

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Regulation of Prepaid Calling Card
Services

WC Docket No. 05-68

**COMMENTS OF LEVEL 3 COMMUNICATIONS LLC
IN RESPONSE TO ARIZONA DIALTONE'S
PETITION FOR RECONSIDERATION**

In its Petition for Reconsideration (“Petition”), Arizona Dialtone requests clarification with respect to an issue—the allocation of access charge liability—on which the Federal Communications Commission has been consistent and clear. Section 69.5(b) of the Commission’s rules provides without ambiguity that access charges apply only to interexchange carriers (“IXCs”), not to local exchange carriers (“LECs”). Long-standing Commission precedent (including the *Declaratory Ruling* at issue in this proceeding) reflects this distinction between LECs and IXCs. In response to Arizona Dialtone’s request for clarification on this point, therefore, the Commission should reconfirm that LECs do not bear access charge liability, including for calls bound for prepaid calling card platforms. The Commission should otherwise defer addressing intercarrier compensation related to locally routed 8YY traffic while its broader intercarrier

compensation reform proceeding is underway, although it should clarify that LECs do not bear access charge liability for such traffic in any event.

Arizona Dialtone's Petition also seeks additional reporting requirements with respect to services that may be used by prepaid calling card service providers to receive traffic. In particular, Arizona Dialtone proposes that the Commission require calling card providers to provide their Direct Inward Dialing ("DID") numbers as part of their quarterly PIU reports, and intermediate LECs to pass on to interconnecting carriers the information they receive from calling card providers. Level 3 supports clarifying the *Declaratory Ruling* to require intermediate LECs to pass on to originating LECs any traffic-related data (e.g. PIU data) that they receive from prepaid calling card providers.

Arizona Dialtone, however, also suggests that the Commission require LECs providing DID service¹ to identify customers unless they can show conclusively that the customers are not calling card providers. This last proposal would overly burden intermediate LECs, needlessly damage their competitive interests, and jeopardize the privacy of their customers, many of whom may not be calling card providers, and who may not even know that their customer is providing service to a calling card provider. Moreover, recently released software for 800 Service Management Systems ("SMS") obviates the need for these reporting requirements as individual LECs now have an efficient, real-time ability to accept or reject 8YY calls routed to DID numbers. For these reasons, and because Arizona Dialtone's other proposals would satisfy its concerns, the

¹ DID service provides a customer with a voice grade telephonic communications trunk channel to receive incoming voice or data calls to local telephone numbers assigned to the customer. DID service does not provide a line-side connection, meaning that the customer can receive communications but cannot originate them. DID service transmits the dialed digits for all incoming calls, allowing the customer's incoming calls to be routed as required by the customer to its designated equipment.

Commission should reject this proposal both under the Communications Act and the Paperwork Reduction Act.

I. Access Charges Apply to the IXC Handling Prepaid Calling Card Traffic, Not to the LEC Providing Local Interconnection

Notwithstanding the Commission’s unambiguous rule, Arizona Dialtone contends that the *Prepaid Calling Card Declaratory Ruling* can be read “implicitly” to permit an originating LEC to assess access charges on another LEC that provides interconnection via DID service between the originating LEC and the prepaid calling card platform.² Arizona Dialtone itself, however, agrees that this result—applying access charges to LECs—would be inappropriate.³ The Commission should reject Arizona Dialtone’s “implicit” interpretation as it finds no support in the text of the *Declaratory Ruling* and, more fundamentally, disregards the Commission’s rules and long-standing precedent.

Section 69.5(b) of the Commission’s rules, which governs the application of switched access charges (“carrier’s carrier charges,” to use the language of the rule), provides that such charges “shall be . . . assessed on all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.”⁴ Nothing in the rule suggests that a LEC bears any

² See Petition at 8-10. Arizona Dialtone mischaracterizes Level 3 as a provider of transport service in this context. See *id.* Level 3 provides a DID service that interconnects the originating LEC and the prepaid calling card platform, both of which are located in the same local calling area. This distinction underscores Level 3’s role as a joint provider of access services in this circumstance, not a provider of transmission services to distant points.

³ Petition at 9-10 (“As a practical matter, it makes sense for the party responsible to pay originating access charges on local DID-routed traffic to be the prepaid long distance provider, not the provider of DIDs.”).

⁴ 47 C.F.R. § 69.5(b).

liability for switched access charges when—either acting alone or jointly with another LEC—it provides an IXC with a connection to an originating or terminating end user. The Commission has recognized this clear apportionment of liability, stating that “access charges are to be assessed on interexchange carriers.”⁵ As Level 3 noted in *ex parte* submissions,⁶ this rule applies even when an originating LEC and an intermediate LEC provide access services jointly.⁷ In cases of jointly provided access, the Commission has established that the LECs share the access revenues paid by the IXC.⁸ In other words, a

⁵ *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd. 7457, 7471 n.92 (¶ 23) (2004).

