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October 27, 2008

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: In the Matter of a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; In the Matter of Regulation of Prepaid Calling Card Services, WC Docket No. 05-68

Dear Ms. Dortch:

STi, Prepaid, LLC ("STi"), urges the Commission to issue a prompt ruling that prepaid card providers are not required to pay originating switched access charges to a third party LEC for calls placed to locally dialed numbers that have been provided to the prepaid card provider by a CLEC, an issue raised in the August 31, 2006 Petition for Reconsideration in WC Docket No. 05-68 by Arizona Dialtone, Inc. This issue is an integral part of the Commission's efforts to establish a unified regime for intercarrier compensation in CC Docket 01-92.

STi is a leading provider of prepaid calling cards and purchases local service from several competitive local exchange carriers ("CLECs") to provide STi's prepaid calling card customers access to STi's network via local telephone numbers. In recent months, STi has received several letters from counsel representing "the AT&T Local Exchange Carriers" ("AT&T"), asserting that STi owes originating switched access charges to AT&T when AT&T customers dial the local telephone number assigned to STi. Based on these assertions, these letters threaten to file suit against STi seeking injunctive and monetary relief. STi understands that several other prepaid calling card providers have received similar letters from AT&T.

**I. STi does not owe AT&T originating switched access charges on locally-dialed calls**

In its letters to STi, AT&T contends, as it did in its October 23, 2006 Reply Comments in WC Docket 05-68, that the Commission's June 30, 2006 Order in WC Docket 05-68 mandates that prepaid card providers pay originating switched access charges to AT&T when an AT&T customer dials a local number, is connected with what AT&T describes as "an intermediate LEC," and then dials an interexchange call using the prepaid card provider's prepaid calling card. STi has advised AT&T that it disagrees with AT&T's interpretation of the Commission's June 30, 2006 Order in Docket 05-68.

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First, STi is receiving access to the PSTN via local service purchased from CLECs. The CLECs provide a local service as they are permitted to do under FCC rules and STi is entitled to purchase local service for its customers to reach it.

Second, while AT&T relies heavily on the Commission's June 30, 2006 order in WC Docket No. 05-68, the FCC did not discuss the exchange of locally-dialed prepaid card traffic at all. It only addressed prepaid card traffic that is originated by means of interexchange carriers' 8YY toll-free services.<sup>1</sup> Since the calls were 8YY calls, there was no question that they were interexchange calls. The only question was whether they were interstate or intrastate. The Commission determined that they were intrastate when the calling and called parties were located in the same state. But as the courts have found, the fact that "interstate" or "intrastate" jurisdiction determined by the end points of a communication<sup>2</sup> is *not relevant* to determining whether traffic is subject to access charges, which is the question presented here.<sup>3</sup>

Third, the locally dialed calls originated by AT&T customers are subject to reciprocal compensation, not access charges. Section 251(b)(5) requires that LECs enter into reciprocal compensation arrangements to compensate each other for the transport and termination of telecommunications. Section 251(b)(5) applies to *all*

<sup>1</sup> *In the Matter of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, at ¶¶ 10-11, 20, 28 (Released June 30, 2006) (For example, with respect to the menu-driven prepaid calling card variant, the FCC noted that "[u]pon dialing the 8YY number, the cardholder is presented with the option to make a telephone call or to access several types of information." Likewise, with respect to the IP transport prepaid calling card variant the FCC refers to cards that use 8YY dialing. "[o]ther than the use of 8YY dialing instead of 1+dialing, prepaid dialing cards ...").

<sup>2</sup> In general, where possible, FCC decisions require that the *jurisdiction* of traffic, *i.e.*, whether it is "interstate" or "intrastate," be determined by the origination and termination points of the call. *See, e.g., NARUC v. FCC*, 746 F.2d 1492, 1499 (D.C. Cir. 1984).

<sup>3</sup> For example, when the FCC relied on the traditional end-to-end jurisdictional analysis to conclude that ISP-bound traffic is not "local," the D.C. Circuit reversed and remanded that decision on the ground that the FCC had failed to explain why the end-to-end jurisdictional analysis was relevant to determining which intercarrier compensation mechanism (access or non-access) would apply. *Bell Atlantic v. FCC*, 206 F.3d 1, 5 (D.C. Cir. 2000).

telecommunications traffic, unless the traffic is excluded by Section 251(g).<sup>4</sup> Certain types of traffic enumerated in Section 251(g) are “carved-out” of Section 251(b)(5) compensation.

