Prepaid Cards and Intercarrier Compensation

Ex Parte Presentation

WC Docket Nos. 01-92, 05-68, 10-90

Introduction

- Who we are
- Why we are here:
  - Intercarrier compensation for prepaid card traffic accessed via CLEC DID is an important issue for the prepaid card industry.
  - FCC's intercarrier compensation NPRM invited comment on this open issue in ¶ 684 and fn. 1101.
  - AT&T and prepaid calling providers filed comments with substantive arguments.
- Recommended FCC action:
  - FCC should confirm that prepaid calling card service providers purchasing local numbers/connections from LECs are not subject to a third party LEC's originating access charges under current FCC rules.
  - FCC should adopt prospective rules that provide certainty and level playing field for the prepaid card industry.

Section 251(g) does not “preserve” access charges on prepaid card traffic accessed via CLEC DIDs

- Section 251(g) requires each LEC to provide “exchange access...to interexchange carriers” in accordance with obligations that apply to “such carrier” prior to the 1996 Act.
- AT&T origination services for prepaid card traffic to CLEC DIDs are provided to another LEC (the LEC serving the prepaid card provider), not an IXC.
- Under *WorldCom*, LEC services provided to other LECs are not “to either an IXC or to an ISP,” even if they are “en route to an” IXC (*WorldCom*, 288 F.3d at 433-34).
- In this case, AT&T offers no exchange access service to an IXC that is preserved by Section 251(g).

Any pre-1996 Act obligation to offer FGA does not apply to CLECs offering DIDs

- AT&T argues Section 251(g) preserves access because the arrangement is the “functional equivalent” of FGA arrangements between LECs that predated the 1996 Act and prepaid card providers should “forthrightly” purchase such FGA services.
- Prepaid card calls accessed via CLEC DIDs are not “functionally equivalent” to FGA between neighboring ILECs.
- Because CLECs are exempt from the FCC rule requiring LECs to offer IXCs exchange access services, there is no applicable “obligation” for Section 251(g) to preserve.
- CLECs may, and do, offer prepaid providers DIDs rather than FGA services; in such cases there is no “jointly provided switched access.”

The routing pattern and tariff terms matter

- In the *Virginia Arbitrations*, the Commission rejected similar functional equivalence arguments, refusing to classify calls routed as local between ILECs and CLECs as subject to access based on their end points.
- FCC can determine in rulemaking whether Act permits AT&T to impose switched access on prepaid calls to CLEC DIDs; FCC or court must determine in complaint whether AT&T tariffs apply to require payment of such access charges in specific circumstances.
- Assuming, *arguendo*, that a prepaid card provider constructively ordered AT&T's FGA service, AT&T would still have to prove its tariffs apply.
- FCC rules provide that the dial tone office provider bills end office switching; AT&T is not the dial tone provider where the CLEC provides DIDs. *Access Billing Requirements for Joint Service Provision*, 4 FCC Rcd 7183, 7185 ¶ 22, and 7187 n.20 (CCB 1989).
- FCC has refused to apply tariff where routing and network configurations at issue were not specifically described in the tariff (*AT&T v. YMax*) and/or the definitions are inconsistent with FCC rules (*Qwest v. Northern Valley*).

AT&T proposes no workable solution to impose access

- Prepaid calls to DIDs are indistinguishable from other local calls.
- Although passage of originating CPN (rather than platform number) can assist *terminating* carriers identify jurisdiction of prepaid calls for access charges, there is no similar mechanism for *originating* carriers to identify jurisdiction of prepaid calls to CLEC DIDs.
- AT&T has never issued IDT any access invoice for prepaid card traffic delivered to CLEC DIDs.
- AT&T's tariffs provide no right or mechanism to issue such invoices.
- Directing each pair of carriers that send and receive such calls to develop a billing solution would be contrary to the NPRM's goal of establishing a uniform intercarrier compensation regime and simplifying billing and payment of such charges.
- It is also impractical for the FCC to direct the entire industry to arrive at a single solution.

The FCC should act to preserve its authority and create uniform rules

- Intercarrier compensation order will not be comprehensive or end disputes if it fails to address prepaid card issue.
- FCC should clarify in the Order that:
  - prepaid calling card service providers purchasing local numbers/connections from LECs are not subject to a third party LEC's originating access charges under current FCC rules or Section 251(g).
  - if the FCC wants to change current law/practice that access charges do not apply, it should make clear it is changing law/policy prospectively for entire industry.
  - assuming, *arguendo*, that Act and rules permit access charges, a LEC must still prove it is offering tariffed services that entitle such LEC to bill access charges.
- Absent clarity provided by FCC ruling, piecemeal litigation, which is already ongoing in 3 separate cases involving AT&T and 3 different prepaid card providers, and which AT&T has threatened to bring against numerous other prepaid card providers, will result in unlevel playing field FCC sought to avoid in 2006 Order.