

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Universal Service Contribution Methodology)	WC Docket No.06-122
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	
Provisions in the Telecommunication Act of 1996)	CC Docket No. 96-98
)	
Developing a Unified Intercarrier Compensation)	
Regime)	CC Docket No. 01-92
)	
Intercarrier Compensation for ISP-Bound Traffic)	CC Docket No. 99-68
)	
IP-Enabled Services)	WC Docket No. 04-36

COMMENTS OF STI PREPAID, LLC

STi Prepaid, LLC (“STi”) submits these comments in response to the above captioned Order on Remand and Report and Order and Further Notice of Proposed Rulemaking (“*Order*”) by the Commission. STi is a leading provider of prepaid calling cards, operating in all fifty states and many U.S. territories. STi’s calling card products are used for intrastate, interstate and international calling. STi’s traffic is heavily international, serving hundreds of foreign destinations, with a particular emphasis on Latin America.

The Commission seeks comment on its three proposals: Appendix A, the Chairman’s Draft Proposal (“Chairman’s Proposal”), Appendix B, the Narrow Universal Service

Reform Proposal (“Narrow Reform Proposal”), and Appendix C, the Alternative Proposal (“Alternative Proposal”). STI’s comments will focus on the Commission’s proposals as they relate to reforming the Universal Service Fund (“USF”) contribution methodology, particularly with respect to prepaid calling card services.

I. INTRODUCTION

STi supports a numbers-based contribution methodology. As the Commission has recognized, by providing predictability and fairness, numbers-based plans simplify the contribution process for contributors and end users. STi questions the treatment of prepaid calling card providers in both the Chairman’s Proposal and the Alternative Proposal because they are, at least initially, excluded from numbers-based treatment. The Narrow Reform Proposal is further flawed in that it seeks to treat prepaid calling card providers as indirect contributors through their underlying carrier, in violation of the Communications Act of 1934, as amended.

Under both the Chairman’s Proposal and the Alternative Plan, prepaid calling card providers are treated as providers of business services and are required to continue contributing to the USF based on their revenues during the interim period until they can be assessed on the basis of connections or numbers.¹ Both proposals provide that during the interim period, while the Commission conducts its proceeding implementing the chosen contribution methodology, business service providers, including prepaid card providers, will continue contributing to the USF using a revenue-based methodology for their services.²

Both plans classify prepaid calling card services as “business services” which, as has been shown numerous times before the Commission, incorrectly categorizes services that are

¹ See *Order*, p. A-58, n.329; p.C-57, n. 321.

² See *Order*, p. A-58, ¶133; p. C-56, ¶129; p. C-57, ¶130.

used overwhelmingly by residential consumers.³ This is STi's experience as well. Under both proposals, calling cards should be shifted at the outset to the same numbers-based approach as other residential services.

The Narrow Reform Proposal is likewise flawed in its treatment of prepaid calling card providers in that it seeks to treat such providers as indirect contributors through their underlying carrier. This action only serves to complicate the system further and, as discussed below, violates the Commission's mandatory contribution obligations under Section 254(d).

II. PREPAID CARDS ARE NOT "BUSINESS SERVICES" AND SHOULD NOT BE TREATED AS BUSINESS SERVICES

Simply put, prepaid calling card services are not "business services" because they are not used primarily by businesses. Rather, as has been repeatedly shown through industry market data, it is overwhelmingly individuals that are the end users of prepaid calling cards.

While within the prepaid calling card industry, a number of entities may be in the chain of commerce that ultimately delivers the card to an individual end user, STi believes that when classifying a service as business or residential, the Commission's analysis should focus on the end user. To do otherwise will result in confusion when attempting to classify any product that travels through a distributor, retailer or even an intermediate carrier prior to reaching its intended recipient. Because the Commission's proposals result in heavier assessments on business services, it is discriminatory for carriers providing the same service to the same group of customers to be treated differently, based merely on differences in distribution or sales channels. This discrimination will distort purchasing decisions by increasing the costs that residential

³ See e.g., Letter from Tamar E. Finn, Counsel, IDT Corporation, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 06-122 (filed Oct. 28, 2008) ("sources demonstrate that prepaid calling cards are used overwhelmingly by residential consumers rather than business consumers.").

consumers face when they place interstate or international calls through prepaid calling cards, rather than through 1+ dialing.

Moreover, as has already been established in the record in this proceeding, market data shows that prepaid calling cards are overwhelmingly used by end users such as immigrants, the military and their families, the elderly, and other low- or fixed-income consumers. The Commission has previously recognized that prepaid calling card services have “played a vital role in providing telecommunications services to low-income consumers and members of the armed services.”⁴ Congress has recently noted on multiple occasions that those who rely on prepaid calling cards include elderly individuals, the poor, and those serving in the Armed Forces.⁵ For example, Rep. Dingell (D.-MI) recently observed that “Many of our consumers – especially recent immigrants, the poor, students, and members of the military and their families – are vitally dependent on these prepaid cards to keep in touch with family and friends.”⁶ The National Consumers League reiterated this position, stating that, prepaid calling cards are marketed to, and used by, “vulnerable consumers” such as immigrants, military families, the working poor and those lower income Americans who often cannot afford or obtain regular phone service.⁷

A recent survey of prepaid calling card users showed that over 80% of prepaid calling card consumers use the cards to make phone calls from their home.⁸ Half of these households report yearly household incomes of \$50,000 or less, placing them into the low or lower-income

⁴ See *Regulation of Prepaid Calling Card Services*, WC Docket 05-68, Declaratory Ruling and Report and Order, FCC 06-79 (June 30, 2006).

