

# Locally-Dialed Prepaid Cards and Intercarrier Compensation

Ex Parte Presentation  
WC Docket Nos. 09-51, 01-92, 05-68

January 5, 2011

# Introduction

- Who we are
- Why we are here:
  - Intercarrier compensation for locally-dialed prepaid cards is an important issue for the prepaid card industry.
  - 2006 Prepaid Card Order did not resolve what intercarrier compensation is appropriate; Arizona Dialtone petition for reconsideration still pending.
- Recommended FCC action:
  - FCC's intercarrier compensation NPRM should address this open issue.
  - FCC should clarify that there has been no finding that prepaid calling card service providers purchasing local numbers/connections from LECs must pay originating access charges to a third party LEC.
  - FCC should adopt prospective rules that provide certainty and level playing field for the prepaid card industry.

# Locally-Dialed Prepaid Cards

- Prepaid card customers are overwhelmingly low income users and rely on calling cards for everyday calling needs.
- Consumers benefit from cards that offer lower-cost alternatives to bundled, all-you-can eat and higher per minute rate plans.
- Calling card providers sell cards/PINs that allow the user to initiate calls via dialing a local number as alternative to toll free number.
- CLECs provide calling card providers with local numbers and connections to the local exchange.
- When the calling card user initiates a call, the call is handed off to the CLEC by the LEC serving the end user placing the call.
- The CLEC delivers the call to the calling card provider's facilities.
- Calling card user may place call or check balance, access other information at platform.

# Uncertainty Regarding Applicability of Access Charges to Locally-dialed Prepaid Card Calls

- FCC 2006 Prepaid Card Order based on AT&T petition describing prepaid card calls accessed via 8YY numbers.
- Order described subject calls as those where “the caller initially dials the 8YY number associated with the calling card platform.” (¶ 28)
- Order did not address prepaid card calls that are made using locally-dialed telephone numbers, although AT&T contends it does (and alleges it is owed potentially millions of dollars for access charges from IDT alone).
- Disputes have arisen among ILECs, prepaid card providers, and carriers providing local numbers.
- Uncertainty breeds litigation - AT&T has filed three lawsuits in Texas claiming unpaid originating access charges and has threatened to file many more.

# 2006 Prepaid Card Order

- Question was whether “menu driven prepaid calling cards” (¶ 10) and “prepaid calling cards that utilize IP transport to deliver all or a portion of the call” (¶ 20) should be classified as telecom or information. (¶ 9)
- FCC classified both as telecom services and noted that such services are now subject to “applicable requirements” of Act and rules. (¶ 21)
- To the extent 2006 Order addressed access charges, it did so only for 8YY dialing pattern, not locally-dialed calls. (¶ 28)
- 2006 Order said dialing pattern did not matter for *regulatory classification* of call as telecom or information. (¶ 20)
- 2006 Order did not address whether 251(b)(5) or 251(g) compensation applies when prepaid card call is placed using local dialing pattern.

# Arizona Dialtone Petition for Reconsideration

- On August 31, 2006 Arizona Dialtone, a LEC, filed a Petition seeking reconsideration of the FCC's June 30 2006 Order.
- Petition asked FCC to address ambiguity in the June 30 Prepaid Card Order by, among other things:
  - requiring prepaid card providers to provide lists of DIDs (local numbers);
  - imposing reporting obligations on LECs offering DIDs to prepaid calling card providers; and
  - clarifying which provider (LEC or card provider) is responsible for access.
- Card providers responded that the 2006 Order did not address the predicate issue, whether locally-dialed calls are subject to Section 251(b)(5) or Section 251(g) compensation.
- FCC has not acted on the Arizona Dialtone Petition.

# Statutory Framework

- 251(b)(5) Requires Reciprocal Compensation:
  - 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* telecommunications traffic, unless the traffic is excluded by Section 251(g).
- Section 251(g) is limited and does not apply here:
  - 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).
  - The “access” traffic described in Section 251(g) is limited to traffic exchange obligations that existed as of February 8, 1996.
  - Does not cover to LEC to LEC arrangements.
  - As with ISP-bound traffic, there was no pre-Act obligation relating to intercarrier compensation for the exchange of locally-dialed prepaid card traffic between two competing LECs. (*WorldCom v. FCC*, 288 F.3d 429, 433-4.)

# The FCC Should Act to Preserve its Authority and Create Uniform Rules

- Court in N.D. Texas rejected IDT motion to refer case to FCC to resolve issues raised in Arizona Dialtone Petition and responses.
- Important that the same rules regarding intercarrier compensation apply across-the-board to all prepaid card providers using locally-dialed numbers.
- FCC should adopt uniform rules that will govern intercarrier compensation prospectively for prepaid card calls using locally-dialed numbers.
  - Current access tariff provisions do not address this type of traffic exchange.
  - Practical difficulty of identifying traffic may require cooperative approach between LECs and calling card provider.
- Absent clarity provided by FCC ruling, piecemeal litigation would result in unlevel playing field FCC sought to avoid in 2006 Order.

# Conclusion

- FCC should clarify that:
  - there is no law or rule preventing prepaid calling card 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.
- Any change in this policy must be applied prospectively on an industry-wide basis to ensure a level playing field for all prepaid card providers using locally-dialed numbers.
- FCC should include this issue in forthcoming intercarrier compensation reform NPRM.