

**H.R. 3993, THE CALLING CARD CONSUMER
PROTECTION ACT OF 2009**

HEARING
BEFORE THE
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

DECEMBER 3, 2009

Serial No. 111-86



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE

74-857

WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND COMMERCE

HENRY A. WAXMAN, California, *Chairman*

JOHN D. DINGELL, Michigan
Chairman Emeritus

EDWARD J. MARKEY, Massachusetts

RICK BOUCHER, Virginia

FRANK PALLONE, JR., New Jersey

BART GORDON, Tennessee

BOBBY L. RUSH, Illinois

ANNA G. ESHOO, California

BART STUPAK, Michigan

ELIOT L. ENGEL, New York

GENE GREEN, Texas

DIANA DEGETTE, Colorado

Vice Chairman

LOIS CAPPS, California

MICHAEL F. DOYLE, Pennsylvania

JANE HARMAN, California

TOM ALLEN, Maine

JANICE D. SCHAKOWSKY, Illinois

CHARLES A. GONZALEZ, Texas

JAY INSLEE, Washington

TAMMY BALDWIN, Wisconsin

MIKE ROSS, Arkansas

ANTHONY D. WEINER, New York

JIM MATHESON, Utah

G.K. BUTTERFIELD, North Carolina

CHARLIE MELANCON, Louisiana

JOHN BARROW, Georgia

BARON P. HILL, Indiana

DORIS O. MATSUI, California

DONNA M. CHRISTENSEN, Virgin Islands

KATHY CASTOR, Florida

JOHN P. SARBANES, Maryland

CHRISTOPHER S. MURPHY, Connecticut

ZACHARY T. SPACE, Ohio

JERRY McNERNEY, California

BETTY SUTTON, Ohio

BRUCE L. BRALEY, Iowa

PETER WELCH, Vermont

JOE BARTON, Texas

Ranking Member

RALPH M. HALL, Texas

FRED UPTON, Michigan

CLIFF STEARNS, Florida

NATHAN DEAL, Georgia

ED WHITFIELD, Kentucky

JOHN SHIMKUS, Illinois

JOHN B. SHADEGG, Arizona

ROY BLUNT, Missouri

STEVE BUYER, Indiana

GEORGE RADANOVICH, California

JOSEPH R. PITTS, Pennsylvania

MARY BONO MACK, California

GREG WALDEN, Oregon

LEE TERRY, Nebraska

MIKE ROGERS, Michigan

SUE WILKINS MYRICK, North Carolina

JOHN SULLIVAN, Oklahoma

TIM MURPHY, Pennsylvania

MICHAEL C. BURGESS, Texas

MARSHA BLACKBURN, Tennessee

PHIL GINGREY, Georgia

STEVE SCALISE, Louisiana

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

BOBBY L. RUSH, Illinois

Chairman

JANICE D. SCHAKOWSKY, Illinois
Vice Chair

JOHN P. SARBANES, Maryland

BETTY SUTTON, Ohio

FRANK PALLONE, JR., New Jersey

BART GORDON, Tennessee

BART STUPAK, Michigan

GENE GREEN, Texas

CHARLES A. GONZALEZ, Texas

ANTHONY D. WEINER, New York

JIM MATHESON, Utah

G.K. BUTTERFIELD, North Carolina

JOHN BARROW, Georgia

DORIS O. MATSUI, California

KATHY CASTOR, Florida

ZACHARY T. SPACE, Ohio

BRUCE L. BRALEY, Iowa

DIANA DeGETTE, Colorado

JOHN D. DINGELL, Michigan (ex officio)

CLIFF STEARNS, Florida

Ranking Member

RALPH M. HALL, Texas

ED WHITFIELD, Kentucky

GEORGE RADANOVICH, California

JOSEPH R. PITTS, Pennsylvania

MARY BONO MACK, California

LEE TERRY, Nebraska

MIKE ROGERS, Michigan

SUE WILKINS MYRICK, North Carolina

MICHAEL C. BURGESS, Texas

CONTENTS

	Page
Hon. Bobby L. Rush, a Representative in Congress from the State of Illinois, opening statement	1
Hon. George Radanovich, a Representative in Congress from the State of California, opening statement	2
Prepared statement	5
Hon. Janice D. Schakowsky, a Representative in Congress from the State of Illinois, opening statement	9
Hon. Cliff Stearns, a Representative in Congress from the State of Florida, opening statement	9
Hon. G.K. Butterfield, a Representative in Congress from the State of North Carolina, opening statement	10
Hon. Joseph R. Pitts, a Representative in Congress from the Commonwealth of Pennsylvania, opening statement	11
Hon. Ed Whitfield, a Representative in Congress from the Commonwealth of Kentucky, opening statement	12
Prepared statement	13
Hon. Eliot L. Engel, a Representative in Congress from the State of New York, opening statement	15
Hon. John D. Dingell, a Representative in Congress from the State of Michigan, prepared statement	97
Hon. Joe Barton, a Representative in Congress from the State of Texas, prepared statement	98
Hon. Phil Gingrey, a Representative in Congress from the State of Georgia, prepared statement	83
WITNESSES	
Lois Greisman, Director, Division of Marketing Practices, Federal Trade Commission	17
Prepared statement	19
Answers to submitted questions	104
Sally Greenberg, Executive Director, National Consumers League	31
Prepared statement	34
Patricia Acampora, Commissioner, New York State Public Service Commission, National Association of Regulatory Utility Commissioners	43
Prepared statement	45
Answers to submitted questions	107
Alie Kabba, Executive Director, United African Organization	61
Prepared statement	63
Scott Ramminger, President, American Wholesale Marketers Association	66
Prepared statement	68
SUBMITTED MATERIAL	
Statement of USTelecom Association	72
Statement of National Association of Convenience Stores	79
Excerpt of Congressional Record, September 25, 2008, submitted by Mr. Radanovich	103

**H.R. 3993, THE CALLING CARD CONSUMER
PROTECTION ACT OF 2009**

THURSDAY, DECEMBER 3, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:09 a.m., in Room 2322 of the Rayburn House Office Building, Hon. Bobby Rush [Chairman of the Subcommittee] presiding.

Members present: Representatives Rush, Schakowsky, Sarbanes, Butterfield, Space, Engel, Radanovich, Stearns, Whitfield, Pitts, Gingrey, and Scalise.

Staff present: Michelle Ash, Chief Counsel; Tim Robinson, Counsel; Angelle Kwemo, Counsel; Anna Laitin, Counsel; Will Cusey, Special Assistant; Sarah Fisher, Special Assistant; Shannon Weinberg, Counsel; Brian McCullough, Professional Staff; Will Carty, Senior Professional Staff; and Chad Grant, Legislative Analyst.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. Good morning. The subcommittee will now come to order.

This hearing is being convened to consider H.R. 3993, the Calling Card Consumer Protection Act of 2009, and the Chair wants to take a quick moment just to welcome all who are gathered, our witnesses, our—the audience, and also I want to welcome all the members to this hearing.

And the Chair now recognizes himself for 5 minutes for the purposes of an opening statement. The pre-paid legal calling industry generates more than \$4 billion in annual revenues. It is a highly fragmented industry comprised of well-known and lesser-known telecommunications companies that are owned and operated on public and private networks, resale of the telecommunications services, and marketing firms and distributors who produce, brand, and deliver the cards to retail outlets and stores.

The Chair wants to take a moment to thank my friend and colleague from New York, Mr. Engel, for reintroducing this bill in the House. It would significantly improve the truthfulness of calling card advertisements and pave new avenues of recourse for millions of defrauded and vulnerable classes of consumers in this country.

There is a familiar phrase that has been made infamous by the great businessman and showman P.T. Barnum, and he kind of succinctly put us in the proper framework for this time. "There is a sucker born every minute," and these words have helped to set the scene for today's hearing.

Fraudulent calling cards are in the stream of commerce day by day. They misrepresent the amount of the calling minutes that are supplied on the calling card and high applicable fees and charges, and at times the cards may even provide substandard phone connection, ineffective PIN numbers, and non-functional or always-busy customer service contact information.

H.R. 3993 would remedy many of these problems. It would require calling card providers and distributors to advertise clearly and conspicuously the relevant and applicable information on the cards. Such disclosures would include contact information for the card service provider, number of minutes applied on the card, and dollar value of the card.

I want to, again, want to greet all the witnesses who are here with us today, and I thank them for taking time out of their busy schedules to be here, and I look forward to each and every one of your insights and to your views on this particular matter of H.R. 3993.

And allow me to take particular pleasure today to greet Mr. Alie Kabba, who is a witness today. Mr. Kabba is the Executive Director of the United African Organization. He has worked devotedly from the organization's Chicago headquarters on behalf of the more than 100,000 African-American women and children who now make their homes in Illinois. Again, I want to thank each and every one of you for being here today.

With that I yield back the balance of my time, and now it is my distinct honor to recognize the Ranking Member of the subcommittee, the gentleman from California, Mr. Radanovich, for 5 minutes.

OPENING STATEMENT OF HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. RADANOVICH. Thank you, Mr. Chairman. I appreciate the fact that we are holding this hearing, and last Congress similar legislation was ushered through the committee and onto the House floor, and only a few short weeks before Congress recessed for the term. Doing so reflected our appropriate recognition that fraud and deception in the prepaid calling card market does exist and that it is necessary to address this problem.

Intentionally taking advantage of consumers, whether they are immigrant groups or our military serving overseas with prepaid cards that deliver less service than advertised, is no different than stealing. If a consumer purchases a calling card expecting a certain amount of minutes, minus the advertised fees, but later finds out that hidden fees or expiration of minutes reduce the value of what they purchased, this is at very least deceptive and quite possibly fraudulent. We certainly would not accept paying for a full tank of gasoline but driving away with only half a tank.

This is not good for consumers, and it is not good for the legitimate businesses who make and sell these cards. Companies generally are not opposed to many of the requirements in legislation as long as they are relevant and adhered to by our competitors. It is often the companies that cannot compete on price or service, however, that hide the fees or intentionally misrepresent the number of minutes the consumer is actually purchasing.

This has got to stop. Consumers should have the necessary information to select the card of their choice and are often willing to pay more when they are knowing that they are buying a better service. The important point is that the consumers are able to choose based on available, truthful information.

H.R. 3993 is intended to provide additional tools to the FDC and to the States to prohibit certain practices, require specific disclosures, and enforce violations of the Act. I agree it is important to provide meaningful tools to stop abusive or fraudulent practices, but given the available time to examine the legislation more thoroughly this year than last year's end-of-Congress frenetic pace, should take the—we should take the appropriate time to move through regular order and make necessary changes. As the FTC will testify, they have brought a number of cases, and the States have brought over 20 cases since the spring of 2008. This legislation could be helpful as a fraud deterrent, but enforcement of existing law will continue regardless of when Congress may enact legislation.

I have concerns regarding certain provisions of the bill and in particular the differences between this version and the one the committee considered in the last Congress. Consolidating enforcement at the FTC is good policy given their history of consumer protection and enforcement against unfair, deceptive practices, but to be effective it requires a legislative change to the existing common carrier exemption under the FCA Act, and without that the vast majority of prepaid service providers would remain outside the reach of the FTC.

My concern regarding this provision is whether it effectively consolidates enforcement under the FTC or whether it leaves open the unwanted possibility of dual regulation by both the FTC and the FCC, and I hope that we can work to clarify this language.

Additionally and of more concern is to change the permits, the States to regulate the same activity as that proposed by this legislation. The States can do—that States can do and enforce their own laws in this area. As a policy matter, the change to remove the preemption while enacting a new Federal law is an obvious problem. We could respect States' rights and leave it to them to continue to enact and enforce 50 different sets of laws, or we can decide we need to have a strong Federal law that provides a uniform and consistent regime that benefits consumers. Doing both will create conflicts and confusion that accompany up to 50 different disclosure requirements and will have little corresponding benefit, which is why I support the one Federal standard.

Additionally, there is concern that retail merchants who have no direct relationship or control over the disclosures required would be subject to this Act. Mr. Engel's original bill defined distributors specifically to not include retail establishments that were engaged

only in a point-of-sale transaction. This clarification is no longer in the legislation, and I would like to hear the objections and providing—to providing such a protection. I am not aware of other instances where a retailer is liable for the disclosures on a product it merely resells as a merchant.

I would like to thank Mr. Engel for his commitment to this issue, and I look forward to discussing and hope to work in a bipartisan manner to improve the legislation. Thank you, Mr. Chairman. I yield back.

[The prepared statement of Mr. Radanovich follows:]

Statement of the Honorable George Radanovich
Ranking Member, Subcommittee on Commerce, Trade, and
Consumer Protection
Hearing on H.R. 3993, the Calling Card Consumer Protection Act
December 3, 2009

Thank you Mr. Chairman for calling this hearing. Last Congress, similar legislation was ushered through the Committee and on to the House Floor only a few short weeks before Congress recessed for the term. . Doing so reflected our appropriate recognition that fraud and deception in the prepaid calling card market exist and that it is necessary to address this problem.

Intentionally taking advantage of consumers – whether they are immigrant groups or our military serving overseas - with prepaid cards that deliver less service than advertised is no different than stealing. If a consumer purchases a calling card expecting a certain amount of minutes, minus the advertised fees, but later finds out hidden fees or expiration of minutes reduced the value of what they purchased, that is at the very least deceptive, and quite possibly fraudulent. We certainly would not accept paying for a full tank of gasoline but driving away with only half a tank.

This is not good for consumers and is not good for the legitimate businesses who make and sell these cards. Companies generally

are not opposed to many of the requirements in the legislation, , as long as they are relevant and adhered to by all competitors. It is often the companies that cannot compete on price or service, however, that hide the fees or intentionally misrepresent the number of minutes the consumer is actually purchasing. This has to stop. Consumers should have the necessary information to select the card of their choice, and are often willing to pay more when they know they are buying a better service. The important point is that the consumers are able to choose based on available, truthful information.

H.R. 3993 is intended to provide additional tools to the FTC and the states to prohibit certain practices, require specific disclosures, and enforce violations of the Act.

I agree it is important to provide meaningful tools to stop abusive or fraudulent practices. But given the available time to examine this legislation more thoroughly this year than last year's end-of-Congress frenetic pace, we should take the appropriate time to move through regular order and make necessary changes. As the FTC will testify, they have brought a number of cases and the states have brought over twenty cases since the spring of 2008. This legislation could be helpful as a fraud deterrent, but

enforcement of existing law will continue regardless of when Congress may enact legislation.

I have concerns regarding certain provisions of the bill, and in particular, the differences between this version and the one the Committee considered last Congress. Consolidating enforcement at the Federal Trade Commission is good policy given their history of consumer protection and enforcement against unfair and deceptive practices. But to be effective, it requires a legislative change to the existing common carrier exemption under the FTC Act. Without it, the vast majority of prepaid service providers would remain outside the reach of the FTC.

My concern regarding this provision is whether it effectively consolidates enforcement under the FTC or whether it leaves open the unwanted possibility of dual regulation by both the FTC and FCC. I hope we can work to clarify this language.

Additionally, and of more concern, is the change that permits states to regulate the same activity as that proposed by the legislation. The states can and do enforce their own laws in this area. As a policy matter, the change to remove the preemption while enacting a new Federal law is an obvious problem. We can respect states'

rights and leave it to them to continue to enact and enforce their own laws, or we can decide we need to have a strong Federal law that provides a uniform and consistent regime that benefits consumers. Doing both will create conflicts and confusion that accompany 50 different disclosure requirements and will have little corresponding benefit.

Additionally, there is concern that retail merchants who have no direct relationship or control over the disclosures required would be subject to this Act. Mr. Engel's original bill defined distributors specifically to not include retail establishments that were engaged only in point of sale transactions. This clarification is no longer in the legislation and I would like to hear the objections to providing such protection. I am not aware of other instances where a retailer is liable for the disclosures on products it merely resells as a merchant.

I would like to thank Mr. Engel for his commitment to this issue, and look forward to the discussion and hope to work in a bipartisan manner to improve the legislation.

Mr. RUSH. The Chairman thanks the gentleman.

The Chair now recognizes the gentleman from Ohio, Mr. Space, for 2 minutes for the purpose of an opening statement.

Mr. SPACE. I will waive my opening statement, Mr. Chairman. Thank you.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the Vice-Chair of the subcommittee, Ms. Schakowsky, for 2 minutes.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I am very pleased to be here today to discuss the Calling Card Consumer Protection Act, and I congratulate my colleague, Mr. Engel, for introducing it and the Chairman for holding this hearing.

This bill moved very quickly in the Congress, passing the House easily by voice vote. I hope that we can move as quickly this time around as—on this important consumer protection bill. Today more than 276 million American households and 89 percent of the U.S. population have cell phones, but prepaid calling cards remain a huge industry, worth \$4 billion in 2007. They are particularly popular among college students, as well as military personnel and immigrant communities, people who frequently make international calls.

My district is one of the most diverse in the Nation. Almost one-third of my constituents are foreign born, first generation American or first generation American residents. So calling cards are very, very important to them.

Unfortunately, the calling card industry is full of deceptive advertising and hidden fees. The Illinois Attorney General, Lisa Madigan, is currently investigating about a half dozen companies for their harmful practices. A card might say it is worth 250 minutes, but you could get 200 or 100 once you actually use it or even zero minutes. Some cards come with phone numbers that never connect or send you to a busy signal. Too often calling cards have no information listed about connection fees, varying rates per minute, a charge each week that you don't know when you use the card, or even fees for just hanging up. Such abusive and unfair practices must stop.

I look forward to hearing from our witnesses, whether they believe the Calling Card Consumer Protection Act is sufficient or whether we need to go even further. I thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. RUSH. The Chair now recognizes the gentleman from Florida, Mr. Stearns, for 2 minutes for the purposes of an opening statement.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Thank you, Mr. Chairman. While we can see what a difference a majority has on the Republicans and Democrats because we all supported the Engel bill. We passed it, I think, by voice vote in the last Congress. Wasn't that right, Mr. Engel? Yes?

And now I have to say that as much as I support the intent, I am a little concerned, obviously, with the Federal preemption, and that is the area that I think many of us on this side are concerned. I know that Mr. Barton has also experienced some concern with that, too.

This pre-card calling industry is a billion dollar industry. There are some bad actors. Mr. Engel is to be commended for his bill. He is simply asking for accurate and reasonable disclosure of the terms and conditions of prepaid calling cards. So what could be wrong with that? Nothing.

But let me just give you one of the concerns that I have. Unlike the one he introduced in last Congress, the new version of the Calling Card Consumer Protection Act does not, does not, let me repeat, contain Federal preemption. Instead, this bill allows States to enact requirements, each and every State, that provide equal or greater protection than the Federal standard.

Given the small size of calling cards and the difficulties involved with having to fit lengthy disclosures onto the cards, some in multiple languages, in a clear and conspicuous manner companies may not be physically able to comply with both Federal and multiple-State disclosure requirements.

So we have 50 States, you are going to have 50 requirements, and you are going to have to reconfigure for each of those States. So I think we need one unified set of rules that will apply all players, to all players on notice, really outlining what their responsibilities are to consumers. I think Mr. Engel would probably agree with that, and so I think this is a point we can work on together in a bipartisan manner to address this issue before we mark up.

So I would urge the Chairman, Mr. Waxman, and the Ranking Member, Mr. Rush, to consider that we have a well-intentioned bill that is something that everybody agrees with, but we need to have an understanding that in the area of preemption we cannot have 50 States complying with all these multiple requirements for disclosures on the card and perhaps in multiple languages.

So with that, Mr. Chairman, I would say that this is a very good bill with that one reservation. Thank you.

Mr. RUSH. The Chair now recognizes the gentleman from North Carolina, Mr. Butterfield, for 2 minutes.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman, for holding this hearing, and thank you, Mr. Engel, for offering it. It is a good bill, and I support it.

The bill increases the protections for consumers and will go far to ensure those who use prepaid calling cards know what they are buying and what fees and charges are associated with the use. I say all of the time, I represent the fourth poorest district in the United States of America, where the unemployment rate is just going out of the sky. Many of my constituents, some of the most—are the most poorest in the Nation, and prepaid calling cards are used often by my constituents to communicate with their families. These are the same workers that clean our schools and harvest our

food, and they are the same people who are being preyed upon by despicable prepaid calling card companies.

Large calling card companies sell these cards in various minute amounts, and what is not clearly disclosed to the consumer is the hefty connection or hang-up fees and other fees associated with each call. A \$20 calling card promising to deliver 100 minutes, for example, could ultimately only yield a small percentage of the minutes. In fact, a 2008, study found that of the 45 prepaid cards surveyed, only 60 percent of advertised minutes were actually delivered. These predatory actions force hardworking people into a cycle of being victimized by the fraud and deception practiced by the prepaid calling card companies.

H.R. 3993 provides greater transparency for prepaid calling card consumers. It is a good bill. I plan to support it, and thank my friend, Mr. Engel, for offering it.

I yield back.

Mr. RUSH. The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 2 minutes.

OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. PITTS. Thank you, Mr. Chairman. Thank you for holding this hearing on H.R. 3993, the Calling Card Consumer Protection Act of 2009.

Prepaid calling cards are used by scores of people in the United States, from college students to people with family and friends abroad, to military personnel. American consumers spent roughly \$4 billion on cards in 2007, however, a number of studies have found that there are serious flaws in some of the cards. Many do not deliver the full number of advertised minutes. In addition, cards sometimes lead to poor phone connections and provide toll free and other call-in numbers that are busy or do not work.

To address these problems last Congress the Energy and Commerce Committee considered H.R. 3402, which passed by voice vote on the floor. The bill we are considering today is similar to last year's, but there are a number of concerns with H.R. 3993 that I hope we can reconcile.

Unlike the sent version of this bill, H.R. 3993 does not explicitly limit the authority of the FCC, where the FTC has jurisdiction under the bill. I believe it would be harmful to place duplicative and overly-burdensome regulation on industry by mandating they be subject to both the FCC and the FTC.

Additionally, preemption is essentially eliminated in H.R. 3993. The previous legislation only permitted continuation of State laws that are identical to the Federal law. Under H.R. 3993 states are now allowed to enact requirements that provide equal or greater protection than the Federal standard. Finally, not exempting retail merchants from the definition of distributor calls into question if the retail merchant industry is now liable for the same card disclosures required of the service providers and distributors.

I hope that many of these concerns can be addressed before we move the bill. I look forward to hearing from the witnesses today, and I yield back.

Mr. RUSH. The Chair now recognizes the gentleman from Maryland, Mr. Sarbanes, for 2 minutes.

Mr. SARBANES. I waive my opening.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the gentleman from Kentucky for 2 minutes.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. Mr. Chairman, thanks very much, and we appreciate your having this hearing on this important legislation.

The Federal Trade Commission estimates that approximately half of the \$4 billion of industry revenue from selling these cards can be attributed to fraudulent gains, and so I do believe that this legislation is a step in the right direction but like some others on the committee I have three basic, primary concerns.

First of all, any industry operating in inter-State commerce I think it is imperative that there be Federal preemption, because the last thing we want to happen is for a company to have to deal with 50 different regulations on a particular card.

The second thing that I am concerned about in this legislation is the possibility of dual regulation between the FCC and the FTC. We all know the difficulty with bureaucracies and without a clear, definitive understanding of which agency will be responsible, I think that is going to be a problem as well.

And then the third thing that I do have a concern about is that the retailers who sell these cards, I think it is imperative that if they are knowingly involved in fraudulent activity, then obviously they should suffer the consequences, but I think it is very easy for retailers to sell these cards and not be aware of the fraudulent activity. And so I think that we should take steps to clarify that and make sure that they are not held liable if they are not knowingly aware of it.

But I want to thank the Chairman for his continued leadership in this effort and for the Ranking Member as well, and I yield back my 9 seconds.

[The prepared statement of Mr. Whitfield follows:]

**Floor Statement for the Honorable Ed Whitfield
H.R. 3993, the Calling Card Consumer Protection Act
June 23, 2010**

- Madame Speaker, I rise today in support of H.R. 3993, the Calling Card Consumer Protection Act.

- Prepaid calling cards provide an economical means for students, immigrants and our men and women in uniform to stay in touch with friends and loved ones. However, recent studies have indicated that this valuable service has been steeped in fraud and foul play.

- Exorbitant connection or hang up fees, maintenance fees, early card expiration, or fluctuating minute rates are just some of the tools that bad actors in the industry are using to shortchange the consumer.

- Though estimates vary, it is widely believed that the majority of prepaid cards only deliver 50 to 60 percent of the minutes advertised. While a private enterprise has the right to shape its business model as it sees fit, it does not have the right to misinform and mistreat consumers.

