

111TH CONGRESS  
1ST SESSION

# H. R. 3993

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

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2009

Mr. ENGEL introduced the following bill; which was referred to the Committee  
on Energy and Commerce

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## A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Calling Card Consumer  
5 Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act, the following definitions  
8 apply:

9 (1) The term “Commission” means the Federal  
10 Trade Commission.

1           (2) The term “prepaid calling card” has the  
2 meaning given the term “prepaid calling card” by  
3 section 64.5000(a) of the Federal Communications  
4 Commission’s regulations (47 C.F.R. 64.5000(a)).  
5 Such term shall also include calling cards that use  
6 VoIP service or a successor protocol. Such term  
7 shall also include an electronic or other mechanism  
8 that allows users to pay in advance for a specified  
9 amount of calling. Such term shall not include—

10           (A) calling cards or other rights of use  
11 that are provided for free or at no additional  
12 cost as a promotional item accompanying a  
13 product or service purchased by a consumer;

14           (B) any card, device, or other right of use,  
15 the purchase of which establishes a customer-  
16 carrier relationship with a provider of wireless  
17 telecommunications service or wireless hybrid  
18 service, or that provides access to a wireless  
19 telecommunications service or wireless hybrid  
20 service account wherein the purchaser has a  
21 pre-existing relationship with the wireless serv-  
22 ice provider; or

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

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

6                   (A) a provider of a prepaid calling card  
7                   that uses VoIP service or a successor protocol;  
8                   and

9                   (B) a provider of a prepaid calling card  
10                  that allows users to pay in advance for a speci-  
11                  fied amount of minutes through an electronic or  
12                  other mechanism.

13           (4) The term “prepaid calling card distributor”  
14           means any entity or person that purchases prepaid  
15           calling cards from a prepaid calling card provider or  
16           another prepaid calling card distributor and sells, re-  
17           sells, issues, or distributes such cards to one or more  
18           distributors of such cards or to one or more retail  
19           sellers of such cards.

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

1           (6) The term “VoIP service” has the meaning  
2           given the term “interconnected Voice over Internet  
3           protocol service” by section 9.3 of the Federal Com-  
4           munications Commission’s regulations (47 C.F.R.  
5           9.3). Such term shall include any voice calling serv-  
6           ice that utilizes a voice over Internet protocol or any  
7           successor protocol in the transmission of the call.

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

11                 (A) required by Federal law or regulation  
12                 or order of the Federal Communications Com-  
13                 mission or by the laws and regulations of any  
14                 State or political subdivision of a State; or

15                 (B) expressly permitted to be assessed  
16                 under Federal law or regulation or order of the  
17                 Federal Communications Commission or under  
18                 the laws and regulations of any State or polit-  
19                 ical subdivision of a State.

20          (8) The term “additional charge” means any  
21          charge assessed by a prepaid calling card provider or  
22          prepaid calling card distributor for the use of a pre-  
23          paid calling card, other than a fee or rate.

24          (9) The term “international preferred destina-  
25          tion” means one or more specific international des-

1       tinations named on a prepaid calling card or on the  
2       packaging material accompanying a prepaid calling  
3       card.

4 **SEC. 3. REQUIRED DISCLOSURES OF PREPAID CALLING**  
5                   **CARDS.**

6       (a) **REQUIRED DISCLOSURE.**—Any prepaid calling  
7       card provider or prepaid calling card distributor shall ac-  
8       curately disclose in a clear and conspicuous manner the  
9       following information relating to the terms and conditions  
10      of the prepaid calling card:

11           (1) The name of the prepaid calling card pro-  
12      vider and such provider’s customer service telephone  
13      number and hours of service.

14           (2)(A) The number of domestic interstate min-  
15      utes available from the prepaid calling card and the  
16      number of available minutes for all international  
17      preferred destinations served by the prepaid calling  
18      card at the time of purchase; or

19           (B) the dollar value of the prepaid calling card,  
20      the domestic interstate rate per minute provided by  
21      such card, and the applicable per minute rates for  
22      all international preferred destinations served by the  
23      prepaid calling card at the time of purchase.