⁵ See S. 2998, Prepaid Calling Card Consumer Protection Act of 2008 (110th Congress, 2008); H.R. 3402, Calling Card Consumer Protection Act (110th Congress, 2008).

⁶ Cong. Rcd, H9937, Sept. 25, 2008.

⁷ See Testimony of Sally Greenberg, Executive Director, National Consumers League, Before the U.S. House Energy and Commerce Committee on HR 3402, the “Calling Card Consumer Protection Act” (Sept. 16, 2008).

⁸ See *IDT Corporation Notice of Ex Parte Communication*, Docket No. 96-45; Docket No. WC 06-122, Appx. B (Oct. 28, 2008)

category of consumers.⁹ Prepaid calling card customers are thus the individuals that are least able to afford to pay an additional USF charge on their interstate and international calls, one that is not paid by residential customers using 1+ dialing. There is no valid reason why such consumers using prepaid calling cards should pay more USF on interstate and international calls than those placing calls through 1+ dialing.

III. TREATING PREPAID CARDS AS BUSINESS SERVICES VIOLATES THE ACT AND IS BAD POLICY

A. Classifying prepaid calling cards as a business services results in discrimination

Section 254(d) of the Rules state that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”¹⁰ That is, all telecommunications carriers, including carriers which provide the underlying platform for prepaid calling cards, and prepaid calling card providers themselves, are required to contribute to the Universal Service Fund. Charging USF assessment on both the underlying calling platform used by a prepaid calling card and the card itself, essentially creates double billing for a single call in violation of the nondiscriminatory policy set forth in Section 254(d).

For example, under any of the proposed plans, if a consumer purchases a bundled home phone service with unlimited local and long distance, the carrier will be assessed (and likely pass through to the end user) a monthly contribution for that number. If the consumer uses that number to place a 1+ international call billed separately per minute from that number, the carrier

⁹ *Id.*

¹⁰ 47 U.S.C. §254(d).

(and ultimately the customer) incurs no additional USF liability on that call. If, however, the consumer places the same international call using a separately purchased prepaid calling card, the prepaid calling card provider would also assess a contribution amount payable to the USF based on the revenue from that call which ultimately raises the price of that call for the consumer. A prepaid calling card call would thus be subject to more USF, and would therefore be more expensive than the exact same call made using the presubscribed long distance carrier. Depending on how a consumer places a call, whether through a pre-subscribed carrier or through a prepaid calling card, the consumer will incur different USF costs for the same service. This result creates a competitive distortion in the industry, frustrates Commission policy of encouraging competitively neutral policies, and violates the requirements of Section 254(d) of the Act, requiring USF contributions to be “equitable and non-discriminatory.”

B. The Commission’s proposed “interim” treatment of prepaid cards overly complicates an already broken system

The Commission states that “[t]he system of contributions to the universal service fund is broken... [and t]he Commission has repeatedly patched the current system.”¹¹ Creating interim fixes for prepaid calling cards only creates yet another “patch” for the system. The temporary treatment of prepaid cards outside of a numbers-based approach merely serves to overcomplicate an already complicated system. If the Commission seeks to fix its broken system, the best means to achieve this is to transfer as many services to a new numbers-based regime as it can, rather than leave certain services in flux for an interim amount of time.

Fixing the USF contribution is only a small part of fixing the overall intercarrier compensation scheme. The FCC has been seeking to reform intercarrier compensation since at

¹¹ Order at A-42, ¶97; B-17, ¶44; C-41, ¶93.

least 2001 when it issued its NPRM asking for comment on ways to unify access and reciprocal compensation schemes.¹² Then, approximately one year later, in 2002, the Commission began to seek out ways in which it could reform and improve the USF.¹³

Fixing the USF is just one exceedingly complicated aspect of the overall intercarrier compensation reform process, and as such, it could take years before a final solution for either is achieved. Leaving prepaid calling card providers in flux during this time only creates more chaos within an already hectic system. A better solution is to have as many services as possible switch to the proposed numbers-based system of contribution sooner rather than later. This allows as many contributors as possible to become part of the newly reformed system rather than leaving providers with one foot in the new system and one foot still in the old.

