilitate the provision of basic services without altering their fundamental character are not considered enhanced services).

2. Even if some or all the "enhanced" features of Variant 1 are information services, that does not change the telecommunications service classification of calls placed to end users using a prepaid card

Even if the Commission determines that certain "enhanced" features of Variant 1 services should be classified as information services, the comments convincingly demonstrate that such classification of "enhanced" features cannot transform the separately available basic telecommunications service functions into information services.

As Verizon points out, the issue raised here is closely similar to the *Time Machine* case. Verizon Comments at 3-4. In *Time Machine*, the Common Carrier Bureau squarely rejected the argument that the availability of information services through a "Teleticket" debit card transformed the basic interstate calling capabilities offered through the card into information services. Similarly, even if the enhanced features of Variant 1 services are classified as information services, the basic end-user calling functions of Variant 1 services must remain classified as telecommunications services.

The cases cited by MCI for the contrary proposition are clearly distinguishable. MCI Comments at 5-9. MCI cites prior FCC rulings that "integrated" or "hybrid" services combining transmission with enhanced functionality must be classified as information services.[4] In the cases cited by MCI, however, the Commission was not

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[4] *Federal-State Joint Board on Universal Service,* Report to Congress, 13 FCC Rcd 11501 (1998) ("*Report to Congress*"); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* Notice of Proposed Rulemaking, CC Dkt. No. 02-33, CC Dkt. Nos. 95-20, 98-10, FCC 02-42 (rel. February 15, 2002) ("*Broadband Framework NPRM*"); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities,* Declaratory Ruling and Notice of Proposed Rulemaking, GN Dkt. No. 00-185, CS Dkt. No. 02-52, FCC 02-77 (rel. March 15, 2002) ("*Cable Unbundling Order*").

addressing services comparable to Variant 1 services, in which the consumer is given a choice of utilizing *either* basic telecommunications functions *or* "enhanced" features. Rather, the Commission was dealing with situations in which a consumer uses telecommunications solely *in order to* access enhanced features.

For example, in the *Report to Congress,* cited by both MCI and IDT, the Commission was trying to help resolve a debate in which certain Senators argued that:

> a service could fall simultaneously into both of the new categories created by the 1996 Act. Under this approach, an information service provider is deemed a telecommunications carrier to the extent it engages in "transmission" of the information it provides. In particular, Senators Stevens and Burns indicate, an information service provider transmitting information to its users over common carrier facilities such as the public switched telephone network is a "telecommunications carrier."

Report to Congress ¶ 34 (emphasis original). The Commission opined that such "hybrid" services are defined by the Act as information services, explaining that "[b]ecause information services are offered 'via telecommunications,' they necessarily require a transmission component in order for users to access information." *Id.* ¶ 57. In the *Report to Congress,* then, the Commission clearly was dealing with the special case in which telecommunications is "an inseparable part of" the information service because it is used to "transmit[] information supplied or requested by the user." *Id.* ¶ 56.

The use of telecommunications that is tied directly and exclusively to providing and/or accessing an information service is quite different from the case presented by Variant 1 services. In Variant 1 services, by contrast, telecommunications can be used *either* to access "enhanced" features (some of which allegedly satisfy the definition of information service) *or* to communicate directly with an end user, without making any

use of the "enhanced" or information service features.[5] Thus, unlike the hybrid services discussed in the *Report to Congress*, Variant 1 offerings are clearly separable into "two distinct services, one of which is a telecommunications service." *Id.* ¶ 60.

Similarly, in the *Broadband Framework NPRM*, also cited by MCI, the Commission differentiated between *providing* telecommunications to the public for a fee, which is subject to regulation, and merely *using* telecommunications to provide an information service, which is not subject to regulation. *Broadband Framework NPRM* ¶ 19. In the case where a prepaid card holder bypasses "enhanced" features in order to make a telephone call to another end user, the prepaid card service provider is clearly *providing* telecommunications service directly to the card holder, and is not merely *using* telecommunications to provide an information service.

