

111TH CONGRESS
1ST SESSION

S. 562

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

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2009

Mr. NELSON of Florida (for himself, Ms. SNOWE, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

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

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 “Prepaid Calling Card
5 Consumer Protection Act of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COMMISSION.—The term “Commission”
9 means the Federal Trade Commission.

1 (2) FEES.—

2 (A) IN GENERAL.—The term “fees” means
 3 all charges, fees, taxes, or surcharges, including
 4 connection, hang-up, service, payphone, and
 5 maintenance charges, which may be—

6 (i) required by State or Federal stat-
 7 ute or by regulation or order of the Com-
 8 mission or a State; or

9 (ii) permitted to be assessed by a
 10 State or Federal statute or by regulation
 11 or order of the Commission or a State.

12 (B) EXCLUSION.—The term “fees” does
 13 not include the applicable per unit or per-
 14 minute rate for the particular destination called
 15 by a consumer.

16 (3) INTERNATIONAL PREFERRED DESTINA-
 17 TION.—The term “international preferred destina-
 18 tion” means a specific international destination
 19 named on a prepaid telephone calling card or on the
 20 packaging material accompanying a prepaid tele-
 21 phone calling card.

22 (4) PREPAID TELEPHONE CALLING CARD.—

23 (A) IN GENERAL.—The terms “prepaid
 24 telephone calling card” and “card” mean—

1 (i) a card or similar device that allows
2 users to pay in advance for a specified
3 amount of calling, without regard to addi-
4 tional features, functions, or capabilities
5 available in conjunction with a prepaid
6 telephone calling service; or

7 (ii) any right of use purchased in ad-
8 vance for a sum certain linked to an access
9 number and authorization code that—

10 (I) enables a consumer to use a
11 prepaid telephone calling service; and

12 (II) is embodied on a card or
13 other physical object, or purchased by
14 an electronic or telephonic means
15 through which the purchaser obtains
16 access numbers and authorization
17 codes that are not physically located
18 on a card, its packaging, an Internet
19 website, or other promotional mate-
20 rials.

21 (B) EXCLUSION.—The terms “prepaid
22 telephone calling card” and “card” do not in-
23 clude cards or other rights of use that provide
24 access to—

1 (i) service provided for free, or at no
 2 additional charge as a promotional item
 3 accompanying a product or service pur-
 4 chased by a consumer; or

5 (ii) a wireless telecommunications
 6 service account with a wireless service pro-
 7 vider that the purchaser has a preexisting
 8 relationship with or establishes a carrier
 9 customer relationship with via the pur-
 10 chase of a prepaid wireless telecommuni-
 11 cations service handset package.

12 (5) PREPAID TELEPHONE CALLING CARD DIS-
 13 TRIBUTOR.—

14 (A) IN GENERAL.—The term “prepaid
 15 telephone calling card distributor” means any
 16 person that—

17 (i) purchases prepaid telephone calling
 18 cards or services from a prepaid telephone
 19 calling service provider; and

20 (ii) sells, resells, issues, or distributes
 21 prepaid telephone calling cards to 1 or
 22 more distributors of such cards or to 1 or
 23 more retail sellers of such cards.

24 (B) EXCLUSION.—The term “prepaid tele-
 25 phone calling card distributor” does not include

1 any retail merchant or seller of prepaid tele-
2 phone calling cards exclusively engaged in
3 point-of-sale transactions with end-user cus-
4 tomers.

5 (6) PREPAID TELEPHONE CALLING SERVICE.—

6 (A) IN GENERAL.—The terms “prepaid
7 telephone calling service” and “service” mean
8 any real time voice communications service, re-
9 gardless of the technology or network utilized,
10 paid for in advance by a consumer, that allows
11 a consumer to originate voice telephone calls
12 through a local, long distance, or toll-free access
13 number and authorization code, whether manu-
14 ally or electronically dialed.

15 (B) EXCLUSION.—The terms “prepaid
16 telephone calling service” and “service” do not
17 include any service that provides access to a
18 wireless telecommunications service account if
19 the purchaser has a preexisting relationship
20 with the wireless service provider or establishes
21 a carrier-customer relationship via the purchase
22 of a prepaid wireless telecommunications service
23 handset package.

