

that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 24, 2006.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

#### § 180.920 [Amended]

■ 2. In § 180.920, the table is amended by removing the entries for "Ethylene glycol monomethyl ether" and "Methylene blue."

[FR Doc. E6-12344 Filed 8-1-06; 8:45 am]

**BILLING CODE 6560-50-S**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 54 and 64

[WC Docket No. 05-68; FCC 06-79]

#### Regulation of Prepaid Calling Card Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Interim rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) takes steps necessary to protect the federal universal service program and promote stability in the market for prepaid calling cards. In particular, the Commission will treat certain prepaid calling card service providers as telecommunications service providers. As such, these providers must pay intrastate access charges for interexchange calls that

originate and terminate in the same state and interstate access charges on interexchange calls that originate and terminate in different states. They also must contribute to the federal Universal Service Fund (USF) based on their interstate revenues, subject to the limitations set forth below. The Commission also addresses a petition for interim relief filed by AT&T and adopts interim rules to facilitate compliance with the universal service and access charge rules. Specifically, on an interim and prospective basis, the Commission requires all prepaid calling card providers to comply with certain reporting and certification requirements. **DATES:** Effective October 31, 2006 except for §§ 64.5001(a), (b), and (c) which contain information collection requirements that have not yet been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Judith.B.Herman@fcc.gov](mailto:Judith.B.Herman@fcc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Lynne Hewitt Engledow, Wireline Competition Bureau, Pricing Policy Division, (202) 418-1520.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Declaratory Ruling and Report and Order in WC Docket No. 05-68, adopted on June 1, 2006, and released on June 30, 2006. The complete text of this Declaratory Ruling and Report and Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418-0531, TTY (202) 418-7365, or at [fcc504@fcc.gov](mailto:fcc504@fcc.gov). The complete text of the decision may be purchased from the

Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY-B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, or e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

#### Synopsis of Declaratory Ruling and Report and Order

1. On May 15, 2003, AT&T filed a petition for declaratory ruling that intrastate access charges did not apply to calls made using its "enhanced" prepaid calling cards when the calling card platform is located outside the state in which either the calling or the called party is located. On November 22, 2004, AT&T submitted an *ex parte* letter requesting a declaratory ruling on two additional types of "enhanced" prepaid calling card offerings: one card that offers the caller a menu of options to access non-call-related information, and a second card that utilizes Internet Protocol (IP) technology, accessed by 8YY dialing, to transport a portion of the calling card call.

2. On February 16, 2005, the Commission denied AT&T's May 2003 Petition. See *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, 70 FR 12828, March 16, 2005 (*Calling Card Order & NPRM*). The Commission found that the service described in the original petition was a jurisdictionally-mixed telecommunications service and that intrastate access charges apply when a call originates and terminates in the same state. The Commission initiated a Notice of Proposed Rulemaking (NPRM) to address additional types of "enhanced" prepaid calling cards, including those described in AT&T's November 2004 letter. On May 3, 2005, AT&T filed a petition seeking the adoption of interim rules pending a final decision by the Commission in this docket. AT&T's Emergency Petition seeks interim rules imposing federal universal service funding obligations on all prepaid calling card services regardless of whether the Commission ultimately decides they are telecommunications services or information services.

#### Declaratory Ruling

3. In this *Order*, the Commission addresses the two prepaid calling card variants described in the NPRM portion of the *Calling Card Order and NPRM*: (1) Menu-driven prepaid calling cards; and (2) prepaid calling cards that utilize IP transport to deliver all or a portion of

the call. As the Commission explains, it finds that both types of prepaid calling cards are telecommunications services and that their providers are subject to regulation as telecommunications carriers. In conjunction with the Commission's prior rulings regarding basic prepaid calling cards and prepaid cards with advertising, all prepaid calling card providers will now be treated as telecommunications service providers. In the future, if prepaid calling card providers introduce new and different card types that they believe should be classified as information services, they may seek a declaratory ruling, a waiver, or other relief from the requirements that the Commission adopts in this *Order*.

#### Menu-Driven Prepaid Calling Cards

4. In its comments AT&T described its "newly augmented" prepaid calling card service accessed via toll-free, 8YY, dialing. Upon dialing the 8YY number, the cardholder is presented with the option to make a telephone call or to access several types of information, such as additional information about the card distributor, sports, weather, or restaurant or entertainment information. Other entities offer similar services to consumers.