IV. THE COMMISSION CANNOT ALLOW PREPAID CARD PROVIDERS TO CONTRIBUTE “INDIRECTLY” THROUGH THEIR UNDERLYING CARRIER

In the Narrow Reform Proposal contained in Appendix B of the Order, the Commission proposes a hybrid system based on Assessable Numbers, with additional contribution for business services that “do not utilize numbers, or that utilize them to a lesser extent.”¹⁴ The Narrow Reform Proposal further attempts to redefine Prepaid Calling Card providers, such as STi, as end users.¹⁵ This approach violates the Commission’s mandatory contribution obligations under Section 254(d), which requires that every carrier that provides telecommunications services must contribute to the USF. This tacit exemption also violates long standing Commission precedent that requires each and every telecommunications carrier (and

¹² See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd. 9610 (2001).

¹³ See *Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order, FCC 02-41 (2002).

¹⁴ Order, B-31, ¶78.

¹⁵ Order, B-35, ¶88.

certain other providers of telecommunications) is responsible for its own USF obligations and cannot merely rely on the contributions of an underlying carrier. Because there can be no doubt that prepaid calling card providers are telecommunications carriers, this is a radical departure from Commission precedent, and is also bad policy that will further complicate the administration of the USF.

The Act gives the Commission very limited authority to exempt only carriers (or classes of carriers) that the Commission determines have such limited telecommunications offerings that their contribution would be de minimis. Here, there is no such finding that prepaid calling cards offer limited telecommunications offerings or that the contributions made by them (either on Accessible Numbers or Accessible Connections, or both) would be de minimis. Rather, the proposal is simply to treat prepaid card providers as end users as a means of exempting them from USF contributions. Plainly speaking, the Commission simply does not have the statutory authority to exempt a telecommunications carrier that does not have limited telecommunications offerings.

The Commission recently completed a review of the prepaid card industry and the services that many prepaid carriers provide. After an extensive review, the Commission concluded that prepaid card services were telecommunications services subject to various obligations under the Act including USF contributions.¹⁶ The Narrow Reform Proposal's attempt to exempt prepaid card carriers from direct USF contributions effectively reverses that decision and declares that the prepaid cards are not subject to USF. In other words, unless the Commission drastically departs from its recent precedent that declares most prepaid calling cards

¹⁶ *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, WC Docket No. 05-68, 21 FCC Rcd 7290, ¶¶10, 21 (Rel. June 30, 2006).

to be telecommunications service, the Commission must continue to assess USF directly from prepaid calling card providers.

Relying on underlying carriers to make contributions on behalf of non-de minimis telecommunications carriers is sharply contrary to current FCC policy.¹⁷ As the Commission has repeatedly said, it is the responsibility of each and every telecommunications carrier to comply with the USF and other reporting and contribution rules, and cannot rely on their underlying carrier to pay on their behalf. Moreover, for any carrier that provides both prepaid cards and other telecommunications services, it will actually add to the administrative burden as it would be required to operate both as a carrier that contributes and a carrier that does not.

The proposal would also significantly increase the administrative burdens of stand-alone prepaid card providers. Presumably, such carriers would still need to file a 499-A (or a successor form) reporting revenue for the purposes of contributing to TRS, NANP, LNP and FCC regulatory fees.¹⁸ Further, underlying carriers that provide numbers and connections (or wholesale switched minutes) would be required to separate out any pass through for USF contributions (either numbers or connections) from various pass through surcharges of other fees such as NANPA and LNP. Many carriers do not have systems that are capable of separating USF surcharges from other surcharges. As a result, prepaid calling card carriers may find themselves effectively double paying into these funds.

This possible double payment would be in addition to the effective double payment of USF contributions if the Commission adopts the proposed assessment on prepaid card providers based on both Assessable Numbers and Assessable Connections, which are based on the

¹⁷ See *Federal-State Joint Board on Universal Service, American Telecommunication Systems, Inc., Equivoice, Inc., Eureka Broadband Corporation, Ton Services, Inc., Value-Added Communications, Inc.*, Order, CC Docket No. 96-45, 22 FCC Rcd 5009 (March 14, 2007).

¹⁸ *Order*, A-64, n. 373; B-29, n. 239; C-63, n. 364.

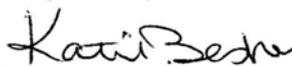
presupposition that prepaid calling card services are business services, rather than residential services. As shown above, prepaid calling cards are used primarily by individual consumers, often of limited income, and should be classified as a residential service. As such, if the Commission were to adopt the Narrow Reform Proposal, it should still make prepaid card providers pay in a manner consistent with other providers of residential services that contribute solely on Assessable Numbers. The “double” payment approach of the Narrow Reform Proposal ultimately inures to the detriment of prepaid calling card consumers, and is contrary to the stated aims of advancing universal service, given that many prepaid consumers are lower income.

V. CONCLUSION

STi urges the Commission to switch all providers of prepaid calling card services to a numbers-based system along with providers of other telecommunications services. In the event the Commission does not transfer all providers at one time and creates an “interim” solution for certain providers, STi recommends that the Commission classify prepaid calling card providers as providers of residential services rather than business services. Finally, STi notes that prepaid calling card providers should continue to be direct contributors to the fund under a numbers system because to do otherwise is in violation of the Act.

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