24 (7) PREPAID TELEPHONE CALLING SERVICE
25 PROVIDER.—The term “prepaid telephone calling

1 service provider” means any person providing pre-
 2 paid telephone calling service to the public using its
 3 own, or a resold, network offering real time voice
 4 communications service regardless of the technology
 5 utilized.

6 (8) WIRELESS TELECOMMUNICATIONS SERV-
 7 ICE.—The term “wireless telecommunications serv-
 8 ice” has the meaning given the term “commercial
 9 mobile service” in section 332(d) of the Communica-
 10 tions Act of 1934 (47 U.S.C. 332(d)).

11 **SEC. 3. REQUIRED DISCLOSURES OF PREPAID TELEPHONE**
 12 **CALLING CARDS OR SERVICES.**

13 (a) REQUIRED DISCLOSURE; RULEMAKING.—Not
 14 later than 180 days after the date of enactment of this
 15 Act, the Commission shall prescribe regulations that re-
 16 quire every prepaid telephone calling service provider or
 17 prepaid telephone calling card distributor to disclose the
 18 following information relating to the material terms and
 19 conditions of the prepaid telephone calling card or service:

20 (1) INFORMATION RELATING TO DOMESTIC
 21 INTERSTATE CALLS.—

22 (A) The number of calling units or minutes
 23 of domestic interstate calls provided by such
 24 card or service at the time of purchase; or

1 (B) the dollar value of such card or service
2 and the domestic interstate rate per-minute
3 provided by such card or service at the time of
4 purchase.

5 (2) INFORMATION RELATING TO INTER-
6 NATIONAL PREFERRED DESTINATIONS.—The appli-
7 cable calling unit or per-minute rates for each inter-
8 national preferred destinations served by such card
9 or service.

10 (3) INFORMATION RELATING TO INDIVIDUAL
11 INTERNATIONAL DESTINATIONS.—

12 (A) The applicable calling unit or per-
13 minute rates for each individual international
14 destinations served by such card or service.

15 (B) That the applicable calling unit or per-
16 minute rates for each individual international
17 destination may be obtained through the pre-
18 paid telephone calling card provider's toll-free
19 customer service number and Internet website.

20 (C) Whether those rates fluctuate.

21 (4) OTHER MATERIAL TERMS AND CONDI-
22 TIONS.—Other material terms and conditions per-
23 taining to the use of such card or service, includ-
24 ing—

25 (A) the amount and frequency of all fees;

1 (B) a description of applicable policies re-
 2 relating to refund, recharge, decrement, or expi-
 3 ration; and

4 (C) limitations, if any, on the use or period
 5 of time for which the displayed, promoted, or
 6 advertised minutes or rates will be available to
 7 the customer.

8 (5) SERVICE PROVIDER INFORMATION.—Infor-
 9 mation relating to the service provider, including—

10 (A) the name of the service provider;

11 (B) the address of such service provider,
 12 which shall be made available on the provider's
 13 website (if any), together with the uniform re-
 14 source locator address thereof; and

15 (C) a toll-free telephone number that may
 16 be used to contact the customer service depart-
 17 ment of such service provider, together with the
 18 hours of service of the customer service depart-
 19 ment.

20 (b) CLEAR AND CONSPICUOUS DISCLOSURE OF RE-
 21 QUIRED INFORMATION AND LANGUAGE REQUIRE-
 22 MENTS.—In prescribing regulations under subsection (a),
 23 the Commission shall require, at a minimum, that—

24 (1) the required disclosures (other than the dis-
 25 closure required by subsection (a)(3)(A)) for prepaid

1 telephone calling cards are printed in plain English
2 in a clear and conspicuous location on the card, or
3 on the packaging of the card, so as to be plainly visi-
4 ble to a consumer at the point of sale;