- I am pleased to say that H.R. 3993 would go a long way toward preventing these occurrences in the future. This legislation will ensure that consumers are better informed by requiring the accurate and reasonable disclosure of the terms and conditions of prepaid telephone calling cards and services.

- Under the bill, prepaid calling card providers would have to clearly disclose how many minutes they offer, and the price for those minutes. They would also have to clearly disclose any additional fees levied on the consumer as well as the card's expiration date, and other relevant information.

- Some have alleged that fraudsters in this business will migrate to the wireless prepaid market, but we have not yet seen evidence of that. Accordingly, the bill addresses this issue with an FTC study.

- Prepaid calling cards are a \$4 billion dollar industry, and I am proud of the steps this legislation takes to make sure the industry is a fair one.
- I would also especially like to thank my colleague and the bill's original sponsor, Mr. Engel, for working so closely with the Minority on this issue. Because of our bipartisan work together, we have a bill that helps consumers without hampering industry.
- This legislation includes common sense a pre-emption standards, liability exemptions for retailers, and of course strong protections for the consumers.
- This bill demonstrates the fine legislative product that is possible when Democrats and Republicans work together.
- I urge my colleagues to support H.R. 3993 and I reserve the balance of my time.

Mr. RUSH. The Chair thanks the gentleman.

Now, seeing that there are no other witnesses, no other members who need to be recognized for opening statements, the Chairman now requests unanimous consent that the author of the bill, Mr. Engel, be allowed to sit in on the committee hearing and participate in the committee hearing, and he will be able to ask questions at the conclusion of the questions by the members of the committee.

Hearing no objections, so ordered.

And the Chair now recognizes for 5 minutes the author of the legislation, Mr. Engel.

OPENING STATEMENT OF HON. ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ENGEL. Well, thank you very much, Mr. Chairman. I want to thank you for holding today's hearing on my legislation, H.R. 3993, the Calling Card Consumer Protection Act, and for allowing me to participate as a member of the Energy and Commerce Committee but not a member of this subcommittee. I would also like to welcome Commissioner Acampora from my home State of New York for attending this hearing as well.

And I appreciate the comments made by all of my colleagues in support of the bill, even though some may have some questions about certain parts of it. As many of us know, calling cards are an invaluable resource for people who don't have long distance telephone service in their home or those who make frequent overseas calls. Calling cards that provide the services the companies advertise can save consumers a great deal of money when they call home, but unfortunately as members have said, as we are seeing over and over again, many companies fail to keep their advertised terms.

About 3 years ago I began hearing from a number of constituents regarding their prepaid calling cards. They were contacting me because their calling cards failed to provide the number of minutes that were advertised. In fact, many were not even close to delivering the promised number of minutes.

In independent tests calling cards were shown to provide far fewer minutes than were advertised. One study found that on average the caller only received 60 percent of the minutes guaranteed by the card. I recently read that the prepaid calling card industry takes in \$4 billion a year in revenue. If the cards are only providing 60 percent of the minutes, we can all do the math. This deception is costing consumers and honest companies hundreds of millions of dollars a year.

Calling card fraud harms segments of the population, as my colleagues have pointed out, who are among the most vulnerable to being victimized by unscrupulous companies, only seeking to make a quick profit. These companies are known to target poor, minority, and immigrant populations, and they don't stop there. Even our soldiers in Iraq and Afghanistan have been preyed upon by deceptive practices of calling card companies.

My legislation will put a stop to these practices. It would also provide that the government is able to enforce the legislation to try

to get rid of the dishonest companies. Calling cards are an extremely useful product for consumers, and I don't want to see honest companies punished. There is absolutely no reason why a company cannot deliver what is promised and still turn an honest profit. If consumers know that the card they purchased will provide the full amount of calling time that is advertised, this will benefit both consumers and the marketplace.

And let me just say I think that industry here should support this bill, not get bogged down with ridiculous reasons for opposing it. I commend those segments of the industry that are working with us, but the ones that are dragging their feet, if they have nothing to hide, if their calling cards are not fraudulent, then they should enthusiastically support this legislation.

And I want to thank Senator Nelson of Florida, who is sponsoring this bill in the Senate, as well. I would strongly encourage the members of the committee, of the subcommittee, to support H.R. 3993.

I will show flexibility in working with members to see if we can all come to a conclusion, but we don't want to water down the bill so much that it becomes ineffective. So I think that is the counter to what some of my colleagues have pointed out, but I do appreciate the bipartisan support for this bill, and I strongly urge members of the committee to support it, and I thank you, again, Mr. Chairman, for holding this hearing today and allowing me to participate as a subcommittee member, and I yield back the balance of my time.

Mr. RUSH. The Chair thanks the gentleman.

Now it is my distinct honor and privilege to welcome our witnesses for today's hearing. Beginning on my left we have with us Ms. Lois Greisman. I think I am pronouncing that right. Ms. Greisman is the Director of the Division of Marketing Practices for the Federal Trade Commission. Next to Ms. Greisman is Ms. Sally Greenberg, who is the Executive Director of the National Consumers League.

And next to Ms. Greenberg is Ms. Patricia Acampora. She is the Commissioner of the New York State Public Service Commission, and she is a member of the National Association for Regulatory Utility Commissioners. Did I get that right? And next to Ms. Acampora is Mr. Alie Kabba. He is the Executive Director of the United African Organization, and then lastly but not least Mr. Scott Ramminger, who is the President of the American Wholesale Marketers Association.

The Chair wants to thank each and every one of you for appearing before this hearing, and it is the practice of this subcommittee to swear in the witnesses, and I will ask if you would stand and raise your right hand.

[Witnesses sworn.]

Mr. RUSH. Please let the record reflect that all the witnesses have answered in the affirmative.

And now it is—the Chair recognizes Ms. Greisman for 5 minutes for the purposes of opening statements.

**TESTIMONY OF LOIS GREISMAN, DIRECTOR, DIVISION OF
MARKETING PRACTICES, FEDERAL TRADE COMMISSION;
SALLY GREENBERG, EXECUTIVE DIRECTOR, NATIONAL CON-
SUMERS LEAGUE; PATRICIA ACAMPORA, COMMISSIONER,
NEW YORK STATE PUBLIC SERVICE COMMISSION, NATIONAL
ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS;
ALIE KABBA, EXECUTIVE DIRECTOR, UNITED AFRICAN OR-
GANIZATION; AND SCOTT RAMMINGER, PRESIDENT, AMER-
ICAN WHOLESALE MARKETERS ASSOCIATION**

TESTIMONY OF LOIS GREISMAN

Ms. GREISMAN. Thank you very much. Good morning, Chairman Rush, Ranking Member Radanovich, members of the subcommittee. I am Lois Greisman. I am the Associate Director of the FTC's Division of Marketing Practices, and I am very pleased to appear before you today.

As you know, the FTC's formal views are presented in its written testimony. My oral remarks and any answers to questions you may have reflect my own views and not those of the Commission or any individual commissioner.

I would like to take my time to update you on the FTC's prepaid phone card initiatives and to discuss the Commission's support for H.R. 3993.

One need look only at the enlarged poster to your left, which was produced by defendants in one of the actions that the FTC brought, to see how problematic disclosures are in this industry. As is typical, the poster makes large, bold claims about the number of calling card—of calling minutes consumers purportedly will receive in calls to specific destinations.

For example, this poster boasts that consumers will receive 124 minutes to the Dominican Republic, 60 minutes to El Salvador. In fact, the FTC's testing showed that the card advertised here delivered on average only about half the advertised minutes. Now, that the card failed to deliver was due in no small part to an array of hefty hidden fees. Buried at the bottom of the poster in fine print that even if I were directly in front of it I would be strained to be able to read, are lines of very small print that is so small and wording so vague as to be nearly incomprehensible.

So if an advertisement says that a card will provide 200 minutes of calling time to a particular country, it should do just that. Providing 100 minutes or less is unacceptable and indeed, it is illegal. Similarly, hidden, incomprehensible connection, disconnection, maintenance, and other fees or charges are illegal.

Last year the Commission testified on the earlier version of H.R. 3993. Since then the Commission has continued to scrutinize the prepaid calling card industry while working very closely with its 35 State partners and the FCC through the Federal State Task Force the Commission created back in 2007. As you have all noted, users of prepaid phone cards, whether recent immigrants, members of the Armed Services, students, or any one of us sitting here, are entitled to receive what they pay for.

Several States, most notably Florida, Illinois, New Jersey, Texas, and California, have been particularly active in this area, investigating or filing many actions against both distributors and car-

riers to ensure that the marketing of prepaid phone cards is truthful and accurate. And at the same time the FTC has continued its law enforcement efforts, targeting prepaid phone card distributors, reaching settlements in two cases with nearly \$3.5 million in monetary relief and strong injunctive relief, and just this past July the Commission sued another major distributor, Diamond Phone Card and its principles, making similar allegations as in the other cases.

Now, as always, complementing the FTC's law enforcement efforts is a targeted consumer education campaign in both English and Spanish to ensure that purchasers of prepaid phone cards know what the cards are supposed to do and know what to look for when making a purchase.

Turning now to the bill. H.R. 3993 is designed to provide accurate and improved disclosures and further provide the Commission with civil penalty authority and create the mechanism for States to enforce the law. It also would provide a strong set of tools to combat fraud in the prepaid phone card industry. Critically, the legislation creates a carve-out to the common carrier exemption that would allow the Commission to sue phone card providers, namely carriers, and obtain civil penalties and other relief against them. Eliminating this common carrier exemption for these purposes will permit the FTC to target the critical segment of the industry that in many cases, no doubt, bears liability for the widespread fraud in this industry.

Indeed as I have already mentioned, many of the State actions have targeted carriers, but—and at the risk of sounding ungrateful, the bill's exemption for certain prepaid wireless phone services is problematic. It creates a welcome sign for the worst actors in the industry, inviting them to migrate their business to prepaid wireless products. The nature of the wireless products and services, as well as the advertising and marketing for them, is strikingly similar to those outside of the wireless context. The same rules of the road should apply.

Thus, taking prepaid wireless services out of the bill's regulatory coverage does not seem sensible and creates a strong incentive for mischief. I urge the subcommittee to reconsider this point.

I very much look forward to working with the subcommittee and to answering any questions you may have. Thank you.

[The prepared statement of Ms. Greisman follows:]

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

PREPAID CALLING CARDS

Before the

**SUBCOMMITTEE ON COMMERCE,
TRADE, AND CONSUMER PROTECTION
of the
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

**WASHINGTON, D.C.
December 3, 2009**

Mr. Chairman and Ranking Member Radanovich, I am Lois Greisman of the Federal Trade Commission (“Commission” or “FTC”).¹ Thank you for giving the Commission this opportunity to testify before the Committee about consumer protection issues associated with prepaid calling cards.

I. Executive Summary

This testimony updates the Committee concerning the Commission’s and the States’ activities in this arena and offers comments on H.R. 3993, “The Calling Card Consumer Protection Act.”² On the enforcement front, since the spring of 2008, the Commission has brought three actions against major distributors of prepaid calling cards charged with deceptively marketing prepaid calling cards targeted at recent immigrants. Earlier this year, the Commission entered into multi-million dollar settlements in two of these cases, and the Commission is aggressively prosecuting the third case, which it filed in July of 2009. State participants in the FTC’s joint task force on fraud in the prepaid calling card industry have collectively brought over twenty law enforcement actions in this arena.

The Commission strongly supports the goals of H.R. 3993, which will provide better

¹ The written statement presents the views of the Federal Trade Commission. Oral statements and responses to questions reflect the views of the speaker and do not necessarily reflect the views of the Commission or any Commissioner.

² In testimony last year, the Commission provided background information about the prepaid calling card industry, the Commission’s and the States’ recent law enforcement actions against distributors of prepaid calling cards, the Commission’s establishment of a joint federal-state task force to combat fraud in the prepaid calling card industry, the FTC’s consumer education and outreach efforts in this area, and, more generally, the FTC’s support for the full repeal of the FTC Act’s exemption for common carriers subject to the Communications Act of 1934. See Prepared Statement of the Federal Trade Commission on Prepaid Calling Cards Before the Subcommittee on Commerce, Trade, and Consumer Protection of the of the Committee on Energy and Commerce, U.S. House of Representatives (Sept. 16, 2008), available at www.ftc.gov/os/2008/09/P074406prepaidcc.pdf.

disclosures for consumers and will arm the Commission with stronger tools to combat fraud in the prepaid calling card industry. Most important, it will authorize the Commission to sue companies that provide telecommunications service for prepaid calling cards – many of which may profit handsomely from deceptive conduct. The bill would create a limited carve-out to the exemption to the FTC Act for common carriers subject to the Communications Act and would give us the authority to fine violators, which we believe is a critical deterrent. But, as explained below, the bill's exemption of certain prepaid wireless phone services could create a loophole if the worst actors in the industry migrate their practices to prepaid wireless handsets to avoid the mandates of the bill. Finally, the Commission recommends the repeal of the common carrier exemption, which is an anachronistic jurisdictional impediment to effective consumer protection.

II. Background

Over the last decade, the prepaid calling card industry has grown into a multi-billion dollar industry. Prepaid calling cards can serve as a convenient and inexpensive lifeline to connect consumers – particularly recent immigrants as well as members of the U.S. armed services – to their families. Such cards are typically sold in gas stations, newsstands, convenience stores, bodegas, groceries, military PX's, as well as over the Internet. Unfortunately, however, purchasers of prepaid calling cards often receive only a fraction of the advertised number of calling minutes and are charged a welter of hefty and confusing fees and surcharges that are undisclosed or inadequately disclosed.³

³ See generally Mark E. Budnitz, Martina Rojo & Julia Marlowe, *Deceptive Claims for Prepaid Telephone Cards and the Need for Regulation*, 19 LOYOLA CONSUMER L. REV. 1 (2006); Jim Hays, *Fraud Plagues Prepaid Calling Card Market*, THE OREGONIAN, Oct. 5, 2008, available at

The FTC has been at the forefront of federal efforts to protect consumers from deceptive practices in the prepaid calling card business. The FTC combats this problem in three ways: (1) the FTC investigates and vigorously prosecutes individuals and entities within its jurisdiction for deceptive marketing of prepaid calling cards; (2) it established and leads a joint federal-state task force on fraud in the prepaid calling card industry; and (3) it conducts public outreach and education to assist consumers of prepaid calling cards.

III. FTC Enforcement Actions

The heart of the FTC's law enforcement authority is Section 5 of the FTC Act, 15 U.S.C. § 45(a)(2), which prohibits deceptive or unfair acts or practices in or affecting commerce. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the Commission may initiate federal district court proceedings to enjoin deceptive or unfair practices and obtain other equitable relief, such as restitution and disgorgement of ill-gotten gains.

In 2008, the FTC used this authority to file two similar cases against major distributors of prepaid calling cards and their principals: *FTC v. Alternatel, Inc.*, No. 08-01433-CIV-Jordan/McAliley (S.D. Fla.) (Compl. filed May 19, 2008), and *FTC v. Clifton Telecard Alliance One LLC*, 2:08-CV-01480-PGS-ES (D.N.J.) (Compl. filed Mar. 25, 2008). In both cases, the FTC alleged that the defendants, which marketed cards chiefly to recent immigrants, violated the

www.oregonlive.com/money/index.ssf/2008/10/fraud_plagues_prepaid_calling.html; Herb Weisbaum, *Prepaid Phone Card Industry Under Attack*, MSNBC, Oct. 23, 2008, available at www.msnbc.msn.com/id/27327684/business-consumer; Joelle Tessler, *Fraud is a Hang-Up for Prepaid Calling Card Market*, USA TODAY, Oct. 5, 2008, available at www.usatoday.com/tech/products/2008-10-05-calling-card-fraud_N.htm; *Talk Isn't So Cheap on a Phone Card*, BUSINESS WEEK, July 23, 2007, available at www.businessweek.com/magazine/content/07_30/b4043079.htm; Susan Sachs, *Immigrants See Path to Riches in Phone Cards*, N.Y. TIMES, Aug. 11, 2002, available at www.nytimes.com/2002/08/11/nyregion/immigrants-see-path-to-riches-in-phone-cards.html.

FTC Act by misrepresenting the number of calling minutes provided by their cards and failing to disclose, or disclose adequately, fees and charges associated with their cards.⁴ The FTC's extensive testing revealed that both the *Alternatel* and *Clifton Telecard Alliance* defendants' prepaid calling cards provided only about half the advertised calling minutes.⁵

The FTC recently obtained stipulated court orders resolving their charges against the *Alternatel* and *Clifton Telecard Alliance* defendants. In *Alternatel*, the final order entered on April 1, 2009 imposed a \$2.25 million judgment, and in *Clifton Telecard Alliance*, the final order entered on June 22, 2009 imposed a \$1.3 million judgment.⁶ Both court orders contain strong and substantially similar injunctive relief, which permanently bars the defendants from misrepresenting the number of minutes of talk time a consumer will receive using their cards. The orders also require the defendants to clearly and conspicuously disclose all material terms and limitations, including card expiration dates, the existence and amounts of fees, and restrictions on the periods during which calling minutes are available. In addition, the final orders impose stringent and extensive obligations on the defendants to monitor the accuracy and

⁴ In *Clifton Telecard Alliance*, the FTC also alleged that the defendants violated the FTC Act by failing to disclose that consumers could be charged even for unconnected calls.

⁵ The FTC collectively tested over 100 calling cards of the *Alternatel* and *Clifton Telecard Alliance* defendants by using the cards to place calls to a variety of countries in Latin America and Africa. The tests were comprised of "single-call" and "multiple-call" testing. In single-call testing, the FTC sought to exhaust the value of the card in a single call, whereas in multiple-call testing, the FTC attempted to use each card to place a series of calls. In all cases, the total number of calling minutes provided by each card was compared to the number of calling minutes promised on the defendants' poster advertisements.

⁶ The full judgment imposed on the *Clifton Telecard Alliance* defendants was \$24,445,252. However, all but \$1.3 million of this amount was suspended based on the defendants' inability to pay. If the defendants are found to have misrepresented their financial condition, they will be liable for the full \$24,445,252.

lawfulness of their calling cards and associated marketing materials as well as the conduct of their business partners – including their telecommunications service providers – to ensure that consumers actually receive the advertised number of calling minutes. For example, the defendants must routinely test the cards they distribute, implement procedures to ensure the distribution of accurate and up-to-date point-of-sale materials, and confirm that only such materials are displayed by retailers.

Most recently, the FTC sued Diamond Phone Card, Inc., a New York-based company that has sold prepaid calling cards throughout the country, and the company's principals. *FTC v. Diamond Phone Card, Inc.*, 09-CV-3257 (E.D.N.Y.) (Compl. filed July 29, 2009). The FTC alleges that the *Diamond* defendants violated the FTC Act by misrepresenting the number of calling minutes consumers could obtain using Diamond prepaid calling cards and by failing to adequately disclose fees associated with Diamond phone cards. As in *Clifton Telecard Alliance* and *Alternatel*, the FTC's extensive testing showed that Diamond calling cards delivered only roughly half the advertised calling minutes. The FTC seeks a permanent injunction as well as equitable monetary relief likely in the form of restitution and/or disgorgement of ill-gotten gains.

IV. State Law Enforcement Actions

The FTC works closely with the offices of State Attorneys General and other state agencies to protect consumers of prepaid calling cards. In the fall of 2007, the FTC established a joint federal-state task force concerning deceptive marketing practices in the prepaid calling card industry. The task force members include representatives from the offices of more than 35 State Attorneys General and other state and local agencies, and the Federal Communications Commission ("FCC"). Working cooperatively allows the FTC and other state, local, and federal

agencies to share information and coordinate law enforcement activity in this arena.⁷

Collectively, states have brought over 20 enforcement actions against prepaid calling card companies for allegedly deceptive marketing practices. Leading the way is the Office of Florida Attorney General Bill McCollum, which has entered into Assurances of Voluntary Compliance (“AVCs”) with 13 prepaid calling card companies.⁸ These settlements are the culmination of a broad investigation into the prepaid calling card industry launched by the Florida Attorney General in July of 2007. Likewise, the Office of the Illinois Attorney General is actively investigating a number of prepaid calling card companies. The New Jersey Attorney General recently has entered into AVCs with seven prepaid calling card providers.⁹ The Texas Attorney General has an ongoing enforcement action against Next-G Communication, a

⁷ The task force includes representatives from the following Offices of Attorneys General: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Maine, Massachusetts, Minnesota, Missouri, Montana, New Mexico, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin. In addition, the New York State Consumer Protection Board, the New York City Department of Consumer Affairs, and the City of Chicago Department of Consumer Services are also task force members.

⁸ See, e.g., Press Release, *McCollum Announces Prepaid Calling Card Settlements, Industry-Wide Reform* (June 11, 2008), available at www.myfloridalegal.com/newsrel.nsf/newsreleases/79C6666DB24608D785257465004EC901. The companies subject to the Florida AVCs are: ADMA Telecom, Inc.; Blackstone Calling Card, Inc.; IDT Corp.; Union Telecom Alliance; Total Call International, Inc.; CVT Prepaid Solutions, Inc.; Dollar Phone Enterprise, Inc.; STi Prepaid, LLC; Alternatel, Inc; Cristel Telecommunications, LLC; Locus Communications, Inc.; Cinco Telecom; and Touch-Tel USA.

⁹ See Press Release, *New Jersey Calls 'Time Out' on Prepaid Calling Cards* (Mar. 17, 2009), available at www.consumeraffairs.com/news04/2009/03/nj_calling_cards.html. The companies subject to the New Jersey AVCs are: CVT Prepaid Solutions, Inc.; Dollar Phone Enterprises, Inc.; Epana Networks, Inc.; IDT Corp.; Locus Telecommunications, Inc.; STi PhoneCard, Inc.; and Total Call International, Inc.

telecommunications service provider that produces and sells prepaid calling cards.¹⁰ The California Attorney General also has recently obtained a consent decree against Total Call International, Inc.¹¹

The FTC commends the actions of the Florida, Illinois, New Jersey, Texas, and California Attorneys General and is grateful for their participation and the participation of all of our law enforcement partners in the FTC's joint federal-state calling card task force.

V. The Proposed Legislation

The FTC supports the goal of H.R. 3993 to provide better disclosures to consumers and believes that it would give the FTC and the states powerful new tools to combat fraud in this area. The FTC appreciates Representative Engel's leadership in protecting consumers of prepaid calling cards.

The FTC believes the proposed elimination of the common carrier exemption with respect to the providers of telecommunications service for prepaid calling cards is essential to the FTC's ability to protect consumers in this arena. The FTC Act exempts common carriers subject to the Communications Act from its prohibitions on unfair and deceptive acts or practices and unfair methods of competition. 15 U.S.C. §§ 44, 45(a)(2). The common carrier exemption has forced the FTC to focus its enforcement efforts on distributors of prepaid calling cards. As a consequence, the telecommunications service providers for such cards have eluded

¹⁰ *State of Texas v. Next-G Commc'n, Inc.*, No. 2008CI08149 (Bexar County, Tex.) (Pet. filed May 23, 2008); *see also* Press Release, *Attorney General Abbott Takes Legal Action Against Prepaid Calling Card Company* (May 23, 2008), available at www.oag.state.tx.us/oagNews/release.php?id=2479.

¹¹ *See* Press Release, *Brown Prevents Calling Card Company From Boosting Profits By Charging Hidden Fees*, available at www.ag.ca.gov/newsalerts/release.php?id=1732.

prosecution by the FTC. Significantly, H.R. 3993 would create a limited carve-out from the common carrier exemption to the FTC Act, to permit the FTC to bring enforcement actions against the common carriers that provide telecommunications service for prepaid calling cards. The FTC strongly supports this extension of FTC authority, which will ensure that a significant segment of the prepaid calling card industry no longer will be shielded from FTC enforcement actions. Notably, there is precedent for granting the Commission authority over telecommunications service providers for the purpose of protecting consumers of a particular service or product. In the Telephone Disclosure and Dispute Resolution Act, 15 U.S.C. § 5701, *et seq.*, Congress authorized the FTC to promulgate regulations concerning advertising for, operation of, and billing and collection procedures for pay-per-call or “900 number” telephone services. *See* 16 C.F.R. Part 308.