⁶ See Letter from John T. Nakahata to Marlene H. Dortch, WC Docket No. 05-68 (filed May 5, 2006) (“[W]hen the call to the platform is a locally dialed number provisioned as a DID service by a LEC, the jointly-provided access model applies, and the originating LEC would bill the platform provider (and not the LEC providing DID service) for access.”); Letter from Adam Kupetsky to Marlene H. Dortch, WC Docket No. 05-68 (filed May 12, 2006) (same); Letter from Adam Kupetsky to Marlene H. Dortch, WC Docket No. 05-68 (filed June 5, 2006) (“Verizon agrees with Level 3 that Verizon should bill the prepaid calling card provider and not the CLEC for any originating access charges that the Commission determines are due for prepaid calling cards.”).

⁷ See, e.g., *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, Memorandum Opinion and Order, 17 FCC Rcd. 27,039, 27,128 (¶ 177) (2002) (“[T]he services in question constitute the joint provision of switched exchange access services to IXCs by WorldCom and Verizon, both operating as LECs.... [W]hen the parties jointly provide such exchange access, Verizon should assess any charges for its access services upon the relevant IXC, not WorldCom.”).

⁸ See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd. 3689, 3695 (¶ 9) (1999) (“When two carriers jointly provide interstate access (e.g., by delivering a call to an interexchange carrier (IXC)), the carriers will share access revenues received from the interstate service provider.”); *id.* at 3705 n.84 (¶ 26) (“[T]wo LECs jointly providing interstate access service share access revenues.”).

LEC providing joint access service is a recipient of originating access payments from the IXC, not a payor.

The Commission’s *Prepaid Calling Card Declaratory Ruling* must be read against the backdrop of this rule and related decisions. Nothing in the *Declaratory Ruling* suggests that the Commission meant to reconsider or alter the basic apportionment of access charge liability. Indeed, the *Declaratory Ruling* was not a rulemaking, and thus could not have altered Rule 69.5(b). The purpose of a declaratory ruling is solely to “terminat[e] a controversy or remov[e] uncertainty” under the *existing* rules.⁹ In keeping with this purpose, the *Declaratory Ruling* acknowledges the underlying rule and provides that prepaid calling card service providers—the IXCs in this context—“must pay intrastate access charges for interexchange calls that originate and terminate in the same state and interstate access charges on interexchange calls that originate and terminate in different states.”¹⁰ Because the background rule is so clear and well-established, and because the *Declaratory Ruling* cannot alter it, the Commission must reject Arizona Dialtone’s “implicit” reading that access charges apply to interconnected LECs providing joint access to prepaid calling card platforms via DID service.

II. CLECs Are Not Liable for Access Charges on DID Services Used to Route 8YY Traffic to a Local Number

Arizona Dialtone’s Petition implicitly asks the Commission to clarify which entity owes access charges when a prepaid calling card provider obtains 8YY service from one

⁹ 47 C.F.R. § 1.2.

¹⁰ *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd. 7290, 7290 (¶ 1) (2006) (“*Declaratory Ruling*”); *see also id.* at 7300 (¶ 27) (“[P]roviders of prepaid calling cards that are menu-driven or use IP transport to offer telecommunications services are obligated to pay interstate or intrastate access charges based on the location of the called and calling parties”).

carrier, purchases DID service from another, and then directs the 8YY number to route into the DID service. This type of arrangement masks the 8YY call as a local call, meaning that LECs providing originating access (either directly or jointly) are unaware that access charges might apply until accounts are reconciled months later. The Commission should not address access charge liability for such traffic in this proceeding, but should instead consider it in its comprehensive intercarrier compensation reform proceeding. In the meantime, however, the Commission should explain that interconnected CLECs providing DID service are immune from access charge liability for such traffic.

A. The Commission Should Address Access Charge Liability for Locally Routed 8YY Calls as Part of its Comprehensive Intercarrier Compensation Reform Proceeding

Locally routed 8YY calls have an impact in a variety of contexts unrelated to prepaid calling cards. In addition to calls bound for prepaid calling card platforms, LECs handle locally routed 8YY calls bound for call centers, VoIP providers, and a host of other recipients. Because providers regularly use locally routed 8YY calls outside of the prepaid calling card context, the Commission should decline to establish the applicable intercarrier compensation rules for such traffic in this narrow proceeding. Rather, the Commission should address locally routed 8YY calls in its comprehensive intercarrier compensation reform proceeding.