5 (2) the required disclosures (other than the dis-
6 closure required by subsection (a)(3)(B)) for prepaid
7 telephone calling service that consumers access and
8 purchase via the Internet are displayed in plain
9 English in a clear and conspicuous location on the
10 Internet site from which the consumer purchases
11 such service, and include conspicuous instructions
12 and directions to any link to such disclosures;

13 (3) the required disclosures (other than the dis-
14 closure required by subsection (a)(3)(A)) for adver-
15 tising and other promotional materials are printed
16 on any advertising for the prepaid telephone calling
17 card or service used at the point of sale, including
18 on any signs for display by retail merchants, dis-
19 played on any Internet site used to promote mate-
20 rial, and on any other promotional material used at
21 the point of sale that is prepared by, or at the direc-
22 tion of, any person that is subject to the require-
23 ments of this Act;

24 (4) if a language other than English is pre-
25 dominantly used on a prepaid telephone calling card

1 or its packaging, or in the point-of-sale advertising,
2 Internet advertising, or promotional material of a
3 prepaid telephone calling card or prepaid telephone
4 calling service, then the required disclosures are pro-
5 vided in that language on such card, packaging, ad-
6 vertisement, or promotional material in the same
7 manner as if they were provided in English; and

8 (5) if a language other than English is pre-
9 dominantly used on a prepaid telephone calling card
10 or its packaging, or in the point-of-sale advertising,
11 or promotional materials of a prepaid telephone call-
12 ing card or prepaid telephone calling service, then
13 the customer service department reached via a toll-
14 free number must provide basic customer support
15 (per-minute rate or equivalent calling units for each
16 destination, fees, and terms of service) in that lan-
17 guage.

18 (c) IMPLEMENTING REGULATIONS.—The Commis-
19 sion may, in accordance with section 553 of title 5, United
20 States Code, prescribe such other disclosure regulations
21 as the Commission determines are necessary to implement
22 this section.

1 **SEC. 4. UNLAWFUL CONDUCT RELATED TO PREPAID TELE-**
2 **PHONE CALLING CARDS.**

3 (a) **PREPAID TELEPHONE CALLING SERVICE PRO-**
4 **VIDER.**—It shall be unlawful for any prepaid telephone
5 calling service provider to do any of the following:

6 (1) **UNDISCLOSED FEES AND CHARGES.**—To
7 assess or deduct from the balance of a prepaid tele-
8 phone calling card any fee or other amount for use
9 of the prepaid telephone calling service, except—

10 (A) the per-minute rate or value for each
11 particular destination called by the consumer;
12 and

13 (B) fees that are disclosed in accordance
14 with the regulations prescribed under section 3.

15 (2) **MINUTES AND RATES AS PROMOTED AND**
16 **ADVERTISED.**—With respect to a prepaid telephone
17 calling card for a service of the prepaid telephone
18 calling service provider, to provide fewer minutes
19 than the number of minutes promoted or advertised,
20 or to charge a higher per-minute rate to a specific
21 domestic destination or international preferred des-
22 tination than the per-minute rate to that specific
23 destination promoted or advertised, on—

24 (A) the prepaid telephone calling card;

25 (B) any point-of-sale material relating to
26 the card that is prepared by or at the direction

1 of the prepaid telephone calling card service
2 provider; or

3 (C) other advertising related to the card or
4 service.

5 (3) MINUTES ANNOUNCED, PROMOTED, AND
6 ADVERTISED THROUGH VOICE PROMPTS.—To pro-
7 vide fewer minutes than the number of minutes an-
8 nounced, promoted, or advertised through any voice
9 prompt given by the prepaid telephone calling service
10 provider to a consumer at the time the consumer
11 places a call to a dialed domestic destination or
12 international preferred destination with a prepaid
13 telephone calling card or service.

14 (4) EXPIRATION.—To provide, sell, resell, issue,
15 or distribute a prepaid telephone calling card that
16 expires—

17 (A) before the date that is 1 year after the
18 date on which such card is first used; or

19 (B) in the case of a prepaid telephone call-
20 ing card or service that permits a consumer to
21 purchase additional usage minutes or add addi-
22 tional value to the card, before the date that is
23 1 year after the date on which the consumer
24 last purchased additional usage minutes or
25 added additional value to the card.

