FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

March 7, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (SIMMONS, TAYLOR, STRONG, MOSES) SAS
DIVISION OF LEGAL SERVICES (LUGO)
DIVISION OF ACCOUNTING AND FINANCE (LESTER) ALM APC

RE: DOCKET NO. 960254-TI - ESTABLISHMENT OF APPROPRIATE REGULATORY POLICY FOR INTEREXCHANGE COMPANIES WHICH ISSUE PREPAID DEBIT CARDS.

AGENDA: MARCH 19, 1996 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE - PROPOSED AGENCY ACTION.

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\960254TI.RCM

CASE BACKGROUND

Despite their great popularity and availability in Europe for more than 15 years, until only a few years ago the words "telephone prepaid debit cards" (PDCs) were largely unknown in the United States. Such a telecommunications product simply did not exist in our country until about 1991. With a PDC, a caller can purchase a block of time in advance and be able to place calls from virtually any telephone in any state. Such an arrangement can be attractive to those individuals who do not subscribe to basic telephone service or those individuals who are very mobile, yet not candidates for a mobile phone. Prices for PDCs have been falling rapidly, although the per minute rate is usually significantly higher than would apply on a calling credit card. PDCs, however, have an advantage over calling credit cards in that no surcharges apply. In addition, with many PDCs, the user may purchase additional time once the initial allotment is exhausted. The additional purchase can be made with a simple telephone transaction and a credit card.

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Though they have been available in the United States for only 5 years, PDCs are fast becoming one of the most widely available consumer products in the country. They are sold in tens of thousands of locations nationwide through supermarket outlets, retail stores, department stores, drug stores, novelty shops, greeting card shops and convenience stores. Additionally, they are given away to promote dozens of products each year.

SIZE OF THE PREPAID DEBIT CARD MARKET

Prepaid telephone cards are widely used outside the United States and are almost the only means of operating a pay phone in France and Japan. It is estimated that prepaid telephone cards generated $4 billion in worldwide sales in 1993. Sales of PDCs in Japan approximate $1 billion. PDCs are currently used in over 130 countries throughout the world.

Within the United States the annual sales of PDCs are skyrocketing; they have already surpassed the $500 million mark and are projected to reach $1 billion in 1997. Florida specific data is not available or germane due to the fact that these cards are portable across state lines.

MECHANICS OF USING A PREPAID DEBIT CARD

A customer typically takes the following steps to use a PDC.

(1) Dial an 800 number listed on the prepaid card from any touchtone telephone.
(2) Listen to a recorded greeting and instructions on what to do.
(3) Dial in the phone card 10 digit ID number.
(4) Hear an electronic report on how many dollars or minutes remain in the account.
(5) Enter the number you wish to call.
(6) Complete the call.
(7) Hang up to terminate the call.

Telephone PDCs are now being viewed as more than just another way to make calls. Features such as voice mail, message delivery, international origination and termination, foreign language options, speed dialing, replenishment and information services are being added to some cards to increase their value and applications.

PROVIDERS OF PREPAID DEBIT CARDS

Of the roughly 400 certificated interexchange carriers operating in Florida, 84 of these companies have tariffed PDC services. Of these 84 companies, 13 firms offer solely PDC services. The companies that offer PDCs typically rely on the facilities of an underlying carrier, rather than their own network, in order to complete calls.

PDCs may be distributed directly by the initial issuer or through one or more intermediaries. The latter approach is by far the more frequently used method. One method of distribution is the card issuer selling the cards to a reseller at a reduced rate. Hypothetically, a PDC selling for $20 would be sold to the reseller for $15. The reseller would then sell the cards for $20 as marked on the cards and keep the $5 difference as commission for selling the cards. This type of resale of PDCs does not place the reseller in a position of being considered a telephone company under Chapter 364.02 Definitions, Florida Statutes, since the company is not offering two-way telecommunications service to the public for hire by the use of a telecommunications facility. Furthermore, the service is provided by a certificated underlying carrier whose relationship is with the end user if service problems exist. Therefore, certification is not required. Examples of this type of reseller would be drug stores, convenience stores, department stores, and others. These companies are often able to place their own advertisements on the cards at no charge. In many cases, the cards are given away to end users to entice the end user to use the company's products or services. Staff does not have any estimates of the percentage of cards that are sold versus given away.

INTERCOMPANY BILLING AND PAYMENT ARRANGEMENTS

When a PDC provider relies on the facilities of an underlying carrier, the former compensates the latter on a minutes of use basis. The PDC provider purchases 800 number access from a long distance carrier, encodes the debit card with a personal identification number (PIN), and sells the PDC at a higher per minute rate than is being charged by the underlying carrier. The end user then dials the 800 number listed on the card, inputs the PIN number, enters the telephone number of the party being called, and completes the call. The minutes of use are drawn down based on the PIN number of the account by the underlying carrier, and the reseller is billed for the minutes of use. There is considerable potential for fraud because it is possible to issue cards with an 800 number that does not work at all or that draw down time for unanswered calls and busy signals.

NATURE AND MAGNITUDE OF COMPLAINTS

While prepaid telephone cards are a relatively new service in this country, the concept of consumers paying before they receive a service is not. Almost every time a consumer buys a ticket he or she is prepaying for a service that may or may not meet their expectations or even do what they are informed it will do. PDCs are no different.

Serious disappointments sometimes occur when purchasing services in advance of consuming them. For example, people have bought airline tickets months in advance at what appeared to be an attractive rate only to be shocked when the airline unexpectedly declares bankruptcy and the tickets become worthless. The chance of fraud occurring during the sale of some tickets has existed for many years. Occasionally forgeries or counterfeit tickets have been sold to unsuspecting customers as the actual ticket allowing one to attend an expensive sporting event. The same potential for fraud exists with PDCs.

While there have been few complaints regarding PDCs, the product is still in its infancy stages in this country. Use of PDCs is growing, fueled in part by the fact that prices have dropped sharply from 50 to 60 cents initially to 23 to 35 cents presently. There is a definite potential for the volume of complaints to increase. The following describes complaint activity to date, both in Florida and other parts of the country.

Complaints Sent to the FPSC

The Consumer Affairs Division experienced few, if any, complaints relating to PDCs until December 1995. During December 1995 the Commission staff became aware of the existence of Telécuba, Inc. (Telecuba) an uncertificated IXC reseller of PDCs, and customer complaints stemming against them. Telecuba sold PDCs without an IXC certificate or tariff on file with the Commission. Initially, Telecuba provided its PDC service by purchasing long distance services from World Access Communications Corporation, a certified carrier, and reselling the service to end user customers who purchased Telecuba's PDCs. In December 1995 World Access Communications disconnected the 800 access numbers Telecuba was using to provide its prepaid calling service. As a result, end users who had purchased the PDCs were unable to complete telephone calls and receive the telephone service for which they had already paid. Staff opened Dockets Nos. 960216-TI and 960217-TI and filed its recommendation concerning this matter on March 7, 1996. This matter is available for discussion at the March 19, 1996 Agenda Conference.

In another incident relating to PDCs, an IXC had 411 PDCs with a retail value in excess of $4,000 stolen from a vending machine. The issuer of the PDCs, seeking to reduce its exposure to potential financial losses, deactivated the stolen cards. The Commission staff was advised of this matter by a consulting firm employed by the issuer of the PDCs. As of this date few, if any, complaints relating to this matter have been received by the Division of Consumer Affairs.

Complaints Filed With the Florida Department of Agriculture & Consumer Services

The Florida Department of Agriculture & Consumer Services has received only one complaint concerning a PDC. A woman in the Miami metropolitan area complained that she purchased four PDCs from a local drugstore which were nonoperative.

Experience in Other Parts of the Country

Considering the hundreds of millions of dollars of PDCs sold each year, the number of customer complaints has been surprisingly low. The NARUC Communications Subcommittee released the results of its debit card survey in November 1995. It said "As for complaints in the debit card area, our survey only turned up ten complaints from all of the states as a whole. The only two that were specified were for improper telemarketing practices and the rate not clearly marked."

As staff was preparing to file this recommendation it learned in February 1996 that tens of thousands of customers who bought a PDC named "USA Calling" have discovered their cards are nonoperative. The card was marketed in major retail establishments, including K- Mart. (See Attachment 1.)

OVERVIEW OF CURRENT REGULATION

The following is an overview of various state, federal, and industry activities to regulate PDCs. A review of a matrix of state regulation underlines the lack of consensus and direction in the regulation of this service. (See Attachment 2.) However, several states have opened generic dockets and reached substantive conclusions. (See Attachment 3.) At least one of the trade associations has drafted a "Prepaid Calling Cardholder's 'Bill of Rights.'" (See Attachment 4.)

