

110TH CONGRESS
2^D SESSION

H. R. 3402

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008

Received

OCTOBER 2 (legislative day, SEPTEMBER 17), 2008

Read twice and referred to the Committee on Commerce, Science, and
Transportation

AN ACT

To require accurate and reasonable disclosure of the terms
and conditions of prepaid telephone calling cards and
services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Calling Card Consumer
3 Protection Act”.

4 **SEC. 2. DEFINITIONS.**

5 For purposes of this Act, the following definitions
6 apply:

7 (1) The term “Commission” means the Federal
8 Trade Commission.

9 (2) The term “prepaid calling card” has the
10 meaning given the term “prepaid calling card” by
11 section 64.5000(a) of the Federal Communications
12 Commission’s regulations (47 C.F.R. 64.5000(a)).
13 Such term shall also include calling cards that use
14 VoIP service or a successor protocol. Such term
15 shall also include an electronic or other mechanism
16 that allows users to pay in advance for a specified
17 amount of calling. Such term shall not include—

18 (A) calling cards or other rights of use
19 that are provided for free or at no additional
20 cost as a promotional item accompanying a
21 product or service purchased by a consumer;

22 (B) any card, device, or other right of use,
23 the purchase of which establishes a customer-
24 carrier relationship with a provider of wireless
25 telecommunications service or wireless hybrid
26 service, or that provides access to a wireless

1 telecommunications service or wireless hybrid
2 service account wherein the purchaser has a
3 pre-existing relationship with the wireless serv-
4 ice provider; or

5 (C) payphone service, as that term is de-
6 fined in section 276(d) of the Communications
7 Act of 1934 (47 U.S.C. 276(d)).

8 (3) The term “prepaid calling card provider”
9 has the meaning given the term “prepaid calling
10 card provider” by section 64.5000(b) of the Federal
11 Communications Commission’s regulations (47
12 C.F.R. 64.5000(b)). Such term shall also include—

13 (A) a provider of a prepaid calling card
14 that uses VoIP service or a successor protocol;
15 and

16 (B) a provider of a prepaid calling card
17 that allows users to pay in advance for a speci-
18 fied amount of minutes through an electronic or
19 other mechanism.

20 (4) The term “prepaid calling card distributor”
21 means any entity or person that purchases prepaid
22 calling cards from a prepaid calling card provider or
23 another prepaid calling card distributor and sells, re-
24 sells, issues, or distributes such cards to one or more

1 distributors of such cards or to one or more retail
2 sellers of such cards.

3 (5) The term “wireless hybrid service” is de-
4 fined as a service that integrates both commercial
5 mobile radio service (as defined by section 20.3 of
6 the Federal Communications Commission’s regula-
7 tions (47 C.F.R. 20.3)) and VoIP service.

8 (6) The term “VoIP service” has the meaning
9 given the term “interconnected Voice over Internet
10 protocol service” by section 9.3 of the Federal Com-
11 munications Commission’s regulations (47 C.F.R.
12 9.3). Such term shall include any voice calling serv-
13 ice that utilizes a voice over Internet protocol or any
14 successor protocol in the transmission of the call.

15 (7) The term “fees” includes all charges, fees,
16 taxes, or surcharges applicable to a prepaid calling
17 card that are—

18 (A) required by Federal law or regulation
19 or order of the Federal Communications Com-
20 mission or by the laws and regulations of any
21 State or political subdivision of a State; or

22 (B) expressly permitted to be assessed
23 under Federal law or regulation or order of the
24 Federal Communications Commission or under

1 preferred destinations served by the prepaid calling
2 card at the time of purchase; or

3 (B) the dollar value of the prepaid calling card,
4 the domestic interstate rate per minute provided by
5 such card, and the applicable per minute rates for
6 all international preferred destinations served by the
7 prepaid calling card at the time of purchase.

8 (3)(A) The applicable per minute rate for all in-
9 dividual international destinations served by the card
10 at the time of purchase; or

11 (B) a toll-free customer service number and
12 website (if the provider maintains a website) where
13 a consumer may obtain the information described in
14 subparagraph (A) and a statement that such infor-
15 mation may be obtained through such toll-free cus-
16 tomer service number and website.

17 (4) The following terms and conditions per-
18 taining to, or associated with, the use of the prepaid
19 calling card:

20 (A) Any applicable fees associated with the
21 use of the prepaid calling card.

22 (B) A description of any additional charges
23 associated with the use of the prepaid calling
24 card and the amount of such charges.

1 (C) Any limitation on the use or period of
2 time for which the promoted or advertised min-
3 utes or rates will be available.

4 (D) Applicable policies relating to refund,
5 recharge, and any predetermined decrease in
6 value of such card over a period of time.

7 (E) Any expiration date applicable to the
8 prepaid calling card or the minutes available
9 with such calling card.