Critically, however, the bill’s exemption of certain prepaid wireless phone services from its coverage raises concerns. This exception could provide a powerful incentive for the worst actors in the prepaid calling card industry to migrate their business practices to prepaid wireless handsets and refill cards in an effort to avoid the mandates of the proposed law.¹²

The FTC also supports the proposed authorization of civil penalties for violations of the FTC Act, which will give the agency a powerful new remedy in this arena. To enable the Commission to address problems with deceptive conduct involving prepaid calling cards more effectively, the Commission also recommends that Congress give the Commission authority to bring actions seeking civil penalties in its own right against prepaid calling card providers and

¹² Some participants in the prepaid calling card industry have begun to offer prepaid wireless services. As the cost of providing cellular phones and calling minutes continues to decrease, the incentive to move consumers to prepaid wireless accounts from more traditional prepaid calling cards has increased.

distributors rather than through the Department of Justice (“DOJ”).¹³ Giving the FTC authority to bring its own civil penalties cases in this area would help ensure that the Commission does not have to forego quick relief in order to seek civil penalties.¹⁴

The Commission recognizes that the agency and the Committee share the same goal: stopping unscrupulous calling card companies from defrauding vulnerable consumers. The Commission looks forward to working with the Committee regarding the legislation as the Committee moves forward.

VI. The Common Carrier Exemption

The Commission appreciates the proposed extension of its authority over prepaid calling card providers, but nonetheless, the Commission respectfully recommends that Congress repeal altogether the FTC Act exemption for common carriers subject to the Communications Act. On several occasions, the Commission has testified in favor of the repeal of the common carrier exemption, and indeed, every commissioner – Democrat, Republican, and Independent going

¹³ Civil penalty actions are filed by DOJ on behalf of the FTC. In general, under the FTC Act, the Commission must notify the Attorney General of its intention to commence, defend, or intervene in any civil penalty action under the Act. 15 U.S.C. § 56(a)(1). DOJ then has 45 days to commence, defend, or intervene in the suit. *Id.* If DOJ does not act within the 45-day period, the FTC may file the case in its own name, using its own attorneys. *Id.*

¹⁴ More generally, the Commission has recommended that Congress authorize the FTC to seek civil penalties for violations of Section 5 of the FTC Act, and, to promote efficiency and expediency, to seek civil penalties in its own right across the board, without being required to refer enforcement of civil penalty proceedings to DOJ. *See, e.g.*, Prepared Statement of the Federal Trade Commission Describing the Commission’s Anti-Fraud Law Enforcement Program and Recommending Changes in the Law and Resources To Enhance the Commission’s Ability to Protect Consumers Before the Subcommittee on Consumer Protection, Product Safety, and Insurance of the Committee on Commerce, Science, and Transportation, U.S. Senate (July 14, 2009), available at www.ftc.gov/os/2009/07/P094402antifraudlawtest.pdf. Commissioner Kovacic has dissented from the Commission’s endorsement of across-the-board civil penalty authority. *See id.* at 3 n.4.

back to at least 2003 – believes it should be repealed.¹⁵

The common carrier exemption originated in an era when telecommunications services were provided by highly-regulated monopolies. However, Congress and the FCC have dismantled much of the economic regulatory apparatus formerly applicable to the industry, in which firms are expected to compete. Removing the exemption from the FTC Act would not alter the jurisdiction of the FCC, but would give the FTC the authority to protect consumers against unfair and deceptive practices by common carriers in the same way that it can protect against unfair and deceptive practices by non-common carriers involved in the provision of similar services.

Prepaid calling cards are a case in point. In contrast to the State Attorneys General, who are able to bring enforcement actions to stop both telecommunications providers and distributors offering prepaid calling cards from engaging in unfair and deceptive practices, the FTC has targeted only the deceptive practices of prepaid calling card distributors, because of the FTC Act common carrier exemption. Furthermore, even when the Commission has identified and brought enforcement actions against non-common carriers, the common carrier exemption has imposed additional litigation costs on the FTC. For example, in both the *Clifton Telecard Alliance* and *Alternatel* cases against prepaid calling card distributors, the defendants moved to dismiss the FTC's cases on the grounds that the FTC had not sued the underlying carriers. While the

¹⁵ See, e.g., Prepared Statement of the Federal Trade Commission Before the Committee on Commerce, Science, and Transportation, U.S. Senate (Apr. 8, 2008), available at www.ftc.gov/os/testimony/P034101reauth.pdf; Prepared Statement of the Federal Trade Commission Before the Subcommittee on Competition, Foreign Commerce, and Infrastructure of the Committee on Commerce, Science, and Transportation, U.S. Senate (June 11, 2003), available at <http://www.ftc.gov/os/2003/06/030611reauthsenate.htm>.

Alternatel court rejected the argument that the common carriers that provided telecommunications service for the calling cards at issue were indispensable parties, the burden of responding to such motions can be substantial.¹⁶

The FTC has extensive expertise with advertising, marketing, billing, and collection – areas in which significant problems have emerged in the telecommunications industry.¹⁷ In addition, the FTC has powerful procedural and remedial tools that could be used effectively to address developing problems in the telecommunications industry if the FTC were authorized to reach them.

VII. Conclusion

The Commission will continue its aggressive law enforcement and consumer outreach and education programs in the prepaid calling card arena. The Commission thanks this Committee for focusing attention on this important issue and for the opportunity to discuss its law enforcement program.

¹⁶ The *Clifton Telecard Alliance* court did not rule on the defendants' motion to dismiss prior to the settlement of the case.

¹⁷ For example, the FTC has brought numerous cases involving the cramming of unauthorized charges onto consumers' phone bills. *See, e.g., FTC v. Nationwide Connections, Inc.*, 06-80180-CIV-Ryskamp/Vitunac (S.D. Fla. 2006); *FTC v. Websource Media, LLC*, Civ. No. H-06-1980 (S.D. Tex. 2006); *FTC v. Verity Int'l Ltd*, 335 F. Supp. 2d 479 (S.D.N.Y. 2004), *aff'd in part, rev'd in part*, 443 F.3d 48 (2d Cir. 2006), *cert. denied*, 127 S. Ct. 1868 (2007); *FTC v. Epixtar Corp.*, 03-CV-8511 (DAB) (S.D.N.Y. 2003); *FTC v. Mercury Marketing of Del., Inc.*, 00-CV-3281 (E.D. Pa. 2000); *FTC v. Sheinkin*, 2-00-363618 (D.S.C. 2000); *FTC v. Int'l Telemedia Assocs., Inc.*, 1-98-CV-1925 (N.D. Ga. 1998); *FTC v. Audiotex Connection, Inc.*, C-97 0726 (DRH) (E.D.N.Y. 1997).

Mr. RUSH. Thank you very much.

The Chair now recognizes Ms. Greenberg for 5 minutes for the purposes of opening statement.

TESTIMONY OF SALLY GREENBERG

Ms. GREENBERG. Thank you very much, Chairman Rush and Ranking Member Radanovich. Good morning. My name is Sally Greenberg. I am Executive Director of the National Consumers League.

The National Consumers League was founded in 1899, which makes us the oldest consumer organization in the United States. As part of our longstanding interest in protecting consumers from fraudulent practices, we operate a fraud center where we accept complaints and educate consumers directly about fraudulent practices. Last year we processed nearly 20,000 complaints. Included in those complaints were concerns that consumers had about prepaid calling cards.

When we appeared last before this committee in September of 2008, we equated the prepaid calling card marketplace with the wild west. A little over a year later we are sad to say that the situation for consumers remains more Gunsmoke than Little House on the Prairie. We believe that H.R. 3993 will help protect consumers from fraud by strengthening disclosure requirements in these cards.

While we would have liked to have seen outright prohibitions on a number of the most egregious business practices, including high billing increments, pricy connection fees, and finding mandatory arbitration clauses, we are heartened that the bill explicitly protects the rights of States to develop strong consumer protections.

The rapid growth in the prepaid calling card industry, which is expected to bring in somewhere between \$2 and \$4 billion in annual revenues by 2012, coupled with loose regulation and often lacks enforcement, has enabled consumer fraud to flourish. While these cards provide users with an alternative means of calling friends and family, many card providers employ false and deceptive practices and impose unconscionable terms.

Part of the problem we believe is the ease with which con artists can enter the industry. According to Pablo Bressan, a Miami-based telecom consultant and prepaid calling card distributor, it costs as little as \$20,000 to buy the long distance minutes and backend consumer platforms to get into—computer platforms to get into the business. Some companies do not even go that far. They simply resell the cards made by others.

The potential for fraud in the prepaid calling card industry is so well known it even merited a mention as a preferred scheme on HBO's "The Sopranos," with Tony Soprano calling the scheme he was running, "blankety blank beautiful because it is so easy to run the scam." Fraud is fraud. If a car is sold with the promise of a sunroof and chrome wheels, it better have a sunroof and chrome wheels, and if a phone card promises 500 minutes to El Salvador, it should deliver those 500 minutes.

The ultimate victims of fraud and deception in the prepaid calling card market are the most vulnerable consumers; immigrants, working poor, military families, and those with lower incomes. By

some estimates Hispanic consumers alone may have been losing \$1 million per day because of the fraudulent phone cards. Independent analysis by the Hispanic Institute and the FTC found that the average calling card only delivered between—cards only delivered between 50 and 67 percent of the minutes advertised. The cost per minute rates for prepaid phone cards can be up to 87 percent higher than expected, and an expected call rate of 15 cents per minute, for example, may end up costing 28 cents per minute.

Now, some attorneys general had done a commendable job in prosecuting fraudulent practices, including in Florida and Texas. The Federal Trade Commission has also conducted investigations as Ms. Greisman has pointed out and has worked very closely with the States, and we commend them for that. While the FTC and State actions in this area have certainly benefited consumers, we feel that—we fear that millions of dollars in losses continue to flow into the pockets of scammers. And also that calling card fraud too often goes under-reported or unreported, and that is why we need basic federal protections to stem the tide of the many deceptive practices in the industry.

NCL believes that giving the FTC greater authority as called for in H.R. 3993 would help to level the playing field for providers. As called for in the bill, the regulations should also include requirements that providers and distributors disclose the terms and the conditions of the cards and list the per-minute rates, preferred international designation rates, and any fees or surcharges. In short, we believe consumers should know what they are buying, what—they get what they paid for, and have an accessible avenue for redress if they are harmed.

We want to add some recommendations onto what is already available in H.R. 3993. First with regard to disclosure, we recommend that this section of the bill be expanded to include a requirement that every calling card provider publish a Web site listing the cards' rates, taxes, fees, and surcharges. Currently Section 3A of H.R. 3993 only requires that providers list rates if they maintain a Web site.

Secondly, if the GAO study mandated in Section 8 of the bill presents evidence indicating that greater disclosure has not curbed the abuses, we recommend further action be considered by this committee. And specifically, we would like the committee to consider requiring—one, requiring all credit card providers to be licensed and post a bond before marketing cards to consumers. Such a move would address the issue of the extreme ease of entry into the industry, which invites fraudsters.

Secondly, we would like to require all providers to—we think there ought to be a requirement that providers have a 24-hour, 7-day-a-week toll-free consumer line staffed by live representatives that are fluent in the language the card is marketed in.

Third, we would like to see a provision requiring sellers to inform consumers via Web site or toll-free phone number of any proposed changes in terms and conditions with the consumers given a chance to reject those changes and receive a refund without a fee.

Fourth, we would like to see a requirement for uniform terms in all prepaid calling card contracts so the consumers can more easily comparison shop, and finally, we would like to see a prohibition on

binding mandatory arbitration and preserving a private right of action.

Thank you, Mr. Chairman. We look forward to answering any questions and working with the committee to see this legislation enacted.

[The prepared statement of Ms. Greenberg follows:]

Testimony of
Sally Greenberg, Executive Director
of the
National Consumers League

before the
United States House of Representatives
Subcommittee on Commerce, Trade, and Consumer Protection
of the Committee on Energy and Commerce

Hearing on Calling Card Consumer Protection Act (H.R. 3993)
December 3, 2009

Introduction

Good morning, Mr. Chairman. My name is Sally Greenberg and I am Executive Director of the National Consumers League. I appreciate this opportunity to appear before the House Committee on Energy and Commerce to again discuss the need for greater consumer protections in the purchase and use of prepaid calling cards. When we last appeared before this committee to discuss the issue, we equated the prepaid calling card marketplace with the "Wild West," where unwary consumers too often fall victim to unscrupulous sellers and merchants. A little over one year later, we are sad to say that the situation for consumer remains more "Gunsmoke" than "Little House on the Prairie."

The National Consumers League, whose founding in 1899 makes us the oldest consumer organization in the United States, has a longstanding interest in protecting consumers from fraudulent practices and is the only consumer group that operates a national fraud center. (NCL's Fraud Center is described at www.fraud.org).

I want to applaud members of this Committee for the scrutiny and attention you have given to the issue of prepaid calling cards and commend Congressman Engel for introducing H.R. 3993 the "Calling Card Consumer Protection Act." Consumers rely on members of this committee to defend consumer rights and protections and to look out for consumer interests. In my testimony, I will address some of the facts and figures describing the magnitude of the prepaid calling card industry and the large amounts of money involved. I will also discuss the fraud and deceptive practices associated with that industry and actions taken at the state and federal levels in response to fraud. I'll discuss why NCL supports H.R. 3993, and I'll make some policy

recommendations.

Part of the problem with the high incidence of fraud in the prepaid calling card business is the ease with which con artists can start a scam. According to Pablo Bressan, a Miami-based telecom consultant and prepaid calling card distributor, it costs as little as \$20,000 to buy the long-distance minutes and back-end computer platforms to get into the business. Some companies do not even go that far -- simply re-selling the cards made by others.¹

The potential for fraud in the prepaid calling card industry is so well-known that it even merited a mention as a preferred scheme on HBO's *The Sopranos*, with Tony Soprano calling fraudulent card schemes "(expletive) beautiful! It's a good one."

While we're not suggesting that the whole prepaid calling card industry is controlled by organized crime: we have no such evidence, this vignette from *The Sopranos* demonstrates how easy it is to get into the industry, rip off consumers, and disappear with no accountability. That must change.

Prepaid Calling Card Facts

- The North American prepaid calling card industry is estimated to reach \$2.14 billion in revenues by 2012.²
- Counting prepaid wireless products, the total prepaid telecommunications industry is estimated to reach \$22 billion in revenues by 2012.³
- Examples of fraudulent practices used by the prepaid companies include "hang-up fees," periodic maintenance fees, destination surcharges, and high billing increments.⁴
- Companies that try to "play by the rules" are often punished by a loss of market share due to

¹ Tessler, Joelle. "1-800 Scammer: Prepaid Calling Cards Rife with Fraud," Associated Press. October 7, 2008. Online: <http://www.msnbc.msn.com/id/27052474/>.

² "Growing Immigrant Population and International Visitors to Drive Sales of Calling Cards in North America," Press Release. September 12, 2006. Online: <http://www.frost.com/prod/servlet/press-release.pag?docid=81415399>. Retrieved on November 30, 2009.

³ Atlantic-ACM. "Prepaid Telecom Market to Reach \$22 Billion by 2012, New Atlantic-ACM Study Reveals," Press release. March 25, 2008. Online: http://www.atlantic-acm.com/index.php?option=com_content&view=article&id=396:pressrelease-03-25-08&catid=33:2008-press-releases&Itemid=5. Retrieved November 30, 2009.

⁴ Office of the Attorney General of Florida (June 11, 2008). "McCollum Announces Prepaid Calling Card Settlements, Industry-Wide Reform". Press release. Retrieved on July 24, 2008.

fraudulent carriers.⁵

- Eleven states, including California, Connecticut, Florida, Illinois, and New Jersey currently have laws pertaining to calling card fraud, specifically. Most turn to generic consumer protection statutes, but enforcement has been extremely light.⁶
- Hispanic consumers may be losing up to \$1 million per day because of fraudulent phone cards.⁷
- The average calling card delivers only 60% of the minutes promised, according to the Hispanic Institute, a non-profit research group.⁸
- The Federal Trade Commission's (FTC) survey of prepaid calling cards confirms the Hispanic Institute's findings. For instance, one calling card tested by the FTC claimed to offer 360 minutes to Panama, but only delivered 23 minutes of calling time. The FTC said that in 87 tests of prepaid cards, they delivered an average of only 50 percent of the advertised minutes.⁹
- The cost-per-minute rates for prepaid phone cards can be up to 87 percent higher than expected. An expected call rate of 15 cents per minute, for example, may end up costing 28 cents per minute.¹⁰
- Customer service representatives for prepaid calling cards are often unavailable or not knowledgeable regarding the prepaid phone cards their employers are selling. A 2005 University of Georgia study found that in a third of the calls to prepaid calling card customer service lines, callers couldn't reach a representative. When they did make contact, the representative often was unable to answer basic questions about fees or rounding up of minutes.¹¹

⁵ Holden, Diana. "Calling Out Prepaid Phone Cards," *BusinessWeek*. July 9, 2008. Retrieved July 24, 2008.

⁶ "Facts and Figures," The Hispanic Institute. Retrieved on July 24, 2008.

⁷ "Facts and Figures," *The Hispanic Institute*. Retrieved on July 24, 2008.

⁸ "Prepaid Calling Cards: Market Dynamics and Forecast 2003-2008," ATLANTIC-ACM. February 2003. Retrieved on July 25, 2008.

⁹ Dang, Dan Thanh. "Avoid These Prepaid Calling Cards, FTC says," *Baltimore Sun*. June 6, 2008. Retrieved July 24, 2008.

¹⁰ Horton, Denise. "Prepaid Phone Cards: Caller Beware," *University of Georgia Research Magazine*. Fall 2005. Retrieved on July 24, 2008.

¹¹ *Ibid.*

Why We Need To Protect Users of Prepaid Calling Cards

The rapid growth of the prepaid calling card industry combined with, until recently, a lax enforcement of consumer protection statues at the state and federal levels, has enabled consumer fraud to flourish. Like so many other fraudulent practices, the most frequent victims are the most vulnerable consumers: immigrants and the working poor; and those lower income Americans who don't have or cannot afford regular phone service. These consumers rely on calling cards to stay in touch with friends and loved ones in the US and abroad. We believe that military families are also likely victims of certain deceptive industry practices.

Yes, the cards provide these users with an alternative means of calling home, but many use false and deceptive practices in the process, along with imposing unconscionable terms. Fraud is fraud—if an automobile is sold with the promise of a sun roof and chrome wheels, it better have a sunroof and chrome wheels—if a phone card promises 500 minutes to call El Salvador, it should deliver those 500 minutes.

Some state attorneys general have done a commendable job in prosecuting fraudulent prepaid card practices, including in Florida and Texas. The Federal Trade Commission has also conducted investigations and brought important cases against individual prepaid phone card providers. While these efforts are important, they are too diffuse to reign in the frequently deceptive promises made by the industry selling these cards. We need basic federal protections to stem the tide of the many deceptive practices in this industry.

NCL believes that giving the FTC greater authority, as called for in H.R. 3993, would help to level the playing field for calling card providers. As called for in H.R. 3993, regulations should include requirements that prepaid phone card providers and distributors disclose the terms and conditions of the cards and list the per minute rates, preferred international destination rates, and any fees or surcharges in their advertising.

We applaud the leadership of the FTC and state attorneys general have shown in cracking down on unscrupulous calling card operators. Beginning in February of this year, the FTC, working with the states, began a series of investigations that have resulted in numerous fraudulent calling card companies being fined millions of dollars. While the FTC and state actions in this area have benefitted consumers, we fear that millions of dollars in losses continue to flow from unwary consumers into the pockets of scammers in the calling card industry.

To address this issue, we support a national floor of minimum requirements stating what industry practices won't be permitted. We applaud H.R. 3993's provisions preserving the rights of states

to go forward with their own civil cases—as Florida did. The federal government should set minimum standards and permit states to act on behalf of their citizens with stronger standards if they so choose. That pro-consumer language acknowledges the important role states have played in enacting and enforcing consumer protections.

Federal legislation may have other positive effects. Anecdotal evidence suggests that the simple threat of regulation has already increased pressure on the prepaid calling card industry to reform its marketing practices.¹² We've also seen evidence through the IDT settlement in Florida that if one company is forced to disclose accurately how many minutes a card will provide and what the surcharges and fees will be, they will lose market share to the other firms who are shading the truth. Therefore, we need to create a level playing field where all participants are required to provide accurate information.

Beyond Disclosure: What More Can We Do To Protect Consumers

While NCL supports efforts requiring require full disclosure of terms and conditions on these prepaid calling cards, we find that the terms themselves, even when disclosed, are too often unconscionable.

For example, the text in fine print on the back of a \$5.00 "Africa Sky" card states the following:

All of the following fees will reduce the number of available minutes and the value of the card. Use of a toll free number from a pay phone will incur a \$.99 per call fee. Per minute rate will be .02 higher for calls placed using toll free access numbers. Call time for multiple calls is calculated by rounding the last minute up to the closest multiple of 3 and then adding 1 minute except that if your call lasts less than 1 minute you will be charged only for a minute. If available minutes are not all used up on the first call the following fees will apply (1) the multiple call rate will be 40% higher and will apply to all calls (see poster for details) (2) a fee per call of \$.59 will apply to each call; and (3) on midnight after the first call a fee of \$.69 will be deducted and then weekly thereafter. Card Expires Three Months After First Use. . . Rates and Fees are Introductory and are subject to change anytime. . . .

The same or similar text is found on most of the cards. So, though we have the terms disclosed, albeit in fine print, we have a company that is rapidly subtracting money from the user's original purchase. A 40% higher rate is imposed after the first call; a fee of 59 cents per call will apply to each one after the first call; and after midnight of the first call, the fee is 69 cents, which will be

¹² Marshalian, Jonathan. "You've Come a Long Way, Baby," *The Prepaid Press*. September 17, 2007. Retrieved July 25, 2008.

deducted weekly thereafter. This is from an original \$5.00 card. No wonder users find that two or three weeks—or sooner—after first use, the card has no credit remaining. Notice the card also contains this catch-all phrase “*Rates and Fees are Introductory and are subject to change anytime...*” leaving the card distributors the option of changing the rules whenever they wish.

Worse still is the \$2.00 “Majestic DMV” Card :

- 1) *A .99 fee applies on the 1st day of use and every 5 days thereafter;*
- 2) *Calls made through toll free access numbers are subject to a fee of up to 4 cents a minute*
- 3) *Payphone surcharge of .99¢*
- 4) *A destination surcharge of between 20-60% of the total call; and/or 5) a fee of .10-.99 for connected calls, .15/minute maximum domestic call rate (before applicable charges and fees); minutes and/or seconds are billed at a minimum of one minute and up to 5 minute increments, plus any applicable fees. Card expires 3 months after first use or 12 months after activation.*

As a consumer advocate, I’ve often found it useful to look at consumer protection measures in other countries. I lived in Australia two years ago and used prepaid cards for calls to the United States. My experience was uniformly positive—the Australian prepaid cards tended to deliver the minutes they promise, and they were good for multiple uses. *Choice Magazine*, Australia’s counterpart to our *Consumer Reports*, tested these international calling cards and found that indeed, many delivered good value and low rates without connection fees or added charges. When I arrived back in the United States and began buying cards here, I found that their value tended to disappear after the first call. When I read the fine print, I understood why.

I also consulted the document *Consumer Protection in the European Union—Ten Basic Principles*—and note that the Fifth Principle is relevant to our discussion of prepaid calling cards:

Contracts Should Be Fair To Consumers

Have you ever signed a contract without reading all the small print? What if the small print says the deposit you just paid is non-refundable – even if the company fails to deliver its side of the bargain? What if it says you cannot cancel the contract unless you pay the company an extortionate amount in compensation? EU law says these types of unfair contract terms are prohibited. Irrespective of which EU country you sign such a contract in, EU law protects you from these sorts of abuses.

We could apply the EU’s notion of contract fairness to this issue. NCL supports H.R. 3993’s

disclosure requirements and hopes that they will satisfactorily address the problem of consumers paying good money for a prepaid calling card that fails to deliver the service, but we don't think it goes far enough. Our recommendations for better consumer protections are laid out below. At the same time, we acknowledge the importance of an open marketplace where all prepaid calling card companies are required to provide accurate information.

NCL Policy Recommendations Related to Disclosure and H.R. 3993

The National Consumers League strongly supports H.R. 3993 and its provisions to give enforcement authority to the Federal Trade Commission under the "unfair or deceptive act or practice," clauses of the Federal Trade Commission Act. While prepaid calling cards generally offer savings on international long distance calling versus traditional "Dial 1," 10-10 dial-around and wireless long distance calling,¹³ these savings are no excuse for fraud or deception. We also support H.R. 3993's requirement that a Government Accountability Office study of the effectiveness of the Act be conducted.