Finally, in the *Cable Unbundling Order*, the Commission determined that cable modem service in its entirety is an information service precisely because it found that cable modem service is rarely, if ever, provided or *used* as a stand-alone telecommunications service. According to the *Cable Unbundling Order* in addition to the various information service features of cable modem internet access service that subscribers may utilize:

> Internet Access service generally includes *using* the [domain name system ("DNS")]. . . . a general purpose *information processing and retrieval* capability that facilitates the use of the Internet in many ways.

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[5] As IDT points out, "[t]he customer does not have to listen to the recorded information to place a telephone call, nor do they have to place a telephone call in order to access the information content." IDT Comments at 5.

Cable Unbundling Order ¶ 37 (emphasis added). In fact, the Commission placed heavy reliance on representations by Cox Cable that the DNS is so integral to cable modem internet access service that "[*w*]*ithout this service, Internet access would be impractical for most users.*" *Id.* n. 147, quoting Bova Statement of Facts at 6 (emphasis added by Commission). The Commission made a point of noting that, even though "some cable modem service users may choose not to *use* the e-mail or webhosting, for example, that is provided with their cable modem service[, n]early every cable modem service subscriber . . . accesses the DNS that is provided as part of the service." *Cable Unbundling Order* ¶ 38 n. 153 (emphasis added).

Cable modem service as described in the *Cable Unbundling Order* fit the Commission's model of an information service for which telecommunications is used in the provision of the service but is not made available to the subscriber as a distinct service. In Variant 1 services, by contrast, pure telecommunications service is always available to the subscriber as an option that the subscriber may choose and use separately from, or instead of, any of the "enhanced features." Therefore, the *Cable Unbundling Order* does *not*, any more than the other FCC orders cited by MCI and IDT, support imposing an information service classification on the pure telecommunications service option that is available to users of Variant 1 services.[6]

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[6] MCI also contends that, in determining whether a service provider who provides both telecommunications and information service functions is providing an integrated information service or two distinct services, the Commission has considered only the way the service is offered to the public, rather than how the service is actually used. MCI Comments at 6-7. This distinction between how a service is offered and how it is used was *not*, in fact, a dispositive factor in the cases cited by MCI. As indicated above, in cable modem service and the other services considered in those cases, a bare telecommunications capability was not *offered and* could not be *used* apart from information service functions.

IDT acknowledges that "simply 'combining an enhanced service with a basic service for a single price' does not necessarily constitute a single enhanced offering." IDT Comments at 12 (citation omitted). Nonetheless, IDT contends that the fact that "enhanced" features are bundled with pure telecommunications offerings "in a single, easy-to-use prepaid card" dictates that two offerings must be classified as a single, integrated information service. *Id.* This proposition is highly dubious on its face. The prepaid card itself is not a "service." As Sprint points out, the card is essentially nothing more than a billing mechanism. Sprint Comments at 3. The Commission has never ruled that, merely because telecommunications and information services are billed by a service provider on a single telephone bill, they must both be classified as information services. *Id.* at 4.

IDT nonetheless claims that prepaid cards offering access to both telecommunications and "enhanced" features should be classified as a single "information service" because they "provide a single enhanced product that gives a single user access to information or telecommunications, or any combination of both, during a single session." *Id.* at 12-13. [7] IDT, however, cites no precedent for such a dramatic expansion of the "contamination" principle.

IDT also argues that there are policy reasons why the Commission must apply the information service classification to even the pure telecommunications offerings of Variant 1 services. According to IDT, applying universal service charges and intrastate

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[7] IDT also describes this as "us[ing] multiple components of the service on a single *call*." *Id.* at 13 (emphasis added). As APCC explained in its comments, however, the Commission has ruled that a consumer can make more than one "call" without hanging up the phone. APCC Comments at 18. The term "session" is thus more appropriate to describe a single, continuous period of access to a calling platform.

access charges to telecommunications services that are offered from the same card or platform as information services will inhibit the development of competitive prepaid card products. It is at least equally true, however, that applying information services exemptions to telecommunications offerings in the manner advocated by IDT would grossly distort market incentives as well as the regulatory process, by creating an artificial incentive for carriers to add sham or marginal information services as "window dressing" in order to escape regulation of their telecommunications services.