The *WorldCom* court’s rejection of the FCC’s reliance on Section 251(g) to classify Internet Service Provider- (“ISP-”) bound traffic shows why locally-dialed prepaid card traffic is subject to Section 251(b)(5) compensation. In the *ISP Remand Order*, the FCC concluded that ISP-bound traffic fell within the scope of Section 251(g) and established a new hybrid compensation scheme for this traffic. The *WorldCom* court concluded that Section 251(g) provided no basis for the FCC’s determination that ISP-bound traffic was excluded from Section 251(b)(5). The court found that Section 251(g) permits only “continued enforcement” of pre-1996 Act requirements, rather than conferring independent authority on the FCC to adopt new intercarrier compensation rules inconsistent with Section 251(b)(5).<sup>5</sup> In other words, the “access” traffic described in Section 251(g) is limited to traffic exchange obligations that existed as of February 8, 1996.

The *WorldCom* court also noted that Section 251(g) only governs service provided to interexchange carriers and information service providers, not services LECs provide to other LECs, such as those services LECs provide each other to originate and deliver a locally-dialed call to an Internet Service Provider. The court recognized that “LEC’s services to other LECs, even if en route to an ISP, are not ‘to’ either an IXC or to an ISP.”<sup>6</sup>

The *WorldCom* court found that because “there had been *no* pre-Act obligation relating to intercarrier compensation for ISP-bound traffic,”<sup>7</sup> the FCC could not use Section 251(g) to create a new intercarrier compensation regime.<sup>8</sup> Similarly, there was no pre-Act obligation relating to intercarrier compensation for the exchange of locally-dialed prepaid card traffic between two competing LECs – AT&T and the CLEC. Moreover, locally-dialed prepaid card traffic cannot be subject to the Section 251(b) pre-Act carve

<sup>4</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9165-66 (¶¶ 30-39) (2001) (“*ISP Remand Order*”), *remanded*, *WorldCom v. FCC*, 288 F.3d 429, 431-34 (D.C. Cir. 2002), *cert. den.* 538 U.S. 1012 (2003).

<sup>5</sup> *WorldCom, Inc. v. FCC*, 288 F.3d 429, 432-434 (D.C. Cir. 2002).

<sup>6</sup> *Id.* at 434-35.

<sup>7</sup> *Id.* at 433.

<sup>8</sup> *Id.* at 432.

out because in exchanging locally-dialed prepaid card traffic, a LEC is providing service to another LEC, not to an IXC or information service provider. Accordingly, locally-dialed prepaid card traffic falls squarely within Section 251(b)(5).

**II. The dispute should be resolved by an industry-wide decision of the Commission, not by piecemeal litigation**

As STi has advised AT&T, apart from the question of whether STi owes AT&T originating switched access charges, it is also critically important that the same rules regarding the obligation to pay originating switched access charges apply across-the-board to all prepaid card providers. AT&T's letters have acknowledged that AT&T shares STi's goal of "leveling the playing field in the prepaid calling services arena"; yet AT&T's recent efforts have apparently been focused on threatening to prosecute individual lawsuits against individual prepaid card providers. Despite its recent repeated and extensive filings of comments and proposals in CC Docket 01-92, AT&T is apparently not pursuing an across-the-board resolution of this issue with the Commission.

STi believes that the type of piecemeal litigation against individual prepaid card providers with which AT&T has repeatedly threatened STi is not the best way to achieve a uniform, across-the-board set of rules that will govern competition among prepaid card providers. Rather, the best way to achieve such a result is via a Commission ruling as part of its upcoming consideration of a unified intercarrier compensation regime.

**III. Conclusion**

STi requests that the FCC clarify that prepaid card providers do not owe originating switched access charges to a LEC whose customers place a call to a CLEC's local number to reach a prepaid calling card service provider. STi respectfully urges the Commission to clarify that there is no law preventing prepaid calling card service providers from purchasing local service to provide their customers with local telephone numbers to reach the prepaid calling card service, and there has been no finding that such arrangements require the prepaid calling card service provider to pay originating access charges to a third party LEC. Moreover, any decisions regarding the treatment of such arrangements must be applied on an industry-wide basis to ensure a level playing field for all telecommunications service providers.

Respectfully submitted,



Eric J. Branfman  
Counsel for STi Prepaid, LLC

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cc: The Honorable Kevin Martin, Chairman  
The Honorable Deborah Taylor Tate, Commissioner  
The Honorable Michael Copps, Commissioner  
The Honorable Jonathan Adelstein, Commissioner  
The Honorable Robert McDowell, Commissioner