B. CLECs Are Not Liable for Access Charges on Locally Routed 8YY Traffic

Regardless of how the Commission treats locally routed 8YY calls in its comprehensive reform proceeding, as discussed above in Part I, interconnected CLECs

providing DID service are not subject to switched access charges under Rule 69.5(b). Nothing in the rule or the Commission’s decisions suggests that the basic switched access-charge liability regime should apply differently in the case of locally routed 8YY traffic, “1+” traffic, or any other kind of traffic.¹¹

Apart from the regulatory bar to applying access charges to CLECs, there is a practical barrier. Often, a CLEC that hands locally routed 8YY traffic from an originating LEC to a local prepaid calling card platform (or to a local call center, VoIP provider, etc.) has no way of knowing that the calls were dialed with an 8YY prefix. Platform operators often direct calls on an 8YY number to a DID number via pre-defined routing logic in SMS. These calls appear to be pure local traffic from the perspective of the carrier providing the terminating service. Thus, an intermediate LEC is typically unaware that access charges might apply at all until an access bill arrives months later. Because the interconnecting CLEC has no means of distinguishing these 8YY calls from local calls, it cannot—as a practical matter—bear access charge liability for such traffic.

III. The Commission Should Not Require LECs to Disclose the Identities of DID Customers Upon Request

Arguing that LECs often operate at an information deficit when providing originating access (either jointly or directly) for prepaid calling card services, Arizona Dialtone proposes a series of new reporting requirements.¹² While LECs may need more information about such traffic in order to recover access charges from calling card

¹¹ 8YY traffic is considered local—at least as between interconnected LECs—when the NPA-NXX codes of the calling parties indicate that the call originates and terminates within a single local calling area. Such traffic is therefore subject to the appropriate reciprocal compensation.

¹² See Petition at 11-14.

platform operators, one of Arizona Dialtone's proposals is overbroad and unnecessarily burdensome. In particular, Arizona Dialtone proposes granting originating LECs the right to demand the identity of the customer of an intermediate LEC.¹³ The intermediate LEC could refuse only "if it is clear that the DIDs in question are not used for prepaid calling card services."¹⁴

This proposed reporting obligation reaches too far, as it would allow originating LECs to obtain information about customers of intermediate LECs in almost every case. Intermediate LECs in general—and intermediate wholesalers in particular—would have difficulty demonstrating the ultimate use of any particular DID, especially when the wholesale customer may itself be a wholesaler. Arizona Dialtone's proposed rule, therefore, would threaten customer privacy—and result in serious competitive harm for the intermediate providers themselves—because their customers' identities would be subject to unchecked disclosure at the originating LEC's request.

The Commission should reject this proposal not only because it threatens customers' privacy and intermediate LECs' competitive positions, but also because it is unnecessary. Arizona Dialtone has identified other reporting requirements that would ensure that it receives the information it needs to recover access charges related to prepaid calling card services. Even more notably, an SMS software system released in June 2005 allows LECs and network service providers to manage the use of the 0110 Carrier Identification Code within their networks. With this software, carriers have the ability to accept or reject 8YY calls routed to a local DID number. The Responsible Organization ("RespOrg") no longer has the capability to route 8YY traffic to a local

¹³ *See id.* at 13.

¹⁴ *Id.*

DID without the written approval of the LEC or network service provider that owns the local DID number. In other words, the industry now has a means of accepting or rejecting 8YY traffic routed to a local DID number on a per carrier basis. This technical solution is more efficient than establishing new compensation rules and guidelines and imposing new reporting requirements on carriers and prepaid calling card providers, as Arizona Dialtone proposes.

In light of the new SMS software release and Arizona Dialtone's other proposals, there is no need to impose additional requirements that would impose unnecessary burdens on intermediate LECs and their customers. Moreover, rejecting Arizona Dialtone's proposal would not prevent originating LECs from obtaining this customer identity information in any circumstance. An originating LEC could request customer identify information through the civil discovery process if it enters into litigation with the calling card provider.

IV. Intermediate LECs Should Pass on Any Information They Receive

Level 3 does not object to a requirement compelling an intermediate carrier (including an intermediate LEC) to pass on to the originating LEC any call information they receive from entities further down the communications chain. Indeed, the Commission appears to have contemplated this kind of information exchange in the *Declaratory Ruling*. In particular the Commission stated that “prepaid calling card provider [must] report PIU factors to those carriers from which they purchase transport services.”¹⁵ The Commission then noted that “[t]he transport provider may use the

¹⁵ *Declaratory Ruling*, 21 FCC Rcd. at 7303 (¶ 35).

reported PIU in calculating any PIU factors it reports to LECs, and it may disclose the reported PIU upon request of such LECs.”¹⁶

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For the foregoing reasons, the Commission should clarify that access charge liability applies only to IXCs—not to intermediate CLECs providing DID service—even in the context of prepaid calling card services. The Commission should address the access charge liability related to locally routed 8YY traffic only as part of its comprehensive intercarrier compensation reform proceeding, but it should clarify in this docket that intermediate CLECs are not liable for such charges in any event. In addition, the Commission should reject Arizona Dialtone’s proposal to require intermediate LECs to provide customer identification information upon request from an originating LEC. Finally, the Commission should confirm that intermediate LECs must pass on to originating LECs any traffic-related information (*e.g.*, PIU data) that it receives from prepaid calling card service providers.

¹⁶ *Id.*

Respectfully submitted,

/s/

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