Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Regulation of Prepaid Calling Card Services	)	WC Docket No. 05-68
	)	
Arizona Dialtone Inc.	)	
Petition for Reconsideration	)	
	)	
Petition for Clarification or, in the Alternative,	)	
for Reconsideration of IDT Telecom, Inc.	)	

REPLY COMMENTS OF AT&T INC.

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I. INTRODUCTION AND SUMMARY

AT&T Inc., and its affiliated companies (collectively, AT&T) respectfully submit the following reply comments in response to the petition for reconsideration filed by Arizona Dialtone Inc. (Arizona Dialtone) and the petition for clarification and/or reconsideration filed by IDT Telecom, Inc. (IDT) regarding the Commission's *Second Prepaid Calling Card Order*.[1]

Although AT&T supports Arizona Dialtone's goal of ensuring that prepaid calling card providers pay applicable access charges, AT&T does not believe that "reconsideration" of the *Second Prepaid Calling Card Order* is necessary to achieve this goal. Rather, the *Order* already requires "all" prepaid calling card providers to pay access charges, including those providers that offer their customers local telephone numbers to originate an interexchange call.[2] In the event a prepaid calling card provider originates a locally-dialed interexchange prepaid call without using an appropriate switched access service from a LEC (*e.g.*, Feature Group A) or otherwise fails to pay applicable access charges, the Commission should be prepared to take swift action against such a provider to ensure compliance with the mandates of the *Second Prepaid Calling Card Order*.

Similarly, while AT&T agrees with IDT's goal of ensuring that prepaid calling card services are subject only to appropriate payphone compensation charges, AT&T does not believe that footnote 101 of the *Second Prepaid Calling Card Order* changed

[1] *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, FCC 06-79 (released June 30, 2006) (*Second Prepaid Calling Card Order*). *See* Arizona Dialtone Inc. Petition for Reconsideration, WC Docket No. 05-68 (Aug. 31, 2006) (Arizona Dialtone Petition); Petition for Clarification or, in the Alternative, for Reconsideration of IDT Telecom, Inc., WC Docket No. 05-68 (Sept. 1, 2006) (IDT Petition).

[2] *Second Prepaid Calling Card Order* ¶¶ 10, 21.

the manner in which such compensation is calculated. Instead, the *Order* appears to be facially consistent with section 276 of the Communications Act and long-standing Commission payphone compensation precedent, which state that payphone compensation is due only for "completed calls."[3] Nonetheless, to remove any possible doubt, AT&T supports IDT's petition insofar as it asks the Commission to clarify what constitutes a "completed call" to a prepaid calling card platform.

II. DISCUSSION

A. Arizona Dialtone Petition

1. All Prepaid Calling Card Services Are Subject to Access Charges.

For many years, the prepaid calling card industry operated under a cloud of uncertainty regarding the regulatory classification of its services and, consequently, the appropriate intercarrier compensation applicable to those services. In 2005 and 2006, however, the Commission eliminated that uncertainty by issuing two orders that, taken together, comprehensively address the issues of regulatory classification and intercarrier compensation for all prepaid calling card services.

In the *First Prepaid Calling Card Order*, the Commission ruled that advertising-based prepaid calling card services, which play a brief advertising message for the user while the call is being set up, are telecommunications services subject to applicable

[3] *See* 47 U.S.C. § 276(b)(1)(A) (directing the Commission to establish a payphone compensation plan to ensure payphone service providers are compensated for "every completed intrastate and interstate call using their payphone"); *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Order on Reconsideration and Order on Clarification, FCC 01-344, ¶ 2 (released Nov. 21, 2001) (*Payphone Third Order on Reconsideration*) ("[W]e reaffirm that, for purposes of payphone compensation, only calls that are answered by the called party are 'completed' and thus compensable."); *Second Prepaid Calling Card Order* ¶ 37 n.101 ("our rules require the payment of dial-around compensation to a payphone service provider when the cardholder completes a call to the platform without attempting to call a third party.").

interstate and intrastate access charges.[4] At the same time, the Commission initiated a rulemaking to determine how "all types of current and planned calling card services" should be regulated, including menu-driven prepaid calling services which offer customers a variety of information service features in addition to telephone calling capability, and IP-in-the-middle calling card services which rely on IP transport technology.[5]

