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2<sup>D</sup> SESSION

# H. R. 3993

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IN THE SENATE OF THE UNITED STATES

JUNE 24, 2010

Received; read twice and referred to the Committee on Commerce, Science,  
and Transportation

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## 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 CFR 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 CFR  
12 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. Such term shall not include—

3 (A) any retail seller whose only activity  
4 with respect to the sale of prepaid calling cards  
5 is point-of-sale transactions with end-user cus-  
6 tomers; or

7 (B) any person whose only activity with re-  
8 spect to the sale of prepaid calling cards is the  
9 transport or delivery of such cards.

10 (5) The term “wireless hybrid service” is de-  
11 fined as a service that integrates both commercial  
12 mobile radio service (as defined by section 20.3 of  
13 the Federal Communications Commission’s regula-  
14 tions (47 CFR 20.3)) and VoIP service.

15 (6) The term “VoIP service” has the meaning  
16 given the term “interconnected Voice over Internet  
17 protocol service” by section 9.3 of the Federal Com-  
18 munications Commission’s regulations (47 CFR  
19 9.3). Such term shall include any voice calling serv-  
20 ice that utilizes a voice over Internet protocol or any  
21 successor protocol in the transmission of the call.

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

1 (A) required by Federal law or regulation  
2 or order of the Federal Communications Com-  
3 mission or by the laws and regulations of any  
4 State or political subdivision of a State; or

5 (B) expressly permitted to be assessed  
6 under Federal law or regulation or order of the  
7 Federal Communications Commission or under  
8 the laws and regulations of any State or polit-  
9 ical subdivision of a State.

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

14 (9) The term “international preferred destina-  
15 tion” means one or more specific international des-  
16 tinations named on a prepaid calling card or on the  
17 packaging material accompanying a prepaid calling  
18 card.

19 **SEC. 3. REQUIRED DISCLOSURES OF PREPAID CALLING**  
20 **CARDS.**

21 (a) **REQUIRED DISCLOSURE.**—Any prepaid calling  
22 card provider or prepaid calling card distributor shall ac-  
23 curately disclose the following information relating to the  
24 terms and conditions of the prepaid calling card:

1           (1) The name of the prepaid calling card pro-  
2           vider and such provider's customer service telephone  
3           number and hours of service, except that the hours  
4           of service may not be required to be disclosed if the  
5           provider's customer service is provided and available  
6           24 hours a day, 7 days per week.

7           (2)(A) The number of domestic interstate min-  
8           utes available from the prepaid calling card and the  
9           number of available minutes for all international  
10          preferred destinations served by the prepaid calling  
11          card at the time of purchase; or

12          (B) the dollar value of the prepaid calling card,  
13          the domestic interstate rate per minute provided by  
14          such card, and the applicable per minute rates for  
15          all international preferred destinations served by the  
16          prepaid calling card at the time of purchase.

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

20          (B) a toll-free customer service number and  
21          website (if the provider maintains a website) where  
22          a consumer may obtain the information described in  
23          subparagraph (A) and a statement that such infor-  
24          mation may be obtained through such toll-free cus-  
25          tomer service number and website.

1           (4) The following terms and conditions per-  
2           taining to, or associated with, the use of the prepaid  
3           calling card:

4                   (A) Any applicable fees associated with the  
5                   use of the prepaid calling card.

6                   (B) A description of any additional charges  
7                   associated with the use of the prepaid calling  
8                   card and the amount of such charges.

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

12                  (D) A description of the applicable policies  
13                  relating to refund, recharge, and any predeter-  
14                  mined decrease in value of such card over a pe-  
15                  riod of time.

16                  (E) Any expiration date applicable to the  
17                  prepaid calling card or the minutes available  
18                  with such calling card.

19           (b) LOCATION OF DISCLOSURE AND LANGUAGE RE-  
20           QUIREMENT.—

21                   (1) CLEAR AND CONSPICUOUS.—

22                           (A) CARDS.—The disclosures required  
23                           under subsection (a) shall be printed in plain  
24                           English language (except as provided in para-  
25                           graph (2)) in a clear and conspicuous manner

1 and location on the prepaid calling card, except  
2 as the Commission may provide under para-  
3 graph (3). If the card is enclosed in packaging  
4 that obscures the disclosures on the card, such  
5 disclosures also shall be printed on the outside  
6 packaging of the card.