As a general proposition, we applaud the requirements included in the Florida Attorney General's June 2008 settlement with prepaid card companies, such as:

- Ceasing all deceptive advertising
- Providing 100% of the minutes advertised
- Not using hidden fees or misleading minute calculations to increase their profits at consumers' expense
- Printing disclosures for a given card in any language used to advertise that card
- Printing the exact number of minutes available and the card's expiration date (if applicable) on the card
- Prohibiting naming of card surcharges to resemble taxes
- Requiring one-minute increment billing

While H.R. 3993 requires disclosure of the name of the prepaid calling card service provider, we recommend that this section of the bill be expanded to include requiring the mailing address of the card originator. In addition, we would like every calling card provider to be required to publish a website (whose address is printed on the card) listing all rates, taxes, fees, and surcharges associated with the card. Currently, Section 3(a) of H.R. 3993 only requires that the provider list rates *if* they maintain a website. With more consumers turning to the Internet every day, we believe it to be imperative that card providers maintain a website with relevant

¹³ "Facts and Figures," The Hispanic Institute. Retrieved on July 24, 2008.

information about the card, especially if they currently do not do so.

Further Recommended Action If Disclosure Requirements Are Not Sufficient

If the GAO study mandated in Section 8 of the bill presents evidence indicating that greater disclosure is not reducing the consumer abuses in the industry, we recommend that further action be considered by this Committee, with the Federal Trade Commission given the authority to enforce these provisions:

- Require all market entrants to be licensed and post a bond before marketing cards to consumers. That bond would go into a fund to compensate consumers who are victims of fraud. Those companies that market prepaid calling cards should also be required to provide a name, address and place of incorporation. Right now, the barriers to entry are so low and the penalties for not making good on the value of the cards are so minimal that it's simply open season on consumers. We believe requiring a bond will act to keep many bad actors out of the industry.
- Require all market entrants to have a 24 hour, 7 days a week toll free number that has a live person on the other end who must be knowledgeable about the use of the card.
- Require that fees and surcharges imposed be related to actual costs. Congress has imposed rules on other industries that were charging consumers outrageous fees – the moving van industry, payday lenders, and funeral homes, to name a few. If this Committee finds that disclosure is not easing the deception and rip-offs that plague this industry, the Committee should consider imposing stronger regulations on prepaid calling card companies to curb the many fees and surcharges they impose on consumers.
- Require that all cards have an expiration date and that this date be no shorter than one year after activation. If a seller fails to make a disclosure on expiration, the card should be valid indefinitely.
- Require sellers to list the minimum charge per call and the balance in minutes and dollars remaining on the card.
- Require sellers to inform consumers, via a website or toll-free phone number, of any proposed changes in terms and conditions, with consumers given the chance to reject these changes and receive a refund on the card with no fee imposed for requesting such a refund within an appropriate grace period of no less than 30 days after posting of the proposed

change. Prepaid calling card providers should also be required to prominently list a mailing address to which customers can direct refund requests and a website with a refund form that the consumer can access easily.

- Require uniform terms in all prepaid calling card contracts so that consumers can comparison shop. Companies should not be allowed to confuse consumers by using a variety of terms for charges such as “administrative fee” or “service fee.”
- The amounts involved in prepaid phone card transactions are too small for any one individual to bring a case to court. The only meaningful way to allow consumers to hold prepaid card sellers accountable is through use of the class action process. Consumers need to be guaranteed a private right of action and the ability to band together as a class to bring cases against dishonest prepaid phone card providers.

Conclusion

We strongly support H.R. 3993 and commend this Committee for holding the hearing today. By requiring much better disclosure on prepaid calling cards, this bill will help to mitigate the deception and fraud associated with these cards. We also support further monitoring of the industry by the GAO, which will in turn report to the members of this Committee.

NCL also urges Congress to investigate ways that consumers can be protected from prepaid calling card industry abuses beyond disclosure requirements. The most vulnerable consumers—military families, immigrants, low income families—rely on these cards and spend their hard-earned money, often only to see the value of the cards disappear quickly after first use. NCL believes we can do better by consumers. We support the disclosure required under this bill and hope that it works. We urge the members of this committee to remain vigilant and ready to act should enhanced disclosure not be sufficient to reign in industry abuses.

Thank you, Mr. Chairman, for giving the National Consumers League this opportunity to comment on your bill. We commend you for your pro-consumer record and look forward to working with you and your staff to see this bill enacted into law.

National Consumers League
1701 K Street, N.W., Suite 1200
Washington, DC 20006
Telephone: (202) 835-3323, Facsimile: (202) 835-0747
Web: <http://www.nclnet.org>

Mr. RUSH. The Chair thanks Ms. Greenburg.
And now the Chair recognizes Ms. Acampora for 5 minutes for opening statements.

TESTIMONY OF PATRICIA ACAMPORA

Ms. ACAMPORA. Thank you, Chairman Rush, Ranking Member Radanovich, Mr. Engel, and members of the committee. My name is Patricia Acampora. I am Commissioner with the New York State Public Service Commission. I am testifying today for the National Association of Regulatory Utility Commissioners or NARUC.

NARUC represents the agencies in each of your States that have oversight responsibilities for telecommunications. These commissioners are, like you, all focused on what is best for your State and your constituents. On behalf of NARUC I want to commend Chairman Rush, Ranking Member Radanovich, and Mr. Engel, my fellow New Yorker, for their leadership on this important issue. We want to specifically thank each of you, in particular, your excellent staffers, Britt McArrid and Anna Laitin.

I have submitted written testimony, but in my oral remarks I will briefly touch on why this is a good bill and then provide a few suggested improvements.

H.R. 3993 is a good bill. Abuse in the prepaid calling card market is well documented. By definition the fraud and inadequate disclosure problems targeted cannot be handled by market forces. That is why reputable providers that make up the heart of this industry should embrace the joint Federal, State enforcement regime presented.

The State—the Federal, State partnership established in Sections 5 and 7 of the bill is critical. It maximizes the avenues for consumer redress. It assures States don't waste tax dollars reshuffling existing enforcement regimes. It allows more protective State fines and remedies to remain intact. It leverages State and Federal enforcement activity to produce the greatest possible deterrents to bad actors. There is never a good reason to take State consumer cops off the beat or to limit your constituents' avenues for redress. H.R. 3993 does neither.

Significantly, the bill also mandates disclosure of all information that consumers need to make informed decisions and also Federal and State authorities need to investigate bad actors. This legislation is, in fact, an excellent template for how Federal and State authorities can best partner to protect consumers. This is a good bill, and NARUC supports it.

That said, I do have a couple of personal suggestions and one NARUC proposal to further improve what is already a very good bill.

NARUC suggests changing the definition of prepaid calling card and calling card service. The current definitions reference existing regulatory classifications that are increasingly outdated as technology evolves. Definitions that reference specific technology is like void, and old classifications can only serve as target for bad actors to find loopholes, something history has conclusively demonstrated they are very, very good at.

The subcommittee should focus on a functional definition that is not tied to any particular technology like the one used in Senate

companion bill S.562. That approach was also used by Representative Engel in H.R. 1258.

I also have a couple of personal recommendations. My Commission and others have difficulty pursuing prepaid calling card complaints because the rates and fees information related to the card is printed on the packaging, which is normally thrown away. I would like to commend Congressman Engel as this bill fills the gap by requiring that disclosure of rates and fees, as well as contact information, be printed on the calling card itself, not just the packaging.

Further, if the disclosure printed on the card is obscured by the packaging, this legislation requires the disclosure also be printed on the packaging. However, I remain concerned that providing full disclosure on the calling card itself may result in unreadable print size. To improve the readability, I suggest service providers be required to include all rates and fees on a piece of cardstock included with the calling card. This card should be the same size as the calling card and have the phrase, consumer, do not discard, printed on both sides in large type.

Another personal recommendation would be to require all calling card providers to maintain a Web site with information on the rates, terms, and conditions of the card and the Web site to be displayed on the card. As currently drafted, the bill only requires online disclosure if a provider maintains a Web site. This opens the door to abuse. It is not unreasonable to require a provider to maintain a Web site outlining rates, terms, and conditions. It is certainly not expensive nor difficult.

Thank you again for allowing me to have this opportunity to testify.

[The prepared statement of Ms. Acampora follows:]

Testimony of

Patricia L. Acampora, Commissioner
of the
New York State Public Service Commission

on behalf of the

National Association of Regulatory Utility Commissioners

before the

United States House of Representatives
Subcommittee on Commerce, Trade, and Consumer Protection
of the Committee on Energy and Commerce

Hearing on Calling Card Consumer Protection Act (H.R. 3993)
December 3, 2009



National Association of
Regulatory Utility Commissioners
1101 Vermont Ave, N.W., Suite 200
Washington, D.C. 20005
Telephone (202) 898-2200, Facsimile (202) 898-2213
Internet Home Page <http://www.naruc.org>

INTRODUCTION

Chairman Rush, Ranking Member Radanovich and members of the Subcommittee, I appreciate the opportunity to testify today on consumer protection in the prepaid calling card market. This is important legislation to your constituents. I thank you for calling this hearing and commend Representative Engel, the sponsors of the bill, and the members of this Subcommittee for your leadership on this important consumer issue.

My name is Patricia Acampora. I am a Commissioner of the New York State Public Service Commission and member of the National Association of Regulatory Utility Commissioners' (NARUC) Committee on Consumer Affairs. NARUC represents the State utility commissioners in each of your States (and in U.S. territories) focused on what is best for your State and your constituents. NARUC's members have oversight responsibilities for all the critical utility infrastructures - telecommunications, energy, and water. NARUC has not yet established a specific position on what the national standards for prepaid calling card services should be, but we do have well-established positions on specific issues raised by *The Calling Card Consumer Protection Act of 2009* (H.R. 3993). From NARUC's perspective, the modifications to H.R. 3993 from the version introduced during the last Congress are an improvement.

The bill improved in two key areas: First, it requires carriers to "accurately" disclose information on rates, terms and conditions. This focus on accuracy is a small but extremely important point. Full disclosure without accuracy is useless to consumers. Second, the bill

preserves existing and future State consumer protections on prepaid calling cards. *These changes are a win-win for consumers.*

As early as July 31, 2002, NARUC adopted a resolution indicating that “consumers of all telecommunications services” should “receive clear and complete information regarding rates, terms and conditions for services.” In July 2008, NARUC’s Committee on Consumer Affairs convened a panel on prepaid cards at our Summer Meetings in Portland, Oregon, which I moderated. The panel, which focused on existing State initiatives, was widely attended. Shortly before that panel discussion, NARUC did an informal survey finding that 18 of 30 responding member commissions currently handle complaints about calling-card services.¹ As a direct result of the panel, NARUC adopted a resolution that “supports action to improve consumer protection with regard to prepaid calling-card services, *“provided that State consumer protections and enforcement are not diminished”* at our Annual Meeting in November of 2008. (See Appendix A). As discussed in more detail below, the bill’s focus on accuracy, as well as the explicit reservation of State authority to enforce existing laws in Section 5 (c)(4) and to provide stronger protections outlined in Section 7, are on all fours with NARUC’s resolutions.

Fraud and Abuse in the Prepaid Calling-Card Market

Several entities are involved in providing calling-card services. Telephone companies are responsible for the telephone lines that carry calls. Resellers buy telephone minutes from the

¹ See, e.g., *Prepaid Calling Cards*, Georgia Governor’s Office of Consumer Affairs, available online at: http://www.georgia.gov/00/article/0,2086,5426814_39039081_39217721,00.html. (Accessed Nov. 30, 2009) See also, *Prepaid Calling Cards: A Buyer’s Guide*, Washington Utilities and Transportation Commission, available at: <http://wutc.wa.gov/webdocs.nsf/0492664a7ba7ed8b88256406006bf2ca/d2a27b466109a0008825679700810fd8!OpenDocument>.

telephone companies and “resell” them to end-users. Issuers set the card rates and provide toll-free customer service and access numbers. Finally, there are card distributors and retailers. Companies that fall into one or more of the first three categories often require certification from a NARUC member commission. But even where a State commission lacks authority, they frequently attempt to resolve complaints informally or cooperate with other State agencies, e.g., the State Attorneys General, on enforcement efforts.

Many Americans rely on prepaid calling cards to complete intrastate, interstate, and international calls. They are popular among travelers, students, people who frequently call overseas, and those who do not have a preferred long distance telephone company. The main victims of abuse in this market are minorities, immigrants, the elderly, low-income consumers, members of our Armed Services, and others either not inclined or not able to adopt other communications options.² It is widely acknowledged that fraud and abuse in this market is more prevalent than complaint data indicates.

My colleagues on the NARUC Consumer Affairs Committee report several recurring issues with calling card services, including: (1) the provider either fails or is not required to seek State commission registration or certification; (2) the calling time provided is substantially lower

² See, *THI Praises FTC for Standing Against Calling Card Fraud*, Press Release, March 31, 2008 ([T]he typical calling-card scam involves deceptive advertising, publicizing a certain number of minutes but delivering far fewer. West says Hispanics, including many low-income immigrants, are hit particularly hard. “Our studies have revealed that the average calling card delivers only 60% of the minutes promised . . . Consumers can lose up to a million dollars a day because of fraudulent phone cards.”) See also, *The Hispanic Institute’s Calling Card Verification Test Plan*, both available online at: <http://thehispanicinstitute.net/research/callingcard>.

than advertised, e.g., the provider's advertising overstates achievable calling time,³ understates unit cost/rate, or charges substantial undisclosed surcharges and fees⁴; (3) the advertised rates expire after short "promotional period"; and (4) the card expires within a short period following the completion of the initial call.

Prepaid calling cards *can* present enforcement challenges for State authorities. Often providers are headquartered in another jurisdiction and fail to register or seek certification from a State commission (in States that require such certification) or even register an agent for service of process under so-called State long-arm statutes. Moreover, most often, even in States where certification is required, the most easily located entity in the marketing chain – the retail store – is not subject to State commission oversight.

New York's Public Service law provides consumer protections which have allowed my commission to assist customers with calling-card complaints. Some of those complaints are related to completion fees that deplete the card faster than the consumer could have realized, or

³ See, e.g., *PUC AND ATTORNEY GENERAL COMPLAINT OF DECEPTIVE MARKETING LEADS TO SUPERIOR COURT JUDGMENT AGAINST CALLING CARD PROVIDER* SAN FRANCISCO, April 13, 2007 - The California Public Utilities Commission (PUC) today announced that as a result of its work with the California Attorney General (AG), the Superior Court of California has issued a ground-breaking judgment that requires [two] California prepaid calling card companies . . . to clearly disclose all fees, surcharges, and other costs (including "maintenance fees") associated with the use of their prepaid calling cards, and prohibits misleading advertising. The judgment also imposes civil penalties of \$118,000. . . . The PUC is pursuing investigation of other prepaid calling card providers in response to consumer complaints and recent market activities suggesting rampant consumer abuse. . . . The PUC is committed to pursuing fraudulent market behaviors . . . as announced in its Decision (D. 06-03-013) The judgment, stipulation, and complaint are available on the PUC's website at www.cpuc.ca.gov/static/aboutcpuc/divisions/consumer+protection/enforcement+branch/030221_phonecards.htm.

⁴ *FTC Halts Bogus Prepaid Phone Card Claims, Cards Failed to Deliver the Number of Minutes Promised in Ads*, rel. June 2, 2008 ("[A]ds . . . fail to clearly disclose there are other random fees, such as "hang-up" and "maintenance" fees and "destination surcharges" that can wipe out the value of the card after even one short call. Such fees are disclosed in tiny font and in vague terms that are mostly incomprehensible in any language."), available online at: <http://www.ftc.gov/opa/2008/06/alternatel.shtm>.

customers receiving far fewer minutes than they were promised and paid for. Another common complaint we receive is from consumers who have a defective card that does not allow him or her to complete any calls, and want reimbursement from the card provider, or who are trying to contact the service provider for general customer service issues. Consumers also frequently complain of call completion fees they did not discover until using the card. However, the NYS commission and other State commissions often have difficulty pursuing these complaints because the rates and fees information related to the card is printed on the packaging which is normally thrown away by the consumer, thereby impeding investigation and resolution of such complaints.

H.R. 3993 fills this gap by requiring that disclosure of rates and fees, as well as contact information, be printed on the calling card itself, *not just the packaging*. Further, if the disclosure printed on the card is obscured by the packaging, H.R. 3993 requires the disclosure to also be printed on the packaging.

Adequate Disclosures

As mentioned earlier, NARUC endorses accurate disclosure of terms and conditions, but the association has no specific position on this problem. *However, I personally have two suggestions I believe will assure greater transparency of rates and fees.*

First, I am concerned that providing full disclosure on a calling card may result in print size so small as to be unreadable. To assure the disclosures can be read, I would like to suggest an alternative. The service provider could be required to include all rates and fees on a piece of

card stock included with the calling card when sold. This card would be the same size as the calling card and would have the phrase “**CONSUMER: DO NOT DISCARD**” printed on both sides in boldface type.

Second, personally, I think *all* calling card providers should be required to maintain a website with information on the rates, terms and conditions of the card. Obviously, the weblink should also be displayed on the card. As currently drafted, Section 3(a) of H.R. 3993 only requires online disclosure if a calling card provider maintains a website. This provides bad actors with a loophole. It is not unreasonable to require a provider to maintain a website outlining the rates, terms and conditions of their products. Any company providing communications services should be technologically savvy enough to maintain a website – it is not expensive or difficult. Requiring a provider to print both a toll free number and website on the card will improve the ability of the consumer to make informed choices. More importantly, the information could prove invaluable to State and federal officials. If a web address is printed on the card, the consumer could provide the consumer complaint call center with the website which would aid the investigation and resolution of a complaint by relevant authorities.

***Partnership – Not Preemption
Leveraging Dual Enforcement and Remedies: Keeping State “Consumer” Cops on the Beat***

The Calling Card Consumer Protection Act protects consumers by requiring the accurate and reasonable disclosure of the terms and conditions of prepaid telephone calling cards and services. NARUC has urged that consumers receive meaningful disclosures about such services, that States must be able to enforce any federal standards using existing procedures and penalties,

and that more protective and alternate State-level protections remain intact. As drafted, H.R. 3993 meets all three NARUC requirements.

There are many circumstances that explain why a consumer may not report a complaint. They may not know who to call or where to file a complaint. The value of the card may not justify the hassle of trying to get a refund or assistance. Also language skills and cultural barriers – particularly for recent immigrants – can make it difficult for some consumers to file complaints. There needs to be a proactive and combined federal and State outreach effort to ensure consumers know that there are rules that protect them and how to seek assistance.

Like our federal counterparts, many State commissions actively address calling card abuses. Several States, including Texas⁵, California, Alaska, and my home State of New York have laws specifying required disclosures. New York law requires notice at the point of sale, verbal disclosures at the beginning of calls, and a required warning one minute before a card is depleted. As in most consumer service matters, a small number of bad actors creates the bulk of the consumer complaints. What troubles me is the negative impact those bad actors can have on the industry which is also comprised of many service providers that deliver quality service at reasonable prices. The reputable providers make up the heart of the industry and should embrace the enforcement regime proposed in H.R. 3993.

By definition, the fraud and inadequate disclosure problems at the focus of this legislation cannot be handled by market forces. The federal-State partnership established in Sections 5 and

⁵ Written Statement Public Utility Commission of Texas Chairman Barry Smitherman before the Senate Committee on Commerce, Science, and Transportation, Washington, D.C., July 30, 2008.

7 of H.R. 3993 is critical. It allows more protective State remedies to remain intact. It maximizes the avenues for consumer redress. It leverages State and federal fining and enforcement activities to produce the greatest possible deterrence to bad actors. There is never a good reason to take State consumer “cops” off the beat or limit consumer avenues for redress. H.R. 3993 does neither.

The bill recognizes that there is considerable value in existing State enforcement options, which often allow consumer concerns to be addressed more quickly, often through informal processes. Section Seven recognizes that to assure maximum deterrence, (a) federal rules should be “[a] floor, not a ceiling,” as “...blanket preemption on consumer affairs will restrict consumer redress in the future,” and (b) that “...consumers should NOT have to wait for federal rulemaking every time a new issue arises.”

The bill also recognizes that, even in those instances when minimum federal consumer protection standards are appropriate, States must be allowed to enforce those standards and to adopt more specific standards where needed. This bill also provides States with flexibility in the method of enforcement. Section Five of the bill empowers a *State AG, PUC or other authorized State consumer protection agency* to bring civil action against a carrier that violates its provisions. Section 5 (c)(4) assures States can continue to enforce existing laws using existing procedures. This is wholly appropriate. States vary on their method of enforcement. In some States consumer complaints may go to the Attorney General, in others complaints go to the PUC or another agency. The federal government should not dictate the agency or procedure for State enforcement. Such federal dictates would require States to waste taxpayer dollars to shift

resources to different agencies. In addition, such a change could only cause consumer confusion by changing the current contact State agency.

Particularly from an enforcement standpoint, H.R. 3993 is a clear win for consumers because it not only establishes clear national standards, but it also couples those standards with coextensive federal and State enforcement. On behalf of NARUC, I would like to again thank Representative Engel for working with us to ensure the bill provides maximum consumer benefits.

Functional, Technologically Neutral Definition of Covered Services

NARUC strongly supports Mr. Engel's legislation. We genuinely appreciate both Mr. Engel and his staff's incorporations of some suggested improvements into the bill. We also appreciate Mr. Engel's receptivity to proposed improvements to the bill and we do have one remaining suggestion we believe will improve the bill.

The modification NARUC suggests is changing the definition of prepaid calling card and calling-card service in the legislation. As currently drafted the bill refers to the FCC definition of a "prepaid calling card" that references regulatory classifications that are increasingly outdated as technology evolves. The bill seeks to compensate for this limiting definition by including a definition of the latest technology, Voice over Internet Protocol (VoIP), and as a catch-all brings in use of "successor" protocols.

Such references are not necessary and can only serve as target for bad actors to find loopholes – something history has conclusively demonstrated that they are very, very good at. Since calling cards are used exclusively for voice service, NARUC suggests that the Subcommittee remove these “silo-” based definitions and focus instead on a functional definition that is not tied to any particular technology. Section 2(4) and 2(6) of Senate bill (S. 562) provides one useful definitional approach, which was also used by Rep. Engel in the *Truth in Caller ID Act* (H.R. 1258) approved by voice vote this October by the Subcommittee on Communications, Technology, and the Internet. Section 2(6) of S. 562 eschews a definition tied to specific technologies or old definitions in favor of a functional approach. It defines a “prepaid calling card service” to mean “any real time voice communications service, regardless of technology or network utilized, paid for in advance by a consumer, that allows a consumer to originate voice telephone calls through a local, long distance, or toll-free access number and authorization code, whether manually or electronically dialed.” We respectfully suggest this legislation adopt the same approach.

CONCLUSION

NARUC supports the jurisdictional balance struck in *The Calling Card Consumer Protection Act*. As drafted, the bill provides consumers with increased national disclosure requirements and ensures strong enforcement of national standards by allowing States to enforce those standards in the manner which best fits their circumstances. It also clearly preserves existing and future State options for consumer relief. The combination of State enforcement of federal standards on preservation of State-level protection provides consumers with maximum

protection from bad actors. The inclusion of the minor modifications recommended here would further refine what is already good legislation.

Thank you again for the opportunity to testify. NARUC supports H.R. 3993 and looks forward to working with this subcommittee, the full committee, and Congress as this bill moves forward. I would be happy to answer any questions you may have.

APPENDIX A

Resolution on Prepaid Calling Card Issues

WHEREAS, Despite the growth in wireless phone subscribership, VoIP and other new technologies, many Americans continue to rely on prepaid calling cards to complete intrastate, interstate, and international calls; *and*

WHEREAS, Many State and federal regulatory bodies receive consumer complaints about fraud and deceptive practices in the prepaid calling-card industry that have brought this issue to the attention of State public utility commissions, State attorneys general, the Federal Communications Commission, the Federal Trade Commission, many consumer groups as well as federal and State legislators; *and*

WHEREAS, The main victims of fraud and abuse in the prepaid calling-card market are primarily minorities, immigrants, U.S. Service men and women, the elderly, low income, and other distinct groups that are not inclined to or cannot afford to adopt new emerging technologies, or move often; *and*

WHEREAS, In response to growing concerns in this market, enforcement actions and civil cases have been initiated and are currently pending in several States against bad actors but concerns still remain. State regulators and attorneys general have been effective in enforcing consumer protections where possible and must continue to have the authority to enforce State consumer protection laws; *and*

WHEREAS, Legislation on this issue was adopted by the House and Senate in the 110th Congress. However, the differences were not resolved in conference. The sponsors, Senator Bill Nelson of Florida and Representative Elliot Engel of New York respectively, intend to reintroduce their legislation in the 111th Congress. The legislation would establish federal requirements for the disclosure of rates and services, outline unlawful conduct and allow for State enforcement of the federal standard – thus keeping more “cops on the beat” protecting consumers; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has previously expressed its commitment to competitive neutrality regardless of the technology utilized and that consumers benefit from full disclosure and application of all charges and fees in making an informed decision when purchasing communications service; *now, therefore, be it*

RESOLVED, That NARUC, convened at its 2008 Annual Convention in New Orleans, Louisiana, supports action to improve consumer protection with regard to prepaid calling-card services, provided that State consumer protections and enforcement are not diminished; *and be it further*

RESOLVED, That NARUC directs its General Counsel, with the consent of NARUC leadership, to communicate this resolution, including supporting initiatives that meet the above referenced goals regarding prepaid calling-card services, to federal and State agencies and Congress.