Each of these compilations point out the pitfalls inherent in this service and the necessities of PDC regulation. Most striking when performing this review is the fact that the strategies now being employed do not meet the objectives of current regulation which are customer protection and removal of barriers to competition. No state or federal regulations exist that can make a customer whole, whether or not the provider is certificated, or can claim that they are not anticompetitive.

Regulation in Florida

In the State of Florida, the Commission has jurisdiction over all calls originating and terminating within the state. Since there is no restriction placed upon cards which prevent calling into a state in which the provider is not licensed, and there is no restriction on consumers buying a card in one state and bringing it into another state, all PDC providers doing interstate business in the United States should be certificated in the State of Florida.

The Commission staff's involvement in regulating PDCs commenced on March 1, 1993, when the Communications Division of the Florida Public Service Commission received a written complaint from Teledebit. Teledebit was a certificated IXC offering only debit card services. Specifically, Teledebit asserted that AT&T, through its TeleTicket service, and other companies were selling PDCs but did not have the service listed in their tariff.

The Commission staff investigated the complaint. AT&T maintained it was not required to tariff its TeleTicket service with the FPSC. In October 1993, AT&T eliminated its TeleTicket Service and tariffed a new prepaid calling service.

The Commission staff also phoned other companies listed on Teledebit's complaint letter and asked that their debit card services be tariffed. This action was followed by a written data request dated August 4, 1993. Subsequently, most of the companies agreed to become certificated and have their debit card services tariffed, probably due in large part to AT&T's actions setting the tone for the rest of the industry.

The FPSC has jurisdiction over issuers of PDCs whose cards can make calls originating and terminating in Florida. However, there are no rules or statutes specifically regulating debit cards. There are no Commission Orders which specifically address PDCs except for several instances when AT&T sought to lower debit card rates for more than 90 days in a 12 month period. (Lowering rates for more than 90 days in a 12 month period requires a waiver of the Commission Rule. The waiver requests were granted and the AT&T tariffs were approved.)

The Commission did not require bonds from PDC issuers until February 6, 1996. At the February 6, 1996 Agenda Conference, the Commission approved staff recommendations requiring that American International Telephone, Inc.; Georgia Public Telephone Co., Inc.; Long Distance of Michigan, Inc., d/b/a/ LDMI Long Distance; and US South Communications, Inc., d/b/a US South and INCOMM each post surety bonds of $10,000. Staff recommended that the Commission require these companies to secure a surety bond as a means of verifying that the companies have the financial strength to provide and maintain the proposed telecommunications service. This is somewhat different from the treatment of other IXC services, for which a bond is required if the company collects deposits of more than one month's usage. Because a PDC does not have a set time frame for usage, a caller could use up the value of a card in an hour or a year.

Staff continues to actively pursue certification of PDC companies that are considered telephone companies under Florida Statutes. A request is being sent to each certificated interexchange company that offers debit card service in its tariff to identify all resellers. We then can ensure that providers of PDCs are properly certificated. In addition, this letter will serve as a reminder to all certificated companies that it is illegal to provide service to uncertificated resellers. Staff does not believe it will be necessary to request a show cause order against companies found to be operating without a certificate unless a company is found to be uncooperative.

Regulation by the Marketplace

The trade associations and individual providers believe that regulation should be kept at a minimum. "Regulation should act to promote the growth and legitimacy of the industry, not stifle the very companies who are making the technology and services possible in an effort to protect the public." (Telecommunications Resellers Association)

The associations, in their trade publications have stressed that competition and the "marketplace" will provide all of the protection needed by the public. However, in interviews with Commission staff they have indicated that they are working on voluntary guidelines for prepaid calling card providers. Such guidelines only apply to members of the associations, and only legitimate entities tend to join such organizations.

Regulation by the FCC

Pursuant to rules promulgated by the Federal Communications Commission (FCC) in 1993, "non-dominant" common carriers are required to file a tariff with the FCC. This includes switchless rebillers, including those selling PDCs. Further, those offering international prepaid calling card services must also file a tariff for international service with the FCC. The fee for the international tariff filing is $490, and the fee for the international service authority is $610.00.

A challenge to state PDC regulation was filed with the FCC in April 1993, by The Time Machine, Inc. (TMI), a Kansas-based prepaid calling card provider. TMI filed a petition for declaratory ruling seeking federal preemption of state regulation of PDCs. TMI argued that it would not be technically feasible for carriers such as TMI to identify or separate intrastate and interstate usage for regulatory purposes. The company further argued that burdensome state regulations would thwart the ability of TMI and others to offer their services and would impede the FCC's procompetitive position.

On August 4, 1993 the Florida Public Service Commission (FPSC) submitted reply comments to the FCC. In its comments the FPSC maintained (1) TMI's services are subject to state jurisdiction, (2) state regulation of TMI is in the public interest, (3) debit card calls can be separated by jurisdiction, and (4) federal preemption is not legally justified for intrastate debit cards services. The FPSC concluded that for these four reasons the FCC should deny TMI's petition.

In November, 1995, more than two years after TMI appealed to the FCC for federal preemption of PDC services, the FCC released its decision rejecting TMI's request. The decision affirmed the FPSC's authority to regulate issuers of PDCs.

State Regulations

Since a PDC can be used to originate calls anywhere in the United States, it is potentially subject to the separate regulatory jurisdiction of all 50 states, in addition to being subject to FCC requirements on interstate calls. For all practical purposes, PDC providers that are entering the market first get certificated in the states in which they are marketing, and as the scope of their sales expand, they become certificated in additional states.

Interviews with representatives of other state commissions have pointed out several vulnerable areas in the regulation of PDCs and given staff an understanding of the possible remedies which are being used or advocated. Among them are:

1. **Duration of Service.** A prepaid calling card should have printed on its face, the expiration date of the card (if applicable). Failure to do so could result in a windfall profit for companies who authorize a short activation period for the cards without customer notification. This measure is generally accepted by the industry, and some states have instituted such a requirement.

2. **Mechanism for Refund of Unused Service.** If a customer finds the service of a prepaid card unsatisfactory, there should be a clear procedure for a refund of the remaining minutes on the card. This information should be available from the provider and from the retailer. This measure is generally accepted by the industry, and some states have instituted such a requirement.

3. **Retailer Education.** It is generally agreed in the industry that retailers need to be educated about debit cards and can provide information to customers by posting informational signs. Retailers need a mechanism by which they can establish that a provider of PDCs is certificated in the state in which they are doing business prior to offering such cards in their stores.

4. **Customer Service Number.** It is important that customers have a toll-free number to call if they experience trouble with their PDC. This measure is generally accepted by the industry, and some states have instituted such a requirement.

5. **Uncertificated Switchless Resellers.** Not all states require certification of switchless resellers. It is important to educate IXC providers that it is their responsibility to assure that a provider is certificated prior to providing access. IXC providers should not consider this policing their competition, but rather policing themselves as sale to an uncertificated provider is a violation of this Commission's rules.

6. **Bonding Strategy.** Bonds are required in several states, especially for start-up companies with weak financials. However, a bonding scheme cannot aid the consumer when they are victimized by an uncertificated provider. Bonds may reduce the rate at which firms enter and exit the business and may indirectly assist consumers. However, a bond could be considered anti-competitive, especially since most companies are trying to become certificated in all 50 states. Even the least restrictive bond requirement could be daunting to an emerging telecommunications company.

ISSUE 1: Which, if any, providers of prepaid debit cards should be required to post a surety bond?

PRIMARY RECOMMENDATION: The Commission should require interexchange companies that provide PDCs to post a surety bond. The Commission should allow companies to apply for an exemption from the bond requirement, with the exemption depending on the company proving that it has the financial means to assure continued operation and to meet its obligations to its customers. Such a showing should include satisfying the five-part criteria described in the primary staff analysis. **(LESTER, TAYLOR)**

1. The company should have independently prepared financial statements.
2. The company should have at least 3 years (36 months) of financial information.
3. The company should have a current ratio (current assets to current liabilities) of at least .80.
4. The company should have a common equity ratio of at least 50%.
5. The company should be profitable.

ALTERNATIVE RECOMMENDATION: The Commission should not require any providers of PDCs to post a surety bond. **(STRONG)**

PRIMARY STAFF ANALYSIS:

PDCs involve a customer paying for long distance service before receiving service. The IXC will control customers' funds in advance of providing service to the customers. This situation could result in customers not receiving service for which they have paid if the IXC cannot meet its obligations due to cash flow problems or misuse of funds.

A surety bond is an agreement under which one party, the surety, guarantees to another, the obligee, that a third party will perform a contract following the contract's documents. When a person or company is placed in a position of trust, a surety bond will guarantee that the person or company performs its obligation or pays its bills up to the amount covered by the bond. An additional significant benefit of the bonding process is that the public can be assured that the bonded party has met the standards of the surety bond company. This review also serves as a substitute for a routine credit check which is currently not done by staff because of the costs to the agency of doing so.

