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January 6, 2006

Ms. Michelle Carey
Legal Advisor, Office of the Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Communication
***Regulation of Prepaid Calling Card Services,* WC Docket No. 05-68**
***Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92**

Dear Ms. Carey:

IDT Corporation and IDT Telecom, Inc. ("IDT"), by their undersigned counsel, submit the following comments to follow up on the *ex parte* meetings we held with you in recent weeks.

As we expressed during our meetings, IDT is concerned about the excessively regulatory and burdensome certification proposals advanced by AT&T and GCI in the *Prepaid Calling Card* proceeding. We submit this letter to explain IDT's concerns and proposals in more detail.

AT&T and GCI have offered proposals in the *Prepaid Calling Card* docket that raise broader issues more properly considered in the *Intercarrier Compensation* rulemaking, such as transmission of calling party data and accuracy of Percent Interstate Usage (PIU) calculations. It would be futile and counter-productive to attempt to adopt a "solution" to these issues limited to prepaid calling card services, because the issues involved affect many other services and service providers. For example, prepaid calling card service providers that purchase toll free service from underlying carriers to originate their services cannot provide accurate jurisdictional information to other carriers unless they receive accurate calling party information from the underlying toll-free service providers, who in turn must rely on information transmitted to them by the originating LEC. Similarly, if a prepaid calling card service provider purchases service from an underlying carrier to terminate its domestic calls, the accuracy of that underlying carrier's PIU certifications to terminating LECs will depend on the accurate measurement of *all* of its traffic, not just the small fraction received from prepaid calling card service providers. Further, the same issues arise when *any* telecommunications carrier transmits traffic to another without accurate jurisdictional information, regardless of whether any prepaid calling card service is involved. Thus, these issues are more appropriately addressed in CC Docket No. 01-92 than in WC Docket No. 05-68.

Additionally, AT&T's proposal (as submitted in its July 15, 2005 *ex parte* in WC Docket No. 05-68) is overly regulatory, unnecessarily complicated, and unduly burdensome. AT&T

suggests that every provider of prepaid calling card services should be required to file an *18-part certification* (some of which have subparts) every calendar quarter.[1] Many parts of this certification would simply declare that the provider is complying with rules with which it was already required to comply anyway. For instance, AT&T proposes a quarterly certification that each provider "is contributing to the federal universal service fund based on the interstate or international revenues it derives from [prepaid calling card] services." Each provider is already required to file Form 499-Q quarterly, under penalty of perjury, and a list of the filing entities is compiled quarterly by USAC. The Commission has demonstrated repeatedly that it can and will sanction providers that ignore this obligation.[2] No additional enforcement capability is provided by requiring carriers to certify on one form that they have filed another form. AT&T's proposed certification requirement would be nothing but regulatory busywork, imposing substantial costs without any offsetting benefit.

Moreover, AT&T's certification proposal seeks to solve problems that do not exist. Indeed, as demonstrated by the dearth of supportive public filings on AT&T's and GCI's proposals, there is virtually no interest within the industry to implement extensive new certification requirements. To the extent there currently are disputes over the calculation of PIUs for prepaid calling card traffic, or the calculation of USF contributions, IDT believes they are due largely to the vagueness and uncertainty under current rules as to which services are properly treated as telecommunications services.[3] If and when the Commission clarifies these substantive issues, there is no reason to believe that any widespread compliance problem will remain. If isolated instances of non-compliance should occur, existing practices and procedures – including the undisputed right of LECs to audit PIU reports under existing tariff provisions, and the Commission's and USAC's ability to audit USF contribution payments – should be more than adequate to address them.

IDT understands that the Commission is already considering adopting rules in the *Intercarrier Compensation* proceeding that will address the so-called "phantom traffic" issue. IDT believes that these rules, if implemented by the Commission, will be broad enough to address any legitimate concerns raised by AT&T and GCI in the *Prepaid Calling Card* docket and are the appropriate vehicle to address any intercarrier compensation issues, whether prepaid calling card related or otherwise. The Commission should not single out particular classes of carriers or services for special burdens, but should seek to ensure accuracy in the jurisdictional classification of *all* telecommunications service traffic. Attempting to address these issues in the

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[1] In addition to the burdens this will place on calling card providers, AT&T's proposal would require the Commission to devote significant administrative resources to process and analyze potentially hundreds, if not thousands, of filings each quarter from calling card providers.

[2] *See, e.g., Blackstone Calling Card, Inc., Apparent Liability for Forfeiture*, DA 05-3192 (released Dec. 19, 2005).

[3] This letter does not address the issue of what prepaid services are appropriately classified as telecommunications services, which IDT has addressed in its *ex parte* presentations filed in WC Docket No. 05-68 on November 10 and December 1 and 21, 2005.

Prepaid Calling Card docket would not provide the comprehensive solution that is needed, but would merely paper over one aspect of the problem while creating disproportionate compliance costs for one segment of the industry, prepaid calling card service providers. Therefore, the AT&T and GCI proposals should be addressed in CC Docket No. 01-92, except to the limited extent (discussed below) that they address issues specific to the prepaid calling card services context.