In addition, the ruling advocated by IDT and MCI would threaten serious economic harm to the payphone industry. As explained in APCC's comments (APCC Comments at 13-14), classifying certain prepaid card services as information services would not remove payphone calls that utilize those services from the purview of the requirement that PSPs be fairly compensated for "each and every completed . . . call." 47 U.S.C. § 276(b)(1)(A). Nevertheless, prepaid card service providers have already contended that prepaid card services classified as information services are somehow exempt from payphone compensation obligations. APCC Comments at 4, n.5. If the Commission issued a ruling classifying certain prepaid card services as information services, prepaid card service providers would be likely to view such a ruling as confirming the reasonableness of the position that certain prepaid card services are exempt from payphone compensation obligations. *Id.* at 4. As a result, a Commission ruling classifying certain prepaid card services as information services would encourage more prepaid card service providers to evade their compensation obligations, aggravating the problems PSPs already encounter in collecting dial-around

compensation for calls completed by prepaid card service providers.[8] To that extent, such a ruling would contravene the statutory fair compensation requirement and frustrate the "widespread deployment of payphone services" required by Section 276 (*id.* § 276(b)).

This danger of further muddying the waters regarding collection of payphone compensation provides one more policy reason why the Commission should avoid applying the information service classification to offerings that clearly constitute telecommunications services. In the event that the Commission does classify some "enhanced" prepaid card service offerings as information services, the Commission must mitigate the adverse consequences of such a ruling by making it crystal clear that

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[8] *Id.* at 3 n.4. In APCC's experience, it has been necessary to litigate with many prepaid card service providers in order to ensure compliance even with simple, straightforward requirements of the Commission's payphone compensation rule. *See, e.g., APCC Services, Inc., et al. v. IDT Corporation*, Complaint, File No. EB-05-MD-002 (filed February 1, 2005) (alleging that IDT failed to make available to PSPs the documents underlying its payphone compensation System Audit Report, in violation of 47 CFR § 64.1320(g)). A Commission ruling that certain prepaid card services are information services would introduce into this contentious payphone compensation milieu all the complexities associated with the information services/telecommunications service distinction, in all likelihood greatly increasing the load of payphone compensation disputes and litigation burdening both the payphone industry and the Commission.

To the extent that some prepaid card service providers successfully evade compliance with the compensation rule, others who attempt scrupulously to comply with the payphone compensation rule will suffer a competitive disadvantage. MCI, for example, states that even though it believes its "Golden Retriever" service is an information service, "MCI will make payphone compensation payments." *See* MCI Ex Parte Submission in this proceeding, "MCI Prepaid Information Services Featuring Golden Retriever," filed February 2, 2005.

calls utilizing such offerings remain subject to the payphone compensation rule. *See* Section II.D.

B. A Call To An "Enhanced" Offering Is A Separate "Call"

The comments also support APCC's position that, when a caller uses a payphone to dial a prepaid card service provider's platform, dials a digit (or speaks a word) to access an "enhanced" feature, and subsequently, without hanging up, places a call to an end user, there are two distinct calls for which the PSP is entitled to compensation. APCC Comments at 16-19.

AT&T, for example, makes a point of saying that Variant 1 prepaid card services "contain multiple communications." AT&T Comments at 3. IDT claims that the "enhanced" features offered with prepaid cards have independent value to consumers. IDT Comments at 7. From this it logically follows that using these "independently accessed and available information services" (*id.*) represents a distinct use of the card, *i.e.*, a distinct "call."

C. Variant 2 Services Are Telecommunications Services

As noted above, Variant 2 is a service in which transport for the call is provided using IP technology. For the reasons stated in APCC's comments and in the APCC IP-Enabled Services Petition,[9] there is no valid reason for classifying calls using prepaid card platforms any differently based on the use of IP technology to transport the call. APCC Comments at 19-25.

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[9] Petition of the American Public Communications Council for a Declaratory Ruling and Petition for Rulemaking to Establish that Payphone-Originated IP-Enabled Communications Are Subject to Payphone Compensation, WC Docket No. 05-176 (filed March 23, 2005). *See* Public Notice, DA 05-1106 (rel. April 21, 2005).