*Sponsored by the Committee on Consumer Affairs
Recommended by the NARUC Board of Directors, November 18, 2008
Adopted by the Committee of the Whole, November 19, 2008*

APPENDIX B

Statement by
Chairman Barry Smitherman
Public Utility Commission of Texas

Senate Committee on Commerce, Science, and Transportation

Washington, D.C.
July 30, 2008

Executive Summary

On May 23, 2008, the Texas Attorney General filed the state's first enforcement action against a prepaid calling card company, Next-G Communications, Inc. The investigation which led to the enforcement action was done in conjunction with the Public Utility Commission of Texas, and determined that Next-G's calling cards consistently delivered only 40% of the minutes on international calls claimed in the advertising for the cards.

The results of the investigation show that Next-G inadequately disclosed the fees and charges associated with each call, reducing the number of minutes available for calling. The Texas Attorney General filed the enforcement action under the Texas Deceptive Trade Practices-Consumer Protection Act.

History

Beginning in 2004, staff from the Consumer Protection Division of the Public Utility Commission of Texas investigated whether calling card companies were following the advertising and disclosure requirements under the Public Utility Commission Substantive Rule 26.34. The initial investigation revealed that calling card companies were not following the Commission rule related to accurate disclosure of rates and charges on the card or at the point of sale. The Commission rule also requires that enforcement actions for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices will be coordinated with the Texas Attorney General in order to ensure consistent treatment of specific alleged violations. Customer Protection notified the Texas AG's Office of the issues relating to the accurate disclosure of information to customers, and during the summer and fall of 2007, worked with the Texas Attorney General's Office to test the calling cards from Next-G Communications to determine the number of minutes that the cards provided.

During the investigation on the Next-G calling cards, Customer Protection staff made calls to numbers in Honduras and El Salvador using \$5.00 and \$10.00 calling cards purchased in San Antonio, which are typical of the calling cards purchased at convenience and grocery stores. Consumer Protection Staff made several different types of calls using different calling cards: "straight line" calls to the target phone numbers, where a call is made until it is terminated by the provider, five-minute calls, and 10-minute calls. When calls were made using the calling cards, a voice prompt is given at the beginning of each call stating the number of minutes available for each call. The minutes stated in the voice prompt were compared to that actual number of minutes received or to the minutes stated in a subsequent call using the same card.

The results of the investigation showed that callers often received less than half of the minutes advertised. For example, when calls were made to Honduras using the five-dollar calling cards, the voice prompt indicated that there was 35 minutes of calling time. Callers

received only 12 minutes for these calls. With calls to El Salvador using the five-dollar cards, the first five-minute call would use up 18 minutes of calling time, and the first 10-minute call would use 25 minutes of calling time, as indicated by comparing the minutes stated on the voice prompt in subsequent calls.

Based on the results of the investigation, the Texas Attorney General filed a lawsuit asserting that Next-G engaged in false, deceptive and misleading acts and practices, specifically, not providing the minutes offered in the advertisements or voice prompt at the beginning of phone calls, and using advertising with vague, misleading, and confusing disclosures about fees and charges. The Attorney General requested that the defendant disgorge all money fraudulently taken from individuals and businesses, and requested a temporary and permanent injunction against Next-G selling cards that do not give all the minutes advertised or indicated in the voice prompt. The lawsuit is currently proceeding in State District Court in San Antonio.

Conclusion

Based on the investigation of the Next-G calling cards, it is obvious that some calling card companies mislead and confuse customers by including vague disclosures on charges and rates that dramatically alter the number of minutes available to a customer. Customers that use calling cards, especially for international calls, are generally immigrant or low income individuals attempting to contact families or friends. Calling card companies should be required to accurately disclose the fees and charges, rather than use incomplete and misleading language. By putting these precise terms up front, customers will be aware of what they are paying for, and can make better decisions in choosing their telecommunications needs.

Mr. RUSH. The Chair thanks Ms. Acampora.
Now the Chair recognizes Mr. Kabba for 5 minutes for the purposes of opening statement.

TESTIMONY OF ALIE KABBA

Mr. KABBA. Mr. Chairman and the subcommittee, I am Alie Kabba, Executive Director of the United African Organization and the Vice President of the Illinois Coalition for Immigrant and Refugee Rights. Thank you very much for the opportunity to share my perspectives on prepaid telephone cards. This hearing is very timely.

The United African Organization and the Illinois Coalition for Immigrant and Refugee Rights recognized that prepaid phone cards are often the only means for immigrants from Africa, Asia, Latin America, and the Caribbean to stay in touch with family members abroad. The cards are generally marketed through ethnic stores in neighborhoods with significant immigrant populations. They are easily accessible and on the surface cheap compared to rates by major providers. However, appearances are often deceiving, particularly for consumers with limited English proficiency.

Prepaid phone cards too often do not provide the actual minutes advertised or announced due to a myriad of fees. Limited English-proficient consumers, including immigrants, refugees, and the low income, are faced with unnecessarily small, fine print to decipher as usage fees. By all accounts prepaid phone cards are predominantly used by some immigrants who can't qualify for phone service from major providers like AT&T and Verizon because they lack needed documentation or they do not have credit history.

Alas, Mr. Chairman, this vulnerable group of undocumented consumers of prepaid phone cards is the least likely to complain about poor customer status, deceptive practices, or deficiencies as the user of the cards. Fees may not always be fully disclosed, and even if they are disclosed, they usually are not understood. When you factor in the problem with low-completion rate of calls, hidden fees can easily account for a hefty portion of the cost per call.

Short expiration dates have become a practice, presumably to increase calling card sales. Unsuspecting consumers are out of minutes if they hold onto the card beyond the short expiration dates. Immigrant customers are likely to buy a few extra cards in case of a family emergency in faraway places like the Democratic Republic of Congo or Trinidad and Tobago. The short expiration dates often leave customers with worthless cards due to no fault of their own.

Short expiration dates are sometimes related to yet another hidden problem with prepaid phone cards. Some calls do not simply reach their destinations. An unsuspecting customer may try repeatedly over an extended period of time to reach their loved ones in say Bolivia or Liberia without giving much attention to the expiration dates. Consequently, they are hit with a double whammy of losing their money and not being able to talk to their loved ones abroad.

Cost-per-minute rates are up to higher than those advertised. The joke in the community is that it does not matter whether the prepaid phone card is marketed under the brand name of African Safari, African Kilimanjaro, or African Sky. The actual cost per

minute is as mysterious as the night sky over the Sahara Desert. In other words, prepaid calling cards are like books whose covers tell you nothing about their context. You simply hope and pray to the Holy Spirit that you have your money's worth.

And to add insult to injury, Mr. Chairman, customers have no recourse to lodge their complaints. Even in the rare instance is where you can reach a customer service department, customer service personnel may not be available or their customer service department speak the language of the customers. Since a significant percentage of their customers consist of limited English proficient households, with at least one relative aboard, it flies in the face of logic that many prepaid phone card providers do not have customer service departments or departments with linguistically-competent staff. This lack of commitment to customers, customer needs implies a cynical business strategy, relying on the captive customers who will accept cutthroat rates and poor service because they have no viable alternatives.

There is the perennial complaint about billing increments, the units the companies use to deduct minutes. For example, if using one bill increment on a 5-cent-per-minute card, they deduct 5 cents for the call even if the call lasts for 1 minute or just 30 seconds. If the card applies a 5 billing increment, that same 30-second call could cost 25 cents. Clearly, the customer ends up with fewer minutes than previously advertised.

It is crystal clear that the empirical basis of the above consumer complaints point to one conclusion. Information provided by prepaid phone card issuers is often confusing, incomplete, and deceptive.

In conclusion, in requiring accurate and reasonable disclosure of the terms and conditions of prepaid telephone calling cards and services, we strongly believe that H.R. 3993 addresses all pertinent consumer complaints in our diverse immigrant and low-income communities.

Furthermore, we believe that careful wording of what is meant by fruitful disclosure of minutes available is imperative if per call and periodic fees are allowed. If fees are allowed, there must be standardization of terms and only one term for each fee. Consumers shall have better information prior to purchase. Prepaid phone card providers can facilitate this process by using simple, plain English.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kabba follows:]

**Testimony of:
Alie Kabba, Executive Director
United African Organization
Chicago, Illinois**

**Submitted to the:
House Subcommittee on Commerce, Trade, and Consumer
Protection
COMMITTEE ON ENERGY AND COMMERCE**

**“Legislative Hearing on HR 3993 the Calling Card Consumer
Protection Card”**

Thursday, December 3, 2009

Introduction:

Thank you very much for the opportunity to share my perspectives on prepaid telephone cards. This hearing is very timely.

The United African Organization (UAO) and the Illinois Coalition for Immigrant and Refugee Rights (ICIRR) recognize that prepaid phone cards are often the only means for immigrants from Africa, Asia, Latin America and the Caribbean to stay in touch with family members abroad. The cards are generally marketed through ethnic stores and neighborhoods with significant immigrant populations; they are easily accessible and, on the surface, cheap compared to rates by major providers. However, appearances are often deceiving, particularly for consumers with limited English Proficiency (LEP).

Consumer Complaints:

Prepaid phone cards too often do not provide the actual amount of minutes advertised or announced due to a myriad of fees. Limited English Proficient (LEP) consumers, including immigrants, refugees and the low-income, are faced with unnecessarily small fine print to decipher associated usage fees. By all accounts, prepaid phone cards are predominantly used by some immigrants who can't qualify for phone service from major providers like AT&T and Verizon because they lack needed

documentation or they do not have credit history. Alas, this vulnerable group of undocumented consumers of prepaid phone cards is the least likely to complain about poor customer service, deceptive practices or deficiencies associated with use of the cards. Fees may not always be fully disclosed; and even if they are disclosed, they usually are not understood. When you factor in the problem with low completion rate of calls, hidden fees can easily account for a hefty portion of the cost per call.

Short expiration dates have become a pervasive practice, presumably to increase calling card sales. Unsuspecting customers are out of minutes if they hold on to the cards beyond the short expiration dates. Immigrant customers are likely to buy a few extra cards in case of a family emergency in far away places like the Democratic Republic of Congo or Trinidad & Tobago. The short expiration dates often leave such customers with worthless cards due to no fault of their own. Short expiration dates are sometimes related to yet another hidden problem with prepaid phone cards: *Some calls do not reach their destinations.* An unsuspecting customer may try repeatedly over an extended period of time to reach their loved ones in Bolivia or Liberia without giving much attention to the expiration date. Consequently, they are hit with the double whammy of losing their money and not able to talk to their loved ones abroad.

Cost-per-minute rates are too often higher than those advertised. The joke in the community is that it does not matter whether the prepaid phone card is marketed under the brand name of “African Safari” or “African Kilimanjaro,” the actual cost-per-minute rate is as mysterious as the night sky over the Sahara desert! In other words, prepaid calling cards are like books whose covers tell you nothing about their content. You simply hope and pray to the Holy Spirit that you’ll have your money’s worth.

And to add insult to injury, customers have no recourse to lodge their complaints. Even in the rare instances where you can reach a customer service department, customer service personnel may not be available or speak a language the customer understands. Since a significant percentage of their customer base consists of Limited English Proficient households with at least one relative abroad, it flies in the face of logic that many prepaid phone card providers do not have customer service departments or departments with linguistically competent staff. This lack of commitment to customer needs implies a cynical business strategy, relying on captive

customers who will accept cutthroat rates and poor service because they have no viable alternatives.

There is the perennial complaint about billing increments – the units the companies use to deduct minutes. For example, if using one-billing increment on a \$.05 per minute card, it deducts \$.05 from the card if the call lasts one minute or just 30 seconds. If the card applied a five-billing increment, that same 30 second call would cost \$.25. Clearly, the customer ends up with fewer minutes than previously advertised.

It is crystal clear that the empirical basis of the above consumer complaints points to one conclusion: *information provided by prepaid phone card issuers is often confusing, incomplete and deceptive.*

Conclusion:

In requiring *accurate and reasonable disclosure of the terms and conditions of prepaid telephone calling cards and services*, we strongly believe that H.R. 3993 addresses all pertinent consumer complaints in our diverse immigrant and low-income communities. Furthermore, we believe that careful wording of what is meant by truthful disclosure of minutes available is imperative if per-call and periodic fees are allowed. If fees are allowed, there must be standardization of terms and only one term for each fee. Consumers should have better information prior to purchase. Prepaid phone card providers can facilitate this process by using simple, plain English!

Thank you.

Mr. RUSH. The Chair thanks the gentleman.
The Chair now recognizes for 5 minutes Mr. Ramminger for the purpose of opening statement.

TESTIMONY OF SCOTT RAMMINGER

Mr. RAMMINGER. Thank you, Mr. Chairman. I am Scott Ramminger, President of American Wholesale Marketers Association. Our association represents distributors to convenience stores across the country. Our members supply about \$85 billion worth of product through convenience stores like 7-11, for example.

Simply put, they purchase products from manufacturers, they purchase snacks and candy and tobacco products from the manufacturers, they aggregate that product and deliver it and sell it to the convenience stores, and of course, one of the things that they do along with the consumable products is supply some of these prepaid calling cards, which they purchase from the manufacturers of those cards.

On behalf of AWMA I would like to thank the subcommittee for holding the hearing and for working to ensure that consumers are protected from unfair and deceptive practices with respect to these cards. We support that goal wholeheartedly, however, we would like to urge that any legislation ultimately approved by the committee include language that imposes liability for false labeling or advertising on our member distributors only if they know about this falsity. Unfortunately, the legislation currently before the committee contains no such provision providing this necessary protection for law-abiding distributors.

Under the current legislation H.R. 993, a distributor, much like a retailer, would be held liable and could be punished simply by acting as a conduit, purchasing these cards from the manufacturer and supplying them to the convenience stores, even if the distributor was completely unaware that there was any sort of discrepancy or problem with the cards.

This would create an unfair burden of liability for the distributors, and I want to urge the committee to ensure that the legislation promoting the consumer protection on the prepaid calling cards includes protection for the law-abiding distributors who unwittingly could be acting as go-betweens on these products.

The H.R. 993 would add the subject of calling cards to the Federal Trade Commission Act, directs the FTC to write a rule governing calling cards, and spells out the consumer disclosures that calling card vendors must provide. The penalties for violation of the FTC rules or injunctions, money damages, and fines. The bill gives States Attorney Generals similar authority. We believe that it is only fair that wholesale distributors are exempt from liability for incorrect disclosure if the distributor has no control over the scope or services that the manufacturer has delivered.

While it is true that a distributor could tell whether or not there was a clear and conspicuous notice on the card about fees and minutes, the distributor would have no way of knowing whether, in fact, the card had the correct number of minutes on it or not.

In previous Congress a similar bill on this issue, H 3402, addressed the problem by making it unlawful for the distributor to distribute the cards if the distributor knows that the prepaid tele-

phone card provides fewer minutes than the number promoted or advertised. As I said, unfortunately, this new bill does not have this much-needed provision.

On behalf of all members of the American Wholesale Marketers Association, I would like to offer the following fix aimed at ensuring the fairness and reasonableness of the measure.

Section 2(4) defines prepaid calling card distributor. This section could be amended by adding the following clause at the end. But such termed as not include distributors who sell such cards in the same form and packaging as acquired from a prepaid calling card service provider or distributor.

Alternatively, a provision could be added to the directions given to the FTC that would read, in promulgating each such regulation, the Commission shall not issue regulations which hold the prepaid calling card distributor liable for deceptive disclosure of services or rates which the distributor was unable to know or control.

And just—I would just like to add, I think there is some—a little bit of nomenclature problem perhaps, because sometimes our members who are real wholesale distributors who are purchasing typically goods, you know, canned goods or candy from a manufacturer and reselling it, we refer to as distributors. But—and sometimes the makers of these cards are referred to as distributors. That is—we are talking about two different sorts of distributors entirely. Our guys are not buying the minutes and producing the cards. They are buying the cards from someone and simply selling them along with other goods to the retailer.

I would again like to commend the subcommittee for these efforts. It is clearly an important issue. I represent small businesses, and I clearly can appreciate this significant problem, and I hope you will consider our concerns as you go forward on this important issue. Thank you, Mr. Chairman.

[The prepared statement of Mr. Ramminger follows:]



AMERICAN WHOLESALE MARKETERS ASSOCIATION

Prepared Testimony and Statement for the Record of

**Scott Rammingner
President, American Wholesale Marketers Association**

Hearing on HR 3993

Before the

**U.S. Subcommittee on Commerce, Trade and Consumer Protection
U.S. House of Representatives**

December 3, 2009

Thank you for providing the opportunity to testify on HR 3993, legislation aimed at preventing pre-paid calling card fraud and promoting consumer protection. My name is Scott Rammingner and I am the President of the American Wholesale Marketers Association (AWMA). AWMA represents convenience distributors nationwide and our distributor members represent more than \$85 billion in U.S. convenience product sales. Associate members include manufacturers, brokers, retailers and others allied to the convenience product industry. The products our members distribute include candy, foodservice, general merchandise, snacks, health and beauty items as well as pre-paid calling cards.

On behalf of AWMA, I would like to thank the subcommittee for holding this hearing and for working to ensure that consumers are protected from unfair and deceptive practices with respect to these pre-paid calling cards. We support that goal

wholeheartedly. However, we urge that any legislation ultimately approved by the committee include language that imposes liability for false labeling or advertising on a distributor of pre-paid calling cards *only if the distributor knows of the falsity*.

Unfortunately, the legislation currently before this subcommittee contains no such provision providing necessary protection for the law-abiding distributor of these products. Under the current legislation – HR 3993, a distributor would be held liable and could be punished simply by acting as conduit between the manufacturer of these pre-paid calling cards and the convenience store even if the distributor was completely unaware of the discrepancy and fraudulent nature of the calling card. This would create an unbearable and unfair burden of liability for distributors and I urge the committee to ensure that legislation promoting consumer protection with respect to pre-paid calling cards include protections for law-abiding distributors unwittingly acting as go-betweens for these products.

HR 3993 would add the subject of calling cards to the Federal Trade Commission Act. It directs the FTC to write a rule governing calling cards and spells out the consumer disclosures that calling card vendors must provide. The penalties for violations of FTC rules are injunctions, money damages and fines. The bill gives state attorneys generals similar authority. We believe that it is only fair that wholesale distributors are exempt from liability for incorrect disclosure if the distributor has no control over the scope of the services or the truth of the labeling. While it is true that a distributor can tell whether or not there is a “clear and conspicuous” notice on the card about fees and minutes etc, it is also true that a distributor has no way of knowing whether that information is accurate. In the previous congress a similar bill on this issue – HR 3402 –

addressed this problem by making it unlawful for the distributor to distribute if “the distributor knows that the prepaid telephone calling card provides fewer minutes than the number of minutes promoted or advertised”. Unfortunately, the new bill offered by Rep. Engel – HR 3993 – does not include this much-needed provision.

On behalf of the American Wholesale Marketers Association I offer the following “fix” aimed at ensuring the fairness and reasonableness of this measure. Section 2(4) defines “prepaid calling card distributor”. This section could be amended by adding the following clause at the end, “but such term does NOT include distributors who sell such cards in the same form and packaging as acquired from a prepaid calling card service provider or distributor.” Or, alternatively, a provision could be added to the directions given to the FTC that would read “In promulgating such regulations, the Commission shall not issue regulations which hold a prepaid calling card distributor liable for deceptive disclosure of services or rates which the distributor was unable to know or control.”

I commend the subcommittee for its efforts to protect consumers, however, as currently drafted, HR 3993 would unfairly penalize law-abiding distributors – many of whom represent small, family-owned businesses which are currently struggling in this economy and can ill-afford such liability. I hope you will consider our concerns as you go forward on this important issue and I appreciate the opportunity to submit this testimony on behalf of the American Wholesale Marketers Association. Thank you.

Mr. RUSH. The Chair thanks you, and the Chair thanks all of the witnesses for their fine opening statements.

Before we begin our line of questioning, I request unanimous consent—I am requesting the submission of two items that were submitted to the subcommittee for entry into the record of today's hearing. Item number one is a statement for the record of Mr. Walter B. McCormick Jr. He is the President and CEO of the U.S. Telecom Association, and the second item is the statement and the comments of Mr. John Eichberger. He is the Vice President of the National Association of Convenience Stores.

Hearing no objection so ordered.

[The prepared statement of Mr. McCormick follows:]

**Statement for the Record
of
Walter B. McCormick, Jr.
President and CEO, USTelecom Association
to the
House Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
December 3, 2009**

Chairman Rush, Ranking Member Radanovich, members of the Subcommittee: Thank you for this opportunity to submit testimony discussing USTelecom's perspective on H.R. 3993, the Calling Card Consumer Protection Act. I am Walter McCormick, President and CEO of the USTelecom Association. USTelecom and its members support the goal of protecting consumers from the unfair and deceptive practices associated with the sale and use of prepaid calling cards. As the Subcommittee moves forward in the legislative process, USTelecom would like to request the inclusion of additional language in H.R. 3993 that would: (1) avoid consumer unfriendly and impractical disclosure requirements; (2) avoid duplicative FTC and FCC regulation and enforcement; (3) recognize the interstate nature of the calling card business and create a national standard to prevent calling card fraud; and (4) prevent duplicative and inconsistent state and local enforcement regimes.

USTelecom represents innovative companies ranging from some of the smallest rural telecoms in the nation to some of the largest corporations in the U.S. economy. Our member companies offer a wide range of services across the communications landscape, including voice, video and data over local exchange, long distance, Internet and cable networks. They are proud members of their communities and deeply committed to their future development. What unites our diverse membership is our shared determination to deliver innovative services to the consumer, including prepaid calling cards, in an honest and forthright manner.

As the Federal Trade Commission (FTC) noted last year, a substantial number of prepaid calling cards are sold to recent immigrants to the U.S. who depend on calling cards to stay in touch with family and friends abroad. Prepaid calling cards are also an important part of communication between members of the armed forces and their families. For example, USTelecom member AT&T has built and maintains 70 calling centers in Iraq, Kuwait and Afghanistan and, since 2000, has donated prepaid phone cards with a retail value of \$8 million to military members. AT&T also works in conjunction with the Army Air Force Exchange Service to help service men and women understand their most affordable calling options. Another USTelecom member, Verizon, has donated over 20,000 cards this year alone to the USO, which has and will provide the cards to our service men and women.

The industry that has arisen around the sale of prepaid calling cards can be confusing. Prepaid calling cards are sold by retailers across the country, ranging from neighborhood convenience stores to “big box” discount supercenters to online merchants. In most cases, our member companies sell directly to these consumer point-of-sale outlets.

But, in other cases, there are often several layers of distributors or sub-distributors who “picce” together the telecommunication components that are ultimately sold to retail outlets. This oftentimes leaves the consumer unaware of who is actually providing the card or service. And it is in these cases where the disclosures are often inadequate.

The prepaid card market itself can also be confusing. Cards sold in retail outlets, including our member companies’ cards, are sold in various denominations. They are also sold at various prices – prices which are set by the individual retailer. Some of those cards are designed primarily for calls within the U.S., while others are intended primarily for international use. If a card designed primarily for use within the U.S. is used internationally, it will (as explained on the card) not have the same value of minutes.

According to Atlantic ACM, an industry research company, the U.S. prepaid calling card market, defined as cards sold in the U.S. and used to make domestic calls and international calls, will be approximately \$2.6 billion in 2009. As the Subcommittee knows, the prepaid calling card market has unfortunately fallen prey to unscrupulous actors who take advantage of some of society’s most vulnerable segments.

Appropriate Federal Legislation: Help to Consumers, and Businesses Alike

Action by Congress on this issue would be helpful to both consumers and legitimate businesses alike. Last year, Congress held two hearings on this subject. At both hearings, witnesses reported on the unscrupulous business practices of certain providers that prey upon the most vulnerable consumer groups. Consumers will certainly benefit from the establishment of national standards.

I am also pleased to report at the outset that the business practices of USTelecom member companies are not in question. In fact, one witness from the University of Georgia specifically noted before Congress last year that the best-known carriers were truthful in providing the number of minutes advertised. Indeed, as the National Consumers League correctly noted, “companies that ‘play by the rules’ are often punished by a loss of market share due to fraudulent carriers.” So it is possible that properly drafted federal legislation to crack down on bad actors in the prepaid calling card market will result in increased sales for legitimate actors.