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

4           (B) a toll-free customer service number and  
5           website (if the provider maintains a website) where  
6           a consumer may obtain the information described in  
7           subparagraph (A) and a statement that such infor-  
8           mation may be obtained through such toll-free cus-  
9           tomer service number and website.

10          (4) The following terms and conditions per-  
11          taining to, or associated with, the use of the prepaid  
12          calling card:

13                 (A) Any applicable fees associated with the  
14                 use of the prepaid calling card.

15                 (B) A description of any additional charges  
16                 associated with the use of the prepaid calling  
17                 card and the amount of such charges.

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

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

1           (E) Any expiration date applicable to the  
2           prepaid calling card or the minutes available  
3           with such calling card.

4           (b) LOCATION OF DISCLOSURE AND LANGUAGE RE-  
5           QUIREMENT.—

6           (1) CLEAR AND CONSPICUOUS.—

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

16          (B) ONLINE SERVICES.—In addition to the  
17          requirements under subparagraph (A), in the  
18          case of a prepaid calling card that consumers  
19          purchase via the Internet, the disclosures re-  
20          quired under subsection (a) shall be displayed  
21          in plain English language (except as provided in  
22          paragraph (2)) in a clear and conspicuous man-  
23          ner and location on the Internet website that  
24          the consumer must access prior to purchasing  
25          such card.

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

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

17 (c) MINUTES ANNOUNCED, PROMOTED, OR ADVER-  
18 TISED THROUGH VOICE PROMPTS.—Any information pro-  
19 vided to a consumer by any voice prompt given to the con-  
20 sumer at the time the consumer uses the prepaid calling  
21 card relating to the remaining value of the calling card  
22 or the number of minutes available from the calling card  
23 shall be accurate, taking into account the application of  
24 the fees and additional charges required to be disclosed  
25 under subsection (a).



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

10 **SEC. 4. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**  
11 **SION.**

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

17 (b) AUTHORITY OF THE COMMISSION.—The Commis-  
18 sion shall enforce this Act in the same manner and by  
19 the same means as though all applicable terms and provi-  
20 sions of the Federal Trade Commission Act were incor-  
21 porated into and made a part of this Act. Notwithstanding  
22 any provision of the Federal Trade Commission Act or any  
23 other provision of law and solely for purposes of this Act,  
24 common carriers subject to the Communications Act of

1 1934 (47 U.S.C. 151 et seq.) and any amendment thereto  
2 shall be subject to the jurisdiction of the Commission.

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

10 (1) take into consideration the need for clear  
11 disclosures that provide for easy comprehension and  
12 comparison by consumers, taking into account the  
13 size of prepaid calling cards; and

14 (2) give due consideration to the views of the  
15 Federal Communications Commission with regard to  
16 matters for which that Commission has particular  
17 expertise and authority and shall take into consider-  
18 ation the views of States.

19 In promulgating such regulations, the Commission shall  
20 not issue regulations that otherwise affect the rates,  
21 terms, and conditions of prepaid calling cards.

22 (d) SAVINGS PROVISION.—Nothing in this Act shall  
23 be construed to limit the authority of the Commission  
24 under any other provision of law. Except to the extent ex-  
25 pressly provided in this Act, nothing in this Act shall be

1 construed to alter or affect the exemption for common car-  
2 riers provided by section 5(a)(2) of the Federal Trade  
3 Commission Act (15 U.S.C. 45(a)(2)). Nothing in this Act  
4 is intended to limit the authority of the Federal Commu-  
5 nications Commission.

6 **SEC. 5. STATE ENFORCEMENT.**

7 (a) IN GENERAL.—

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

21 (A) enjoin that practice;

22 (B) enforce compliance with this Act;

23 (C) obtain damage, restitution, or other  
24 compensation on behalf of residents of the  
25 State; or

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

3 (2) NOTICE TO THE COMMISSION.—

4 (A) IN GENERAL.—Before filing an action  
5 under paragraph (1), the State shall provide to  
6 the Commission—

7 (i) written notice of the action; and

8 (ii) a copy of the complaint for the ac-  
9 tion.

