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Via ECFS and E-Mail

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

Re: *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68

Dear Ms. Dortch:

I am writing this letter on behalf of the AT&T local exchange carriers (“AT&T LECs”)¹ in response to the letter submitted by Cinco Telecom Corp. (“Cinco”).² Cinco purports to seek “clarification” of the Commission’s *Second Prepaid Calling Card Order*.³ That order unambiguously and unequivocally “require[s] all prepaid calling card service providers to pay intrastate and interstate access charges” for prepaid calls, without any exception for long-distance calls placed via prepaid calling card platforms that are accessed through local access numbers.⁴ Nonetheless, Cinco claims that “[t]he regulatory treatment of these calls has been nebulous” and complains about the AT&T LECs’ efforts to collect access charges pursuant to the Commission’s plain edict. Cinco’s request rests in large part on mischaracterizations of the AT&T LECs’ position. More fundamentally, Cinco’s request for clarification is unfounded because the Commission’s order is quite clear.

The Commission was equally clear in this order that all prepaid calling card providers must contribute to the federal universal service fund (“USF”) based on their interstate and international telecommunications revenues.⁵ As discussed below, it is unclear whether a prepaid calling card provider that utilizes local access numbers to connect to its prepaid calling card

¹ The AT&T LECs are: BellSouth Telecommunications, Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southwestern Bell Telephone Company, The Ohio Bell Telephone Company, The Southern New England Telephone Company, and Wisconsin Bell, Inc.

² Letter from Juliana Jaramillo, Cinco Telecom Corp., to Marlene Dortch, Secretary, FCC, WC Docket No. 05-68 (filed May 28, 2009).

³ *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006) (“*Second Prepaid Calling Card Order*”).

⁴ *Id.* ¶ 27.

⁵ *Id.* ¶ 22.

platform in order to provide, for example, international only calls, contributes anything (indirectly or directly) to the USF.

The Commission's Order Is Not "Nebulous," As Cinco Contends, But Clear.

Cinco's principal error lies in its suggestion that there is anything "nebulous" about the Commission's order. Tellingly, Cinco does not identify a single word or phrase in the actual order that it claims to be unclear, or that it believes to support its own position that prepaid calling card traffic is exempt from applicable access charges if it is placed through ostensibly "local" access numbers. There is nothing nebulous about the Commission's order, which squarely states that "all" prepaid calling card providers must pay the applicable access charges for prepaid long-distance calls.⁶ The order contains no exception for calls placed through locally assigned numbers that are used as "platforms." Nor is it limited to calls placed through "8YY numbers." Indeed, there is no exception or limitation in the Commission's order. Moreover, the Commission specifically rejected the view that the dialing pattern for initiating a prepaid call would have any impact on the treatment of that call, stating: "We see no reason why the use of a different dialing pattern to make calls, without more, should result in a different regulatory classification."⁷

To reinforce its holding, the Commission explained that it *intended* its order to have no limitation or exception. First, the Commission acted to ensure a "level regulatory playing field" for "all providers."⁸ Second, the Commission sought to eliminate any "incentives for providers to reduce exposure to charges they may owe or evade them altogether."⁹ Third, the Commission noted, any "uncertainty regarding applicability of our rules could stifle continued market innovation and encourage providers to adapt their products solely to evade contribution to universal service funding mechanisms."¹⁰ Allowing some calling card providers to evade access charges, simply because they offer their end users a different dialing pattern to initiate long-distance calls, would destroy all of these goals by creating improper incentives, distorting the playing field, encouraging providers to adapt their offerings and evade their obligations, and creating the same "uncertainty regarding applicability of our rules" that the Commission sought to (and did) preclude.

The history of the Commission's order confirms its comprehensive scope and intent. Prior to the 2006 order, the Commission had addressed specific prepaid calling arrangements individually, to determine whether access charges applied to each particular arrangement.¹¹ But

⁶ *Id.* ¶ 27.

⁷ *Id.* ¶ 20.