5. "Telecommunications" is defined as the "transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. 153(43). Building on the definition of "telecommunications," the Communications Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used." 47 U.S.C. 153(46). Thus, a "telecommunications service" involves more than the mere transmission of information; it requires the "offering" of pure transmission capability "for a fee directly to the public."

6. Although it may be difficult at times to determine whether a service bundle is "sufficiently integrated" to merit treatment as a single service, that is not the case here. There simply is no functional integration between the information service features and the use of the telephone calling capability with menu-driven prepaid calling cards. The menu is a mechanism by which the customer can access the separate capabilities that are packaged together in a single prepaid calling card. The customer may use only one capability at

a time and the use of the telecommunications transmission capability is completely independent of the various other capabilities that the card makes available. But even if those additional capabilities are classified as an information service, the packaging of these multiple services does not by itself transform the telecommunications component of these cards into an information service.

7. The Commission's finding here is consistent with the Commission's conclusions in the *Calling Card Order* and *NPRM*. Just as the Commission found in that order that the addition of an advertising message does not convert a telecommunications service into an information service, the Commission now finds that the addition of an option to access other types of information does not convert the telecommunications service offered by these prepaid calling cards into an information service for regulatory purposes, even if standing alone the information processing capability would meet the statutory definition of an information service. In short, these menu-driven calling cards offer customers a telecommunications service that enables them to make telephone calls, and the ability to obtain sports scores, stock quotes, and other information through the same card does not alter that conclusion.

#### Prepaid Calling Cards That Utilize IP Technology

8. In the *IP-in-the-Middle Order*, the Commission addressed AT&T's use of IP technology to transport interexchange telephone calls dialed on a 1+ basis. See *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 (2004) (*IP-in-the-Middle Order*). The Commission found that "an interexchange service that: (1) Uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology" is a telecommunications service. The Commission limited its ruling in the *IP-in-the-Middle Order* to calls that meet all of the above criteria and are placed using 1+ dialing.

9. Other than the use of 8YY dialing instead of 1+ dialing, prepaid calling cards that use IP transport appear to be identical to the services addressed by the Commission in the *IP-in-the-Middle Order*. The Commission sees no reason

why the use of a different dialing pattern to make calls, without more, should result in a different regulatory classification. These cards are used to originate calls on the circuit-switched network using standard customer premises equipment, factors that the Commission previously has used to distinguish telecommunications services from information services. Consequently, the Commission finds that the use of IP transport in the provision of a prepaid calling card service does not alone convert that service from a telecommunications service to an information service.

#### Report and Order

10. As a result of the Commission's finding that providers of the two types of prepaid calling cards described in the previous section offer telecommunications services, these providers are now subject to all of the applicable requirements of the Communications Act and the Commission's rules, including requirements to contribute to the federal USF and to pay access charges. In this section, the Commission sets forth some additional requirements that will apply, at least on an interim basis, to all prepaid calling card providers.

#### USF Contributions

11. As noted above, all prepaid calling card providers must contribute to the Federal USF based on interstate and international telecommunications revenues. 47 U.S.C. 254 and 47 CFR 54.706. The Commission has established two safe harbors for use by carriers that offer retail packages that bundle interstate telecommunications services with other services (e.g., basic phone service and voicemail). A carrier may elect to treat all bundled revenues as telecommunications revenues or it may report revenues from the bundled offering based on the unbundled service offering prices, with no discount allocated to the telecommunications service. Prepaid calling card providers may avail themselves of these safe harbors; should they choose to forego these safe harbors, they must be prepared to defend the allocation method they use in an audit or enforcement context.

12. Based on the record in this proceeding, the Commission finds that an exemption from the contribution requirement for calling cards sold by, to, or pursuant to contract with DoD or a DoD entity will serve the public interest. Accordingly, the Commission forbears from applying section 254(d) to the extent necessary to implement the exemption from USF contribution

obligations for prepaid calling cards sold by, to, or pursuant to contract with DoD or a DoD entity, on an interim basis while the Commission decides other USF contribution issues in its *Contribution Methodology* proceeding. The Commission finds that this exemption easily meets the three-pronged forbearance standard contained in section 10(a). 47 U.S.C. 160(a).