Another advantage to properly drafted federal prepaid calling card legislation is bringing some order to the myriad of state laws governing this area. Currently fourteen states have prepaid phone card rules/laws/regulations:

States Regulating Prepaid Phone Cards

Alabama	Louisiana
Alaska	Maine
California	Missouri
Connecticut	New Jersey
Florida	New York
Georgia	Texas
Illinois	Washington

The laws are not uniform, as some states require minimal disclosures while the disclosure requirements of other states are quite extensive. Depending on the state, the disclosures might be required on the card, the packaging, or both. In addition to the disclosure requirements, many of the states have various other requirements in connection with the provision of the card or service, such as advertising, customer service information, formatting, and limitations on charges relating to customer service, fees, usage, and value.

Because our member companies' prepaid calling cards are typically sold through distributors, wholesalers and retailers with regional or even national footprints that cross state lines, the disclosures provided on the card and/or packaging must be in compliance with each and every state regulation as there is no way of knowing where the card will eventually be sold. That compliance is typically accomplished by review and comparison of all state prepaid card laws and rules, as well as the gift card laws of four states which inexplicably have been made applicable to prepaid telephone cards, to ensure that all information is provided on the card and packaging as required.

For example, seven states require the customer service number on the card, five require it on the card or packaging, and two require it on the card and packaging. In order to comply, a national company selling prepaid calling cards needs to meet the most stringent requirement - putting the number on the card and the packaging. Cards sold nationally also need to comply with the in-language requirements of three states, meaning that if a language other than English is used on the card or packaging to provide certain material terms or is predominantly used on the card or packaging, then the disclosures must also be in that other language. One state requires a statement on the packaging of its prepaid calling cards advising the cardholder to safeguard both card and PIN and that the customer is responsible for its loss or unauthorized use. This, in turn, requires national providers to place such a statement on the packaging of every calling card.

Preventing Consumer Confusion, Higher Costs and Withdrawal From Markets

USTelecom supports the enactment of legislation to protect consumers from predatory practices in this market. As we noted earlier, such legislation is not only good for consumers, but could also result in increased sales for legitimate actors. If properly drafted, a federal law would also establish order amongst the myriad of state laws currently governing the industry. As the Subcommittee moves forward, we would like to offer several suggestions that we believe would strengthen the legislation and prevent

confusion and higher costs to the consumer, as well as avoid the possible withdrawal of legitimate actors from certain markets.

The bill's laudable objective of providing consumers with "clear and conspicuous" information disclosure about these calling cards is undermined by the long and prescriptive list of disclosures that, under the approach being contemplated, must appear on the cards themselves. Moreover, the bill could subject telecom providers to duplicative and inconsistent regulation and enforcement from two different federal agencies and a multitude of state and local authorities. Let me comment on each of these points in a little more detail.

Avoid Consumer-Unfriendly and Impractical Disclosure Requirements

USTelecom supports appropriate disclosures on prepaid calling cards. As the National Consumers League has previously noted, the accurate disclosure of how many minutes a card will provide as well as other surcharges and fees can cost legitimate actors market share to firms that are shading the truth. However, we believe the bill's highly prescriptive disclosure requirements will ultimately be unhelpful to the average consumer. The issue here is not *whether* the information should be disclosed – it is where, and how. As the FTC described the current situation at last year's hearing, "The disclaimers are frequently in type so small as to be illegible and in language so vague as to be effectively incomprehensible."

The objective of providing consumers with "clear and conspicuous" information disclosure about calling cards is undermined by the long and prescriptive list of disclosures that must appear on the cards or packaging. Even if all these disclosures could be fit onto a 2-by-3 inch calling card, as the bill requires, they would have to appear in a type size so small that the average consumer would derive little real benefit, if any at all. The FTC should decide what information is so important that it must be printed on the back of the card itself, what information should appear on the card's packaging, and what information should be provided in any point-of-sale advertising displays. This approach would have the benefit of giving all interested parties notice and the opportunity to comment on these issues, while ensuring that the FTC has the authority to provide these disclosures in a manner calculated to be actually seen and understood by consumers. The bill should be modified to provide the FTC with this flexibility. Let me be clear: USTelecom does not oppose, in concept, any of the substantive disclosure requirements set forth in the bill. We simply believe that rather than establishing unnecessarily prescriptive regulation through the statute, the FTC should be given the authority to carry out the essential statutory mandates based on the record before it, taking into consideration what is both essential for consumers and reasonable and practicable for the various segments of the industry. The FTC has a long history of carefully developing disclosures based on real world experience, and we should take advantage of that expertise.

Avoid Duplicative FTC and FCC Regulation and Enforcement

USTelecom does not oppose providing the FTC with explicit authority over common carriers for the purpose of enforcing reasonable disclosure requirements pertaining to prepaid calling cards. However, this narrow and limited exception to the long-standing exemption of common carriers from FTC jurisdiction should make clear that duplicative and inconsistent federal regulation and enforcement are to be avoided. The Federal Communications Commission (FCC) possesses a range of informal and formal enforcement mechanisms and options with respect to common carriers and collaborates with the FTC and uses its expertise in common carrier regulations to assist the FTC in targeting in its enforcement efforts against non-common carriers, prepaid calling card providers, and distributors who engage in deceptive marketing practices. Moreover, a representative of the FCC pointed out at a hearing before the United States District Court for the Eastern District of New York earlier this month that, based on comment it had received concerning the prepaid calling card industry in response to an August 2009 Notice of Inquiry, it was now considering extending its regulation of the industry.

To minimize the burdens and potential inadvertent consequences of overlapping and duplicative federal regulatory regimes, we believe that the FCC should be expressly restrained from exercising any enforcement authority it may otherwise have with respect to prepaid calling cards, calling card providers, and calling card distributors if the FTC is provided with the specific enforcement authority with respect to common carriers under the bill. At a minimum, we would urge the Subcommittee to include additional legislative language making clear that should the FCC also elect to regulate in this area, Congress expects the FTC and FCC to consult and coordinate in order to create a seamless, consistent, and non-duplicative rulemaking structure. A good model may be found in the previous work by the Consumer and Communications Subcommittees in developing the Do-Not-Call Implementation Act (PL 108-10).

Avoid Duplicative and Inconsistent State and Local Enforcement Regimes

As we noted above, most prepaid calling cards and services that permit consumers to make domestic and international calls are highly portable, and are generally sold and often used in multiple states and localities. Thus our members would welcome the creation of a uniform federal framework governing the provision of these cards and services to consumers. We also do not oppose giving states a role through the adoption of identical state laws or enforcement of the federal law through their state Attorneys General. We have already outlined the process that legitimate actors in this industry go through to stay in compliance with state laws. In this respect, we would prefer the legislative language found in the 110th Congress version of the bill that required any related state laws to be identical with those resulting from this legislation. However, expanding enforcement authority to every State public utility commission, consumer agency, and local government in the country is unreasonable, burdensome, and potentially counterproductive, as state and local court interpretations, and the inevitable turf battles among state and local authorities, will undoubtedly lead to inconsistent application and, consequently, customer confusion and higher costs. Should the

involvement of local entities grow too burdensome, it is not hard to imagine legitimate actors choosing to decline supplying prepaid calling cards to those areas. Consumers would not benefit from the absence of these entities from the calling card market.

We thank you for this opportunity to offer our views, and we commend the Subcommittee for its efforts on behalf of consumers who have been defrauded by the unscrupulous practices of certain entities in the prepaid calling card industry. USTelecom appreciates your consideration of our suggestions, and looks forward to our continued work together on behalf of the American consumer.

[The prepared statement of Mr. Eichberger follows:]



December 3, 2009

The Honorable Bobby Rush
 Chairman
 House Energy and Commerce,
 Subcommittee on Commerce,
 Trade and Consumer Protection
 2125 Rayburn House Office Building
 Washington, DC 20515

The Honorable George Radanovich
 Ranking Member
 House Energy and Commerce,
 Subcommittee on Commerce,
 Trade and Consumer Protection
 2322A Rayburn House Office Building
 Washington, DC 20515

Dear Chairman Rush and Ranking Member Radanovich,

On behalf of the member companies of the National Association of Convenience Stores (NACS), I appreciate this opportunity to submit comments regarding H.R. 3993, the "Calling Card Consumer Protection Act."

NACS is an international trade association representing the convenience and petroleum retailing industry. The industry as a whole operates more than 145,000 stores in the United States, generated more than \$624 billion in sales in 2008 and employs more than 1.7 million workers. More than 60 percent of convenience stores are owned by one store operators. In 2008, our industry sold an estimated \$380 million worth of prepaid telephone cards.

In September 2008, NACS testified before this subcommittee regarding H.R. 3402, the Calling Card Consumer Protection Act. In our testimony, we expressed support for the legislation as introduced. In particular, we were supportive of language in Section 3(4) that exempted retailers from regulatory enforcement. As we testified, retailers have no ability to verify the veracity of marketing claims made by the providers of pre-paid calling cards or the efficacy of those cards. Consequently, retailers should not be held liable for fraudulent cards or deceptive marketing materials. This protection of honest retailers was the critical element leading to our support for the bill.

Unfortunately, as H.R. 3402 moved through the legislative process, this exemption was removed from the bill. Clearly, the intent of the authors was not to subject innocent retailers to wrongful prosecution. In fact, when the bill moved to the House floor, Chairman Rush and Representatives Ed Whitfield and Eliot Engel clarified that Congressional intent was to "go after the companies who fraudulently manufacture and sell these cards, not to go after individual grocery stores or mom and pop stores that sell these cards." But deletion of this exemption from the legislation leaves retailers potentially liable for violations that are beyond their control.

NACS hoped that when the legislation was introduced this Congress, it would once again include language that reaffirmed Congressional intent as it relates to innocent retailers. Without this exemption, NACS must officially oppose the legislation.

The Association for Convenience & Petroleum Retailing

1800 Duke Street • Alexandria, VA 22314-3436 • (703) 684-3600 • FAX (703) 836-4584 • www.nacsonline.com

I would like to reassure the Committee that NACS still strongly supports efforts to protect the right of consumers to have their reasonable expectations fulfilled when they purchase prepaid calling cards and to rely upon the Federal Trade Commission ("FTC") to achieve this purpose. However, we urge the following changes to H.R. 3933 that will ensure innocent retailers are not unfairly prosecuted under this regime while enhancing the protections afforded to consumers.

- 1) **Innocent Retailers.** To ensure that innocent retailers are not subject to liability for behavior beyond their control, we encourage the Committee to amend H.R. 3933 as follows:

On page 3, line 19, after "cards.", insert "Such term shall not include any retail merchants or sellers of prepaid telephone calling cards exclusively engaged in point of sale transactions with end users."

This language is identical to that included in the original H.R. 3402 introduced last Congress, consistent with statements made on the House floor last year, and ensures that retailers are not wrongfully prosecuted when they have no knowledge that the cards they are selling may not meet the expectations of their customers. This does not prevent authorities from seeking injunctive relief to remove these cards from commerce, and we encourage enforcement authorities to aggressively pursue removing these cards from commerce.

- 2) **Fraud Reporting Mechanism.** NACS members do not want to sell deceptive products to their customers. The majority of convenience stores are family owned and operated; they are members of their communities and their reputation is critically important. They want to provide the fair and honest service their customers demand. However, due to the difficulties of determining which calling cards are legitimate and which are not, there must be some mechanism through which consumers can report deceptive practices and through which retailers can determine if a calling card provider is tarnishing the store's reputation.

NACS recommends the Committee consider establishing (or using an existing) telephone reporting system at the FTC through which customers can report deceptive calling cards and the location from which those cards were purchased. This will provide the authorities with a database of fraudulent providers and their distribution networks, facilitating the prompt removal of these cards from commerce. In addition, this will provide retailers with the ability to verify the claims of consumers who return fraudulent cards and enable them to remove these cards from their shelves proactively. These developments will benefit consumers and retailers alike and will promote confidence in the market.

- 3) **National Uniformity.** Finally, NACS is concerned that H.R. 3993 sets a federal standard for pre-paid calling cards, but also authorizes state and local officials to establish a different set of standards. For convenience store retailers who may operate in multiple states or local jurisdictions, and for their customers, it would make sense that all pre-paid calling cards be governed under the same regulations. NACS does not oppose empowering state and local officials to enforce the regulations set forth by the federal government, but to empower these same officials to enact regulations that may be inconsistent with those established by this legislation or by the FTC would be highly problematic.

If these suggestions are included in the legislation, we believe the Committee will have greatly strengthened the consumer protections in the bill while treating innocent retailers fairly. If these are included, NACS will remove its opposition to H.R. 3993.

Thank you again for this opportunity to comment and for your consideration of our recommendations. Please let us know if we can be of any additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "John Eichberger". The signature is fluid and cursive, with a large loop at the end.

John Eichberger
Vice President, Government Relations

Mr. RUSH. The Chair——

Dr. GINGREY. Mr. Chairman.

Mr. RUSH [continuing]. Recognizes himself now for 5 minutes.

Dr. GINGREY. Mr. Chairman, could I ask unanimous consent to submit my opening statement for the record?

[The prepared statement of Dr. Gingrey follows:]

Rep. Phil Gingrey
Opening Statement for Calling Card Hearing
Commerce, Trade, and Consumer Protection Subcommittee
December 3, 2009

Mr. Chairman, I want to thank you for calling today's hearing on H.R. 3933 – the Calling Card Consumer Protection Act of 2009 – which is similar to legislation considered by this subcommittee during the 110th Congress.

Over the past decade, the prepaid calling card industry has grown into a multi-billion dollar venture. In 2007 alone, consumers in the United States spent approximately \$4 billion on these prepaid calling cards. Therefore, given the growing size of this industry, it has become more susceptible to fraud and scams – so much so that there was an episode of the HBO hit, *The Sopranos*, which included mob activity in a prepaid calling card scam.

Unfortunately Mr. Chairman, consumers have been subjected to a number of scams and inconsistencies in the way prepaid calling cards work. In many cases, these cards do not deliver the advertised number of minutes, are full of hidden charges, or direct consumers to non-working phone numbers. All of these scenarios result in fraud that can impact individuals who rely on prepaid calling cards – particularly individuals who use them as a means to call overseas that could include military families.

These are deplorable business practices that need to be stopped. Given its current scope of enforcement, I applaud the recent actions taken by the Federal Trade Commission to compel companies to pay close to \$3.5 million in restitution for their deceptive practices.

Mr. Chairman, H.R. 3933 seeks to protect consumers by requiring accurate and reasonable disclosure of terms and conditions for prepaid calling cards while giving the FTC broader enforcement power to

regulate this industry. However, despite its intention, there have been significant changes from the version of the bill this subcommittee considered last year, H.R. 3402.

One of my principal concerns within these changes relates to the preemption clause in H.R. 3993. Unlike the previous version of the bill, this legislation allows states to enact more stringent standards. This could potentially lead to a state-by-state patchwork of regulations that may unintentionally hurt the good actors within the prepaid calling card industry.

Mr. Chairman, despite my underlying concerns over the changes made in H.R. 3993, I am looking forward to hearing from today's panel of witnesses on this important consumer protection issue. I yield back.

Mr. RUSH. Hearing no objections, so ordered.

The Chair recognizes himself for 5 minutes, and the Chair directs this question to Ms. Greisman.

Ms. Greisman, this legislation provides the FCC with the authority over common carriers solely for the purpose of enforcing the provisions of the bill. Although the FCC is generally prohibited from exercising any authority over common carriers, precedence on this kind of carve-out authority as a similar problem with giving it to the FCC regarding pay-per-call services.

The question that I ask of you is what could the FCC do differently if it had this special carve-out authority regarding these calling cards?

Ms. GREISMAN. Mr. Chairman, the answer is very simple. It could sue carriers, which it cannot currently do. The three cases brought by the FDC have been against prepaid phone card distributors. We do not have the statutory authority currently to sue the carriers, many of whom we believe are also responsible and should be held liable for the fraudulent claims that were made.

Mr. RUSH. In your testimony you argued for a complete repeal of the common carrier exemption. Why do you believe that this is necessary?

Ms. GREISMAN. We think that exemption is outdated. The telecommunications industry today looks incredibly different from how it looked back in the early '90s. We see convergence among telecommunications and internet service providers, and we simply think it does not make sense and it actually impedes our law enforcement activities as it has in the prepaid calling card context, and it complicates litigation which we have seen in cases where we have brought involving cramming, which is the unauthorized placement of charges on telephones, telephone bills.

Mr. RUSH. Are there any other witnesses who have either similar or contrary comments or answers to this question? Are there any other witnesses who would like to comment on Ms. Greisman's response to the question?

Ms. GREENBERG. Mr. Chairman, we—in our testimony we support the carve-out for the specific purposes of allowing the FDC to have jurisdiction over the common carriers in this situation because they play a big role in servicing the consumers who buy these cards. So, yes, we do support the FDC's role in this area.

Mr. RUSH. Anyone else? Any other comments?

I am going to move to another line of questioning here. Mr. Kabba, for many immigrants living in the U.S., and you clearly stated it, but I want you to state it again, but it is not only immigrants. We got college students and military personnel, and the prepaid calling card is a primary method for staying in touch with families and friends. But has been stated earlier, prepaid calling cards in most instances or in many instances fails to deliver the full number of advertised minutes.

For example, in 2007, the Hispanic Institute conducted a study and concluded that on average of prepaid calling cards 60 percent of the minutes that were advertised, and this is totally unacceptable. In what remaining time I have a want to explore, dig into the impact these fraudulent calling cards can have on American consumers. You represent immigrants in Chicago. What impact do

these fraudulent cards have on the many immigrants that you help on a daily basis?

Mr. KABBA. Clearly if you look at the deceptive practices, what we see on a daily basis in our communities is that they are generally low-income households, hence you lose more money than the service that gets returned, and I think that this is important, you know, because these are the households that really need to divert significant portions of their household income to basic necessities, you know, food, making sure that it can pay the rent and not be homeless, to pay for childcare, you know, for their children, or they need actually to have a place before they can go to work.

And so when we look at the complaints that we receive every time, Mr. Chairman, it is clear that there is, indeed, an outflow of income from these households to businesses that are clearly not providing the services that they purport to provide for the community.

And more importantly I think that it sends the message that, in our communities at least, that there is no recourse for these households to turn to in terms of their legitimate complaints, and this, I think, bill helps us to deal with that problem, because there is a way for them to call a place. Even a toll-free number, you know, that is dedicated to customer complaints that we can direct them to. That will be far more empowering and help them to know that they are not vulnerable to these predators, because that is really what the practice is.

Each card comes in different names, and you attempt to buy the cards that perhaps is restricted to your homeland, you know, if you are from Trinidad and Tobago, you see a card that talks about some Trinidadian music, and you think, oh, that is great. Calypso and you buy it, but then it is really the same thing as African Kili-manjaro, you know, but it is targeted towards these households that are not able to really react to the deceptive practices that we have documented.

And these documentations, in fact, have been highlighted in the University of Chicago study of 2004, which clearly supports many of the statements that you have made here, that people who buy phone cards generally do not get their money's worth. And so we are really talking about a community that is significantly losing money and not getting the services, and I think this bill will help stop that bleeding from their households.

Mr. RUSH. The Chairman's time is up.

The Chair now recognizes the Ranking Member, Mr. Radanovich, for 5 minutes.

Mr. RADANOVICH. Thank you, Chairman Rush. Welcome to the subcommittee, and we appreciate all of your testimony.

Ms. Greisman, if I may, I would like to quiz you on one particular item, and that is the retail end of this concern in legislation. During the floor debate last year the gentleman from New York, Mr. Engel, the author of the bill, stated very clearly that he believes that the intent of the legislation, at least last year's legislation, was to address the bad actors manufacturing these cards and not go after Mom and Pop retailers. And I commend him for his hard work on this legislation and efforts to target the source of the problem.

And, Mr. Chairman, I do have a transcript of a colloquy that was done on the floor with—by Mr. Engel and I believe Mr. Whitfield, and I would ask unanimous consent to submit that for the record.

Mr. RUSH. Hearing no objections, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. RADANOVICH. Thank you, Mr. Chairman.

My question is does the FTC concur with Mr. Engel's policy intent on this legislation to exempt retailers?

Ms. GREISMAN. Speaking on my own behalf, which is all I can do at the moment, yes, that is consistent with my understanding of the bill.

Mr. RADANOVICH. All right, and so you do agree that Mom and Pop stores who have done nothing wrong but rather than—they shouldn't be on the hook for the bad actors?

Ms. GREISMAN. They have not been a target of the FTC enforcement, and I would not anticipate looking toward them in any foreseeable future.

Mr. RADANOVICH. OK. The FTC staff provided technical comments in a redline version of H.R. 3402 in the previous Congress. The Commission's comments did not delete the original language that carved out retail merchants, only engaged in point-of-sale transaction with consumers but rather only made a technical change to it. The language was removed as it moved to the House Floor for consideration.

Does the Commission believe that there is any harm if that limitation is placed back in the legislation?

Ms. GREISMAN. I would have to look at the precise language. I don't remember it specifically.

Mr. RADANOVICH. If it were as simple as just, you know, making sure that retailers were not Mom and Pop stores and as such were not held liable under this legislation.

Ms. GREISMAN. Our concern in that context I believe would be that a carve-out is not needed and it is not necessary and as a general matter we disagree with carve-outs to bills.

Mr. RADANOVICH. So you didn't—did the FTC support the deletion of the exemption?

Ms. GREISMAN. I honestly don't remember. I will have to check.

Mr. RADANOVICH. If you could get back to me on that, that would be great. Thank you.

What is the current civil penalty for violation of Section 18 of the FTC Act?

Ms. GREISMAN. Sixteen thousand dollars per violation.

Mr. RADANOVICH. Uh-huh. Does that mean that without some sort of legislative limitation such as a definitional exemption or injunctive relief for not knowing violations, that Mom and Pop stores or bodega stores could be liable for up to \$16,000 if it unwittingly sells a \$5 prepaid card that omits particular disclosures?

Ms. GREISMAN. Under the Federal Trade Commission Act there is a knowledge standard that FTC would have to satisfy in order to impose a civil penalty on any entity.

Mr. RADANOVICH. Uh-huh. Would the FTC support amending the bill to include a retainer exemption? I am sorry. You addressed that before, but are you speaking as a commissioner or as the Commission or—

Ms. GREISMAN. I am speaking solely on my own behalf, and on my own behalf I do not believe we would support that.

Mr. RADANOVICH. Because you feel that that exemption is not necessary.

Ms. GREISMAN. Correct.

Mr. RADANOVICH. Alternatively would the FTC support limiting relief against those—these point-of-sale retailers in case of not knowing, non-knowing violations to injunctions similar to the limitations for State actions in the bill?

Ms. GREISMAN. I am sorry. I am not sure I follow your question, sir.

Mr. RADANOVICH. Would the FTC support limiting relief against these point-of-sale retailers in cases of non-knowing violations to injunctions similar to the limitation of State actions in the bill?

Ms. GREISMAN. I think for the same reasons I just stated that as a general manner—matter we disfavor any particular exemptions. We probably would not support that.

Mr. RADANOVICH. All right. Thank you very much, and Mr. Chairman, I yield back.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the Ranking Member, Ms. Schakowsky, for 5 minutes for questions.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I want to give a special welcome to Mr. Kabba. I like to welcome people from our hometown but also to say that I have worked very closely with the Illinois Coalition for Immigrant and Refugee Rights, and I appreciate your work. And, again, as I said in my opening statement, it has particular resonance in my district, which is so immigrant rich, and people coming from all over the world.

Let—who was it that talked about technologies not being too specific? Was that you, Ms. Greenberg? Oh, you did. My understanding is that—and I don't know if they exist right now, but actual telephones, cheap telephones that—instead of cards that could be sold. In other words, you know, instead of a card or other technologies where this—it would have exactly the same affect, but this legislation wouldn't cover it because it is not a card.

Is that what you were concerned about?

Ms. ACAMPORA. It was being not so specific because technology keeps changing, so actually we recommended the language that was in the Senate bill.

Ms. SCHAKOWSKY. Which—

Ms. ACAMPORA. Which doesn't go into some of these technologies, because technology keeps changing.

Ms. SCHAKOWSKY. Are you referring to a card versus something else? Is that what you are saying?

Ms. ACAMPORA. It could be. Yes. It could be that there will be changes so it won't be a card and so that if the bill is just specific, you are leaving loopholes open to these people who are very inventive and who are the bad actors. They will find a loophole in the law, and they will look to do something else.