⁸ *Id.* ¶ 8.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd 4826, ¶ 14 (2005).

in its February 23, 2005 order responding to a petition for declaratory ruling by AT&T Corp., the Commission initiated a rulemaking to consider more generally the classification and jurisdiction of “new forms of prepaid calling cards.”¹² Based on the evidence assembled, the Commission “conclude[d] that immediate action ... is necessary to preserve universal service and provide regulatory certainty” by issuing unambiguous rules of unlimited application “requiring *all* providers to pay intrastate and interstate access charges.”¹³

The remaining requirements of the Commission’s order likewise refute any suggestion that the Commission left any opening for prepaid calling card providers to use locally assigned numbers as a means to disguise long-distance calls and thereby evade the access charges that apply to “all” providers. The Commission stated that all carriers – including prepaid calling card providers and the carriers that serve them – “must pass the CPN [calling party number] of the calling party (i.e., the number associated with the telephone used by the cardholder) and not replace that number with the number associated with the platform.”¹⁴ Likewise, the Commission squarely “prohibit[ed] carriers that serve prepaid calling card providers from passing the telephone number associated with the [calling card] platform in the charge number (CN) parameter of the SS7 stream.”¹⁵ Each of these requirements makes clear that the “telephone number associated with the [calling card] platform” – be it an 8YY number, a locally assigned number, or some other scheme – is not and cannot be relevant to determining the applicability of access charges.

While this Commission’s rules under federal law are unmistakable, it bears noting that Florida law – which governs the bulk of Cinco’s intrastate operations – compels the same result. Section 364.16(3)(a) of the Florida Statutes prohibits any competitive local telecommunications company from knowingly delivering “traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.” Under section A2.2.10 of the Florida General Exchange Tariff, schemes to avoid the payment of regular service charges are a sufficient basis to suspend or disconnect service.

Cinco Mischaracterizes The AT&T LECs’ Actions Taken Pursuant To The Commission’s Order

As the preceding discussion makes clear, the plain language of the Commission’s order refutes Cinco’s underlying theory that the Commission’s ruling is “nebulous.” That conclusion is fatal to Cinco’s request.

Perhaps in an attempt to distract the Commission, Cinco’s letter attempts to distort the position of the AT&T LECs. To set the record straight, the AT&T LECs wish to correct Cinco’s misstatements.

¹² *Id.* ¶ 2.

¹³ *Second Prepaid Calling Card Order*, ¶¶ 8, 27.

¹⁴ *Id.* ¶ 33.

¹⁵ *Id.* ¶ 34.

First, the AT&T LECs do not “maintain[] that it is unlawful to use local access numbers to connect to a prepaid calling card platform” as Cinco suggests. Unless the Commission says otherwise, Cinco may use local access numbers to connect to a prepaid calling card platform – so long as it pays access charges on the associated long-distance calls, as it is required to do under this Commission’s order and the AT&T LECs’ effective access tariffs. The problem is that Cinco is using local access numbers to evade its obligation – the obligation of “all prepaid calling card service providers” – to “pay intrastate and interstate access charges.”¹⁶ Accordingly, the AT&T LECs asked Cinco to “cease and desist from all activities the effect of which is to avoid the payment of access charges owed to any AT&T LEC for traffic covered by the FCC’s Prepaid Calling Card order and existing FCC rules.” And in later discussions, the AT&T LECs have confirmed that their concern is not with Cinco’s *use* of local access numbers, standing alone, but with Cinco’s failure to pay the required access charges.

Second, the AT&T LECs do not contend “that the only way to provide local access numbers for prepaid calling card use ... is by employing Feature Group A services.” Certainly, that is one way (and an accepted industry practice at that) for prepaid calling card providers to use local access numbers while still complying with their obligation to pay access charges. And while that is the approach that the AT&T LECs sought in their initial correspondence with Cinco, consistent with comments filed previously in this docket,¹⁷ the AT&T LECs are amenable to other methods that accomplish the same result and that allow the AT&T LECs to confirm that they receive the access charges they are due.