Staff believes that requiring a surety bond would minimize the possibility of an IXC not meeting its obligations created by PDCs. It would also satisfy the legislative requirement that companies have the financial capability to provide and maintain the proposed service. Specifically, the requirement of a surety bond requirement could be used as a qualifying tool in that it would cause certificated IXCs providing PDCs to meet the standards of the surety bond company. The bonding process should weed out disreputable or financially risky companies not able to secure a bond in the amount required.

Underwriting surety bonds differs from insurance in that it is based on a creditor-debtor relationship. Typically, surety bond companies review the following criteria before issuing a bond:

- The company's financial condition. The surety will review the company's financial statements. While audited financial statements are preferred, independently prepared financial statements such as an accountant's review or compilation are accepted. The bond company assesses the company's financial condition by reviewing liquidity, profitability, and debt service measures.

- The quality of the company's assets and available collateral.

- A check of the company's credit history. The surety probably will order an independent credit report on the company and look at the company's banking relationship and access to a line of credit.

- Other measures. The surety may check references of suppliers, owners' resumes, letters of recommendation, and the company's business plan.

Even for small bond amounts, i.e., $10,000, the surety bond company will conduct a thorough review.

Small companies or start-up companies are not excluded from the bonding process. Personal guarantees or pledges of collateral by the owners could substitute for deficiencies in the above requirements. There are surety bond companies that specialize in start-up and small companies. Surety bonds for such companies may cost more than bonds for companies in business for three or more years.

Rule 25-24.490 (3), Florida Administrative Code, requires an IXC to maintain a bond on file with the Commission to cover its current balance of deposits and advance payments for more than one month's service. This rule reflects the Commission's concern that an IXC should be a reliable business with continued operation over the long term. Staff believes that the requirement of a surety bond for providers of PDCs is consistent with the rule in this regard.

However, staff notes that the above referenced Rule requires IXCs to bond the full amount of deposits or advance payments, thus ensuring protection of customers for the entire amount. Staff's recommendation of a bond for PDC providers differs in that the bond requirement is a qualifying tool and will not protect the full amount of customer funds that might be at risk.

Staff believes reviews carried out by surety bond companies would tend to weed out disreputable or financially weak companies and make it difficult for such companies to enter the Florida market. A surety bond would provide some assurance that certificated Florida providers of PDCs were reliable.

Further, the cost imposed on companies would be small. For example, the annual cost of a $10,000 surety bond typically would be $200 to $300. Therefore, requiring a surety bond would not be a financial imposition that would discourage competition. Staff discusses the appropriate amount of the bond and the effect on competition in Issue 2.

Staff believes that companies providing PDCs should be allowed to apply for an exemption from the bond requirement. This would be consistent with Rule 25-24.490(3) which governs deposits and advance payments. Under this rule a waiver depends on the company demonstrating that it has the financial resources and income to provide assurance of continued operation under its certificate over the long term. Several larger IXCs, such as Sprint and LDDS, have applied for, and received, a waiver.

Requiring a bond of a company with a proven track record and in sound financial condition would be redundant since such companies, by their experience and financial condition, have proven their ability to meet the obligation created by PDCs. Since the aim of the bond requirement is to weed out disreputable or financially risky companies, staff believes that it is reasonable to allow companies to prove their trustworthiness and, therefore, be exempt from the bond requirement. A customer would have direct recourse to a proven company. There is assurance that it will be in business and meet its obligations over the long-term.

Staff proposes the following criteria for determining if a company should be exempt from the surety bond requirement:

1. The company should have independently prepared financial statements. Staff would prefer audited financial statements but an independent accountant's review or compilation is acceptable if it is affirmed true and correct by the company's chief executive officer or chief financial officer.

An accurate analysis of a company's financial condition depends on reliable financial information. Financial statements provided by an independent auditor are the source of reliable financial information. An accountant's review or compilation report is independently prepared but is not as reliable as audited financial statements.

2. The company should have at least 3 years (36 months) of financial information. This will eliminate start-up companies. Companies should have a track record to be exempt from the bond requirement.

3. The company should have a current ratio of at least .80. The current ratio is the ratio of current assets to current liabilities and is a measure of a company's liquidity. The median current ratio for the major telecommunications companies is approximately .80.

4. The company should have a common equity ratio of at least 50% this is within the range for common equity ratios based on the most recent S & P financial benchmarks for telecommunications companies. (S & P no longer publishes financial benchmarks for telecommunications companies.) Also, it is a conservative figure when compared to the 40% floor for common equity ratios in the water and wastewater leverage formula.

5. The company should be profitable.

Staff recognizes that the above requirements will give a slight competitive advantage to companies with audited financial statements and a proven track record. Still, the purpose of the bond requirement is to provide some assurance of continued operation, and these companies are the least likely to fail in their obligation to customers. A bond requirement for these companies would be redundant.

In summary, the Commission should require interexchange companies that provide PDCs to post a surety bond. The Commission should allow companies to apply for an exemption from the bond requirement, with the exemption depending on the company proving that it has the financial means to assure continued operation and to meet its obligations to its customers. Such a showing should include satisfying the five-part criteria described above.

ALTERNATIVE STAFF ANALYSIS: Alternative staff believes that uncertificated issuers of PDCs are a major problem and that further regulation of certificated issuers imposes additional regulatory costs which are not warranted. In addition, there is indication that the industry trade organizations may be willing to compensate PDC users for any issues incurred due to nonoperative cards. Each of these points is discussed below. Alternative staff is also concerned that while a surety bond requirement could theoretically assist customers in the event of a company defaulting on its obligations, there is little assurance that the victims will know how to obtain assistance. The overwhelming majority of those consumers who purchased Telecuba's PDCs did not contact the FPSC for assistance (The Division of Consumer Affairs estimates it received less than 20 complaints against Telecuba, yet the FPSC staff believes thousands of Telecuba PDCs became non-operative). There is no way to contact customers to refund money for the unused portion of the PDC since customers' names, addresses, or phone numbers are not known.

In Summary, alternative staff believes uncertificated issuers of PDCs generate a disproportionate percentage of the problems, as compared to certificated issuers. Consequently, emphasis should be placed on solving the problems associated with uncertificated issuers of PDCs.

Uncertificated Issuers of PDCs Are A Major Problem

In comments filed in 1994 with the Public Utilities Commission of the State of Colorado, AT&T stated that:

> AT&T's own estimate is that over 200 resellers participated in the debit card industry in 1993 and that over 500 resellers will participate in the debit card industry in 1994.

Meanwhile, a review of the approximately 400 certificated IXC tariffs on file at the FPSC revealed that only 84 have tariffed debit card services (13 IXC resellers offer PDCs as their sole telecommunications tariffed service). If AT&T estimates are to be believed, that information, when compared with the Commission's own "head count" on certificated IXCs offering PDCs, suggests that there may be a serious problem relating to IXC resellers who have not tariffed their PDC service in Florida.

An excellent example of the problems with uncertificated issuers of PDCs is the recent difficulty with Telecuba. The "Telecuba incident", while most unfortunate, could not have been prevented by requiring certificated IXCs issuing PDCs to post a bond. Telecuba was an uncertificated issuer of PDCs, which the Commission staff was unaware existed, until December 1995 when Telecuba's cards were no longer working.

A Surety Bond Requirement Imposes Additional Regulatory Costs Upon Certificated Providers and is Anti-competitive.

The regulatory costs of becoming certificated in all 50 states is currently estimated to be approximately $100,000. These costs would rise further if Florida and all the other state Commissions adopted a surety bond requirement. Companies who are certificated and tariffed to provide PDCs would be competitively disadvantaged as they attempted to recover increasing regulatory costs imposed upon them and avoided by uncertificated issuers of PDCs.

The impact of additional regulatory costs falls particularly hard upon small companies trying to enter the industry (i.e., the fictitious Bob's Debit Card Company with assets of only $100,000, which might be forced out of business due to rising regulatory costs; meanwhile AT&T and MCI can afford to pay such costs and continue to provide PDCs). By raising the costs of regulation, the end user may be harmed in two ways. Some small companies may choose not to enter the business, while others may choose to do so illegally and operate on a "fly by night" basis. A regulatory policy requiring PDC issuers to post a surety bond is flawed and should be rejected.

At first glance, the policy advocated in the primary recommendation appears to be non-discriminatory. However, such a policy will have a disproportionate effect. Smaller firms with less capital will find the surety bond requirement more daunting than will larger firms. A surety bond requirement serves to impose higher regulatory costs upon the very firms that are least able to afford it. Moreover, a surety bond will not necessarily deter those entrants with mal intent. Anyone can get a surety bond. The only variable is that the cost of the bond depends on the perceived risk as assessed by the bonding entity.