10 (b) LOCATION OF DISCLOSURE AND LANGUAGE RE-
11 QUIREMENT.—

12 (1) CLEAR AND CONSPICUOUS.—

13 (A) CARDS.—The disclosures required
14 under subsection (a) shall be printed in plain
15 English language (except as provided in para-
16 graph (2)) in a clear and conspicuous manner
17 and location on the prepaid calling card. If the
18 card is enclosed in packaging that obscures the
19 disclosures on the card, such disclosures also
20 shall be printed on the outside packaging of the
21 card.

22 (B) ONLINE SERVICES.—In addition to the
23 requirements under subparagraph (A), in the
24 case of a prepaid calling card that consumers
25 purchase via the Internet, the disclosures re-

1 required under subsection (a) shall be displayed
2 in plain English language (except as provided in
3 paragraph (2)) in a clear and conspicuous man-
4 ner and location on the Internet website that
5 the consumer must access prior to purchasing
6 such card.

7 (C) ADVERTISING AND OTHER PRO-
8 MOTIONAL MATERIAL.—Any advertising for a
9 prepaid calling card that contains any represen-
10 tation, expressly or by implication, regarding
11 the dollar value, the per minute rate, or the
12 number of minutes provided by the card shall
13 include in a clear and conspicuous manner and
14 location all the disclosures described in sub-
15 section (a).

16 (2) FOREIGN LANGUAGES.—If a language other
17 than English is prominently used on a prepaid call-
18 ing card, its packaging, or in point-of-sale adver-
19 tising, Internet advertising, or promotional material
20 for such card, the disclosures required by this sec-
21 tion shall be disclosed in that language on such card,
22 packaging, advertisement, or promotional material.

23 (c) MINUTES ANNOUNCED, PROMOTED, OR ADVER-
24 TISED THROUGH VOICE PROMPTS.—Any information pro-
25 vided to a consumer by any voice prompt given to the con-

1 sumer at the time the consumer uses the prepaid calling
2 card relating to the remaining value of the calling card
3 or the number of minutes available from the calling card
4 shall be accurate, taking into account the application of
5 the fees and additional charges required to be disclosed
6 under subsection (a).

7 (d) **DISCLOSURES REQUIRED UPON PURCHASE OF**
8 **ADDITIONAL MINUTES.**—If a prepaid calling card permits
9 a consumer to add value to the card or purchase additional
10 minutes after the original purchase of the prepaid calling
11 card, any changes to the rates or additional charges re-
12 quired to be disclosed under subsection (a) shall apply only
13 to the additional minutes to be purchased and shall be
14 disclosed to the consumer before the completion of such
15 purchase.

16 **SEC. 4. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
17 **SION.**

18 (a) **UNFAIR AND DECEPTIVE ACT OR PRACTICE.**—
19 A violation of section 3 shall be treated as a violation of
20 a rule defining an unfair or deceptive act or practice pre-
21 scribed under section 18(a)(1)(B) of the Federal Trade
22 Commission Act (15 U.S.C. 57a(a)(1)(B)).

23 (b) **AUTHORITY OF THE COMMISSION.**—The Commis-
24 sion shall enforce this Act in the same manner and by
25 the same means as though all applicable terms and provi-

1 sions of the Federal Trade Commission Act were incor-
2 porated into and made a part of this Act. Notwithstanding
3 any provision of the Federal Trade Commission Act or any
4 other provision of law and solely for purposes of this Act,
5 common carriers subject to the Communications Act of
6 1934 (47 U.S.C. 151 et seq.) and any amendment thereto
7 shall be subject to the jurisdiction of the Commission.

8 (c) RULEMAKING AUTHORITY.—Not later than 180
9 days after the date of enactment of this Act, the Commis-
10 sion shall, in consultation with the Federal Communica-
11 tions Commission and in accordance with section 553 of
12 title 5, United States Code, issue regulations to carry out
13 this Act. In promulgating such regulations, the Commis-
14 sion shall—

15 (1) take into consideration the need for clear
16 disclosures that provide for easy comprehension and
17 comparison by consumers, taking into account the
18 size of prepaid calling cards; and

19 (2) give due consideration to the views of the
20 Federal Communications Commission with regard to
21 matters for which that Commission has particular
22 expertise and authority and shall take into consider-
23 ation the views of States.

1 In promulgating such regulations, the Commission shall
2 not issue regulations that otherwise affect the rates,
3 terms, and conditions of prepaid calling cards.

4 (d) SAVINGS PROVISION.—Nothing in this Act shall
5 be construed to limit the authority of the Commission
6 under any other provision of law. Except to the extent ex-
7 pressly provided in this Act, nothing in this Act shall be
8 construed to alter or affect the exemption for common car-
9 riers provided by section 5(a)(2) of the Federal Trade
10 Commission Act (15 U.S.C. 45(a)(2)). Nothing in this Act
11 is intended to limit the authority of the Federal Commu-
12 nications Commission.