7 (B) ONLINE SERVICES.—In addition to the  
8 requirements under subparagraph (A), in the  
9 case of a prepaid calling card that consumers  
10 purchase via the Internet, the disclosures re-  
11 quired under subsection (a) shall be displayed  
12 in plain English language (except as provided in  
13 paragraph (2)) in a clear and conspicuous man-  
14 ner and location on the Internet website that  
15 the consumer must access prior to purchasing  
16 such card.

17 (C) ADVERTISING AND OTHER PRO-  
18 MOTIONAL MATERIAL.—Any advertising or  
19 other promotional material for a prepaid calling  
20 card that contains any representation, expressly  
21 or by implication, regarding the dollar value,  
22 the per minute rate, or the number of minutes  
23 provided by the card shall include in a clear and  
24 conspicuous manner and location all the dislo-



1           sures described in subsection (a), except as the  
2           Commission may provide under paragraph (3).

3           (2) FOREIGN LANGUAGES.—If a language other  
4           than English is prominently used on a prepaid call-  
5           ing card, its packaging, or in point-of-sale adver-  
6           tising, Internet advertising, or promotional material  
7           for such card, the disclosures required by this sec-  
8           tion shall be disclosed in that language on such card,  
9           packaging, advertisement, or promotional material.

10           (3) DIFFERENT LOCATION OF CERTAIN INFOR-  
11           MATION AS DETERMINED BY COMMISSION.—Not-  
12           withstanding the requirements of paragraph (1), the  
13           Commission may determine that some of the infor-  
14           mation required to be disclosed pursuant to sub-  
15           section (a) does not need to be disclosed on the pre-  
16           paid calling card, advertising, or other promotional  
17           material, if the Commission by regulation—

18                   (A) requires the information to be other-  
19                   wise disclosed and available to consumers; and

20                   (B) determines that—

21                           (i) such disclosures provide for easy  
22                           comprehension and comparison by con-  
23                           sumers; and

24                           (ii) the remaining disclosures on the  
25                           prepaid calling card, advertising, or other

1 promotional material, include sufficient in-  
2 formation to allow a consumer to effec-  
3 tively inquire about or seek clarification of  
4 the services provided by the calling card.

5 (c) MINUTES ANNOUNCED, PROMOTED, OR ADVER-  
6 TISED THROUGH VOICE PROMPTS.—Any information pro-  
7 vided to a consumer by any voice prompt given to the con-  
8 sumer at the time the consumer uses the prepaid calling  
9 card relating to the remaining value of the calling card  
10 or the number of minutes available from the calling card  
11 shall be accurate, taking into account the application of  
12 the fees and additional charges required to be disclosed  
13 under subsection (a).

14 (d) DISCLOSURES REQUIRED UPON PURCHASE OF  
15 ADDITIONAL MINUTES.—If a prepaid calling card permits  
16 a consumer to add value to the card or purchase additional  
17 minutes after the original purchase of the prepaid calling  
18 card, any changes to the rates or additional charges re-  
19 quired to be disclosed under subsection (a) shall apply only  
20 to the additional minutes to be purchased and shall be  
21 disclosed clearly and conspicuously to the consumer before  
22 the completion of such purchase.

23 (e) NO FALSE, MISLEADING, OR DECEPTIVE DISCLO-  
24 SURES.—No prepaid calling card, packaging, advertise-  
25 ment, or other promotional material containing a dislo-

1 sure required pursuant to this section shall contain any  
2 false, misleading, or deceptive representations relating to  
3 the terms and conditions of the prepaid calling card.

4 **SEC. 4. FEDERAL TRADE COMMISSION AUTHORITY.**

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

10 (b) AUTHORITY OF THE COMMISSION.—The Commis-  
11 sion shall enforce this Act in the same manner and by  
12 the same means as though all applicable terms and provi-  
13 sions of the Federal Trade Commission Act were incor-  
14 porated into and made a part of this Act. Notwithstanding  
15 any provision of the Federal Trade Commission Act or any  
16 other provision of law, common carriers subject to the  
17 Communications Act of 1934 (47 U.S.C. 151 et seq.) and  
18 any amendment thereto shall be subject to the jurisdiction  
19 of the Commission for purposes of this Act.