Over the past five years small companies issuing PDCs, disadvantaged by the lack of name recognition among potential customers, sought to capture a portion of the market by introducing PDCs with low per minute charges. The result is that the price of PDCs as measured by per minute usage charges has fallen by approximately fifty percent in five years. These small companies should not be discouraged from competing in the PDC industry by increasing their regulatory costs through imposing surety bond requirements upon them.

Industry Trade Organizations Helping Consumers

Industry trade organizations provide some consumer protection through imposing a code of ethics upon their members. Additionally recent events indicate such associations may be willing to fully refund PDCs of companies who suddenly deactivate their cards. For example, the members of the United States Telecard Association have offered to fully refund the purchase price of USA Calling PDCs which were abruptly deactivated in February, 1996. Dr. Lawrence Brilliant, Chairman of the Board of Directors of the Association said, "This unfortunate incident, in which a non-member company has failed to live up to its part of the bargain after taking consumers' money is what prompted me to help found the US Telecard Association."

In summary, a surety bond adds regulatory costs, while failing to address the problem of uncertificated PDC providers. For these reasons, the Commission should not require any providers of PDCs to post a surety bond.

ISSUE 2: If a surety bond is required, what is the appropriate dollar amount, and how long should the bond be held?

RECOMMENDATION: The appropriate amount for the surety bond is $10,000. The bond should be posted for as long as the company provides PDCs in Florida or until it meets the criteria in Issue 1 for securing an exemption from this requirement. [LESTER, TAYLOR]

STAFF ANALYSIS: Staff believes that $10,000 is an appropriate amount for the surety bond. Since the purpose of the bond is to weed out disreputable or financially weak companies, and the surety bond company would conduct a thorough review before issuing a $10,000 bond, staff believes that a higher bond amount is unnecessary.

Staff believes that bonding the full amount of revenue from PDCs would be very difficult. Projecting the amount of revenue a company would take in from PDCs would be difficult at best. Companies might request confidentiality for such information, which could complicate enforcement of the requirement.

Bonding the full amount of revenue could also be anticompatitive. The annual cost of a bond would be 2% to 3% of the amount. At $10,000, the cost of a bond should not be a barrier to entry. If the full amount of revenue is bonded, however, the cost of a bond could cause a provider of PDCs to forego the Florida market.

Staff notes that Section 364.01 (4)(d), Florida Statutes, states:

> The Commission shall exercise its exclusive jurisdiction in order to: (d) Promote competition by encouraging new entrants into telecommunications markets . . .

Staff believes that tha $10,000 amount acts as a qualifying tool and is not anticompetitive.

ISSUE 3: If a surety bond is required, how should this requirement be applied to currently certificated interexchange companies that have been offering prepaid debit cards?

PRIMARY RECOMMENDATION: Each currently certificated interexchange company that is providing prepaid debit card service and desires an exemption from the surety bond requirement should file the requisite data to satisfy the five-part criteria in Issue 1 within 60 days of the order resulting from this docket. Those currently certificated interexchange companies that are providing prepaid debit card services and choose not to file for an exemption from the surety bond requirement, should secure a surety bond per the Commission's decision in Issue 2, within 60 days of the order resulting from this docket. [LUGO]

ALTERNATIVE RECOMMENDATION: Each interexchange company that has been certificated and has offered prepaid debit cards for a minimum of 36 consecutive months should not be required to post a surety bond. Certificated interexchange companies that have offered prepaid debit card service for less than 36 consecutive months should be required to post a surety bond in accordance with the Commission's decision in Issue 2. [MOSES]

PRIMARY STAFF ANALYSIS: Staff believes the bond requirements for currently certificated interexchange companies should be the same as for entrants. Issue 1 of this recommendation sets forth the minimum requirements staff believes should be required to exempt a company from posting a surety bond. To be consistent in the application of this criteria, existing companies should be subject to the same criteria. To apply the criteria differently could be viewed as discriminatory.

Therefore, primary staff recommends that each currently certificated interexchange company that is providing prepaid debit card service and desires an exemption from the surety bond requirement should file the requisite data to satisfy the five-part criteria in Issue 1 within 60 days of the order resulting from this docket. Those currently certificated interexchange companies that are providing prepaid debit card services and choose not to file for an exemption from the surety bond requirement, should secure a surety bond per the Commission's decision in Issue 2, within 60 days of the order resulting from this docket.

ALTERNATIVE STAFF ANALYSIS: An interexchange company that has been in operation and provided prepaid debit card service for 36 consecutive months would have come to the attention of staff through numerous complaints if the service provided was not adequate. These companies should be allowed to continue providing service without posting a bond. Providing service for that amount of time demonstrates a stable financial and technical ability that staff believes is sufficient to not require a bond.

Furthermore, to require a bond from companies that have not experienced problems in providing prepaid debit card service and have provided the service for more than 36 consecutive months could impose an unnecessary financial and administrative burden. The purpose of requiring the bond of entrants is to offer some type of protection to consumers against companies that are possibly not financially stable or may have managerial problems. Staff believes that to require a bond from existing companies that have demonstrated adequate service and financial stability does not offer the consumer further protection.

ISSUE 4: What other additional regulations, if any, should be imposed on interexchange companies that provide prepaid debit cards?

PRIMARY RECOMMENDATION: No additional regulations should be imposed on interexchange companies that provide prepaid debit cards. [STRONG]

ALTERNATIVE RECOMMENDATION: Interexchange companies that provide prepaid debit cards should be bound by the following additional regulations:

1. A prepaid debit card should have, the expiration date printed on the face of the card.

2. A prepaid debit card should have a clearly defined procedure for the refund of unused service.

3. The Commission should establish a program of retailer education by July 1, 1996, including the provision of signs, to advise customers to contact the Commission with complaints about poor service regarding prepaid debit cards. Further, the Commission should establish a retailers' hotline by July 1, 1996 to enable the retailer to establish that a provider of prepaid debit cards is certificated by the Commission prior to offering such cards in their stores.

4. Each prepaid debit card should include a toll-free Customer Service Number in order to report trouble with the calling card, and this Customer Service Number should be included in the tariff of each IXC offering such cards. [LUGO]

PRIMARY STAFF ANALYSIS:

As mentioned in the Case Background (Overview of Current Regulation), the industry trade associations are taking an increasingly active role in trying to ensure that its member companies are responsible corporate citizens. Current trade association activities include developing voluntary guidelines which cover various aspects of consumer information such as including the expiration date, refund mechanism, and customer service number on the PDC and providing retailer education programs. In addition, the recent action by the United States Telecard Association to refund the full purchase price of defunct cards of a non-member company (USA Calling) suggests that the legitimate PDC issuers are trying to "right the wrongs" of unscrupulous PDC issuers. Primary staff expects this trend to improve industry standards will continue.

Moreover, the entire telecommunications industry is moving towards less and less regulation. The recent passage of the Telecommunication Act of 1996 is yet another indication of the movement towards allowing marketplace forces to govern the industry. Given the known number of PDC issuers operating in Florida (84) and the potential that the actual number of PDC issuers may be 500 or more, this market appears to be more competitive than most. In addition, PDC prices have fallen by approximately fifty percent in five years, which is still another indicator that this market is quite competitive.

To date, there have also been few complaints regarding PDCs. This fact, coupled with the large number of companies that provide PDCs, suggests that the time has come for consumers to accept responsibility for their purchasing decisions. Just as an airline ticket may become worthless if the carrier goes bankrupt, PDCs carry the same risk. The purchaser should have the responsibility to examine the qualifications of the seller.

Given the increasingly active role of the trade associations in setting industry standards, the large number of PDC providers, price trends in PDCs over the last five years, and the low incidence of complaints, further regulation does not appear necessary. Also, further regulation would be counter to overall trends in the telecommunications industry. Therefore, no additional regulations should be imposed on interexchange companies that provide PDCs.

ALTERNATIVE STAFF ANALYSIS:

Customer Protection

Ideally, there should be a way for citizens who experience a loss through the use of prepaid debit cards to be made whole. Currently, the Telecommunications Resellers Association and the Prepaid Communications Association have a voluntary refund policy in which their members make good for losses incurred by consumers in order to promote public goodwill.

A Possible Solution

A solution which has been discussed, although not implemented as yet, is the establishment of a Service Assurance Fund (SAF). The Service Assurance Fund would be financed by an additional application fee for those companies that wish to provide prepaid debit card services. The fund could be administered by a non-profit corporation or by the FCC or state commissions.

The additional application fee would be collected only once and thus be substantially less than the cost of a bond which would need to be renewed annually. Further, the SAF, would be paid by all applicants and not just those with weak financials, thus avoiding any barrier to competition. The SAF also has the advantage of being the only solution available to consumers who have experienced a loss, even if the company responsible for the loss is uncertificated in the State of Florida.