Ms. SCHAKOWSKY. Ms. Greisman, would you comment on that as well?

Ms. GREISMAN. We would have to take a look at the specific language of the bill. I can't address whether there are any loopholes at the moment. It is certainly something we will look into.

Ms. SCHAKOWSKY. Well, at the moment but I am wondering if you could—if you have any advice on drafting legislation that would have some staying power.

Ms. GREISMAN. Yes. We specifically do oppose the exemption for wireless prepaid providers.

Ms. SCHAKOWSKY. OK. Let me see. When you said that there are no remedies, Mr. Kabba, do you see any—is that a matter of consumer education in your view or the fact that there really aren't any remedies right now, that people are left at the mercy of the calling card companies?

Mr. KABBA. I think it is really the fact that currently there are no remedies all across diverse communities we see this, you know, the fact that we do not even have one standardized place for people to turn to, even if it is a toll-free number that we can say this complaint can be lodged there. That I think would be helpful.

The consumer education is not as difficult as I would imagine if we have clear language; simple, clear language from the providers. The fact that they are using extra-fine print in language that we do not even, as advocates, understand, less, you know—so when you are talking about limited-English-proficient households, you know, that, in effect, makes it harder. But I do know that right now the fact that there is no way to lodge complaints, you know, and when you are dealing with cards that keep on changing their plan names, the target households, making sure that, yes, people who are from Asia can feel like, oh, this card is special because it has something that reminds them of their home. You know, or in the case of Africa, come up with a card and when, in fact, it is really the same provider if you read the fine print.

We need to make sure that we really have a place to lodge complaints.

Ms. SCHAKOWSKY. OK. Does the State of New York have any remedies, and I am assuming because you are here, your view is that national legislation certainly would be preferable.

Ms. ACAMPORA. We do have a law, and, of course, our law as compared to what a new national standard would be would be less, but we do like the flexibility issue for States because, as I said in my statement, the State cops, when something happens, people are coming to the local officials, and so that the flexibility that allows us to address a problem right away is crucial, but the uniformity is still a good thing to have. We still could use more teeth in legislation. Yes.

Ms. SCHAKOWSKY. OK. Ms. Greenberg.

Ms. GREENBERG. I think Mr. Kabba mentioned an interesting idea. One thing we might think about is having a statement on the card, if you have issues or concerns about use of this card, call this toll-free number, and it could be a place that would log complaints and see which providers are raising the biggest or creating the biggest problems. I think, you know, we would begin to have a database of where the rip-offs were happening.

And one other thing—

Ms. SCHAKOWSKY. And would the FTC be the right place for that?

Ms. GREENBERG. We will see if Ms. Greisman agrees to that, and she probably won't on the spot, but, yes, I would think it would have to be a, you know, a Federal clearinghouse for this kind of information.

One other thing I want to say is that I lived abroad for a year. I lived in Australia, and when you buy a calling card there, and it says you are going to get 500 minutes, you get—you always get those minutes. So this is not rocket science. It can be done. They just have tougher regulations, and here I use cards here all the time and routinely they, you know, use them once, they are—the value dissipates almost immediately.

So I know this can be done, and I am sorry to use up your time.

Ms. SCHAKOWSKY. Yes. No. My time—although, Mr. Chairman, I—if we could later, I do have one or—

Mr. RUSH. The Chair wants to inform the Vice Chair that we will have a second round for 2 minutes each for each member to ask a second round of questions.

The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 2 minutes. Five minutes.

Mr. PITTS. Thank you, Mr. Chairman.

Ms. Greisman, the FTC works with the FCC and State AGs and other State and local agencies to combat unfair and deceptive calling card practices. How do all these agencies divide up enforced responsibilities? And with all these entities involved in enforcement do you end up with duplicative efforts?

Ms. GREISMAN. No, sir, we do not. Dual Federal and State enforcement really is more the norm than the exception, and we see that most particularly in the telemarketing area where this type of dual enforcement scheme has been enormously effective and productive, and in fact, working through task forces such as the Prepaid Phone Card Task Force that we created back in 2007. We do allocate resources and share information and work in a very cooperative manner.

Mr. PITTS. Do inconsistent State laws place service providers in an untenable situation by prohibiting activities in one State that are permitted in another? Are prepaid calling card services usually tailored on a State-by-State basis, or are they generally uniform throughout the United States?

Ms. GREISMAN. What I can say is that there are 11 States currently that have specific statutes or regulations addressing the prepaid phone card industry, and I am not aware of problems that those different laws have presented or posed.

Mr. PITTS. Would it be easier or more efficient to coordinate with the States on enforcement actions if there were a single standard? If there is a single standard, isn't it easier to catch fraudulent actors?

Ms. GREISMAN. I don't believe that is necessarily the case. I think what we have now are different standards among the various States and at the Federal level, and for example, in the telemarketing area. That has not been a problem at all.

Mr. PITTS. Now, Mr. Ramminger offers two proposed solutions to the concern of distributor and retail merchant liability, and his pro-

posals involve either a change to the definition or a change to require the FTC to address it through its required rulemaking.

What do you think of those proposals?

Ms. GREISMAN. Well, I would like to take this opportunity to correct a misstatement I made in response to Mr. Radanovich's question. Actually, as I understand it, distributors, the way distributors currently is defined in the bill is a way that would exclude pure retailers, which I think is an issue that was raised earlier. I would have to look at the type of proposal that Mr. Ramminger is proposing with respect to distributors, but as a general matter, as I said before, my position is that we would not favor excluding any particular entity.

And the three cases the FTC has brought have, in fact, been against distributors.

Mr. PITTS. Ms. Greenberg, at what point do too many disclosures overwhelm consumers to the point where they disregard them or never read them?

Ms. GREENBERG. Yes, sir. That certainly is a concern, and that is why we recommended something much more uniform, some sort of uniform text on every card because, you know, with the fine print as we can see there with this very good example, you know, at some point it is too small to read, and people don't really know what to do with the information.

So if we could have some uniformity on these cards, I think that would be a great benefit to consumers.

Mr. PITTS. And as Mr. Kabba said, it should be in simple, plain English.

Ms. GREENBERG. That is correct.

Mr. PITTS. Yes. Should calling card companies not be allowed to set their own rates and fees as long as they disclose them completely?

Ms. GREENBERG. That is a question for me? Yes.

We—this is why we call this the wild west because right now they can, these companies could set whatever fees they wish. They can promise—the rules can change at any moment. So we are really calling for much more oversight on—both on the part of the FTC and this bill to try to curb some of the worst practices.

Mr. PITTS. Mr. Kabba, do you know if the FCC has received complaints about the prepaid wireless market, and if so, do you know what the FCC has done to resolve those complaints?

Mr. KABBA. Not to the best of my knowledge but I do know that it is a concern to us, you know, and I hope that there will be some standardized way for us to really lodge those complaints.

Mr. PITTS. We don't have much time, but what percentage of the market would you say, Mr. Kabba, are bad actors?

Mr. KABBA. At this point I can really say that the vast majority, you know, and that is why this problem needs to be addressed, and I really commend the subcommittee for focusing on it. It is very hard to really pick out the good actors, you know. Last month alone I used probably four different cards, and I can show you that all the cards did not deliver the number of minutes. So it is not a case where you have a good apple in the bag of bad apples. It is really the bag that you need to look at, the whole bag.

Mr. PITTS. My time has expired. Thank you, Mr. Chairman.

Mr. RUSH. The Chair now recognizes Dr. Gingrey for—no. Mr. Stearns. I am sorry. Mr. Stearns for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

Ms. Greisman, under the law the jurisdiction of the FCC and the FTC would share jurisdiction, but I don't think they necessarily overlap if I understand. If the jurisdiction in this area was to overlap, for instance, by removing the common carrier exemption so that the FTC can bring actions against FCC-regulated entities, the question would be could common carriers find themselves at risk of being compliant with one agency's rules but subject to a different enforcement regime by a different agency, enforcing the same rule?

Ms. GREISMAN. I don't believe so, sir. I think the rules of the road would be remarkably consistent, and that is what we have seen in the telemarketing area where both the FTC and the FCC enforce very similar rules involving the telemarketing industry, and I don't believe we have seen any consistent or any inconsistent or duplicative efforts. For example, I think do not call is a prime example of that.

Mr. STEARNS. Would the FTC support the inclusion of language that is similar to that in the Senate bill that essentially limits the FCC enforcement in this area where the FTC enforcement authority exists?

Ms. GREISMAN. I don't recall that specifically in the Senate bill, but I—the FTC's—

Mr. STEARNS. My staff says it is in there so—

Ms. GREISMAN. OK. I certainly would take your word for that. I just can't recall it myself.

Mr. STEARNS. Yes. Let us just go under that assumption. I think people in the audience are nodding, so let us just assume that and then just see if you can answer the question with that premise in mind.

Ms. GREISMAN. If I understand your question, the FTC's view is that the common carrier exemption is outdated, and lifting it will not create inconsistent or duplicative enforcement efforts by the FTC and the FCC.

Mr. STEARNS. Uh-huh. I think this is probably a reiteration of what you have already answered, but you have testified it is never a good idea to limit—this is for Acampora. You said that it is never a good idea to limit State consumer protection.

However, without preemption is it, isn't it farfetched to see that if disclosure is required by the Federal Government and even one-third of the States, let alone all 50, that the legally-required disclosure can end up looking something much like that poster over there? And I think it was suggested earlier that people obviously are not going to read it if it looks similar to that poster over there.

You suggest requiring disclosure on cardstock, and I guess the question is would the cardstock distribute with cards? Will the cardstock distributed with cards have to be as big as that poster to fit all those disclosures? I mean, that is what we are thinking about.

Ms. ACAMPORA. Well, the cardstock would be the same size as the calling card, and it would simply have on there the warning to consumers not to throw that card out, and it would have informa-

tion for them, which sometimes is on that packaging getting thrown out, and then they can't see it.

So we thought we would kick this around at the NARUC committees from commissioners from all the States, and this is something that was brought up that everyone agreed with could be helpful.

Mr. STEARNS. You have closed on a House before, and did you read all the fine print on the mortgage statement of the—you know how complicated it is? Sometimes it is 30 pages.

Ms. ACAMPORA. I didn't, but my husband did.

Mr. STEARNS. Oh, you have a lawyer do it?

Ms. ACAMPORA. No, he is not a lawyer, but he is a very precise man.

Mr. STEARNS. But most people have a lawyer. I mean, at the rate we are going if you have that card, you are going to need a lawyer once you buy the card to get this whole thing. You are going to need a lawyer to see what it is. I mean, obviously, wouldn't you think you would want to make it simplified?

Ms. ACAMPORA. I think this is simplified.

Mr. STEARNS. With 50 States having separate, different connotations on the card?

Ms. ACAMPORA. Well, you have to give the States flexibility. I mean, we like the idea of the Federal Government having a standard but—

Mr. STEARNS. And remember, we passed this bill without this by unanimous agreement in this—so both—bipartisan bill, the Engel bill passed, everybody supported it without what you are requesting, so I think—

Ms. ACAMPORA. Well, you are jumping from card to now to the various—

Mr. STEARNS. OK.

Ms. ACAMPORA [continuing]. Degrees. So let us just look at the flexibility that States need, but also I believe in the bill the language, the Federal law would prevail if there was a problem.

Mr. STEARNS. All right. As I understand it each State would have the flexibility to do what they want, and the Federal law—

Ms. ACAMPORA. They do but if there was a case where it was brought to—where the Federal Government would be involved, the Federal law would prevail.

Mr. STEARNS. OK. My time has—but you would agree that something that complex on a small card would be very difficult to convey to—

Ms. ACAMPORA. That wouldn't be on the small card. The information that consumers would need to make a phone call or to go on a Web site, that is the information that would be on that card, not that.

Mr. STEARNS. You don't think this would create a lot of litigations?

Mr. RUSH. And the gentleman's time is up. We have—there is a vote occurring on the floor, and we want to try to finish up the questioning before we would have to recess for the vote.

The—Mr. Scalise, the gentleman from Louisiana. I am sorry. Dr. Gingrey is recognized for 5 minutes.

Dr. GINGREY. Mr. Chairman, thank you. Sometimes myself and Mr. Scalise get confused. He likes to walk around saying he is Dr. Scalise, but we know better. Mr. Chairman, thank you.

I want to address my question, the first question to Mr. Ramminger. In your testimony you discussed the need to hold the prepaid calling industry accountable for the current abuse of the system, abuses of the system. However, you also discussed the need for your industry to be held accountable, only if they know about the incorrect information on the calling cards that are being distributed.

Under the bill previously considered by the subcommittee that ultimately passed the House, there was an exemption for point-of-sale retailers if they sold these cards. Under the current version of this bill that exemption for retailers no longer exists.

So my question is this. How does this potentially affect your industry, and if you can speculate the point-of-sale retailers for whom you, I guess you work.

Mr. RAMMINGER. Yes. We supply. I mean, what we are basically asking for is that the protection that was in the original legislation last time around that protected the retailers be extended to our distributor members, and I, again, want to make the distinction between our distributors who are buying candy and gum and snacks and phone cards and selling it to the retailers and the "distributors," that are sometimes called distributors, they are buying minutes from a long distance company and making cards. That is a different kind of distributor.

So, yes, sir. What could happen is if through no fault of his own one of my members buys these cards from what is essentially a manufacturer of the cards and sells them to a retailer, believing what the manufacturer of the card has said, that there are 10,000 minutes or however many minutes it says there are, the person who should be—the entity that should be held accountable if there are not that many minutes is the entity that created the card we believe, not the distributor or the retailer. And we don't believe it would be appropriate for our distributors to be fined \$16,000 every time they sell a phone card that—

Dr. GINGREY. Mr. Ramminger, thank you. I understand your response.

And let me go back then to Ms. Greisman, because I got a little confused. You, just a moment ago you asked to correct something that you had said. Do you disagree with Mr. Ramminger, or do you now agree with him that point-of-sale folks are different than those who are the so-called distributors who buy the minutes, who put them on the card and the bad actors that can monkey around with what is really—is there any disagreement with what he just said and your opinion?

Ms. GREISMAN. My interpretation of the bill is that virtue of the way distributors is a defined term there, that retailers are not covered. So retailers are out of this particular bill. I would not support taking distributors out, and I would cite to the fact that the three cases the FTC has brought have involved retailers. Excuse me. Have involved distributors.

Dr. GINGREY. So you wouldn't be in favor of taking the point-of-sale folks out of—

Ms. GREISMAN. Point-of-sale people to the extent they are the ones I would characterize as retailers already are out of the bill as drafted.

Dr. GINGREY. Let me ask you, Ms. Greisman, another question. Do inconsistent State laws place service providers in an untenable situation by prohibiting activities in one State that are permitted in another? Are prepaid calling card services usually tailored on a State-by-State basis, or are they generally uniform throughout the United States?

Ms. GREISMAN. Sir, my understanding is that 11 States have discrete statutes or regulations that do, in fact, tailor the treatment of prepaid phone card industry currently. I am not aware that that has led to conflicting results or problems in an industry that by all calculations appears to be thriving.

Dr. GINGREY. Yes, but wouldn't it be easy and more efficient to coordinate with the States on enforcement actions if there was a single standard?

Ms. GREISMAN. It might be, but I don't believe having different standards has created any problems to date or necessarily would be going forward.

Mr. RUSH. Dr. Gingrey, it seems like your time is complete.

Dr. GINGREY. Mr. Chairman, thank you. I didn't realize I had—

Mr. RUSH. I didn't either.

Dr. GINGREY. I yield back. Thank you.

Mr. RUSH. Thank you so much.

Now, Dr. Scalise.

Mr. SCALISE. I only play when we are talking about the healthcare debate, I guess. Thank you, Mr. Chairman. I know we have votes. I will try to run through this real quick.

First, Ms. Greisman, on—earlier I think in your testimony you talked about some of the bad actors, the worst actors in the prepaid industry and now moving over to the wireless market.

First, do you have a list of those worst actors, and have you all been taking any action against them as they have been doing things both in dual industries, both prepaid and wireless?

Ms. GREISMAN. Sir, we don't have jurisdiction over them. We are talking about carriers that would migrate into the wireless space. We currently have no jurisdiction over common carriers. But what I can say is that we have seen the advertising and marketing for the wireless prepaid phone card services looks significantly similar to—in the non-wireless space, and in particular we do see that they are targeting immigrant populations.

Mr. SCALISE. Have you taken action against them on the prepaid side?

Ms. GREISMAN. We do not have—our prepaid phone court cases have involved only distributors.

Mr. SCALISE. And if I could go back on, Mr. Ramminger, I know it seems like there is a little, I don't know if it is a rift or the definitions, and obviously there is a dispute between a distributor, is the definition of distributor first in a way that you feel is fair, but also when the statement that retailers are out of the bill, is that—are you all comfortable with that, too? Do you feel that the people

that really don't have any part in—if there is fraud going on, they have no part in it, but are they really being pulled into it?

Mr. RAMMINGER. Yes. I mean, I think it is fair to say that we certainly support taking the retailers, the liability away from the retailers. What we are saying is we also believe that our distributor members, similar to the retailers, are buying from effectively a manufacturer. Occasionally the people who make these cards, because they are buying minutes, they are not selling widgets. They are buying minutes and putting them on a card, those guys are referred to as distributors, too. That is why I think the confusion is coming in. Our guys are not buying minutes and putting them on a card. They are simply buying the cards and selling them to the retailer, who is selling them to the consumer, and we don't think we should have to be liable unless, you know, it can be shown that somehow—

Mr. SCALISE. Think you are doing something deliberate or there is harm intended. I appreciate it. I know we have got to go, so I yield back.

Mr. RUSH. The Chair thanks the gentleman.

The Chair thanks all the witnesses for the gracious use of your time. You have sacrificed a portion of your busy day to us, and we really appreciate your testimony. It has been very enlightening for us all, and you certainly have illuminated a path for us as we proceed with this matter.

I would just ask that you be available to us for members to submit their questions to you in writing and then if you would respond within 2 weeks to those questions, we would be delighted.

And, again, we thank you so much for your time. We do have a vote, so we will rush over to the floor in order to cast four votes. Thank you very much for your presence, and the subcommittee is now adjourned.

[Whereupon, at 11:45 a.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Statement of
Representative John D. Dingell
Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
Hearing on "H.R. 3933, the 'Calling Card Consumer Protection Act of 2009'"

December 3, 2009

Thank you, Mr. Chairman, for convening today's hearing on the Calling Card Consumer Protection Act. In 2008, the full House of Representatives approved this bill under suspension of the rules, thus evidencing its broad appeal to members of Congress. The bill before us today is largely the same as it was when we considered it last year, save for a few changes. While I firmly believe consumers have the right to learn in plain English what fees the purchase and use of a calling card entail, I have some concern about the bill's lack of preemption of state law on the matter. I wonder if this could lead to overly burdensome and complicated regulation with little or no tangible benefit for consumers. It is my hope that our witnesses will help the Committee better understand this issue, as well as provide their input about the feasibility of the bill's disclosure requirements.

This in mind, I am supportive of the intent of Mr. Engel's bill and look forward to a productive discussion about it this morning.

Thank you for your courtesy, Mr. Chairman, and I yield back the balance of my time.

Statement of the Honorable Joe Barton
Ranking Member, Committee on Energy & Commerce
December 3, 2009

Mr. Chairman, thank you for holding this hearing on the prepaid calling industry. Prepaid calling is a multi-billion dollar a year business that provides a legitimate service to varied segments of our population. It is also plagued with fraud and deceit.

Estimates vary, but it is clear that many prepaid cards deliver only 50 to 60 percent of the minutes advertised. This deficit can be attributed to exorbitant connection or hang-up fees, maintenance fees, early expiration, or varying per-minute rates. Outlawing some of these practices and punishing the companies that employ them is a complex business and ultimately may be the only cure. But what I'm ready to say today is this: if you are going to charge these fees, you're going to have to start telling the truth about them. Consumers have a right to know what they're buying, and they certainly have a right to get what they paid for.

Mr. Chairman, we marked up, reported, and voted out of the House a decent bill last Congress. But this bill is different and I have some serious reservations about the changes it proposes.

First and foremost, Mr. Chairman, I am concerned about the explicit failure of this bill to make Federal law dominant. I supported our bill in the last Congress in part because it created a strong, unified Federal law. We can argue until we are blue in the face about pre-emption as public policy -- sometimes it's good policy, sometimes not so good. But we're going to have a real problem if we set Federal requirements on things like the content and placement of the disclosures and then turn it over to 50 States plus territories to set additional, different, or, worse, conflicting notices on top of our notice.

Folks, this isn't like pirates flying the Jolly Roger. We're talking about all of these notices having to fit on something the size of a credit card. Of course, we permit some of those disclosures to be

printed on a card's packaging, but how big does the packaging have to be to fit all of those notices? And more salient, how meaningful will all that language be if consumers just throw it away because of information overload?

Secondly, Mr. Chairman, I am concerned about the potential for disparity in enforcement against violations of this legislation if we permit the existence of two Federal regulators. The question is, who's the boss? We cannot guarantee parity of interpretation or enforcement with more than one Federal agency in charge. Just one will do, and the Federal Trade Commission should be the one. FTC is our agency for consumer protection and it is therefore the logical choice for enforcement. While this legislation permits FTC enforcement with a limited rollback of the common carrier exemption of the FTC Act, it does not make clear that there is only one Federal cop on this beat. Don't ever quote me on this, but I believe the Senate got it right when they granted FTC exclusive

enforcement jurisdiction over the provisions of this bill and explicitly limited the FCC's enforcement abilities.

Third and finally, I am concerned about the effect of language that permits the FTC and the States to hold your average retailer responsible for the failure of a calling card provider to comply with all required disclosures. If a retailer knows a calling card provider is being dodgy with its disclosures and sells faulty cards, anyway, then yes, the seller is part of the scheme and should be held accountable for bilking his customers. But no more law is required for that to happen because the FTC has the ability to go after such fraudsters under its existing authority.

While we want distributors who buy minutes wholesale and then repackage the minutes into cards to disclose the various terms and conditions, a convenience store typically has no role in this manufacturing, packaging, or disclosure process. However,

retailers are rolled into the definition of “distributor” under this legislation and can be held liable if the card provider cheats.

There are several ways to address this, Mr. Chairman. We could restore the language that disappeared from last year’s H.R. 3402 that explicitly exempted point-of-sale retailers from the definition of distributor. We could also place the limitation that appears under the State enforcement section essentially limiting relief to injunctions for non-knowing violations in the FTC enforcement section. I am sure there are other ways to address this concern, Mr. Chairman, and I wonder if you would commit to working with me on it.

I will close by saying that I want to give consumers a chance to make informed decisions, and I want to stop the cheats who won’t deliver on what they promised. I support the intent of this legislation and hope that we can work together to address my concerns. I yield back the balance of my time.

September 25, 2008

CONGRESSIONAL RECORD—HOUSE

H9937

from Michigan for his strong support of this legislation.

This passed unanimously out of the Energy and Commerce Committee in a bipartisan way and in no small part due to the people I have mentioned before. I also want to thank the dedicated majority and minority staffs of the Consumer Protection and Telecommunications subcommittees for their diligent work in crafting an excellent bipartisan, compromise bill.

Madam Speaker, the prepaid calling card market is a \$4 billion industry. In a recent independent study it was found that, on average, companies failed to provide 40 percent of the minutes guaranteed by the card, costing consumers hundreds of millions of dollars a year.

This fraud harms segments of the population who are least able to afford it, the poor, recent immigrants, minorities and seniors, and the companies don't stop there. They have even preyed upon our soldiers in Iraq and Afghanistan. This is unconscionable and obviously un-American. This legislation would end the deception and the fraud that these people have suffered at the hands of unscrupulous companies.

Now, the bottom line for this bill is this is a consumer protection bill. If we are in favor of protecting the consumer, then we should vote for this bill, because it's very, very simple. People have a right to know that when they buy a prepaid calling card, what they see is what they get. If a card says you get 60 minutes of calling time, on that consumer who buys the card is entitled to 60 minutes of calling time.

What we find in little small print that nobody can see or understand, there are so many hidden fees. Some calling cards say that you only can get the 60 minutes if you call at certain times. But if you don't call at other times, you don't get the minutes. Then the time you get the minutes is only from 2 to 4 a.m., which is ridiculous. Some cards charge you 3 units, 3 minutes of call time if you get a busy signal. Or 3 minutes of call time if you are just connected, as for a connection charge, even if it was across the street or in the same State.

So consumers don't want to think they are being defrauded. Consumers are entitled to get what they pay for. Sometimes there are companies that are very legitimate. Most of the companies are legitimate.