AT&T's and GCI's submissions do identify two substantive issues specific to prepaid calling card services that the Commission may need to address: treatment of calls that terminate at the prepaid calling card platform, and the use of "default" PIUs in the absence of actual jurisdictional data.

As AT&T correctly notes, not all originating minutes to prepaid calling card platforms correspond to either completed or attempted outgoing calls. Callers may spend some of their time checking their balance, accessing information services provided from the platform itself, or may simply change their mind and hang up without placing an outbound call. AT&T correctly proposes that this usage be treated as terminating at the platform, so that these originating minutes would be assigned to the appropriate jurisdiction based on the locations of the calling party and the platform.[4] GCI calls this a "loophole" and insists that these minutes should be allocated between jurisdictions based on a PIU. GCI's position, however, has no support other than its evident desire to place as many minutes in the intrastate category as possible. GCI weakly argues that AT&T's proposal "could be seen as an endorsement for the previously rejected two-call theory," but this is illogical. There cannot be "two calls" when no outbound call has even been attempted; there is only a communication path between the caller and the platform, and any allocation of these minutes based on the location of non-existent called parties would be pure fiction.

Further, if a caller communicates with the platform solely for purposes of retrieving stored information (whether to check a balance, or to listen to news, weather, or other types of information from an audiotext platform), this particular use of the card plainly is an enhanced service and should not be subject to *any* access charges under FCC precedents, even if other uses of the same card are subject to access charges.

AT&T also proposes a default PIU of 50% for any traffic for which the prepaid calling card provider cannot identify the originating jurisdiction due to lack of call detail information. GCI complains that this is too favorable to providers, and proposes that the measured PIU should be applied to non-measured traffic unless non-measured traffic exceeds 30% of the total, in which case a default of 20% (*i.e.*, 80% of traffic would be treated as intrastate) would apply. IDT agrees that if a PIU can be determined for the majority of traffic, it makes sense to apply this PIU to other traffic where the origin cannot be determined. However, AT&T's and GCI's

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[4] AT&T and GCI agree that when an outbound call is attempted, it should be assigned for jurisdictional purposes based on the location of the called party, whether the attempt is completed or not.

proposed defaults are both entirely unrepresentative for typical prepaid calling card service providers, including IDT.

Prepaid calling card traffic is overwhelmingly international; both domestic interstate and intrastate usage are relatively minor fractions of the total. The most recent (2003) figures released by the Commission reveal that, of total end-user prepaid calling card revenues of $874 million (compared to total industry end-user revenues of $230 *billion*), only $69 million (about 7.9%) were derived from intrastate services, with $124 million (about 14.2%) from domestic interstate services, and the remainder from international services.[5]

Accordingly, even the 50% default PIU proposed by AT&T would arbitrarily and capriciously assign far too much traffic to the state jurisdiction. The Commission should not impose any arbitrary default PIU on all carriers without considering the actual nature of their traffic.[6] Also, as explained earlier in this letter, there is no reason to adopt a special "default PIU" solely for prepaid calling card services, since the problem of identifying the jurisdiction of telecommunications services arises for many other services that have nothing to do with prepaid calling card services. IDT believes that this issue, along with other PIU-related issues, should be addressed on a comprehensive industry-wide basis in CC Docket No. 01-92.

In summary, IDT urges that, to the extent the Commission classifies any prepaid calling card services as telecommunications services, it should:

1) confirm that *all telecommunications carriers* involved in transmitting these prepaid calling card services, not just the carrier operating the prepaid calling card service platform, are subject to the same requirements as any other interexchange service for transmitting signaling information, submitting accurate PIU reports, and complying with all other applicable provisions of access tariffs;

2) confirm that originating minutes on calls to a calling card platform that do not involve outbound call attempts (successful or unsuccessful) are to be treated as calls terminating at the platform for purposes of jurisdictional allocation and application of access charge rules;

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[5] Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, filed in CC Docket No. 96-45, Table 1.6 at page 1-25 (Dec. 2005). Because prepaid calling card service providers are required to report revenues based on the face value of cards sold, rather than services actually used, the figures in the monitoring report, which show prepaid calling card usage as about 0.4% of the total telecommunications industry, actually overstate the size of this industry segment.

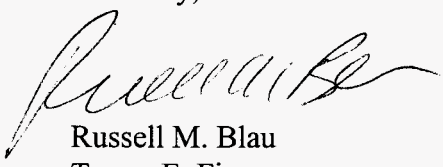
[6] Indeed, since in-state calling patterns vary drastically by state, it makes no sense to adopt any nationwide default PIU. To do so would result, for example, in assigning some prepaid calling card minutes originating in the District of Columbia as "intrastate," even though the District has *no* intrastate toll service.

3) reject proposals to assign an arbitrary default PIU to calling card minutes of use that cannot be directly assigned to an appropriate jurisdiction based on call detail information, but instead should subject this traffic to the same PIU rules as any other interexchange traffic that lacks call detail information; and

4) decline to adopt any additional rules or reporting requirements applicable solely to prepaid calling card services that are more appropriately addressed on an industry-wide basis in the *Intercarrier Compensation* proceeding.

A copy of this letter is being filed electronically with the Secretary in accordance with Commission rules in the above-referenced proceedings.

Sincerely,



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