#### Access Charges

13. As a result of this *Order*, providers of prepaid calling cards that are menu-driven or use IP transport to offer telecommunications services are obligated to pay interstate or intrastate access charges based on the location of the called and calling parties. 47 CFR 69.1 *et seq.* As noted above, the Commission previously has found that these same access charge obligations apply to basic prepaid calling cards and prepaid calling cards with unsolicited advertising. As with other services that require the caller to dial an access number, the assessment of interstate and intrastate access charges based on the location of the called and calling parties can be complicated with respect to prepaid calling card traffic because the caller initially dials the 8YY number associated with the calling card platform and only later dials the number of the called party.

14. The Commission believes that these complications can be addressed through certification and reporting requirements that compel the prepaid calling card provider to share the necessary information with the carriers that it uses to transport traffic to and from the platform. The Commission agrees with AT&T that such requirements will promote transparency in the prepaid calling card market and that, absent such requirements, calling card providers and their underlying carriers would have the incentive and the ability to avoid intrastate access charges. As with any other service subject to the Commission's rules, if prepaid calling card providers do not comply with these rules they will be subject to the Commission's enforcement authority, including complaints and forfeitures. 47 U.S.C. 208, 501.

#### Reporting to Other Carriers

15. Prepaid calling card providers are subject to the Commission's rules on the passing of CPN. 47 CFR 64.1601. Under these rules, carriers that use SS7 are required to transmit the CPN associated with an interstate call to interconnecting carriers. In the context of prepaid calling card calls, the Commission interprets this to mean that carriers

must pass the CPN of the calling party (*i.e.*, the number associated with the telephone used by the cardholder) and not replace that number with the number associated with the platform.

16. For similar reasons, the Commission prohibits carriers that serve prepaid calling card providers from passing the telephone number associated with the platform in the charge number (CN) parameter of the SS7 stream. The Commission concludes that carriers that serve prepaid calling card providers may not pass information regarding the calling card platform in the CN parameters in the SS7 stream. This approach properly balances the need for accurate intercarrier billing records with the need of some carriers to use CN for their own retail billing purposes.

17. The Commission also requires prepaid calling card providers to report percentage of interstate use (PIU) factors to those carriers from which they purchase transport services. Specifically, a prepaid calling card provider must report prepaid calling card PIU factors, and call volumes on which these factors were calculated, based on not less than a one-day representative sample. These factors must be computed separately for originating and terminating traffic on a state-specific basis. This information must be provided to the transport provider no later than the 45th day of each calendar quarter. The transport provider may use the reported PIU in calculating any PIU factors it reports to LECs, and it may disclose the reported PIU upon request of such LECs.

18. If the prepaid calling card provider fails to provide the appropriate PIU information to the transport provider in a timely manner, the transport provider may treat the prepaid calling card provider's traffic as subject to a 50 percent default PIU. The transport provider may notify any originating or terminating LEC that it has applied the default PIU to the prepaid calling card provider's traffic for that reporting period. A transport provider also may audit the PIU reports it receives from a calling card provider if it has a reasonable basis to believe that such reports contain inaccurate or misleading data. The Commission finds that the use of a default PIU and the ability to audit are reasonable means by which to protect underlying transport providers (who themselves may be subject to comparable requirements under LEC access tariffs) and encourage the timely submission of accurate information by prepaid calling card providers. The platform number should be considered the called party number

if the caller does not attempt to make a call to a third party.

#### Certification to the Commission

19. The Commission believes that the exchange of information among carriers, as described above, should be sufficient to resolve most issues related to the assessment of access charges with respect to prepaid calling card traffic. To reduce further the incentive for carriers to report false or misleading information, however, the Commission also requires prepaid calling card providers to file certifications with the Commission. On a quarterly basis, every prepaid calling card provider must submit a certification, signed by an officer of the company under penalty of perjury, stating that it is in compliance with the reporting requirements described above. The certification also should include the percentage of interstate, intrastate, and international calling card minutes for that reporting period.

20. Each prepaid calling card provider also must certify the percentages of total prepaid calling card service revenues (excluding revenue that is exempt under the military exemption adopted above) that are interstate and international and therefore subject to federal universal service assessments for the reporting period. The certification the Commission requires in this *Order* is not a replacement for the Form 499—Telecommunications Reporting Worksheet. As such, prepaid calling card providers are responsible for filing both the certification required in this *Order* and a Form 499. Finally, the certification must include a statement that the company is making the required contribution based on the reported information.