The key to being eligible for a refund from the SAF would be the point of sale. If the card were bought in Florida, from a Florida retailer, the cardholder would be in line for a refund if the provider were to fail. A card purchased in another state would not be subject to refund by the Florida SAF.

The retailer would participate in letting the consumer know that such a fund was available in the event of a bankruptcy or due to the activities of a criminal enterprise. Each of the trade associations has signed-off on this proposal with the caveat that they would prefer some type of mechanism that would provide a refund if the company performed with no violations for a specified period. (Prepaid Communications Association, Telecommunications Resellers Association, and the United States Telecard Association.)

Due to the portable nature of prepaid debit cards across state lines, a national FCC or trade association administered SAF may be more practical. It should also be noted that in order to implement a Florida specific SAF, statutory authority would need to be obtained. While staff cannot make a specific recommendation concerning a Service Assurance Fund at this writing, we will continue to investigate this approach.

<u>An Interim Approach</u>

Some consumer protection strategies, short of the Service Assurance Fund, can be implemented at this point in time. Based on discussions with other state regulators (see Case Background) and alternative staff's own perceptions, the following measures should be required:

1. A prepaid debit card should have the expiration date printed on the face of the card. A failure to do so could result in a windfall profit for companies who authorize a

short activation period for the cards without notifying customers.

2. A prepaid debit card should have a clearly defined procedure for the refund of unused service. This information should be available from the provider and from the retailer.

3. The Commission should establish a program of retailer education by July 1, 1996, including the provision of signs, to advise customers to contact the Commission with complaints about poor service regarding prepaid debit cards. Further, the Commission should establish a retailers' hotline by July 1, 1996 to enable the retailer to establish that a provider of prepaid debit cards is certificated by the Commission prior to offering such cards in their stores.

4. Each prepaid debit card should include a toll-free Customer Service Number in order to report trouble with the calling card, and this Customer Service Number should be included in the tariff of each IXC offering such cards.

There is general consensus within the industry that regulation in the prepaid debit card industry is most effective at the "point of sale." Retailers can be best contacted through their state or regional marketing offices where most merchandising decisions are made. Small mom and pop stores may be overlooked, but most cards are sold in retail outlets and convenience stores which have marketing divisions. After the "USA Calling" debacle (most of their cards were sold through K-Mart,) it has become clear that large merchandisers are as vulnerable to debit card losses as small proprietor-owned businesses and will be eager to find ways to minimize their liability. (See Attachment 1) The point of sale signs would act much like the inserts now provided in phone bills. Since this product may be used by individuals that do not subscribe to basic service, a new approach to consumer education is needed.

The trade associations are in general agreement with these provisions, and most association members would probably follow these principles on a voluntary basis. Alternative staff's concern rests with those prepaid debit card providers that may have something other than ethical business objectives. Consequently, alternative staff believes the above requirements will not materially increase the operating expenses of legitimate providers, but will provide some element of protection against unscrupulous PDC providers. Ordinarily, alternative staff would favor allowing the market to discipline behavior. In this case, however, there is currently inadequate consumer information about PDCs. Moreover, there is no real way to reach PDC users absent placing information at points of sale and on the cards themselves. For these reasons, alternative staff recommends approval of the four requirements cited above.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Yes. If no person whose substantial interests are affected files a protest with 21 days of the issurnce date of the order from this recommendation, this docket should be closed.

USTelecard
United States Telecard Association

FOR IMMEDIATE RELEASE
CONTACT: HOWARD SEGERMARK
202-544-4448

WASHINGTON -- FEBRUARY 27, 1996 -- Howard Segermark, Executive Director of the USTelecard Association, announced that as of today, ten of its member companies stand ready to exchange non-working prepaid phone cards issued by the USA Calling company of Atlanta, Georgia.

"Recently, our Consumer Hotline number (800-333-3513) received many calls from consumers who have found that the prepaid phone cards they bought issued by the "USA Calling" company are nonoperative. These cards were purchased by consumers at K-Mart, Meijer stores, SERVISTAR stores and Coast-To-Coast stores. The US Telecard Association believes tens of thousands of the cards were sold, though we have received complaints from only a fraction of these customers.

"We have been in touch with the stores selling these cards and all have offered to fully refund the purchase price on these cards and have stopped selling them.

"Our Association and its members are going one step further to make those consumers whole. Upon receipt of the nonworking USA Calling card, consumers will receive a new prepaid phone card which will provide the same number of minutes of domestic long distance service as the face value of the USA Calling cards did.

"I'm glad to announce that today we informed all of those consumers that contacted us, will receive new, working prepaid phone cards.

"Participating firms providing the refunds will receive an equal percentage of calls made to 800-694-8242. This offer will be good through March 25, 1996.

The Chairman of the Board of Directors of the Association, Dr. Lawrence Brilliant said, "This unfortunate incident, in which a non-member company has failed to live up to its part of the bargain after taking consumers' money, is what prompted us to help found the USTelecard Association. Members of our Association have the highest ethical standards and best business practices in the industry. We want to show our concern for the consumer by what we're doing today."

The firms offering this service are: SmarTel (Boston), Global Link (Philadelphia), Mercury Marketing Company (Fair Lawn, NJ), ConQuest Telecommunications (Dublin, OH), PacBell (San Ramon, CA), ACMI (Memphis, TN), Ameritech (Chicago), IntelliCommunications Network, Inc. (McHenry, IL), Quest Communications (Forest Park, GA), and TALK 'N TOSS (Vancouver, WA).

The USTelecard Association is the trade association of the prepaid phone card industry.

DEBIT CARDS

REGULATORY CERTIFICATION OVERVIEW: PREPAID CALLING CARD SERVICES/[1]

STATE	NOTES
AK	Intrastate access charge issues; only Sprint, Alascom and GCI authorized underlying IXC's for resale. Expensive newspaper legal notification required. $50 filing fee.
*AL	In-state proceeding, personal appearance required, attorney recommended. Has opened generic docket to explore further regulation.
*AZ	Courtesy notice: Additional regulation rejected.
AR	Payment into carrier common line pool or affidavit of underlying IXC required. $250 filing fee.
*CA	300 parties must be served with application: $25K unencumbered cash requirement for switchless IXC's $75 fee. Exploring deregulation. Currently require bond in amount of first years' projected intrastate revenue.
*CO	Deregulated.
CT	In-state proceeding, in-state counsel and personal appearance required. 10XXX authority only. Streamlining filing requirements.
DE	Bond required for prepaid calling cards/deposit. $200 filing fee, notice to competitors and legal notice in newspapers.
*GA	New debit card regulations adopted (See Attachment 3)
HI	0-16 mileage free requirements. AT&T rate caps apply. Free intracounty calling requirements.
ID	Competitive intraisland calling is prohibited.
IL	Simplified registration; potential universal service fund payments.
IN	Requires telephone deposition of company "witness" if no formal intervention.
LA	Requires serving application to 40 parties.
*KS	Made a finding that a prepaid debit card did not constitute a deposit. Therefore, traditional bonding requirement not applicable.
KY	Standard application and tariff; an attorney may be required to represent the application.
LA	Simplified registration. Standard application and tariff.
*ME	Providers must notify customers of period of time card is valid and are mandated to discount for TDD customers.

[1]"This chart is based on an article printed in "Phone +" in June of 1995. It has been updated thru March 1, 1996, by a subsequent literature review as well as telephone interviews with state commissions, FCC staff, trade association representatives and the NARUC Communications Subcommittee Reports. All changes from original articles are indicated by bold type and an *asterisk.

STATE	NOTES
MD	Standard application and tariff. Applicants must sign affidavit acknowledging Commission rules/orders and agreeing to abide by them.
MA	Recent simplified registration procedures adopted. Filing fee $15 and $0.15 per tariff page for tariffs of 30 pages or more.
MI	Switches IXC's are considered nonjurisdictional: requires only affidavit of 1ste....????word
MN	Bond required for deposits and prepaid calling cards. Applicant is billed
MS	In-state proceeding, Instate counsel required. Personal appearance may be required. Notice must be made to service list: Commission bills applicant for notice costs-approx. $50.
MO	In-state counsel required.
MT	Courtesy notification. Switched-based IXC's are not regulated.
NE	In-state proceeding and personal appearance required. $50 filing fee. Hearing fee of %40 per half day applicable, to be paid at hearing.
NV	Bond required for prepaid calling cards, $250 filing fee, recent intraLATA authority may expedite certifications. Strong financials and experience important.
NH	Standard application and tariff.
NJ	Bell Atlantic notification required only for switchless IXC's
NM	In-state proceeding, In-state counsel and personal appearance required. $250 filing fee.
NY	Banded rate tariffs and price list authorized.
NC	In-state proceeding, In-state counsel and personal appearance required. $250 filing fee. Severe penalties for unauthorized Intrastate service including refunds of all Intrastate revenues. Subject to change depending on NCUC rulemaking following recent legislation.
ND	Simple application. Bond required for prepaid calling cards.
OH	Petition for declaratory ruling must be filed for switchless resellers to allow OCUC to determine whether petitioner is nonjurisdictional. Prepaid calling card providers have been found nonjurisdictional on a case-by-case basis.
*OK	IXC applications have been simplified registration and tariffs.
OR	Simplified registration required.
PA	$350 filing fee; banded rates are authorized.
RI	The Commission has not yet authorized IntraLata competition and is therefore taking no action on applications. Several applications have received initial interrogatories and a requirement for audited financials.
SC	In-state proceeding, In-state counsel and personal appearance required. Refunds of unauthorized intrastate toll are required. A certificate of deposit of $5K or more in SC bank is required when offering prepaid calling cards. Severe penalties for unauthorized intrastate service.
SD	$250 filing fee. Rate cost support required.