Sixteen months later in the *Second Prepaid Calling Card Order*, the Commission concluded that "all" prepaid calling card services are telecommunications services subject to applicable access charges.[6] As the Commission explained, "[a]ny uncertainty regarding the regulatory requirements applicable to prepaid calling cards creates incentives for providers to reduce exposure to charges they may owe or evade them altogether."[7] To remove this uncertainty, the Commission chose to "level [the] regulatory playing field for calling card providers" by uniformly treating all prepaid calling card services as telecommunications services, which will "encourage efficient development and innovation in the prepaid calling services industry . . . ."[8]

While the *Second Prepaid Calling Card Order* primarily discussed prepaid calling card services that offer customers a toll-free 8YY number to originate a call, the holdings of that *Order* were not limited to such services. Rather, the *Order* expressly

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[4] *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Order and Notice of Proposed Rulemaking, FCC 05-41, ¶¶ 14, 28 (released Feb. 23, 2005) (*First Prepaid Calling Card Order*).

[5] *First Prepaid Calling Card Order* ¶ 38.

[6] *Second Prepaid Calling Card Order* ¶ 10. *See also id.* ¶¶ 1, 21, 27, 54, 68.

[7] *Second Prepaid Calling Card Order* ¶ 8.

[8] *Second Prepaid Calling Card Order* ¶ 8.

states that "*all prepaid calling card providers* will be treated as telecommunications service providers."[9] Indeed, the Commission cautioned prepaid calling card providers that, to the extent they offer services different from those specifically discussed in the *Order*, such providers are still subject to the obligations associated with providing a telecommunications service, including the payment of applicable access charges, unless and until the provider first obtains "a declaratory ruling, a waiver, or other relief from the requirements we adopt in this *Order*."[10]

Despite these clear pronouncements, Arizona Dialtone asserts that the *Second Prepaid Calling Order* "is somewhat vague and ambiguous with respect to identifying the party responsible to pay access charges" on the originating end of an interexchange prepaid call that is routed first from the originating LEC to a locally-dialed number (instead of a toll-free 8YY number) provided by an intermediate LEC and, from there, to a prepaid calling card platform and, ultimately, to the called party.[11] According to Arizona Dialtone, the *Order* "implicitly suggests" that the intermediate LEC providing the locally-dialed number is obligated to pay access charges, rather than the prepaid calling card provider who purchases local service from the intermediate LEC.[12] To resolve this asserted ambiguity, Arizona Dialtone asks the Commission to clarify which

[9] *Second Prepaid Calling Card Order* ¶ 10 (emphasis added).

[10] *Second Prepaid Calling Card Order* ¶ 10.

[11] Arizona Dialtone Petition at 8. In its Petition, Arizona Dialtone addresses prepaid calling card providers that use direct inward dialing (DID) services to route their customers' calls. As Verizon explains in its comments, however, other locally-dialed arrangements, such as ISDN PRIs, could also be used for this same purpose. Verizon Comments at 3. Thus, in these comments, AT&T uses the term "locally-dialed" to reference the DID arrangements described by Arizona Dialtone as well as any other similar arrangements that allow prepaid calling card calls to be originated over a telephone number that appears to be local to the originating LEC.

[12] Arizona Dialtone Petition at 8.

party is responsible for access charges when locally-dialed telephone numbers are used for originating interexchange prepaid calling card calls.[13]

Although AT&T supports Arizona Dialtone's goal of ensuring that prepaid calling card providers fulfill their intercarrier compensation obligations, we do not believe the *Second Prepaid Calling Card Order* is "vague or ambiguous" with respect to identifying the party obligated to pay access charges for prepaid calling card calls. To the contrary, the Commission's *Order* expressly and repeatedly states that "*prepaid calling card service providers* . . . must pay intrastate access charges for interexchange calls that originate and terminate in the same state and interstate access charges on interexchange calls that originate and terminate in different states."[14] Indeed, given the plain language of the *Second Prepaid Calling Card Order* and the Commission's clear intent to classify all prepaid calling card services as telecommunications services, there can be no serious dispute that the obligation to pay access charges applies to prepaid calling card providers that rely on locally-dialed arrangements to originate their services. Just like 8YY prepaid calling card providers, locally-dialed prepaid calling card providers use a LEC's "local exchange switching facilities" for the provision of an interstate or intrastate interexchange telecommunications service and, therefore, they are required to pay access

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[13] Arizona Dialtone Petition at 9.

