

Union Calendar No. 290

111TH CONGRESS
2^D SESSION

H. R. 3993

[Report No. 111-507]

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2009

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

JUNE 15, 2010

Additional sponsors: Mr. BURTON of Indiana and Ms. TSONGAS

JUNE 15, 2010

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on November 3, 2009]

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.*

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

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

24 (B) *any card, device, or other right of use,*
25 *the purchase of which establishes a customer-car-*

1 *rier relationship with a provider of wireless tele-*
2 *communications service or wireless hybrid serv-*
3 *ice, or that provides access to a wireless tele-*
4 *communications service or wireless hybrid serv-*
5 *ice account wherein the purchaser has a pre-ex-*
6 *isting relationship with the wireless service pro-*
7 *vider; or*

8 *(C) payphone service, as that term is de-*
9 *efined in section 276(d) of the Communications*
10 *Act of 1934 (47 U.S.C. 276(d)).*

11 *(3) The term “prepaid calling card provider”*
12 *has the meaning given the term “prepaid calling card*
13 *provider” by section 64.5000(b) of the Federal Com-*
14 *munications Commission’s regulations (47 C.F.R.*
15 *64.5000(b)). Such term shall also include—*

16 *(A) a provider of a prepaid calling card*
17 *that uses VoIP service or a successor protocol;*
18 *and*

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

23 *(4) The term “prepaid calling card distributor”*
24 *means any entity or person that purchases prepaid*
25 *calling cards from a prepaid calling card provider or*

1 *another prepaid calling card distributor and sells, re-*
2 *sells, issues, or distributes such cards to one or more*
3 *distributors of such cards or to one or more retail sell-*
4 *ers of such cards. Such term shall not include—*

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

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

12 *(5) The term “wireless hybrid service” is defined*
13 *as a service that integrates both commercial mobile*
14 *radio service (as defined by section 20.3 of the Federal*
15 *Communications Commission’s regulations (47 C.F.R.*
16 *20.3)) and VoIP service.*

17 *(6) The term “VoIP service” has the meaning*
18 *given the term “interconnected Voice over Internet*
19 *protocol service” by section 9.3 of the Federal Com-*
20 *munications Commission’s regulations (47 C.F.R.*
21 *9.3). Such term shall include any voice calling service*
22 *that utilizes a voice over Internet protocol or any suc-*
23 *cessor protocol in the transmission of the call.*

1 (7) *The term “fees” includes all charges, fees,*
2 *taxes, or surcharges applicable to a prepaid calling*
3 *card that are—*

4 (A) *required by Federal law or regulation*
5 *or order of the Federal Communications Com-*
6 *mission or by the laws and regulations of any*
7 *State or political subdivision of a State; or*

8 (B) *expressly permitted to be assessed under*
9 *Federal law or regulation or order of the Federal*
10 *Communications Commission or under the laws*
11 *and regulations of any State or political subdivi-*
12 *sion of a State.*

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

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

22 **SEC. 3. REQUIRED DISCLOSURES OF PREPAID CALLING**
23 **CARDS.**

24 (a) **REQUIRED DISCLOSURE.**—*Any prepaid calling*
25 *card provider or prepaid calling card distributor shall ac-*

1 *curately disclose the following information relating to the*
2 *terms and conditions of the prepaid calling card:*

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

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

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

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

22 *(B) a toll-free customer service number and*
23 *website (if the provider maintains a website) where a*
24 *consumer may obtain the information described in*
25 *subparagraph (A) and a statement that such informa-*

1 *tion may be obtained through such toll-free customer*
2 *service number and website.*

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

6 *(A) Any applicable fees associated with the*
7 *use of the prepaid calling card.*

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

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

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

18 *(E) Any expiration date applicable to the*
19 *prepaid calling card or the minutes available*
20 *with such calling card.*

21 *(b) LOCATION OF DISCLOSURE AND LANGUAGE RE-*
22 *QUIREMENT.—*

23 *(1) CLEAR AND CONSPICUOUS.—*

24 *(A) CARDS.—The disclosures required under*
25 *subsection (a) shall be printed in plain English*

1 *language (except as provided in paragraph (2))*
2 *in a clear and conspicuous manner and location*
3 *on the prepaid calling card, except as the Com-*
4 *mission may provide under paragraph (3). If the*
5 *card is enclosed in packaging that obscures the*
6 *disclosures on the card, such disclosures also*
7 *shall be printed on the outside packaging of the*
8 *card.*

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

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

1 *spicuous manner and location all the disclosures*
2 *described in subsection (a), except as the Com-*
3 *mission may provide under paragraph (3).*

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

11 (3) *DIFFERENT LOCATION OF CERTAIN INFORMA-*
12 *TION AS DETERMINED BY COMMISSION.*—*Notwith-*
13 *standing the requirements of paragraph (1), the Com-*
14 *mission may determine that some of the information*
15 *required to be disclosed pursuant to subsection (a)*
16 *does not need to be disclosed on the prepaid calling*
17 *card, advertising, or other promotional material, if*
18 *the Commission by regulation—*

19 (A) *requires the information to be otherwise*
20 *disclosed and available to consumers; and*

21 (B) *determines that—*

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

1 (ii) the remaining disclosures on the
2 prepaid calling card, advertising, or other
3 promotional material, include sufficient in-
4 formation to allow a consumer to effectively
5 inquire about or seek clarification of the
6 services provided by the calling card.

