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December 11, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Proposed Rule 12 CFR Part 205 - Docket No. R-1377

Dear Ms. Johnson,

By way of introduction, I am the Chief Executive Officer and founder of Interactive Communications International, Inc. (“InComm”), a leading global innovator, developer, and marketer of prepaid products and services, including open and closed-loop prepaid cards, as well as the Chief Executive Officer and majority owner of ITC Financial Licenses, Inc. (“ITCFL”) and IH Financial Licenses, Inc. (“IHFL”), both state-licensed money transmitters engaged in the sale of open-loop prepaid cards through a network of over 170,000 retail locations in the United States, and am one of the few individuals with 18 years of experience in the prepaid industry. As compliance with the regulations applicable to prepaid cards is of great importance in the operation of these businesses, I very much appreciate the opportunity to comment on the Federal Reserve Board’s (“Board”) proposed rule (“Proposed Rule”) implementing Title IV of the Credit Card Accountability Responsibility and Disclosure Act of 2009¹ (“CARD Act”). Specifically, I am writing to the Board to support the position that an “instant issue” or temporary non-reloadable open-loop prepaid card (“Temporary Card”) which is sold as the precursor card to, or eventually used as, a general-purpose reloadable open-loop prepaid card (“GPR Card”) should be treated as a General-Use Prepaid Card,² such that it would be subject to the Proposed Rule, rather than as a card which is “reloadable and not marketed or labeled as a gift card or gift certificate,” such that it would fall within such exclusion³ (the “Reloadable Exclusion”) to the Proposed Rule.

At the outset, it should be noted that I strongly endorse regulation designed to ensure protection of consumers in their purchase and use of prepaid cards and gift certificates; indeed, each of InComm, ITCFL and IHFL owe a great amount of their success today to their continued efforts to ensure that customers are satisfied with their products and derive significant value from using them, and regulation of the sort addressed by the Proposed Rule will ensure that others in the industry maintain the same consumer-centric focus. It should also be noted that several of the GPR Card programs offered by InComm, ITCFL and IHFL include the provision of Temporary Cards to consumers, and therefore the Board’s decision regarding the treatment of such cards will have a direct impact on the business of InComm, ITCFL and IHFL.

¹ Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24.

² As defined under § 915(a)(2)(A) of the CARD Act and proposed 12 C.F.R. § 205.20(a)(3).

³ See § 915(a)(2)(D)(ii) of the CARD Act and proposed 12 C.F.R. § 205.20(b)(2).

Although Temporary Cards may be offered in connection with a GPR Card program, they themselves are either non-reloadable at all times or not reloadable until such time as (i) the customer has registered the card (which in many cases never occurs) by providing certain identifying information as required by the issuing financial institution's customer identification program in accordance with the Bank Secrecy Act, and (ii) the issuing financial institution has successfully screened the customer against the Specially Designated Nationals list published by the U.S. Department of Treasury's Office of Foreign Assets Control, meaning that they do not fall within the express language of the Reloadable Exclusion, and therefore would otherwise be subject to the Proposed Rule. However, the Board has raised questions as to whether the fact that these cards are offered in connection with a GPR Card program should change the way that they are viewed for purposes of applying the Proposed Rule, and has set forth the following three alternatives for comment:

1. View the Temporary Card and GPR Card collectively as a single offering, and exclude Temporary Cards from the scope of the Proposed Rule because they are offered as part of a GPR Card program.
2. View the Temporary Card and GPR Card collectively as a single offering, and subject both cards to the Proposed Rule based on the fact that the Temporary Card is not reloadable and therefore does not fall within the Reloadable Exclusion.
3. View the two types of cards separately, and subject the Temporary Card to the Proposed Rule as a General-Use Prepaid Card, but exclude the subsequently-issued GPR Card pursuant to the Reloadable Exclusion.