If a company says that you get 60 minutes of calling card, and it's a legitimate card, and that card may be a little bit more expensive than the fraudulent card, the unsuspecting consumer will buy the cheaper card thinking that he or she will get a better deal, when, in reality, the 60 minutes may only be 30 or 32 or 35 minutes.

The bottom line is this, if you are for the consumer, if you are for truth in marketing, then you should support this bill. If you are not, and you want things to go along the way they have been, then don't vote for the bill.

I am so delighted that we have bipartisan consideration on this and that, in a bipartisan fashion, we all agree that this is something that really should pass.

Nobody, nobody should be against this, not the telecom companies, not consumer groups, not any Members of Congress.

If we want to stand for legitimacy and say that we want to protect the consumer, and that we want people to understand that when they purchase something, they know what they are getting, then we ought to all vote for this bill.

I thank my colleagues. This is a tremendous victory for the consumers in America.

Mr. TERRY. Madam Speaker, I yield 4 minutes to the gentleman from Kentucky.

Mr. WHITFIELD of Kentucky. I certainly want to thank Chairman RUSH and the Democratic staff and the Republican staff for working so diligently to pass not only the Calling Card Consumer Protection Act, but also the Travel Promotion Act. I certainly want to congratulate Mr. ENGEL for bringing this matter before the House. It certainly is an important issue, and we are all delighted that this bill is moving forward.

Madam Speaker, I simply wanted to have a colloquy, if I could, with Chairman RUSH about a couple of issues relating to this bill, and simply wanted to confirm with Mr. RUSH the intent of certain provisions as they relate to small retailers that are selling these prepaid calling cards.

Chairman RUSH. If a retailer sells a card but is unaware that the calling card does not make all of the disclosures required by the act, will the retail merchant be subject to monetary penalties under sections 4 or 5 of the bill?

Mr. RUSH. I want to assure the gentleman if the retailer knowingly sells fraudulent cards, it would be subject to FTC penalty. But if the seller, the retailer does not know that they are fraudulent cards, then the penalties would not apply, only injunctive relief.

Mr. WHITFIELD of Kentucky. Thank you very much, Chairman RUSH.

To be clear, it is also my understanding that, obviously, to protect consumers, a retailer could be enjoined by the FTC, or State authorities, and required to stop selling fraudulent cards, which they should be required to stop, whether or not they knew the cards were fraudulent.

Such retailer would not, however, it's my understanding, and I think you pointed this out, they would not be subject to civil penalties or damages unless they knew the cards were unlawful; is that correct?

Mr. RUSH. The gentleman is correct. Mr. WHITFIELD of Kentucky. I thank the gentleman very much, and I just wanted to express once again, the pleasure of working with the chairman on this.

We appreciate your great leadership. Once again, I want to thank the staffs on both sides of the aisle.

Mr. ENGEL. Would the gentleman yield?

Mr. WHITFIELD of Kentucky. Yes, Mr.

Mr. ENGEL. I thank the gentleman from Kentucky for bringing up this very important point. He should know as I am sure he does, that there is an intent to penalize mom-and-pop store owners or anybody who may sell a card of this degree without any knowledge that there is something wrong with the card.

The purpose of this legislation is to go after the companies who fraudulently manufacture and sell these cards, not to go after individual grocery stores or mom and pop stores that sell these cards. I definitely agree with the gentleman that if someone does not have a knowledge that they are selling a card that may be flawed, we should not in any way, shape or form penalize them. That is certainly not the intent of the bill.

Mr. WHITFIELD of Kentucky. We certainly appreciate that clarification and look forward to the passage of this bill.

Mr. DINGELL. Madam Speaker, I rise in strong support of an excellent and sorely needed piece of legislation, H.R. 3402, the "Calling Card Consumer Protection Act". This bill is intended to combat the fraud and deception that is rampant in the marketing of prepaid calling cards. Many of our consumers—especially recent immigrants, the poor, students, and members of the military and their families—are vitally dependent on these prepaid cards to keep in touch with family and friends.

This bill requires providers and distributors of these cards to make full, clear, and honest disclosures on the cards, their packaging, and advertising materials. No more hidden charges. No more cards that do not deliver the minutes they promise. The bill empowers the Federal Trade Commission to enforce the Act. Violators would be subject to injunctive and other equitable relief to stop them from cheating consumers. If a violation is "knowing", they would be subject to civil penalties. In this way, the bill ensures that retailers who sell these dirty cards are subject only to injunctive relief, unless it can be shown that retailers knew the cards were fraudulent. Thus, we get the fraudulent cards off the market without punishing innocent retailers.

This bill maximizes protections for consumers and maintains a clear line between the areas of expertise of two agencies—the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC). The bill provides the FTC with limited jurisdiction over common carriers, but is careful to preserve FCC's jurisdiction over common carriers for all other purposes. The bill also appropriately excludes prepaid wireless services as the record has not demonstrated a need for requiring such disclosures.

Once again, to promote uniform disclosures on cards bought across the United States, it provides a narrow preemption of State prepaid calling card disclosure requirements only. It preserves a strong enforcement role for State

HENRY A. WAXMAN, CALIFORNIA
(CHAIRMAN)

JOHN D. DINGELL, MICHIGAN
(CHIEF OF STAFF)

EDWARD J. MARKEY, MASSACHUSETTS
RICK BLUMENTHAL, CONNECTICUT
KANG KALOUDEK, ILL. / JEFF JOHNSON, MISSOURI
BART JOHNSON, TENNESSEE
ROBERT C. BYRD, WEST VIRGINIA
ANITA B. BISHOP, CALIFORNIA
BART STUPAK, ARIZONA
EUGENE H. CRAMER, NEW YORK
GENE GREEN, TEXAS
DAN Rostenkowski, ILLINOIS
LOIS CAPLES, CALIFORNIA
MIKE COFFEE, PENNSYLVANIA
JANE HARRMAN, CALIFORNIA
JAN SCHAKOWSKI, ILLINOIS
CHARLES A. BOZALEK, TEXAS
JOY BEHE, MARYLAND
STANLEY WALDMAN, MICHIGAN
VITO MARINO, ARIZONA
ARTHUR D. HEARD, ILLINOIS
JIM MATCHESON, UTAH
G. K. BUTTERFIELD, NORTH CAROLINA
CHARLES H. JOHNSON, LOUISIANA
KATHY CASTRO, CALIFORNIA
BARBARA F. BOYER, TEXAS
DORIS D. MATSUI, CALIFORNIA
TERESA CHRISTENSEN, VIRGIN ISLANDS
KATHY CASTRO, FLORIDA
JOHN CARSON, MARYLAND
CHRISTOPHER BARNETT, CONNECTICUT
ZAN MARIE P. SHARZ, OHIO
DEPT. MARGARET E. CALLEY, TEXAS
BETTY SUTTON, OHIO
DANIEL TRACY, OHIO
PETER WELCH, VERMONT

AND GUNTER, TEXAS
FRANK RAYBURN

ROY BLUNT, MISSOURI
DUNCAN HUNTER, MISSOURI
RALPH M. ABRAHAM, TEXAS
FRANK LUTON, MISSOURI
CLIFF STEARNS, FLORIDA
KATHY STAHL, CALIFORNIA
ED MASTERS, MISSOURI
JOHN S. CURTIS, UTAH
JOHN S. CHAMBERS, ARIZONA
STEVE BOYER, MISSOURI
GUYTON, TEXAS
JOSEPH S. PETERSON, CALIFORNIA
MARTY BORD MACK, CALIFORNIA
GREG WALTON, CALIFORNIA
LIZ TERRELL, NEBRASKA
MIKE NICHOLS, ARIZONA
GLENN HANCOCK, NORTH CAROLINA
JOHN S. LINDSEY, CALIFORNIA
TIM BISHOP, MISSOURI
MICHAEL T. SPOHRER, TEXAS
MARTIN S. GOODMAN, TENNESSEE
PAUL SANDERS, GEORGIA
STEVE SCALISE, LOUISIANA

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Telephone: (202) 225-2941
Facsimile: (202) 225-2941
Address: (202) 225-2941
energycommerce.house.gov

December 22, 2009

Lois Greisman
Director, Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Ms. Greisman:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on December 3, 2009, at the hearing on H.R. 3993, the "Calling Card Consumer Protection Act of 2009".

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions and include the text of the question with your response, using separate pages for responses to each Member.

Please provide your responses by January 14, to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building and via e-mail to Earley.Green@mail.house.gov. Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,



Henry A. Waxman
Chairman

Attachment

The Honorable Bobby L. Rush

Q. The fee structure for some calling cards is absurd. On a \$2 DC-Metro area card, it seems that there are more fees and if-then clauses than actual minutes available. In connection with using one particular card, there is a 28% fee deducted after each call, a 49 cent post-call fee, a 69 cent weekly value deduction, and a 90 cent pay-phone fee – just to name a few. It is clear that most consumers would have great trouble in attempting to decipher just how many minutes this card actually contains. This bill calls for clear disclosures of the number of minutes available on a card. Given all of the fees associated with this card, I find it hard to imagine that such a disclosure would be possible. Does the FTC have any concerns about the feasibility of these disclosures? Would it be possible for a calling card manufacturer to print all of these disclosures on a 2 by 3 inch calling card?

I share your concern that many prepaid calling cards contain a welter of fees that make it difficult or impossible for reasonable consumers to determine how many calling minutes the card will deliver. The FTC's recent enforcement actions in this arena have challenged such failures to adequately disclose calling card fees under Section 5 of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive or unfair acts or practices in or affecting commerce. *See FTC v. Diamond Phone Card, Inc.*, No. 09-CV-3257 (E.D.N.Y.) (Compl. filed July 29, 2009); *FTC v. Alternatel, Inc.*, No. 08-01433-CIV-Jordan/McAliley (S.D. Fla.) (Compl. filed May 19, 2008); *FTC v. Clifton Telecard Alliance One LLC*, 2:08-CV-01480-PGS-ES (D.N.J.) (Compl. filed Mar. 25, 2008).

H.R. 3993 would require clear and conspicuous disclosure of all fees. However, a company's decision to impose a host of fees obviously raises serious questions about whether clear and conspicuous disclosure is feasible. This is due both to the small size of calling cards and the inherent difficulty consumers have computing the impact of multiple fees on the number of minutes delivered by a card. Given these constraints, I believe Congress should consider how to address this problem.

Q. While H.R. 3993 would protect consumers from unfair and deceptive practices by prepaid calling card providers, the FTC has raised concerns that some industry participants would respond to these tougher regulations by shifting their focus to prepaid wireless phones. FTC argues that by marketing prepaid cell phones and refill cards rather than prepaid calling cards, the worst actors in this industry could avoid the mandates of this law and continue unfair practices in a similar market.

a. You mentioned in your testimony that some participants in the prepaid calling card industry have already begun to offer prepaid wireless services. If new regulations are imposed on prepaid calling cards, do you believe prepaid wireless services could present a close substitute? Would

higher costs of this technology and a different business model provide some protection against abuse?

As noted in the FTC's written testimony, an exemption from H.R. 3993 for prepaid wireless products could provide a powerful incentive for the worst actors in the prepaid calling card industry to migrate their business practices to prepaid wireless handsets and refill cards in an effort to avoid the mandates of the proposed law. Some large players in the prepaid calling card industry already have begun to market prepaid wireless products to immigrant communities for international calls to Latin America and elsewhere. As the cost of providing wireless phones and calling minutes continues to decrease, the incentive to move consumers to prepaid wireless products from more traditional prepaid calling cards likely will increase. I am unaware of any characteristics of prepaid wireless technology or the prepaid wireless business model that would prevent or deter bad actors in the traditional prepaid calling card industry from transferring their abusive practices to the prepaid wireless market.

b. Is legislation needed to address abuses in the prepaid wireless phones area or is it too soon to know?

Yes. The FTC supports modifying H.R. 3993 to eliminate the exemption for prepaid wireless products. The risk that the exemption, if enacted, will encourage the industry's worst actors to move to prepaid wireless products is clear. As noted above, some large prepaid calling card companies already have begun to market prepaid wireless products to immigrant groups for international calls to Latin America and elsewhere, and, as prepaid wireless technology becomes cheaper, there is reason to expect this trend to continue. Conversely, there is no reason why prepaid wireless companies should not be required to abide by the same rules of the road as H.R. 3993 would require of companies that provide other prepaid calling products.

HENRY A. WAXMAN, CALIFORNIA
 CHAIRMAN

JAMES D. BOVILL, MICHIGAN
 CHAIRMAN EMERITUS

EDWARD J. MARKEY, MASSACHUSETTS

BOB ROUBIN, VIRGINIA

KENNY PALOMO, NJ, NEW JERSEY

BART GORTON, TENNESSEE

BARRY L. MELI, ILLINOIS

AMANDA HORN, CALIFORNIA

BENNY LUTZ, MICHIGAN

LUCY L. ENGEL, NEW YORK

JOHN WILSON, TEXAS

JOHN P. LITTE, CALIFORNIA
 202-225-4847

JOHN CORNYN, TEXAS

MICHAEL B. ROSENBLUTH, PENNSYLVANIA

JIM GIBSON, CALIFORNIA

JAN SCHANKOVSKY, ILLINOIS

DANIEL A. ROSENBLUM, TEXAS

EDY BALLEW, MISSOURI

FRANK RALSTON, MISSOURI

MARK WILSON, ARIZONA

ANTHONY D. SORRES, NEW YORK

IRA S. MATHIAS, TEXAS

SEN. DUTTENFIELD, MISSISSIPPI/LAURENCE
 CHARLES DELANCEY, LOUISIANA

JOHN MANCHINI, GEORGIA

BARBARA P. JOHNSON, ILLINOIS

DONALD G. WATSON, CALIFORNIA

CONNOR CHRISTENSEN, VIRGINIA/STANISLAUS
 COUNTY, CALIFORNIA

FRANK RANKIN, FLORIDA

JENNIFER WEAVER, MARYLAND

CHRISTOPHER MURPHY, CONNECTICUT

DONALD H. RUBLE, OHIO

JERRY MCBURNIE, CALIFORNIA

BETTY DUTTON, MISSOURI

PHILIP BRADLEY, OHIO

PETER WELCH, VERMONT

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515-6115

Monthly 202 225-4100
 Fax/Fedex 202 225-2325
 Mailroom 202 225-2341

energycommittee.house.gov

JOE BARTON, TEXAS
 RANKING MEMBER

BOY BLUNT, MISSOURI

DEBETTY DOWNING, TEXAS

DALY M. HALL, TEXAS

FRED LUTZ, MISSOURI

GARY STANINS, FLORIDA

MARK AMODEO, CALIFORNIA

COMMITTEE ASSISTANT

JOHN SHIMMICK, ILLINOIS

JOHN B. SHIMMICK, MISSOURI

STEVE BRYEN, TEXAS

GEORGE CHRISTENSEN, CALIFORNIA

JOSEPH A. MEEB, PENNSYLVANIA

MARY BETH MACK, CALIFORNIA

CHRIS WALLACE, MISSOURI

LEE TERRY, NEBRASKA

MARK ROBERTS, MISSOURI

SEN. JEFFREY BLUMENTHAL, NORTH CAROLINA

JOHN BURNETT, DELAWARE

THEODORE E. DEWINE, PENNSYLVANIA

MICHAEL C. BURGESS, TEXAS

WARRING G. ANDERSON, TENNESSEE

PAUL SCHUMER, GEORGIA

STEVE ISAKS, VIRGINIA

December 22, 2009

Ms. Patricia L. Acampora
 Commissioner
 New York State Public Service Commission
 Three Empire State Plaza, 4th Floor
 Albany, NY 12223

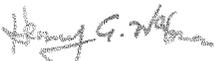
Dear Ms. Acampora:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on December 3, 2009, at the hearing on H.R. 3993, the "Calling Card Consumer Protection Act of 2009".

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions and include the text of the question with your response, using separate pages for responses to each Member.

Please provide your responses by January 14, to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building and via e-mail to Earley.Green@mail.house.gov. Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,


 Henry A. Waxman
 Chairman

Attachment

The Honorable Bobby L. Rush

1. This legislation would allow states to retain the ability to enact additional calling card regulations that are more protective of consumers than the federal rules require. In your testimony, you supported these provisions. Can you address concerns that giving states this authority would lead to a “patchwork” of confusing rules?

Response of Commissioner Acampora:

Thank you again for inviting NARUC to testify before your Subcommittee on Representative Engel’s Calling Card Consumer Protection Act (H.R. 3993) and thank you for this follow up question. It was clear from questions at the hearing that confusion remains on this issue. I appreciate the opportunity to clear up the misunderstandings and provide members of the Subcommittee with some facts on the interplay between federal and State law and enforcement.

Substantive Provisions – There is no “patchwork”

For decades industry has sought to preempt State authority citing an onerous “patchwork” of laws across various States. The “patchwork” argument is, at best, a gross exaggeration.

First, even where Congress chooses to explicitly preserve State authority, so-called “conflict preemption”¹ effectively eliminates State provisions where it is not possible to comply with both that particular State provision and the federal law. This makes federal rules an effective minimum floor of protection for consumers in all States. Any State rule is preempted if it either (1) provides less protection than the federal rules or (2) is impossible to comply with for a provider that is also complying with federal rules.

Second, history demonstrates that States that adopt rules *after* federal laws are enacted have a long history of simply following the federal lead.

The exception occurs when, *as frequently happens*, bad actors find ways around federal rules to defraud consumers. In such circumstances, a State will often act quickly to provide additional protections for your constituents. Where for example, a language other than English is used on the card or packaging to provide certain material terms or is predominantly used on the card or packaging, then some States with large immigrant populations have imposed a common sense (and fair) requirement that disclosures must also be in that other language.

¹ “The supremacy clause mandates that federal law overrides, i.e., preempts, any state regulation where there is an actual conflict . . . such that both cannot stand.” Nowak, John E. Rotunda, Ronald D., & Young, J. Nelson, *Handbook on Constitutional Law*, West Publishing, Hornbook series (1978) at 267, footnotes omitted. Generally speaking, any state law or regulation that conflicts with a federal law is preempted. *Gibbons v. Ogden*, 22 U.S. 1 (1824). A conflict exists if a party cannot comply with both state law and federal law (for example, if state law forbids something that federal law requires). *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963).

USTelecom's patchwork comments *necessarily argue* that, it is *unfair* for sellers to provide disclosures in the same language those sellers use to market their card to non-English speaking consumers *in those States where either no rules exist or less protective rules currently exist or in the future - if when passed, this bill in its final form does not address such situations.*² This argument makes no sense. In States with diverse populations, like New York, those who are most vulnerable – non-English speakers – are being systematically targeted by fraudulent entities. Disclosure coupled with strong enforcement is an effective method to combat this problem.

As USTA notes, a mere 14 States currently have rules and some of them require only "minimal disclosure."³ Those with only minimal disclosures will likely be preempted by any federal rules via "conflict preemption." But even those few States with potentially greater protections than this draft legislation *don't result in a "patchwork of confusing regulation."*

As even USTelecom concedes in its Statement – in the relatively rare circumstance where one State sets a standard that is more protective than the federal rules, assuming there is no direct conflict, then, for some companies, that State rule will be a default national standard. *Therefore no patchwork exists.*⁴ The bill defines what constitutes fraud and deceptive practices so States have a well defined sphere in which to take action *consistent* with this Act. A carrier meeting the most protective State standard meets all standards.

Practically speaking, USTelecom has acknowledged the obvious: concurrent federal and State authority to set and enforce standards never requires carriers to tailor their disclosures *differently* from State-to-State.

² December 3, 2009 *Statement for the Record of Walter B. McCormick, Jr., President & CEO, USTelecom Association, before the House Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection*, at page 3 (McCormick Statement). "For example, seven states require the customer service number on the card, five require it on the card or packaging, and two require it on the card and packaging. In order to comply, a national company selling prepaid calling cards needs to meet the most stringent requirement - putting the number on the card and the packaging. Cards sold nationally also need to comply with the in-language requirements of three states, meaning that if a language other than English is used on the card or packaging to provide certain material terms or is predominantly used on the card or packaging, then the disclosures must also be in that other language. One state requires a statement on the packaging of its prepaid calling cards advising the cardholder to safeguard both card and PIN and that the customer is responsible for its loss or unauthorized use. This, in turn, requires national providers to place such a statement on the packaging of every calling card." p. 3. Note, even under this "USTelecom" worse case, what happens? With 14 states, there aren't 14 different regimes. Using USTelecom's example, there are three basic non-national rules to comply with, each example USTelecom cites unquestionably provides additional protection for consumers, and, of course, THERE IS NO PATCHWORK.

³ Id. at 3.

⁴ Id. at 3. "For example, seven states require the customer service number on the card, five require it on the card or packaging, and two require it on the card and packaging. In order to comply, a national company selling prepaid calling cards needs to meet the most stringent requirement - putting the number on the card and the packaging. Cards sold nationally also need to comply with the in-language requirements of three states, meaning that if a language other than English is used on the card or packaging to provide certain material terms or is predominantly used on the card or packaging, then the disclosures must also be in that other language. One state requires a statement on the packaging of its prepaid calling cards advising the cardholder to safeguard both card and PIN and that the customer is responsible for its loss or unauthorized use. This, in turn, requires national providers to place such a statement on the packaging of every calling card." p. 3.

I can assure you States are not looking for more work. Like you, we have many issues before us and are not looking for unnecessary duties. However, as I mentioned in my testimony, bad actors are very, very good at exploiting loopholes in law enacted with the best of intentions. States are almost always the first to learn about and provide relief when new abuses emerge, e.g., slamming, cramming, or mislabeling simple business expenses as “regulatory charges.” *Often State efforts beat federal counterparts in promulgating rules to respond to new abuses by 1 - 3 years.* Sometimes the gap is longer. Whenever such abuses arise – *and they always do* – the law of unintended consequences should not be construed to work against consumers. Moreover, consumers should not have to wait years for federal rulemaking every time a new issue arises.

H.R. 3993 recognizes these facts and adopts the most efficient and consumer-friendly approach – retaining State authority to address new issues and protect our shared constituents from fraud and abuse.

Enforcement of Standards

More “Cops” and additional State remedies provide more Constituent Protection

Even those that believe their own state legislators or public service commissions should NOT be allowed to respond to new abuses of their constituents with additional protective measures cannot argue credibly for preemption of State enforcement of national standards *using existing procedures and penalties.* Taking State consumer cops off the beat can only hurt enforcement efforts and significantly curtail your constituents’ available avenues for relief. Micromanaging which State agency is allowed to enforce any federal rule and how – limiting existing penalties and enforcement options – is, on its face, incredibly inefficient. Such federal intrusions into State process and procedure can only have one impact – more confusion for your constituents and an incredible waste of precious State taxpayer funds and staff resources to re-educate the public on new remedies and contacts, to change existing websites and consumer publications, and to pass new authorizing State legislation to make sure the state agency selected by Congress has the authority, staff resources, and budget to do the job.

During the hearing, several members asked the Federal Trade Commission witness, Lois Greisman, the agency’s view on retaining State authority to both set and enforce standards and whether this is an area of concern. In each response, Ms. Greisman emphasized that concurrent State and federal authority is not a problem and in practice is a positive for consumers, specifying that the “duel enforcement scheme has been enormously productive and effective.”⁵ The FTC cited the agency’s close work with States on telemarketing and other consumer issues. Overlapping enforcement between States and the federal government is more the norm than the exception.⁶ There are many areas of cooperation between the various levels of government to protect consumers.

⁵ Response by Lois Greisman, Director, Division of Marketing Practices, FTC to question posed by Rep. Pitts during Q&A session of hearing. Time 01:38:17 in Audio file of hearing available at: http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1843:hr-3993-the-calling-card-consumer-protection-act&catid=129:subcommittee-on-commerce-trade-and-consumer-protection&Itemid=70.

⁶ Response by Lois Greisman, Director, Division of Marketing Practices, FTC to question posed by Rep. Pitts during Q&A session of hearing. Time 01:38:05 in Audio file of hearing available at: http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1843:hr-3993-the-calling-card-consumer-protection-act&catid=129:subcommittee-on-commerce-trade-and-consumer-protection&Itemid=70.

I fully agree with members of the subcommittee who expressed concern with the readability of the disclosure. That is why I offered up alternatives, including requiring all calling card providers to maintain a website containing all their rates, terms, and conditions.

H.R. 3993 strikes the appropriate jurisdictional balance that is a true win for consumers. Overlapping federal and State enforcement is more the norm than the exception and is always enormously effective. Practically speaking, there is no patchwork of substantive prepaid calling card standards. Moreover, as this response points out, retaining State authority will NOT create one. I thank Chairman Rush for the opportunity to clarify my oral testimony. I look forward to working with the Subcommittee on H.R. 3993 and other consumer related issues.