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

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

1 (e) *NO FALSE, MISLEADING, OR DECEPTIVE DISCLO-*
2 *SURES.*—*No prepaid calling card, packaging, advertise-*
3 *ment, or other promotional material containing a disclo-*
4 *sure required pursuant to this section shall contain any*
5 *false, misleading, or deceptive representations relating to*
6 *the terms and conditions of the prepaid calling card.*

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

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

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

23 (c) *RULEMAKING AUTHORITY.*—*Not later than 1 year*
24 *after the date of enactment of this Act, the Commission*
25 *shall, in consultation with the Federal Communications*

1 *Commission and in accordance with section 553 of title 5,*
2 *United States Code, issue regulations to carry out this Act.*

3 *In promulgating such regulations, the Commission shall—*

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

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

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

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

1 *provided in this Act, nothing in this Act shall be construed*
2 *to alter or affect the exemption for common carriers pro-*
3 *vided by section 5(a)(2) of the Federal Trade Commission*
4 *Act (15 U.S.C. 45(a)(2)). Nothing in this Act is intended*
5 *to limit the authority of the Federal Communications Com-*
6 *mission.*

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 Communications*
11 *Commission shall coordinate with the Federal Trade Com-*
12 *mission to ensure that any such requirements are not incon-*
13 *sistent with the requirements of this Act and the regulations*
14 *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 reason*
20 *to believe that an interest of the residents of that*
21 *State has been or is threatened or adversely affected*
22 *by the engagement of any person in a practice that*
23 *is prohibited under this Act, the State utility commis-*
24 *sion or other consumer protection agency, if author-*
25 *ized by State law, or the State, as parens patriae,*

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

5 *(A) enjoin that practice;*

6 *(B) enforce compliance with this Act;*

7 *(C) obtain damage, restitution, or other*
8 *compensation on behalf of residents of the State;*
9 *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 provide*
5 *notice and a copy of the complaint to the*
6 *Commission at the same time as the State*
7 *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 right*
11 *to intervene in the action that is the subject of the no-*
12 *tice.*

13 (2) *EFFECT OF INTERVENTION.*—*If the Commis-*
14 *sion intervenes in an action under subsection (a), it*
15 *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 appropriate*
19 *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 State,*
24 *a State utility commission, or other consumer protection*
25 *agency authorized by State law from exercising the powers*

1 *conferred on the attorney general or other appropriate offi-*
2 *cial 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 action*
13 *under subsection (a) against any defendant named in the*
14 *complaint in that action for violation of this Act or regula-*
15 *tion.*

16 *(e) VENUE; SERVICE OF PROCESS.—*

17 *(1) VENUE.—Any action brought under sub-*
18 *section (a) may be brought in the district court of the*
19 *United States that meets applicable requirements re-*
20 *lating to venue under section 1391 of title 28, United*
21 *States Code.*

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

25 *(A) is an inhabitant; or*

1 (B) may be found.

2 **SEC. 6. APPLICATION.**

3 *This Act shall apply to—*

4 (1) *any prepaid calling card issued or placed*
5 *into the stream of commerce beginning 180 days after*
6 *the date on which final regulations are promulgated*
7 *pursuant to section 4(c); and*

8 (2) *any advertising, promotion, point-of-sale ma-*
9 *terial or voice prompt regarding a prepaid calling*
10 *card that is disseminated beginning 180 days after*
11 *the date on which final regulations are promulgated*
12 *pursuant to section 4(c).*

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

14 *After the date on which final regulations are promul-*
15 *gated pursuant to section 4(c), no State or political subdivi-*
16 *sion of a State may establish or continue in effect any pro-*
17 *vision of law that contains requirements regarding disclo-*
18 *tures to be printed on prepaid calling cards or packaging*
19 *unless such requirements are identical to the requirements*
20 *of section 3.*

21 **SEC. 8. STUDIES.**

22 (a) *GAO STUDY.*—*Beginning 2 years after the date*
23 *on which final regulations are promulgated pursuant to sec-*
24 *tion 4(c), the Comptroller General shall conduct a study*
25 *of the effectiveness of this Act and the disclosures required*

1 *under this Act and shall submit a report of such study to*
2 *Congress not later than 3 years after the date of enactment*
3 *of this Act.*

4 **(b) FTC STUDY.**—*The Commission shall, in consulta-*
5 *tion with the Federal Communications Commission, con-*
6 *duct a study of the extent to which the business practices*
7 *of the prepaid calling card industry intended to be ad-*
8 *dressed by this Act exist in the prepaid wireless industry*
9 *and shall submit a report of such study, including rec-*
10 *ommendations, if any, to Congress not later than 3 years*
11 *after the date of enactment of this Act.*

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