1 (5) CHARGES FOR UNCONNECTED CALLS.—To
2 assess any fee or charge for any unconnected tele-
3 phone call. For purposes of this paragraph, a tele-
4 phone call shall not be considered connected if the
5 person placing the call receives a busy signal or if
6 the call is unanswered.

7 (6) MAXIMUM BILLING INCREMENTS.—To as-
8 sess or deduct a per-minute rate (or equivalent call-
9 ing unit) in an increment greater than 1 minute of
10 calling time for calls that are less than 1 full
11 minute. It shall not be a violation of this section for
12 a prepaid telephone calling service provider to de-
13 duct different destination-specific rates (or equiva-
14 lent calling units) for each full minute of calling
15 time in accordance with properly disclosed rates or
16 other terms and conditions.

17 (b) PREPAID TELEPHONE CALLING CARD DIS-
18 TRIBUTOR.—It shall be unlawful for any prepaid telephone
19 calling card distributor to do any of the following:

20 (1) UNDISCLOSED FEES AND CHARGES.—To
21 assess or deduct from the balance of a prepaid tele-
22 phone calling card any fee or other amount for use
23 of the prepaid telephone calling service, except—

1 (A) the per-minute rate or value for each
2 particular destination called by the consumer;
3 and

4 (B) fees that are disclosed as required by
5 regulations prescribed under section 3.

6 (2) MINUTES AS PROMOTED AND ADVER-
7 TISED.—To sell, resell, issue, or distribute any pre-
8 paid telephone calling card that the distributor
9 knows provides fewer minutes than the number of
10 minutes promoted or advertised, or a higher per-
11 minute rate to a specific destination than the per-
12 minute rate to that specific destination promoted or
13 advertised, on—

14 (A) the prepaid telephone calling card that
15 is prepared by or at the direction of the prepaid
16 telephone calling card service distributor;

17 (B) any point of sale material relating to
18 the card that is prepared by or at the direction
19 of the prepaid telephone calling card service dis-
20 tributor; or

21 (C) other advertising relating to the card
22 or service.

23 (3) MINUTES ANNOUNCED, PROMOTED, OR AD-
24 VERTISED THROUGH VOICE PROMPTS.—To sell, re-
25 sell, issue, or distribute a prepaid telephone calling

1 card that such distributor knows provides fewer min-
2 utes than the number of minutes announced, pro-
3 moted, or advertised through any voice prompt given
4 to a consumer at the time the consumer places a call
5 to a dialed destination with the prepaid telephone
6 calling card or service.

7 (4) EXPIRATION.—To provide, sell, resell, issue,
8 or distribute a prepaid telephone calling card that
9 expires—

10 (A) before the date that is 1 year after the
11 date on which such card is first used; or

12 (B) in the case of a prepaid telephone call-
13 ing card that permits a consumer to purchase
14 additional usage minutes or add additional
15 value to the card or service, before the date
16 that is 1 year after the date on which the con-
17 sumer last purchased additional usage minutes
18 or added additional value to the card or service.

19 (c) LIABILITY.—A prepaid telephone calling service
20 provider or a prepaid telephone calling card distributor
21 may not avoid liability under this section by stating that
22 the displayed, announced, promoted, or advertised min-
23 utes, or the per-minute rate to a specific destination, are
24 subject to fees or charges. A prepaid calling service pro-
25 vider or prepaid calling distributor shall not be liable for

1 the disclosure of lawful fees, charges, or limitations made
2 pursuant to regulations prescribed by the Commission
3 under section 3, including lawful conditions of use.

4 (d) IMPLEMENTING REGULATIONS.—The Commis-
5 sion may, in accordance with section 553 of title 5, United
6 States Code, prescribe such regulations as the Commission
7 determines are necessary to implement this section.