1. Variant 2 itself is a telecommunications service

In Variant 2 itself, a carrier "provide[s] transport associated with enhanced calling card calls over its Internet backbone network using IP technology." *Notice* ¶ 38. The prepaid card calling services provided in Variant 2 generally would take the form of "IP-in-the-middle" transmissions, originating and terminating on the PSTN. As the Commission noted in the *Notice*, the Commission has already determined that 1+ calls that both originate and terminate on the PSTN are telecommunications services. *Notice* ¶ 40, *citing Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004)("*IP-in-the-Middle Order*"). No party offers any reason why the Commission's analysis of "IP-in-the-middle" communications should be any different merely because the call is originated by means of a toll-free number instead of 1+ dialing.

2. "IP-in-the-middle" analysis does not change when a SBR provides the platform

The comments confirm that the same analysis would apply when switch-based resellers provide prepaid card services transported by "IP in the middle." The only party that disputes this is IDT. IDT states:

> [A] non-facilities-based calling card provider may convert the telecommunications portion of the call to a different format, such as IP, to hand the call off to a third-party carrier for delivery to the called party . . . . [T]he calling card provider would deliver the information in a different form, *e.g.*, an IP packet stream, than it was originally received, and the terminating carrier would convert the IP packet stream to TDM or another format for delivery to the called party. Thus, the calling card provider would be providing a net protocol conversion.

IDT Comments at 10-11. Thus, IDT argues that, if multiple service providers are involved in a call, and if one service provider effects a "net" protocol conversion with respect to the portion of the call that it handles, the call should be classified as an information service even if there is no net protocol conversion with respect to the call as a whole.[10] The Commission made clear in the *IP-in-the-Middle Order*, however, that the logic and holding of that decision "applies to services that meet [the order's] criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport." *Id.* ¶ 19.

3. The fact that some payphone-originated calls using a prepaid card platform may terminate over IP facilities should not affect the analysis

In some cases, the called party for a call using a prepaid card service platform may be a person who has a broadband connection terminating in a computer or specialized IP-enabled telephone.[11] In such cases, as a technical matter, the call may be said to undergo a "net protocol conversion." As APCC's comments point out, however, in all other respects this call would appear no different from the prepaid card calls that terminate over circuit-switched facilities.

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[10] The quoted passage from IDT's comments describes a situation where there is a "net" protocol conversion between the point where the prepaid card provider receives the call and the point where the calling card provider hands off the call to a third-party carrier. Thus, IDT appears to be taking the position that such a "net" protocol conversion renders the call an information service whether or not there is a net protocol conversion between the origination and termination of the call as a whole.

[11] For calls originating from payphones, the *calling* party virtually always has a circuit-switched connection to the network.

None of the comments refutes APCC's position that, in such cases, the termination of a prepaid card call in IP is "incidental" to the telecommunications service provided, does not alter its "fundamental character," and serves to facilitate the piecemeal introduction of packet switched technology into the network (by accommodating the fact that some CPE currently utilizes broadband, IP-based network connections while payphones generally do not yet use such connections). APCC Comments at 21-25. The Commission should rule that when a prepaid card calling service terminates calls over facilities using IP technology, it is still a "telecommunications service," not an information service.

* * *

As explained below, in the event that the Commission determines that some Variant 2 services are information services, the Commission must make clear that payphone-originated calls using such services are in no way exempt from payphone compensation obligations.

D. Regardless Of Their Classification, Calls Using Variant 1 or 2 Prepaid Card Services Are Subject To Payphone Compensation, And Compensation For Such Calls Should Be Paid By The Prepaid Card Service Provider

Nothing in the comments conflicts with APCC's position that, even if the Commission does classify certain prepaid card services as information services, the Commission can and should rule that calls accessing such offerings are subject to payphone compensation. APCC Comments at 13-14, 25-26. Section 276 requires the Commission to ensure fair compensation for "each and every completed . . . call," without any distinction based on the regulatory classification of the call, and provides

clear authority (as does Title I)[12] for the Commission to "regulate" information services to the extent of requiring the providers of information services to compensate PSPs for the use of their payphones.