[14] *Second Prepaid Calling Card Order* ¶ 1 (emphasis added). *See also id.* ¶ 21 ("these providers are now subject to all of the applicable requirements of the Communications Act and the Commission's rules, including requirements to contribute to the federal USF and to pay access charges."), ¶ 27 ("providers of prepaid calling cards that are menu-driven or use IP transport to offer telecommunications services are obligated to pay interstate or intrastate access charges based on the location of the called and calling parties."), ¶ 54 ("providers of these types of prepaid calling cards will be treated as telecommunications carriers and therefore must pay access charges, contribute to the Universal Service Fund, and comply with all the other applicable obligations under the Communications Act and the Commission's rules."), ¶ 68 ("the Commission finds that certain types of prepaid calling card providers are telecommunications carriers and therefore subject to applicable requirements of the Communications Act and the Commission's rules, including the obligation to pay access charges and contribute to the Universal Service Fund.").

charges under the plain language of the *Second Prepaid Calling Card Order* and the Commission's rules.[15] Accordingly, there is no need for the Commission to "reconsider" this well-settled aspect of the *Second Prepaid Calling Card Order*.

Even though the issues raised by Arizona Dialtone do not require reconsideration of the core holdings of the *Second Prepaid Calling Card Order*, Arizona Dialtone has highlighted some practical concerns regarding the implementation of the *Order* by prepaid calling card providers that rely on locally-dialed arrangements to originate their calling card services. Specifically, when the customer of such a provider uses local exchange service from an intermediate LEC to originate an interexchange prepaid call by dialing a seven-digit local access number, the call appears to the originating LEC as a local call, not an interexchange call. Thus, rather than *receiving originating access charges* from the prepaid calling card provider, the originating LEC would presumably *pay reciprocal compensation* to the intermediate LEC supplying the locally-dialed number to the prepaid calling card provider. Such a result would turn the *Second Prepaid Calling Card Order* and the Commission's access charge rules on their head. Indeed, the intermediate LEC would receive an unwarranted windfall of improper reciprocal compensation payments and the prepaid calling card provider would obtain an unfair – and unlawful – competitive advantage over other prepaid calling card providers that comply with the *Order* and the Commission's rules.[16]

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[15] *Second Prepaid Calling Card Order* ¶ 28. *See also* 47 C.F.R. § 69.5(b).

[16] This is not the first time the improper use of locally-dialed arrangements to avoid the payment of access charges has been brought to the Commission's attention. In a petition filed in November 2005, Frontier raised nearly identical concerns regarding the locally-dialed arrangements used by USA Datanet in its provision of interexchange services. *See* Petition of Frontier Telephone of Rochester, Inc. for Declaratory Ruling that USA Datanet Corp. Is Liable for Originating Interstate Access Charges When It Uses Feature Group A Dialing to Originate Long Distance Calls, WC Docket No. 05-276 (Nov. 22, 2005). Although Frontier ultimately settled its dispute with USA Datanet and withdrew its petition, the improper use of

As Verizon aptly points out, there is a straightforward solution to these concerns. To the extent a prepaid calling card provider wishes to offer its customers the ability to use locally-dialed numbers to originate interexchange prepaid calling card calls, it can purchase Feature Group A service from an ILEC or CLEC.[17] Indeed, the locally-dialed routing arrangements identified by Arizona Dialtone are functionally equivalent to the Feature Group A services that have been offered by numerous LECs across the country for many years. Specifically, Feature Group A is "a form of switched access" that interexchange carriers, including prepaid calling card providers, can use to originate calls by their end user customers.[18] In a Feature Group A dialing arrangement, "the end user dials a seven digit number to reach the LEC's 'dial tone' office serving the IXC, where the LEC switches the call to the IXC's POP via a dedicated loop-side connection."[19] Because the LEC offering Feature Group A is aware that such a locally-dialed call is bound for an IXC, the LEC can route the call appropriately and bill the IXC for the applicable access charges. In addition, if a locally-dialed prepaid interexchange call begins on an originating LEC's network and is bound for a intermediate LEC offering Feature Group A to a prepaid calling card provider, the originating and intermediate LECs would typically have the ability to coordinate the routing and billing for such a call

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locally-dialed arrangements to avoid access charges continues to present problems for the communications industry. *See* Motion of Frontier Communications to Withdraw Petition, WC Docket No. 05-276 (June 15, 2006) (seeking to withdraw petition "without prejudice" due to Frontier's potential need to pursue claims for unpaid access charges against other providers).

[17] Verizon Comments at 4.

[18] *See Transport Rate Structure and Pricing*, CC Docket No. 91-213, First Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 5370 ¶ 15 (1993) (*Transport Rate Order*).