20 (c) RULEMAKING AUTHORITY.—Not later than 1  
21 year after the date of enactment of this Act, the Commis-  
22 sion shall, in consultation with the Federal Communica-  
23 tions Commission and in accordance with section 553 of  
24 title 5, United States Code, issue regulations to carry out

1 this Act. In promulgating such regulations, the Commis-  
2 sion shall—

3           (1) take into consideration the need for clear  
4 disclosures that provide for easy comprehension and  
5 comparison by consumers, taking into account the  
6 size of prepaid calling cards; and

7           (2) give due consideration to the views of the  
8 Federal Communications Commission with regard to  
9 matters for which that Commission has particular  
10 expertise and authority and shall take into consider-  
11 ation the views of States.

12 In promulgating such regulations, the Commission may  
13 prescribe requirements concerning the order, format, pres-  
14 entation, and design of disclosures required by this Act  
15 and may establish and require the use of uniform terms,  
16 symbols, or categories to describe or disclose fees and ad-  
17 ditional charges, if the Commission finds that such re-  
18 quirements will assist consumers in making purchasing  
19 decisions and effectuate the purposes of this Act. The  
20 Commission shall not issue regulations that otherwise  
21 specify the rates, terms, and conditions of prepaid calling  
22 cards.

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

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

7 (e) COORDINATION.—If the Federal Communications  
8 Commission initiates a rulemaking proceeding to establish  
9 requirements relating to the disclosure of terms and condi-  
10 tions of prepaid calling cards, the Federal Communica-  
11 tions Commission shall coordinate with the Federal Trade  
12 Commission to ensure that any such requirements are not  
13 inconsistent with the requirements of this Act and the reg-  
14 ulations issued under subsection (c).

15 **SEC. 5. STATE ENFORCEMENT.**

16 (a) IN GENERAL.—

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

1 patriae, may bring a civil action on behalf of the  
2 residents of that State in an appropriate district  
3 court of the United States or any other court of  
4 competent jurisdiction to—

5 (A) enjoin that practice;

6 (B) enforce compliance with this Act;

7 (C) obtain damages, restitution, or other  
8 compensation on behalf of residents of the  
9 State; or

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

12 (2) NOTICE TO THE COMMISSION.—

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

16 (i) written notice of the action; and

17 (ii) a copy of the complaint for the ac-  
18 tion.

19 (B) EXEMPTION.—

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

1 provide the notice described in that sub-  
2 paragraph before the filing of the action.

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

8 (b) INTERVENTION BY COMMISSION.—

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

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

16 (A) to be heard with respect to any matter  
17 that arises in that action;

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

20 (C) to file a petition for appeal.

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

1 powers conferred on the attorney general or other appro-  
2 priate official by the laws of that State to—

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

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

16 **SEC. 6. APPLICATION.**

17 This Act shall apply to—

- 18 (1) any prepaid calling card issued or placed  
19 into the stream of commerce beginning 180 days  
20 after the date on which final regulations are promul-  
21 gated pursuant to section 4(c); and
- 22 (2) any advertising, promotion, point-of-sale  
23 material or voice prompt regarding a prepaid calling  
24 card that is disseminated beginning 180 days after



1 the date on which final regulations are promulgated  
2 pursuant to section 4(c).

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

4 After the date on which final regulations are promul-  
5 gated pursuant to section 4(c), no State or political sub-  
6 division of a State may establish or continue in effect any  
7 provision of law that contains requirements regarding dis-  
8 closures to be printed on prepaid calling cards or pack-  
9 aging unless such requirements are identical to the re-  
10 quirements of section 3.

11 **SEC. 8. STUDIES.**

12 (a) GAO STUDY.—Beginning 2 years after the date  
13 on which final regulations are promulgated pursuant to  
14 section 4(c), the Comptroller General shall conduct a  
15 study of the effectiveness of this Act and the disclosures  
16 required under this Act and shall submit a report of such  
17 study to Congress not later than 3 years after the date  
18 of enactment of this Act.

19 (b) FTC STUDY.—The Commission shall, in con-  
20 sultation with the Federal Communications Commission,  
21 conduct a study of the extent to which the business prac-  
22 tices of the prepaid calling card industry intended to be  
23 addressed by this Act exist in the prepaid wireless industry  
24 and shall submit a report of such study, including rec-

- 1 ommendations, if any, to Congress not later than 3 years
- 2 after the date of enactment of this Act.

Passed the House of Representatives June 23, 2010.

Attest:                   LORRAINE C. MILLER,  
*Clerk.*