10 (B) EXEMPTION.—

11 (i) IN GENERAL.—Subparagraph (A)  
12 shall not apply with respect to the filing of  
13 an action by a State under this subsection,  
14 if the attorney general or other appropriate  
15 officer determines that it is not feasible to  
16 provide the notice described in that sub-  
17 paragraph before the filing of the action.

18 (ii) NOTIFICATION.—In an action de-  
19 scribed in clause (i), the State shall pro-  
20 vide notice and a copy of the complaint to  
21 the Commission at the same time as the  
22 State files the action.

23 (b) INTERVENTION BY COMMISSION.—

24 (1) IN GENERAL.—On receiving notice under  
25 subsection (a)(2), the Commission shall have the

1 right to intervene in the action that is the subject  
2 of the notice.

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

6 (A) to be heard with respect to any matter  
7 that arises in that action;

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

10 (C) to file a petition for appeal.

11 (c) CONSTRUCTION.—For purposes of bringing any  
12 civil action under subsection (a), nothing in this section  
13 shall be construed to prevent an attorney general of a  
14 State, a State utility commission, or other consumer pro-  
15 tection agency authorized by State law from exercising the  
16 powers conferred on the attorney general or other appro-  
17 priate official by the laws of that State to—

18 (1) conduct investigations;

19 (2) administer oaths or affirmations;

20 (3) compel the attendance of witnesses or the  
21 production of documentary and other evidence; or

22 (4) enforce any State law.

23 (d) ACTION BY THE COMMISSION MAY PRECLUDE  
24 STATE ACTION.—In any case in which an action is insti-  
25 tuted by or on behalf of the Commission for violation of

1 this Act, or any regulation issued under this Act, no State  
2 may, during the pendency of that action, institute an ac-  
3 tion under subsection (a) against any defendant named  
4 in the complaint in that action for violation of this Act  
5 or regulation.

6 (e) VENUE; SERVICE OF PROCESS.—

7 (1) VENUE.—Any action brought under sub-  
8 section (a) may be brought in the district court of  
9 the United States that meets applicable require-  
10 ments relating to venue under section 1391 of title  
11 28, United States Code.

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

15 (A) is an inhabitant; or

16 (B) may be found.

17 (f) LIMITATION.—No prepaid calling card distributor  
18 who is a retail merchant or seller of prepaid calling cards,  
19 who, with respect to such cards, is exclusively engaged in  
20 point-of-sale transactions may be liable for damages in an  
21 action authorized under this section unless such dis-  
22 tributor acted with actual knowledge that the act or prac-  
23 tice giving rise to such action is unfair or deceptive and  
24 is unlawful under this Act.

1 **SEC. 6. APPLICATION.**

2 This Act shall apply to—

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

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

12 If the Commission determines that it is not feasible for  
13 prepaid calling card providers or distributors to comply  
14 with the requirements of this Act with respect to prepaid  
15 calling cards issued or placed into the stream of commerce  
16 after such 90-day period, the Commission may extend  
17 such period by not more than an additional 90 days.

18 **SEC. 7. EFFECT ON STATE LAWS.**

19 Nothing in this Act shall affect the authority of any  
20 State to establish or continue in effect a provision of the  
21 law of a State relating to regulation of prepaid calling  
22 cards, prepaid calling card distributors, prepaid calling  
23 services, or prepaid calling service providers, except to the  
24 extent that such provision of law is inconsistent with the  
25 provisions of this Act or a regulation prescribed under this  
26 Act, and then only to the extent of such inconsistency.

1 A provision of the law of a State is not inconsistent with  
2 this Act or a regulation prescribed under this Act if such  
3 provision provides equal or greater protection to con-  
4 sumers than what is provided under this Act or the regula-  
5 tions prescribed under this Act.

6 **SEC. 8. GAO STUDY.**

7       Beginning 2 years after the date on which final regu-  
8 lations are promulgated pursuant to section 4(c), the  
9 Comptroller General shall conduct a study of the effective-  
10 ness of this Act and the disclosures required under this  
11 Act and shall submit a report of such study to Congress  
12 not later than 3 years after the date of enactment of this  
13 Act.

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