STATE	NOTES
TN	New certification rules take effect in mid-year, companies will have 60 days to file application.
TX	Simplified registration. Tariff updates required only. Annual reporting requirements.
UT	Switchless IXCs are not regulated. Courtesy notification. Payment into the universal service fund is required.
*VT	Bond required equivalent to the companies' projected intrastate revenues.
VA	Switchless resellers are not regulated. Courtesy notification.
WA	A separate application for "competitive company classification" is required to obtain reduced regulation after company certificated. Extensive financial surety requirements for prepaid calling card providers; escrow or bond for 100% of all outstanding account balances-reportable to WUTC each month.
*WVA	Newspaper legal notification in 10 state newspapers is required, approximate cost of $600. Prepaid calling card bond required. Bond is equal to the companies' projected intrastate revenue for the first year of operation.
WI	Switchless resellers must affirm their status annually.
WY	Simplified registration requirements recently adopted.
Interstate FCC	Domestic service requires the filing of a rate-specific tariff on computer diskette. $565 filing fee for special permission referral to other company tariffs and $565 on file company tariff. New rules may require rate-specific rates. 14 days notice and no computer disk filing.
Inter-national FCC	International service requires authority under Section 214 of the Communications Act potential fee for special permission authority and $565 tariff filing fee.

ATTACHMENT 3

COMMISSIONERS
ROBERT B. (BOBBY) BAKER, CHAIRMAN
MAC BARBER
BOB DURDEN
ROBERT C. (BOBBY) PAFFORD
ROBERT A. (BOBBY) ROWAN

WILLIAM J. BOYER
EXECUTIVE DIRECTOR
TERRI M. LYNDALL
EXECUTIVE SECRETARY

Georgia Public Service Commission

244 WASHINGTON STREET SW
ATLANTA GEORGIA 30334-5701

DOCKET NO. [illegible]-U

IN RE: GENERIC HEARINGS TO INVESTIGATE THE REGULATION OF DEBIT CARD SERVICES.

RECORD SUBMITTED: November 8, 1994 **DECIDED:** December 6, 1994

APPEARANCES

FOR THE STAFF OF THE GEORGIA PUBLIC SERVICE COMMISSION:

John Hennelly, Attorney

FOR THE CONSUMERS' UTILITY COUNSEL:

Jeanette Mellinger

FOR THE GEORGIA TELEPHONE ASSOCIATION:

E. Freeman Leverett, Attorney
Robert F. Leverett, Attorney

FOR AMERICAN TELECOMMUNICATIONS ENTERPRISE, INC.:

Lawrence H. Tisch

FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES:

Roxanne Douglas, Attorney

FOR CONQUEST OPERATOR SERVICES CORPORATION:

Marianne A. Townsend

FOR INTELLICAL OPERATOR SERVICES, INC.:

Newton M. Galloway, Attorney

FOR INTERLINK TELECOMMUNICATIONS, INC.:

Walt Sapronov, Attorney
Charles Hudak, Attorney

FOR LCI INTERNATIONAL TELECOM CORPORATION:

Scott McMahon

FOR LDDS COMMUNICATIONS d/b/a LDDSMETROMEDIA COMMUNICATIONS:

Patrick K. Wiggins, Attorney

FOR MCI TELECOMMUNICATIONS, INC.:

Michael J. Henry, Attorney

FOR QUEST COMMUNICATIONS:

Jeanie Ray

FOR RCI LONG DISTANCE, INC.:

Walt Sapronov, Attorney
Charles Hudak, Attorney

FOR SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY:

William J. Ellenberg II, Attorney
Langley Kitchings, Attorney

FOR SPRINT COMMUNICATIONS COMPANY L.P.:

Chanthina R. Bryant, Attorney

FOR WESTERN UNION COMMUNICATIONS, INC.:

Philip V. Permut, Attorney
Rachel J. Rothstein, Attorney

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INITIAL DECISION

I.

INTRODUCTION

The Georgia Public Service Commission ("Commission") initiated an investigation into the regulation of debit card rates and services. Preliminary investigation was done by the Commission Staff in conjunction with testing of payphone services throughout the State to ascertain if regulation was necessary for the providers of debit card services. Based upon Staff's findings and information obtained at the 1994 meeting of the National Association of Regulatory Utility Commissioners ("NARUC") in San Diego, California, the Commission decided to proceed with its investigation

On September 13, 1994 the Commission issued a notice setting this matter for public hearing In the notice, the Commission set forth a list of 16 issues to be addressed in the proceedings.

The issues were as follows:

1. Define Debit Cards (i.e., what is a Debit Card, Smart Card, Calling Card, Travel Card, Credit Card, Cash Card, etc.).

2. Are Debit Cards in the public interest?

3. Should the Commission establish rules and/or regulations regarding rates, terms and conditions governing the provisioning of Debit Cards?

4. Should registration/certification be established for Debit Card providers?

5. What specific information should be provided on Debit Cards?
   Example:
   a. Who provided the card. (Name, address and telephone number.)
   b. Denomination of the card.
   c. Customer services/complaints response.

6. Should there be restrictions on the types of calls? (i.e., local, 700, 800, 900, DA, etc.)

7. Should local calls (to include Intracounty calls) be completed via the Debit Card?

8. What services should be accessible through the use of the Debit Card?

9. Should perspective rates, terms and conditions governing Debit Card usage be consistent with existing Commission orders, rules, regulations and State laws governing services accessible through Debit Cards?

10. Should the Commission distinguish between Local Exchange Company (LEC) issued Debit Cards and those issued by other providers?

11. Are there specific state/federal jurisdictional issues the Commission should address in developing guidelines for Debit Card usage?

12. For the LEC's Debit Card, how should the cost and revenue be treated for regulatory purposes?

13. What impact does Debit Card availability have on Universal Services?

14. Should minimum quality of service standards be established for Debit Cards?

15. What are the tax requirements?

16. Should an aggregator's list (those who actually sell the card to the End-Users) be provided?

On November 8, 1994 the hearing was conducted before the Commission. Testimony was presented by George Adams, public witness; S. E. Sanders, Southern Bell Telephone & Telegraph Company; James M. Martz, AT&T Communications of the Southern States; D. Reid Presson, Intellicall Operator Services, Inc.; Brian Sulmonetti, LDDS Communications, Inc. d/b/a LDDSMetromedia Communications; Denise Hales, MCI Telecommunications, Inc.; Michael J. Nighan, RCI Long Distance, Inc.; and Tony H. Key, Sprint Communications Co.

Although Telecommunications Resellers Association (TRA) did not file any formal testimony in these proceedings, it did, however, file comments that summarized the industry's position. All of the testimony as well as the comments of parties was considered by the Commission in its decision. The Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1.

There are many types of debit cards in use today. From banking to credit card companies, debit cards are used for purchasing goods and services on a prepaid basis. However, the

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Commission is only concerned with debit cards that are used for telecommunication purposes. For Commission purposes, debit card is best defined as a "prepaid calling card". Debit cards or prepaid calling cards "are simply a medium which enables long distance telephone users to purchase an amount of long distance telecommunications service at a fixed rate from a service provider with whom the user enters into a relationship, prior to the use of service."[1]

2.

At this time there does not appear to be any significant or widespread problems regarding the use of debit cards. Unlike conventional presubscribed long distance services, debit or prepaid cards are discretionary, convenience services which merely supplement existing long distance service. There are numerous providers of this service, the distribution of the cards is worldwide and the service is very competitive. Due to these factors and the overwhelming success of the card, it is widely believed that the card is in the public interest.

3.