21. Certifications will be due on a quarterly basis and may be filed in WC Docket No. 05–68 using the Commission's Electronic Comment Filing System. The first provider certifications are due the last day of the first full calendar quarter after OMB approval of this requirement.

#### Effect of This Order

22. In contrast to the new reporting and certification rules the Commission adopts in this *Order*, which it will apply to all prepaid calling card providers on a prospective basis, the Commission's decision to classify prepaid calling cards that use IP transport and menu-driven prepaid calling cards as telecommunications services is a declaratory ruling, which is a form of adjudication. 47 CFR 1.2.

23. Adjudicatory decisions typically apply on a retroactive basis, and the

Commission finds that such retroactivity is appropriate for cards that use IP transport. The Commission reaches a different conclusion, however, with respect to menu-driven prepaid calling card services. Given the lack of clarity in the law on this issue, both before and as a result of the NPRM, the Commission is concerned that retroactive application of this *Order* to menu-driven prepaid calling cards would be so unfair to providers of such cards as to work a "manifest injustice." For example, the Commission recognizes that retroactive application of its decision would be burdensome for menu-driven prepaid calling card providers, in that the decision subjects them to access charges, Universal Service Fund contribution obligations, and the full panoply of Title II obligations. The Commission also recognizes that, given the state of the law at the time, parties may have relied on the assumption that they would not be subject to these burdens. For these reasons, the Commission concludes that its decision that menu-driven calling cards offer telecommunications services and that their providers are subject to regulation as telecommunications carriers shall have prospective effect only.

24. To give prepaid calling card providers sufficient time to implement this new regulatory regime, this *Order* will take effect on October 31, 2006. The certification requirements set forth above are effective according to the timeframe outlined above.

#### Certification Filing Procedures

25. Pursuant to § 64.5001 of the Commission's rules, all prepaid calling card providers shall file the quarterly reports described above in WC Docket No. 05–68. The first certification reports are due the last day of the first full calendar quarter after the effective date of this item and OMB approval of this requirement. Certification reports may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Certification reports filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Only one copy of an electronic submission must be filed in a single docket. On completing each transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, WC Docket No. 05–68. Parties may also submit an electronic report by Internet e-mail. To get filing instructions for e-mail reports, reporters should send an e-mail to

[ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and instructions will be sent in reply. Parties are strongly encouraged to file their certification reports electronically using the Commission's ECFS.

26. Parties who choose to file by paper must file an original and four copies of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners, and any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

27. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send one copy of their filings to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition, parties should send one copy to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554 (202) 488–5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

28. Documents in WC Docket No. 05–68 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at [fcc504@fcc.gov](mailto:fcc504@fcc.gov).

#### Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Order and Notice of Proposed Rulemaking*, 70 FR 12828, March 16, 2005. The Commission sought written public comment on the proposals in the *Order and Notice of Proposed Rulemaking*, including comment on the IRFA. We received no comments specifically directed to the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### Need for, and Objectives of, the Report and Order

30. On May 15, 2003, AT&T filed a petition for declaratory ruling that intrastate access charges did not apply to calls made using its "enhanced" prepaid calling cards when the calling card platform is located outside the state in which either the calling or the called party is located. On November 22, 2004, AT&T submitted an *ex parte* letter requesting a declaratory ruling on two additional types of "enhanced" prepaid calling card offerings: One card that offers the caller a menu of options to access non-call-related information, and a second card that utilizes Internet Protocol (IP) technology, accessed by 8YY dialing, to transport a portion of the calling card call.

31. On February 16, 2005, the Commission released a *Report and Order and Notice of Proposed Rulemaking* denying AT&T's petition and requiring it to contribute to the Federal Universal Service Fund based on its interstate prepaid calling card revenue. The NPRM portion of that item sought comment on the appropriate regulatory treatment of AT&T's additional prepaid calling card types and any other current or planned prepaid calling card offerings. On May 3, 2005, AT&T filed an Emergency Petition for Interim Relief asking the Commission to impose Federal universal service funding obligations on all prepaid calling card providers regardless of whether the cards offer telecommunications or information services. AT&T's Emergency Petition also requested that the Commission issue interim rules subjecting all prepaid calling card providers to the same types of access charges.