The Commission Should Determine Whether Certain Prepaid Calling Card Providers Are Complying With Their Federal Universal Service Contribution Obligations

While there is no need to clarify the Commission’s clear order that all prepaid calling card providers must pay access charges, there is another issue that warrants the Commission’s attention – an issue that Cinco does not acknowledge in its letter. Prepaid calling card providers, like other providers of telecommunications services, must contribute directly to the federal USF based on their interstate and international telecommunications revenues.¹⁸ There are several reasons, however, why a provider of interstate or international telecommunications would not contribute directly to the USF. First, if a telecommunications provider’s annual contribution would be less than \$10,000, it is considered a *de minimis* provider and may not, under the Commission’s rules, contribute directly to the federal USF.¹⁹ Second, purely international

¹⁶ *Id.* ¶ 27.

¹⁷ See AT&T Reply Comments, WC Docket No. 05-68, at 8 (filed October 23, 2006) (“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*.”) (emphasis added).

¹⁸ 47 C.F.R. § 54.706(a)(19); *Second Prepaid Calling Card Order*, ¶ 22. This order, of course, established a limited exemption from the Commission’s contribution rules for prepaid calling card providers that sell their services pursuant to a Department of Defense contract. 47 C.F.R. § 54.706(d); *Second Prepaid Calling Card Order*, ¶¶ 24-26.

¹⁹ See 47 C.F.R. § 54.708.

telecommunications providers are exempt from contributing directly to the federal USF.²⁰ To be clear, simply because a telecommunications provider is *de minimis* and/or a purely international provider, does not mean that it would not contribute *indirectly* to the USF. Indeed, the Commission directs wholesale providers of interstate telecommunications to treat *de minimis* and purely international carrier customers as end users, not resellers, of their services.²¹ Thus, if AT&T were selling an interstate telecommunications service to an international only prepaid calling card provider, it would treat this provider as an end user and would include the revenues it receives from selling its interstate telecommunications service to this provider in its assessable base. AT&T also would recover its federal USF contribution costs from this international only prepaid calling card provider via a line-item charge calculated pursuant to the Commission's rules.²²

On the other hand, if AT&T is selling an international only prepaid calling card provider (or a *de minimis* prepaid calling card provider) an intrastate service out of its intrastate tariffs, it obviously would not report its intrastate revenues in the federal contribution base, nor would there be any federal USF fee for it to charge the prepaid calling card provider. If an international only prepaid calling card provider is utilizing only local access numbers to reach its calling card platform, it is unclear whether that prepaid calling card provider is contributing anything indirectly to the federal USF. Given that the contribution factor is poised to be at its highest level ever next quarter, AT&T suggests that the Commission consider whether it intended this result when it found several years ago that "all prepaid calling card providers must contribute to the federal USF based on interstate and international telecommunications revenues."²³

* * *

Cinco asks the Commission "to act quickly and conclusively to resolve this issue." But the Commission already resolved the issue, conclusively, in its 2006 order. While the AT&T LECs would have no objection to a "prompt ruling" that reiterates the Commission's prior order and rejects Cinco's attempts to evade that ruling, there is no need for further clarification. The

²⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, ¶ 779 (1997).

²¹ See, e.g., Telecommunications Reporting Worksheet, FCC Form 499-A Instructions at 19 (2009) (directing underlying carriers to report revenues derived from the provision of telecommunications to exempt carriers and providers on Lines 403-417 of FCC Form 499-A). Lines 403-417 are included in the underlying carrier's assessable base.

²² 47 C.F.R. § 54.712(a).

²³ *Second Prepaid Calling Card Order*, ¶ 22. In its most recent quarterly prepaid calling card certification, Cinco certifies that it is "making any required Universal Service Fund contribution on [its interstate and international] revenues." Quarterly Prepaid Calling Card Certification of Cinco Telecom Corp., WC Docket No. 05-68 (filed Feb. 25, 2009). According to the Commission's web site, Cinco is not listed as a current USF contributor. See <http://fjallfoss.fcc.gov/cgb/form499/499detail.cfm?FilerNum=823004>. As AT&T notes above, when a carrier purchases intrastate services from it, AT&T obviously does not contribute to the federal USF based on its intrastate revenues.

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only issue that warrants this Commission's consideration is whether Cinco and other providers are complying with their obligations to contribute to the federal USF.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Cathy Carpino
AT&T Services, Inc.

cc: Al Lewis
Deena Shetler
Hillary DeNigro