There is no real consensus between providers as to the establishment of specific rules and/or regulations governing the debit card, except to say that regulation should be at a minimum. However, the Commission should establish some rules and/or regulations that provide full disclosure to consumers and facilitate an informed purchase decision. Testimony was presented that favored streamlined registration/certification of debit card providers through the Commission's existing certificates of public convenience and necessity. Existing Commission orders, rules, regulations, and State laws, which generally govern the provision of long distance services, should also govern the provision of debit card services where applicable. According to TRA's comments, "There are many instances where existing Commission orders and rules are simply inapplicable to the manner in which [debit card] prepaid calling card services are offered. For an example, rules dealing with service termination, collection of deposits or advance payments, and billing and credit requirements, have no applicability to the provision of prepaid calling card services."[2] However, the Commission finds that any service offered should be outlined in detail in the service provider's tariff. There was not enough evidence presented to warrant establishing any minimum quality of service standards. At this time, the Commission

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[1]Comments of the Telecommunications Resellers Association, dated October 24, 1994, page 5.

[2]Comments of the Telecommunications Resellers Association, dated October 24, 1994, page 12.

feels that an aggregator list would be too burdensome on the provider and too cumbersome for the Commission to maintain; hence, an aggregator list is not warranted at this time.

4.

Although the debit card or prepaid calling card can be sold and/or manufactured virtually anywhere, it contains basic generic information, such as name of provider, toll free customer service number, denomination, expiration date (when applicable), and instructions/terms and conditions. The Commission agrees that this information should, at a minimum, be placed on all debit cards or prepaid calling cards produced/manufactured, sold and marketed in the State. In addition, there was also some discussion about a warning being given prior to the depletion of the time remaining on the card.

5.

TRA best summarized the industry's position on calling restrictions for debit cards:

> All known prepaid calling card service network platforms limit access to 700, 800, or 900 service. Virtually all services do not provide operator and directory assistance. And notwithstanding local service prohibitions, the cost of utilizing a prepaid calling card service and inconvenience of dialing several digits to make local calls effectively preclude prepaid card usage for local calling for all but the local exchange companies. Commission restrictions on specific types of calls are unnecessary due to the nature of the manner in which prepaid services are already provided.[3]

At this time, the Commission has no position on what restrictions should be placed on debit cards, except for what has already been outlined above. Furthermore, the Commission feels that the intended use of the card is primarily for the completion of long distance services. However, the provisions of debit card service would not expand the authority to provide services not covered by a company's certificate.

6.

The industry presented testimony that was not consistent as to whether the Commission should distinguish between LEC issued debit cards and those issued by other providers. Therefore, the Commission feels that the issue should not be addressed at this time. If the LEC

[3]Comments of the Telecommunications Resellers Association, dated October 24,1994, page 11.

does decide to enter the debit card market, it will need to meet the same requirements as all debit card providers.

7.

There was not enough evidence provided on the subjects of state/federal jurisdictional issues, universal services, and tax requirements on which to base a conclusion or decision at this time.

Based on the foregoing findings of fact and the reasonable inferences which can be drawn therefrom, the Commission makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1.

The debit card/prepaid calling card is a medium for purchasing the telecommunication services of telephone utilities operating within the State of Georgia, which is subject to O.C.G.A. §46-2-21.

2.

Telephone utilities providing debit cards ("Debit Card Providers") are subject to the jurisdiction of the Commission and the Commission's authority and control extends to its supervision of their debit card. O.C.G.A. §§46-2-20, 46-1-21.

3.

As a telephone utility operating telephone lines or systems, a Debit Card Provider is subject to the rules and regulations of this Commission concerning the operation of such systems. O.C.G.A. §§46-2-20, 46-1-21.

4.

Pursuant to O.C.G.A. §§46-5-41, 46-2-23, and 46-2-25, the Commission has jurisdiction to grant to a Debit Card Provider a Certificate of Public Convenience and Necessity and to determine the reasonableness of the rates, charges, classifications and services established by the Debit Card Provider.

Debit Card Providers will be allowed to resell services only from tariffs that have been expressly approved for resell by this Commission which at the present time includes services from the WATS and MTS tariffs, and which shall also include originating access to the reseller's switches or terminating access for interLATA calls. Debit Card Providers shall not resell, until expressly authorized to do so, interLATA private lines services, intraLATA private line services, intraLATA foreign exchange services, interLATA foreign exchange services or access services other than those set forth above.

WHEREFORE, it is

ORDERED, that all Debit Card Providers (defined as telephone utilities providing debit cards) not already holding a Georgia Certificate of Public Convenience and Necessity (resell or interexchange carriers' certificate) shall make application for a Certificate of Public Convenience and Necessity for the provision of said services under the resell or interexchange carriers docket.

ORDERED FURTHER that all Debit Card Providers shall file tariffs outlining said services and rates.

ORDERED FURTHER that all rates for such services are limited by the maximum rates prescribed by this Commission for dominant carriers within the State for like services and such rates must be stated on the card or with the literature provided with the card.

ORDERED FURTHER that for any Debit Card Provider who produces/manufactures, sells or markets a debit card within the State, the card must contain, at a minimum, name of the Debit Card Provider, toll free customer service number, denomination (in dollar amounts and/or minutes), expiration date (when applicable), and brief instructions/terms and conditions, which must also be covered in detail in the tariff.

ORDERED FURTHER that a verbal notice of one minute must be given prior to depletion of the time remaining on the card.

ORDERED FURTHER that implementation concerning information placed on the card itself will become effective 120 days from the date of this order.

ORDERED FURTHER that all other dockets, orders and rules pertaining to the provision of telephone utility services remain in effect with the exception of service termination, collection of deposits or advance payments, and billing and credit requirements.

ORDERED FURTHER that jurisdiction over this matter is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

ORDERED FURTHER that a motion for reconsideration or other motion for the purpose of review shall not stay the effectiveness of this Order, unless otherwise ordered by the Commission.

The above by action of the Commission in Administrative Session on December 6, 1994.

Terri M. Lyndall
Terri M. Lyndall
Executive Secretary

DATE January 24, 1995

Bob Durden
Bob Durden
Chairman

DATE January 24, 1995

tra MEMBER

TRA Prepaid Calling Cardholder's "Bill of Rights"

The TRA Cardholder's "Bill of Rights" states that when purchasing prepaid calling cards, users should expect to be:

- Informed of prepaid calling card's rates, terms and conditions of use prior to purchase of the card.
- Guaranteed that they will receive a reasonable level of service quality on every call.
- Provided a reasonable number of 800 toll-free network access circuits to process their calls with minimal, if any, call blockage due to overloaded capacity.
- Provided, upon request, up-to-date time and/or dollar amounts remaining on their prepaid calling card account during the use of the card and at no additional cost.
- Informed of the depletion of the account in advance and during a conversation not less than one minute prior to card expiration.
- Guaranteed that service rates will remain uniform or in no instance be increased during the life of the card.
- Guaranteed that rates will be charged in increments not exceeding one full minute.
- Provided call details upon request.
- Given immediate access to the service upon purchase.
- TRA members must ensure that their cards are packaged in such a manner as to assure the purchaser that the card has not been used prior to purchase (e.g. sealed cards, covered authorization codes, etc.) and that the following information appears on the card or the materials with which it is distributed:
  - The name of the TRA member company providing the prepaid calling card service to the end user.
  - An 800 number which end users can utilize to contact customer service.
  - An expiration date or a clear statement that the prepaid calling card has no expiration date.
  - The prepaid calling card authorization number for the use of the card.
  - Dialing instructions for the use of the card.
  - A warning to users to protect the prepaid calling card as they would money or a credit card.
  - The denomination of the initial card value in minutes, units or dollars/currency

Post-it® Fax Note 7671
To SKY Lugo
From Doug McCarthy
Co. TRA
Fax # 202-418-6630

Committed to Excellence in Provision of Prepaid Calling Card Services

For more information call TRA:
(202) 429-6601

TRA MEMBERS : Committed to Excellence in Telecommunications

As a subscriber to a Telecommunications Resellers Association member's services, you can be confident that your telecommunications company is committed to providing the best in telecommunications services. TRA was established in 1992 to promote the telecommunications resale industry in the United States. The organization and its members have pledged their support to a Code of Ethics prescribing professional operating guidelines, which include:

- Truth in Advertising and Promotions
- Fulfillment of regulatory obligations
- Disclosure of rates and terms in clearly understandable terms
- Toll free customer service support
- Quick and honest response to subscriber complaints
- Acceptance of financial responsibility for provisions, timely billing and payments and customer service

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PREPAID CALLING CARD PROVIDERS: WHAT YOU NEED TO KNOW

Prepaid calling cards present excellent opportunities for your organization to add products and increase profits as well as create promotional programs. Knowing the right questions to ask about the performance standards of a prepaid calling card provider is key.