32. In this *Order*, we find that providers of the types of cards upon which the Commission sought comment in the NPRM offer telecommunications services. Consequently, providers of these types of prepaid calling cards will

be treated as telecommunications carriers and therefore must pay access charges, contribute to the Universal Service Fund, and comply with all the other applicable obligations under the Communications Act and the Commission's rules. Prepaid calling card providers that use SS7 must pass the CPN of the calling party (the cardholder), and the CN where appropriate, and not pass the telephone number associated with the calling card platform in the CPN or CN parameter of the SS7 stream.

33. We also adopt interim rules requiring that prepaid calling card providers report prepaid calling card PIU factors, and call volumes from which these factors were calculated, based on not less than a one-day representative sample, to those carriers from which they purchase transport services. We also require that prepaid calling card providers certify to the Commission that they are providing PIU and CPN information to other carriers as required above and that they report their total intrastate, interstate, and international calling card minutes and revenues.

34. The requirements imposed on prepaid calling card providers in this *Order* are necessary to preserve and advance the Universal Service Fund, provide regulatory certainty and prevent "gaming" of the system. The Commission believes the public interest will best be served by eliminating any uncertainty and promoting stability in the prepaid calling card market through the adoption of this *Order*.

35. In the *Calling Card Order* and *NPRM*, the Commission noted that military personnel rely heavily on prepaid calling cards and asked what steps, if any, it should take to ensure that such cards remain reasonably priced. In this *Order* we decide that the public interest will be served by exempting revenue from prepaid calling cards sold by, to, or pursuant to contract with DoD or a DoD entity from the above-described universal service contribution obligations. As such, on an interim basis, prepaid calling card providers are not required to pay USF contributions on revenue generated from prepaid calling cards sold by, to, or pursuant to contract with DoD or a DoD entity.

#### Significant Issues Raised by Public Comments in Response to the IRFA

36. No comments were received regarding the IRFA.

#### Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

37. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, 5 U.S.C. 601(3). A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

38. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

39. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

40. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having

1,500 or fewer employees. According to Census Bureau data for 1997, there were a total of 2,225 firms in this category that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

41. *Local Exchange Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers reported that they were incumbent local exchange service providers. In addition, according to Commission data, 769 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 companies, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 39 carriers reported that they were "Other Local Service Providers." Of the 39 "Other Local Service Providers," an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and "Other Local Service Providers" are small entities that may be affected by the rules and policies proposed herein.

42. *Telecommunications Resellers*. The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 companies reported that they were engaged in the provision of prepaid calling cards. Of these 89 companies, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies proposed herein.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

43. In this *Order*, we hold that providers of the types of cards upon

which the Commission sought comment in the *NPRM* offer telecommunications services. As a result of this finding, these prepaid calling card providers are now treated as telecommunications carriers and therefore are subject to the Communications Act and the Commission's rules, including all applicable reporting and recordkeeping requirements. For example, they now must submit to USAC the reports required in connection with contributions to the Federal USF.

44. In this *Order*, we also adopt new interim rules applicable to all prepaid calling card providers. Prepaid calling card providers must report prepaid calling card PIU factors, and call volumes on which these factors were calculated, based on not less than a one-day representative sample, to those carriers from whom they purchase transport services. They also must certify to the Commission that they are complying with this PIU reporting requirement. This certification also must include information on total intrastate, interstate, and international calling card minutes and revenue, and a statement that they are contributing to the Federal USF based on all interstate and international revenues, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with DoD or a DoD entity.

#### **Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

45. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1) through (c)(4).

46. In this *Order*, the Commission finds that certain types of prepaid calling card providers are telecommunications carriers and therefore subject to applicable requirements of the Communications Act and the Commission's rules, including the obligation to pay access charges and contribute to the Universal Service Fund. We apply these existing rules for the purpose of preserving and advancing universal service and

providing regulatory certainty. A strong, well-funded USF is one of the Commission's regulatory mandates and is in the public interest. The clear application of regulations to the prepaid calling card industry also will promote regulatory certainty, foster innovation and competition, and avoid market disruption during the pendency of this and other rulemaking proceedings. We rejected AT&T's suggestion to address a more limited set of issues on the ground that such an approach would not provide the necessary certainty and stability. After reviewing the record, we conclude that the best way to meet our goals of preserving and advancing universal service and providing certainty to the prepaid calling card market is to subject all prepaid calling card providers to the same requirements.