8 **SEC. 5. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
9 **SION.**

10 (a) UNFAIR AND DECEPTIVE ACT OR PRACTICE.—
11 Notwithstanding any other provision of law, a violation of
12 a regulation prescribed under section 3 or the commission
13 of an unlawful act proscribed under section 4 shall be
14 treated as a violation of a rule defining an unfair or decep-
15 tive act or practice prescribed under section 18(a)(1)(B)
16 of the Federal Trade Commission Act (15 U.S.C.
17 57a(a)(1)(B)).

18 (b) AUTHORITY OF THE COMMISSION.—The Commis-
19 sion shall enforce this Act in the same manner and by
20 the same means as though all applicable terms and provi-
21 sions of the Federal Trade Commission Act were incor-
22 porated into and made a part of this Act. Notwithstanding
23 section 5(a)(2) of the Federal Trade Commission Act (15
24 U.S.C. 45(a)(2)), communications common carriers shall
25 be subject to the jurisdiction of the Commission exclusively

1 for the purposes of this Act, and section 5(a)(2) shall not
2 be otherwise affected.

3 (c) FEDERAL COMMUNICATIONS COMMISSION AU-
4 THORITY.—

5 (1) To the extent that the Federal Trade Com-
6 mission has authority under this Act with respect to
7 prepaid calling cards, prepaid calling card providers
8 and prepaid calling card distributors, the Federal
9 Communications Commission shall not exercise any
10 authority that it may otherwise have with respect to
11 such cards, providers and distributors.

12 (2) Except as provided in paragraph (1), noth-
13 ing in this Act affects the authority of the Federal
14 Communications Commission with respect to such
15 prepaid calling card providers and distributors.

16 **SEC. 6. STATE ENFORCEMENT.**

17 (a) IN GENERAL.—

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

1 behalf of the residents of that State in a district
 2 court of the United States of appropriate jurisdic-
 3 tion—

4 (A) to enjoin that practice;

5 (B) to enforce compliance with this Act;

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

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

11 (2) NOTICE TO FEDERAL TRADE COMMIS-
 12 SION.—

13 (A) IN GENERAL.—Before filing an action
 14 under paragraph (1), the attorney general of a
 15 State, a State utility commission, or an author-
 16 ized State consumer protection agency shall
 17 provide to the Commission—

18 (i) written notice of the action; and

19 (ii) a copy of the complaint for the ac-
 20 tion.

21 (B) EXEMPTION.—

22 (i) IN GENERAL.—Subparagraph (A)
 23 shall not apply to the filing of an action
 24 under paragraph (1) if the attorney gen-
 25 eral of a State, a State utility commission,

1 or an authorized State consumer protection
 2 agency filing such action determines that it
 3 is not feasible to provide the notice de-
 4 scribed in subparagraph (A) before the fil-
 5 ing of the action.

6 (ii) NOTIFICATION.—In an action de-
 7 scribed in clause (i), the attorney general
 8 of a State, a State utility commission, or
 9 an authorized State consumer protection
 10 agency shall provide notice and a copy of
 11 the complaint to the Commission at the
 12 time the action is filed.

13 (b) INTERVENTION BY FEDERAL TRADE COMMIS-
 14 SION.—

15 (1) IN GENERAL.—Upon receiving notice under
 16 subsection (a)(2), the Commission may intervene in
 17 the action that is the subject of such notice.

18 (2) EFFECT OF INTERVENTION.—If the Com-
 19 mission intervenes in an action under subsection (a),
 20 the Commission may—

21 (A) be heard with respect to any matter
 22 that arises in that action; and

23 (B) file a petition for appeal.

24 (c) CONSTRUCTION.—Nothing in this Act may be
 25 construed to prevent an attorney general of a State, a

1 State utility commission, or an authorized State consumer
2 protection agency from exercising the powers conferred on
3 the attorney general, a State utility commission, or an au-
4 thorized State consumer protection agency by the laws of
5 that State—

6 (1) to conduct investigations;

7 (2) to administer oaths or affirmations;

8 (3) to compel the attendance of witnesses or the
9 production of documentary and other evidence;

10 (4) to enforce any State consumer protection
11 laws of general applicability; or

12 (5) to establish or utilize existing administrative
13 procedures to enforce the provisions of the law of
14 such State.