- Is the provider in regulatory compliance?
  - Certified carrier in states where service is provided
  - Federally tariffed
  - Bonds or tariffs posted where required
- Is verification of regulatory compliance available?
- Is the provider complying with local, state and federal tax laws?
- Is complete pricing and service information available?
- Is 24-hour toll-free customer service offered?
- Does the provider take responsibility for fraud?
- Does the provider offer domestic and international capability?
- Does the provider offer enhanced features?
- Is the provider financially stable?
- Does the provider have network integrity, platform capacity, reliability and redundancy and answer times that meet industry standards?
- Has the provider demonstrated managerial, administrative and technical competence?
- Is the provider a TRA Member in compliance with the TRA Code of Ethics and TRA's Prepaid Calling Cardholder's "Bill of Rights"

tra MEMBER

TELECOMMUNICATIONS RESELLERS ASSOCIATION

TRA's mandate is to foster the business and financial interests of its members and promote competitive telecommunications. It strives to ensure fair representation before federal and state regulatory bodies, to build and maintain strong relationships with underlying telecommunications carriers, such as local and long distance telephone companies, to promote ethical operating practices and to create awareness of the value-added telecommunications services offered by its members to the calling public.

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INDUSTRY HISTORY

Prepaid Calling Card Services

New Industry Emerges

Prepaid Calling Card (PCC) services, also known as debit card or telecard services, represent one of the most innovative telecommunications services introduced in the past decade. Although acceptance in this country was slow at first, usage has grown exponentially over the past 12 months. Revenues are projected to reach $500 million in 1994 and more than $1 billion within the next two to three years, according to InfoMark Dimension International's *Prepaid Calling Card Source '94 Reference Guide*.

PCC services are perhaps the only truly discretionary telecommunications service in that they do not require presubscription. PCC services are used extensively by travelers, business executives, college students and low income users as a cost-effective alternative to conventional calling cards or operator services.

Before Prepaid Cards

Until about four years ago, the only way to place a phone call in the United States while away from the home or office was by:

- using a conventional calling card with credit terms;
- utilizing an operator to bill the call to the called party, a third party or home phone number;
- making the call from a payphone using coins;
- calling from a hotel phone and paying for the call as part of the hotel bill.

All such calls carry per-call surcharges and premium rates as they offer a convenience to the caller. PCC services, on the other hand, have been designed to compete favorably with these services by being more cost-effective as well as convenient. PCCs typically carry no per-call surcharges and have per-minute rates ranging from 25 cents to 60 cents. By comparison, conventional calling card rates, for one, usually have a surcharge of 60 cents or more and per-minute rates exceeding 60 cents.

Popularity in Europe and Asia

Prepayment for calls already had become common in Europe and Asia by 1977. Telecards are issued in about 140 countries, and sales in Japan alone approach 1 billion cards each year, according to InfoMark's *Source '94*. U.S. companies that were aware of the popularity of prepaid cards in these areas were not quick to venture in, however, concerned about the American public's reluctance to prepay for services and the technological and economical obstacles to implementing a network of telephones equipped to read the cards' encoded account information.

However, as early as 1991, a handful of U.S Companies saw the value of the cards and sought to bring them to the United States. Rather than build the intelligence into the cards and telephones, they housed the functionality in their switching systems. This gave rise to remote memory cards which have become the prominent method for offering PCC services in the United States.

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Prepaid Cards In The United States

Much of the growth in the PCC services industry in the United States – estimated to be $75 million in 1993 – has come from the success of such companies. Still, the U.S. market is in its infancy. Today there are estimated to be 200 companies offering PCC services. While a majority of these companies are small, most major telephone companies now are marketing PCC services. AT&T, MCI, Sprint, Western Union, Ameritech and US West are just a few.

The cards are distributed in many ways, including retail stores, vending machines, direct mail or direct response advertising and direct person-to-person or business-to-business sales. In addition, a large number of cards are given out free as promotions and incentives.

Applications Drive Usage

The discretionary nature of PCC services presents unlimited possibilities for its use. Prepaid technical support, computer/software planning forms, prizes, premiums and advertising specialties are among the applications for the cards. Telecards also are ideal as vehicles to sell other products, such as greeting cards or information services. Prepaid calling cards also could be used as incentives for consumers to answer surveys or listen to a sales pitch by "giving back" the time it takes to do so.

Collector Market

While the applications likely will drive the proliferation of the cards as freebies and for sale, the emerging prepaid collector market will flourish. Telecard collecting, called Telegery, is now recognized as a serious hobby not unlike coin and stamp collecting. The collecting craze was triggered by overseas phone companies which began issuing limited edition cards featuring popular subjects, such as athletes, celebrities and animated characters.

Industry experts estimate there are more than 2 million prepaid card collectors worldwide, approximately 20,000 of those reside in the United States.

How They Work

PCC services are offered from one of two "platforms." The first is Customer Premise Equipment-based system where the intelligence, such as account information, resides on the card, either on a magnetic strip or silicon memory chip. The second is a network-based system using remote memory cards where all information resides at or near a switching system.

"Smart cards" require special telephones to read and process the data appearing on the card. These phones also record new information, such as account balance, on the card after each call. [illegible], for example, has used this technology extensively for its PCC service.

Remote memory cards are used far more frequently. Users typically access the service provider's network by dialing a toll-free number. A card identification number then is dialed by the user, followed by the telephone numbers of the called party. As the call is made, it is rated and decremented in the service provider's data base until the account is fully depleted or replenished by the user.

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Enhanced Services

PCC services are now being seen as more than just another way to make calls. Features such as voice mail, message delivery, international origination and termination, foreign language options, speed dialing, replenishment and information services are being added to the cards to increase their value and applications.

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REGULATORY OVERVIEW

Prepaid Calling Card Services

Introduction

The proliferation of prepaid calling card (PCC) services has given rise to new public policy questions from regulators who are attempting to determine how or if PCC services should be regulated.

By definition, companies offering telecommunications services to the public "for hire" are subject to state regulation. Pennsylvania, for example, defines "public utilities" subject to commission jurisdiction as "a person or corporation owning or operating equipment or facilities in this commonwealth for conveying or transmitting messages or communications over the telecommunications network for the public for compensation."

The First Challenge

The first challenge to state PCC service regulation came in April 1993 when The Time Machine Inc. (TMI), a Kansas-based prepaid calling card provider, filed a Petition for Declaratory Ruling with the Federal Communications Commission seeking federal preemption of state PCC service regulation.

TMI principally argued that it would not be technically feasible for carriers such as TMI to identify or separate intrastate and interstate usage for regulatory purposes. The company further argued that burdensome state regulation would thwart the ability of TMI and others to offer their services and would impede the FCC's pro-competitive policies.

To date, no FCC decision has been rendered and one likely will not be made in the foreseeable future as any federal preemption is a politically and emotionally charged issue.

Providers Set Precedent

AT&T and Sprint, two giants in the U.S. PCC services industry, had taken the position that PCC services were "enhanced services" and not subject to regulation under federal regulatory preemption of enhanced services which also include voice mail, broadcast facsimile services, etc. Late last year, however, both companies began to tariff their PCC services possibly under pressure from several states which did not agree with the companies' stance on PCC service regulation.

Several other PCC providers presumed their services were subject to state and federal regulation, and as early as 1992, began the process of obtaining state registration/certification for their services under existing regulation. Their efforts effectively created a precedence which likely will be the basis for requiring all PCC providers to obtain state registration/certification and to tariff PCC services pursuant to each state's regulatory framework.

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POLICY POSITION SUMMARY

Prepaid Calling Card Council

TRA's Prepaid Calling Card Council recommends the following regulatory approach to prepaid calling card services as summarized from a comprehensive proposal titled, "A Regulatory Approach to Prepaid Calling Card Services" published by the PCCC separately:

Assumptions

- Prepaid calling card services are a discretionary, convenience service for subscribers who are aware of pricing and terms prior to purchase.
- Calls may technically originate and terminate anywhere, e.g., may be utilized in states where the service is not sold.
- Service rates are typically flat (not based on time of day or distance) and do not vary with jurisdiction (rates are the same for interstate and intrastate calls).

In States Where Service is Sold

- States should require simplified registration for companies proposing to offer prepaid calling cards exclusively and which have not already obtained intrastate operating authority. Simplified registration includes company information, description of proposed service, financial statements and contact information.
- States should require all providers to file tariffs or price lists at company option, presumed lawful and effective within seven days.

In State Where Service is Not Sold

- States should require simplified registration only for companies proposing to offer prepaid calling card services exclusively without already having obtained intrastate operating authority.

Financial Surety

- States should require financial surety only for newly registering companies that have not yet achieved profitability.
- Financial surety requirements should be waived upon proof that a company is profitable and has a history of no unresolved complaints with the commission.

Operating Standards

- States should not regulate operational procedures but allow them to be market driven and subject to standard industry ethical guidelines.

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