47. In this *Order*, we also adopt interim rules requiring all prepaid calling card providers to meet certain reporting requirements. Specifically, they must report prepaid calling card PIU factors, and call volumes from which these factors were calculated, based on not less than a one-day representative sample, to those carriers from which they purchase transport services. The interim rules also require that prepaid calling card providers make quarterly certifications to the Commission. Specifically, they must certify that they have complied with the reporting requirements discussed above. In addition, they must provide information on total intrastate, interstate, and international calling card minutes and revenues, and include a statement that they are contributing to the federal USF based on the reported information. AT&T proposed that prepaid calling card providers comply with a much more extensive set of reporting and certification requirements. We rejected these additional reporting and certification requirements because they would prove too burdensome to small prepaid calling card providers.

48. As described above, the Commission has considered a variety of alternative approaches for regulating prepaid calling card providers. In weighing these alternatives we tried to balance our desire not to unduly burden small entities (small prepaid card providers, as well as small LECs and small IXC) with our goals of ensuring regulatory certainty, preserving and advancing universal service, and avoiding market disruption during the pendency of other rulemakings. The *Order* we adopt achieves this balance by applying the same rules to all prepaid calling card providers, while at the same time rejecting proposals that would

place excessive burdens on small companies.

#### **Report to Congress**

49. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**, 5 U.S.C. 604(b).

#### **Paperwork Reduction Act Analysis**

50. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

#### **Ordering Clauses**

51. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 202, and 254, this Declaratory Ruling and Report and Order in WC Docket No. 05-68 is adopted, and that parts 54 and 64 of the Commission's rules, 47 CFR parts 54 and 64, are *amended* as set forth in the rule changes.

52. *It is further ordered* that AT&T's Emergency Petition for Immediate Interim Relief is granted in part and denied in part as set forth herein.

53. *It is further ordered* that the final rules and rule revisions adopted in this Declaratory Ruling and Report and Order shall become effective October 31, 2006.

54. *It is further ordered* that all prepaid calling card providers shall file an initial certification as required herein no later than the last day of the first full calendar quarter after OMB approval of this requirement.

55. *It is further ordered* that the Frontier Petition for Declaratory Ruling is *granted* as set forth herein and otherwise is *denied*.

56. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Declaratory Ruling and Report and

Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Parts 54 and 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

#### Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 64 as follows:

#### PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Section 54.706 is amended by adding paragraph (a)(19) and revising paragraph (d) to read as follows:

#### § 54.706 Contributions.

(a) \* \* \*

(19) Prepaid calling card providers.

\* \* \* \* \*

(d) Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit health care providers; broadcasters; systems integrators that derive less than five

percent of their systems integration revenues from the resale of telecommunications. Prepaid calling card providers are not required to contribute on the basis of revenues derived from prepaid calling cards sold by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity.

#### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 3. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 4. Amend part 64 by adding subpart DD to read as follows:

#### Subpart DD—Prepaid Calling Card Providers

##### § 64.5000 Definitions.

(a) *Prepaid calling card.* The term “prepaid calling card” means a card or similar device that allows users to pay in advance for a specified amount of calling, without regard to additional features, functions, or capabilities available in conjunction with the calling service.

(b) *Prepaid calling card provider.* The term “prepaid calling card provider” means any entity that provides telecommunications service to consumers through the use of a prepaid calling card.

##### § 64.5001 Reporting and certification requirements.

(a) All prepaid calling card providers must report prepaid calling card

percentage of interstate use (PIU) factors, and call volumes from which these factors were calculated, based on not less than a one-day representative sample, to those carriers from which they purchase transport services. Such reports must be provided no later than the 45th day of each calendar quarter for the previous quarter.

(b) If a prepaid calling card provider fails to provide the appropriate PIU information to a transport provider in the time allowed, the transport provider may apply a 50 percent default PIU factor to the prepaid calling card provider's traffic.

(c) On a quarterly basis, every prepaid calling card provider must submit to the Commission a certification, signed by an officer of the company under penalty of perjury, providing the following information with respect to the prior quarter:

(1) The percentage of intrastate, interstate, and international calling card minutes for that reporting period;

(2) The percentage of total prepaid calling card service revenue (excluding revenue from prepaid calling cards sold by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity) attributable to interstate and international calls for that reporting period;

(3) A statement that it is making the required Universal Service Fund contribution based on the reported information; and

(4) A statement that it has complied with the reporting requirements described in paragraph (a) of this section.

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