[19] *Transport Rate Order* ¶ 15. *See also id.* ("In many cases, the dial tone office is the [serving wire center]; in some cases, dial tone is provided from a different office, in which case there will be a separate [serving wire center] between the dial tone office and the POP.")

through a jointly provided access arrangement, which would result in the applicable access charges being shared appropriately between the two LECs.[20]

But rather than forthrightly purchasing Feature Group A services and arranging to pay applicable access charges to the originating LEC, the prepaid calling card providers identified by Arizona Dialtone are apparently using locally-dialed, non-switched-access arrangements today for the express purpose of avoiding the payment of access charges.[21] Upon the October 31, 2006 effective date of the *Second Prepaid Calling Card Order*, however, these prepaid calling card providers will no longer have any plausible legal basis to avoid paying access charges by originating interexchange telephone calls through locally-dialed arrangements.[22] If they fail to purchase Feature Group A switched access service or do not otherwise arrange to pay access charges to the originating LEC, the Commission should be prepared to take swift and certain action against them for violating the *Order*.

2. The Additional Reporting Requirements Suggested by Arizona Dialtone Would Not Solve the Access Charge Avoidance Problem It Identifies.

To address its concerns about prepaid calling card providers using locally-dialed arrangements to avoid paying originating access charges, Arizona Dialtone asks the Commission to: (a) require prepaid calling card providers to identify the DID numbers associated with their calling card platforms, and (b) direct intermediary LECs to identify

[20] *See* Verizon Comments at 4-5.

[21] *See* Arizona Dialtone Petition at 6 (describing services offered by Pingo.com).

[22] *See* Arizona Dialtone Petition at 4 and Exhibit B (stating that some prepaid calling card providers contacted by Arizona Dialtone claim they are exempt from access charges because they provide "enhanced" services); *Second Prepaid Calling Card Order* ¶ 10 ("all prepaid calling card providers will now be treated as telecommunications service providers.").

the customer associated with a DID number upon request from an originating LEC.[23] In proposing these additional reporting requirements, Arizona Dialtone assumes that all originating LECs are capable of tracking call volumes for individual, locally-dialed telephone numbers. Contrary to Arizona Dialtone's assumption, however, many LECs do not create the call detail records that would be necessary to determine the volume of minutes that were directed to an individual, locally-dialed telephone number.[24] Thus, even with the additional data suggested by Arizona Dialtone, many LECs would not be able to bill appropriate access charges.

Moreover, Arizona Dialtone's proposal would still result in the intermediary LEC billing the originating LEC for reciprocal compensation charges on the locally-dialed calls bound for the prepaid calling card provider's platform. Indeed, in each billing cycle, the originating LEC would effectively have the burden of compiling the data identified by Arizona Dialtone in order to prove that it is not liable for reciprocal compensation payments to the intermediary LEC, but is instead owed access charges by the prepaid calling card provider. Such a result is contrary to the *Second Prepaid Calling Card Order*, which, as discussed above, squarely places the burden for paying access charges on prepaid calling card providers.

B. IDT Petition.

In its petition, IDT asks the Commission to clarify the meaning of footnote 101 of the *Second Prepaid Calling Card Order*, which states that the payment of dial-around compensation to a payphone service provider is required "when the [prepaid] cardholder

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[23] Arizona Dialtone Petition at 11-13.

[24] *See* Verizon Comments at 8.

completes a call to the platform without attempting to call a third party."[25] According to IDT, the Commission should confirm that it did not intend to require compensation in the event a prepaid call reaches the platform but the cardholder hangs-up without contacting a third party or accessing any information service capabilities of the calling card platform.[26]

AT&T agrees with IDT to the extent it asserts that footnote 101 should not be read to change the Commission's long-standing understanding of what constitutes a "completed call" for purposes of the payphone compensation provisions of section 276 of the Communications Act. As the Commission has explained, a call is "completed" for payphone compensation purposes when it is "answered by the called party."[27] In the case of prepaid calling card calls, the "called party" could be the individual whom the calling party is attempting to reach, as well as the platform itself when the calling party accesses the information service capabilities of the platform. In either scenario, if the call is discontinued before the "called party" answers, the call would not be compensable for payphone compensation purposes. To remove any doubt, however, AT&T supports IDT's petition insofar as it asks the Commission to clarify what constitutes a "completed call" to a prepaid calling card platform.

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[25] *Second Prepaid Calling Card Order* ¶ 37 n. 101.

[26] IDT Petition at 2.

[27] *Payphone Third Order on Reconsideration* ¶ 2.

III. CONCLUSION

For all of the preceding reasons, the Commission should (1) ensure that all prepaid calling card providers fulfill their access charge obligations and (2) clarify what constitutes a "completed call" to a prepaid calling card platform.

Respectfully Submitted,

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