15 (d) VENUE; SERVICE OF PROCESS.—

16 (1) VENUE.—Any action brought under sub-
17 section (a) shall be brought in the district court of
18 the United States that meets applicable require-
19 ments relating to venue under section 1391 of title
20 28, United States Code.

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

24 (A) is an inhabitant; or

25 (B) may be found.

1 **SEC. 7. APPLICATION.**

2 The regulations prescribed under section 3 and the
3 provisions of sections 3 and 4 shall apply to any prepaid
4 telephone calling card issued or placed into the stream of
5 commerce, and to any advertisement, promotion, point-of-
6 sale material or voice prompt regarding a prepaid tele-
7 phone calling service that is created or disseminated more
8 than 120 days after the date on which the regulations pre-
9 scribed under section 3 are published in the Federal Reg-
10 ister.

11 **SEC. 8. EFFECT ON STATE LAW.**

12 (a) PREEMPTION.—

13 (1) IN GENERAL.—Except as otherwise pro-
14 vided in this section, this Act preempts the laws of
15 any State or political subdivision thereof to the ex-
16 tent that such laws are inconsistent with this Act,
17 or the rules, regulations, or orders issued by the
18 Commission under this Act.

19 (2) EXCEPTIONS.—This Act shall not preempt
20 any provision of State law or enforcement action
21 that provides additional enforcement protection to
22 consumers of prepaid telephone calling cards if such
23 provision of law or enforcement action—

24 (A) imposes higher fines or more punitive
25 civil or criminal remedies, including injunctive
26 relief, for any violation of this Act, or the rules,

1 regulations, or orders issued by the Commission
2 under this Act; or

3 (B)(i) relates to terms, conditions, or
4 issues that are not addressed by this Act, or by
5 the rules, regulations, or orders issued by the
6 Commission under this Act; and

7 (ii) is not determined by the Commission
8 to be inconsistent with the public interest.

9 (b) PETITIONS CONCERNING PREEMPTION.—

10 (1) PETITIONS BY PROVIDERS.—

11 (A) AUTHORITY TO PETITION.—A prepaid
12 telephone calling card provider or a prepaid
13 telephone calling card distributor may submit a
14 petition to the Commission to challenge a State
15 law or regulation—

16 (i) as inconsistent with this Act or the
17 rules, regulations, or orders issued by the
18 Commission under this Act; or

19 (ii) as inconsistent with the public in-
20 terest, if the measure relates to terms, con-
21 ditions, or issues that are not addressed by
22 this Act, or the rules, regulations, or or-
23 ders issued by the Commission under this
24 Act.

1 (B) DEADLINE FOR COMMISSION AC-
2 TION.—Within 90 days after receiving a peti-
3 tion under subparagraph (A), the Commission
4 shall issue a final determination on the issues
5 presented in the petition. The Commission may
6 issue an order staying the effectiveness of any
7 State law or regulation that is the subject of
8 the petition during, but for no longer than,
9 such 90-day period.

10 (2) PROCEEDINGS ON UNADDRESSED ISSUES.—
11 If, on the basis of any petition under paragraph (1),
12 the Commission determines that a term, condition,
13 or issue is not addressed by sections 3 or 4 of this
14 Act, or the rules issued by the Commission under
15 this section 3 of this Act, the Commission shall,
16 within 180 days after the date of such determina-
17 tion, conduct an inquiry or other proceeding to de-
18 termine whether the Commission should, in the pub-
19 lic interest, promulgate a rule, pursuant to section
20 3(c), to address such term, condition, or issue.

21 **SEC. 9. GAO STUDY.**

22 Beginning 1 year after the date on which final regula-
23 tions are promulgated pursuant to section 3(a), the Comp-
24 troller General shall conduct a study of the effectiveness
25 of this Act and the disclosures required under this Act

1 and shall submit a report of such study to the House Com-
2 mittee on Energy and Commerce and the Senate Com-
3 mittee on Commerce, Science, and Transportation no later
4 than 2 years after the date of enactment of this Act.

○