Why the Board should not adopt either of the first two alternatives

The first two alternatives above each violate both the express language and the intent of the CARD Act, and are therefore impermissible. To explain, Title IV of the CARD Act and the Proposed Rule each provide that a General-Use Prepaid Card shall be subject to their respective provisions, while a card which is "reloadable and not marketed as a gift card or gift certificate" shall be excluded from their application. Therefore, given that a Temporary Card falls within the definition of a General-Use Prepaid Card, it must be included within the scope of the Proposed Rule, and, likewise, as a GPR Card is reloadable, it must be excluded so long as it is not marketed or labeled as a gift card or gift certificate.

Furthermore, as Congress drafted the CARD Act to distinguish between reloadable and non-reloadable cards, the Board's failure to observe that distinction in the Proposed Rule would obstruct the intent of the CARD Act and potentially expose consumers to the sorts of fees and lack of disclosure that Congress sought to prohibit in enacting the CARD Act. For example, by excluding Temporary Cards from the scope of the Proposed Rule, the Board would present a significant opportunity for issuers to circumvent the intent of the CARD Act and the protections afforded thereunder by including some offer of a GPR Card in connection with what is essentially a non-reloadable gift card. Indeed, many Temporary Cards may be used without the consumer ever registering for a GPR Card, meaning that there is no distinction to be made between such cards and General-Use Prepaid Cards, other than the fact that such Temporary Cards offer the consumer to opportunity to obtain a GPR Card. Further, certain providers currently apply monthly service charges to such Temporary Cards of as much as \$5.95 per month beginning ten (10) days following a consumer's purchase of the card. Excluding Temporary Cards from the scope of the Proposed Rule will allow this practice to continue, which,

given the non-reloadable nature of the Temporary Cards, violates the CARD Act's prohibition against such fees. Imagine the unknowing consumer who buys a GPR Card thinking it is a gift card and not understanding the significance of the word "reloadable" on the package, gives it as a gift and, before the first use of the card, \$5.95 is taken as a fee. This scenario is happening today to thousands of consumers, and any failure to address the same would constitute a great violation of the public trust.

Why the Board should adopt the third alternative

As the language and intent of the CARD Act requires that the Temporary Card and GPR Card each be viewed and regulated separately, based on the individual characteristics of each card, this represents the only permissible approach for the Board to pursue. While, as noted in the Proposed Rule, there may be some potential for consumer confusion associated with having two seemingly-linked cards subject to different terms and conditions, such possibility does not justify ignoring the spirit and letter of the CARD Act, and can be effectively eliminated by ensuring that clear disclosures which indicate that different terms apply to the two cards are featured prominently on all card packaging, the cardholder agreement provided with each card, and any marketing materials used to promote the GPR Card program to consumers. Moreover, GPR Card providers have the opportunity to reiterate the terms applicable to the GPR Card at the time of registration. This is far less confusing to the consumer than buying this item mistakenly as a non-reloadable gift or single-use card and then being charged onerous fees while under the presumption that the CARD Act has assured them of protection from such fees. Industry data indicates that more than 60% of the consumers buying a GPR Card from a retail store display do so in an unassisted manor, and subsequently neither register or reload the card. Again, it is important to recognize that consumers are often unable to clearly differentiate between open loop non-reloadable and open loop GPR Cards in the retail environment. In most cases consumers simply believe they are acquiring a gift or a single-use card, with others wishing to remain anonymous and therefore buying GPR Cards and gift cards with the intent of single or non-reloadable use. The current packaging strategy of some GPR Card providers results in the Temporary Cards which are available at retail looking very similar to non-reloadable gift or single-use cards, with the exception that the packages contain the word "reloadable". Most consumers simply will not understand that the inclusion of the word "reloadable" will result in the Temporary Card not receiving the protections of the CARD Act.

In closing, I understand the difficulty faced by the Board in developing and implementing the Proposed Rule in a manner which takes into account the various participants and concerns involved, and respectfully request that the Board consider the points discussed above in its development of the final rule in its efforts to ensure appropriate consumer protection. Should you have any questions, or if I can be of further assistance, please do not hesitate to contact me at address above.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Brooks Smith", with a long horizontal flourish extending to the right.

M. Brooks Smith