Nor do the comments refute APCC's position that payphone compensation for such calls should be paid by the prepaid card service provider, rather than by the carrier that delivers such calls to the prepaid card service provider. As noted in APCC's comments, in order to ensure that PSPs are fairly compensated, it must be feasible for PSPs and others to determine which service provider has the obligation to pay compensation to the PSP. If the Commission ruled that compensation for calls using certain "enhanced" prepaid card service offerings must be paid by the carrier delivering the call to the prepaid card service provider, then it would be extremely difficult, if not impossible, to determine which entity has the compensation obligation. *See* APCC Comments at 14-16, 25-26. *See also* APCC IP-Enabled Services Petition at 24-25.

As also noted in APCC's comments, the Commission's compensation rule currently provides that compensation will be paid by the "Completing Carrier." APCC Comments at 15-16. A prepaid card service provider who offers both telecommunications services and information services will not thereby lose its identity as a "Completing Carrier"[13] and can be held liable to pay compensation on information service calls as well as telecommunications service calls.

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[12] *See, e.g., IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 ¶ 27 n.95 (2004), and cases cited therein.

[13] *Cf. Northwestern Bell Telephone Co.*, Memorandum Opinion and Order, 2 FCC Rcd 5986 ¶ 2 (1987) ("*Talking Yellow Pages*") ("In addition to providing the Talking Yellow Pages and other enhanced services, Teleconnect operates as a nondominant interexchange carrier"). The Commission has long recognized that carriers who offer

As explained in APCC's comments, even if the Commission does determine that it must amend the compensation rule in order to find prepaid card service providers liable to pay compensation for information service calls, such an amendment can and should be adopted in this proceeding. *Notice* ¶ 38. ("Rather than continuing to address the appropriate regulatory regime for variations of prepaid calling cards in a piecemeal manner, we conclude that the public interest would best be served by considering this issue in a more comprehensive manner"). And, as also explained in APCC's comments, the Commission has ample authority under either Section 276 or Title I to require prepaid card service providers to pay compensation for calls accessing their information service offerings. APCC Comments at 14.

E. To The Extent That The Commission Finds Providers Of "Enhanced" Prepaid Card Services Are Not Subject To Dial-Around Compensation Obligations, The Commission Must Rule That The Compensation Obligation Falls On The Carrier That Delivers A Call To The Prepaid Card Service Provider

As stated in APCC's comments, if the Commission classifies some "enhanced" prepaid card services (whether based on Variant 1 or 2) as information services and rules that the prepaid card service provider is not required to pay dial-around compensation for such information service calls, then the Commission must rule that

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(Footnote continued)
information services do not cease to be carriers, and that the conditions under which carriers offer such information services can be regulated under the Commission's ancillary jurisdiction. *See e.g.*, 47 CFR §§ 64.702(b)-(d)(regulating the manner in which certain carriers are permitted to provide enhanced services). The Commission's compensation rule similarly requires "Completing Carriers" to pay compensation for all payphone-originated dial-around calls that they complete, even if some of those calls are classified as the provision of information services.

the compensation obligation falls on the carrier that delivers the call to the provider of the prepaid card information service.[14] Again, nothing in the comments conflicts with the Commission's ability to require a carrier who delivers a call to an information service provider to pay compensation to a PSP if the information service provider does not.

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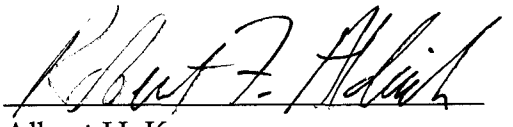
[14] APCC Comments at 26-27. As noted in APCC's Comments, if the Commission finds that an information service provider is not required to pay compensation, it must be because the information service provider is considered to be an "end user" rather than a "Completing Carrier." In that case, the "Completing Carrier" for the call must be the carrier that delivers the call to the information service provider, because in doing so that carrier is "completing" the call to its "end user."

Dated: May 16, 2005

Respectfully submitted,



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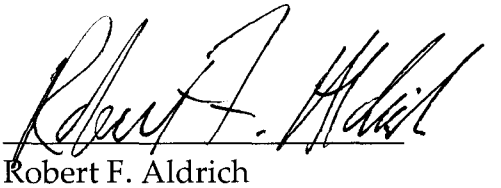

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