13 **SEC. 5. STATE ENFORCEMENT.**

14 (a) IN GENERAL.—

15 (1) CIVIL ACTIONS.—In any case in which the
16 attorney general of a State, a State utility commis-
17 sion, or other consumer protection agency has rea-
18 son to believe that an interest of the residents of
19 that State has been or is threatened or adversely af-
20 fected by the engagement of any person in a practice
21 that is prohibited under this Act, the State utility
22 commission or other consumer protection agency, if
23 authorized by State law, or the State, as *parens*
24 *patriae*, may bring a civil action on behalf of the
25 residents of that State in a district court of the

1 United States of appropriate jurisdiction, or any
2 other court of competent jurisdiction to—

3 (A) enjoin that practice;

4 (B) enforce compliance with this Act;

5 (C) obtain damage, restitution, or other
6 compensation on behalf of residents of the
7 State; or

8 (D) obtain such other relief as the court
9 may consider to be appropriate.

10 (2) NOTICE TO THE COMMISSION.—

11 (A) IN GENERAL.—Before filing an action
12 under paragraph (1), the State shall provide to
13 the Commission—

14 (i) written notice of the action; and

15 (ii) a copy of the complaint for the ac-
16 tion.

17 (B) EXEMPTION.—

18 (i) IN GENERAL.—Subparagraph (A)
19 shall not apply with respect to the filing of
20 an action by a State under this subsection,
21 if the attorney general or other appropriate
22 officer determines that it is not feasible to
23 provide the notice described in that sub-
24 paragraph before the filing of the action.

1 (ii) NOTIFICATION.—In an action de-
2 scribed in clause (i), the State shall pro-
3 vide notice and a copy of the complaint to
4 the Commission at the same time as the
5 State files the action.

6 (b) INTERVENTION BY COMMISSION.—

7 (1) IN GENERAL.—On receiving notice under
8 subsection (a)(2), the Commission shall have the
9 right to intervene in the action that is the subject
10 of the notice.

11 (2) EFFECT OF INTERVENTION.—If the Com-
12 mission intervenes in an action under subsection (a),
13 it shall have the right—

14 (A) to be heard with respect to any matter
15 that arises in that action;

16 (B) to remove the action to the appro-
17 priate United States District Court; and

18 (C) to file a petition for appeal.

19 (c) CONSTRUCTION.—For purposes of bringing any
20 civil action under subsection (a), nothing in this section
21 shall be construed to prevent an attorney general of a
22 State, a State utility commission, or other consumer pro-
23 tection agency authorized by State law from exercising the
24 powers conferred on the attorney general or other appro-
25 priate official by the laws of that State to—

- 1 (1) conduct investigations;
- 2 (2) administer oaths or affirmations;
- 3 (3) compel the attendance of witnesses or the
- 4 production of documentary and other evidence; or
- 5 (4) enforce any State law.

6 (d) ACTION BY THE COMMISSION MAY PRECLUDE
7 STATE ACTION.—In any case in which an action is insti-
8 tuted by or on behalf of the Commission for violation of
9 this Act, or any regulation issued under this Act, no State
10 may, during the pendency of that action, institute an ac-
11 tion under subsection (a) against any defendant named
12 in the complaint in that action for violation of this Act
13 or regulation.

14 (e) VENUE; SERVICE OF PROCESS.—

15 (1) VENUE.—Any action brought under sub-
16 section (a) may be brought in the district court of
17 the United States that meets applicable require-
18 ments relating to venue under section 1391 of title
19 28, United States Code.

20 (2) SERVICE OF PROCESS.—In an action
21 brought under subsection (a), process may be served
22 in any district in which the defendant—

- 23 (A) is an inhabitant; or
- 24 (B) may be found.

1 (f) LIMITATION.—No prepaid calling card distributor
2 who is a retail merchant or seller of prepaid calling cards,
3 who, with respect to such cards, is exclusively engaged in
4 point-of-sale transactions may be liable for damages in an
5 action authorized under this section unless such dis-
6 tributor acted with actual knowledge that the act or prac-
7 tice giving rise to such action is unfair or deceptive and
8 is unlawful under this Act.

9 **SEC. 6. APPLICATION.**

10 This Act shall apply to—

11 (1) any prepaid calling card issued or placed
12 into the stream of commerce beginning 90 days after
13 the date on which final regulations are promulgated
14 pursuant to section 4(c); and

15 (2) any advertising, promotion, point-of-sale
16 material or voice prompt regarding a prepaid calling
17 card that is disseminated beginning 90 days after
18 the date on which final regulations are promulgated
19 pursuant to section 4(c).

20 If the Commission determines that it is not feasible for
21 prepaid calling card providers or distributors to comply
22 with the requirements of this Act with respect to prepaid
23 calling cards issued or placed into the stream of commerce
24 after such 90-day period, the Commission may extend
25 such period by not more than an additional 90 days.

