

CALLING CARD CONSUMER PROTECTION ACT

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JUNE 15, 2010.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. WAXMAN, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

[To accompany H.R. 3993]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3993) to require accurate and reasonable disclosure of the terms and conditions of prepaid telephone calling cards and services, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

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

**SEC. 2. DEFINITIONS.**

For purposes of this Act, the following definitions apply:

- (1) The term “Commission” means the Federal Trade Commission.
- (2) The term “prepaid calling card” has the meaning given the term “prepaid calling card” by section 64.5000(a) of the Federal Communications Commission’s regulations (47 C.F.R. 64.5000(a)). Such term shall also include calling cards that use VoIP service or a successor protocol. Such term shall also include an electronic or other mechanism that allows users to pay in advance for a specified amount of calling. Such term shall not include—
  - (A) calling cards or other rights of use that are provided for free or at no additional cost as a promotional item accompanying a product or service purchased by a consumer;
  - (B) any card, device, or other right of use, the purchase of which establishes a customer-carrier relationship with a provider of wireless telecommunications service or wireless hybrid service, or that provides access to a wireless telecommunications service or wireless hybrid service account wherein the purchaser has a pre-existing relationship with the wireless service provider; or
  - (C) payphone service, as that term is defined in section 276(d) of the Communications Act of 1934 (47 U.S.C. 276(d)).
- (3) The term “prepaid calling card provider” has the meaning given the term “prepaid calling card provider” by section 64.5000(b) of the Federal Communications Commission’s regulations (47 C.F.R. 64.5000(b)). Such term shall also include—
  - (A) a provider of a prepaid calling card that uses VoIP service or a successor protocol; and
  - (B) a provider of a prepaid calling card that allows users to pay in advance for a specified amount of minutes through an electronic or other mechanism.
- (4) The term “prepaid calling card distributor” means any entity or person that purchases prepaid calling cards from a prepaid calling card provider or another prepaid calling card distributor and sells, re-sells, issues, or distributes such cards to one or more distributors of such cards or to one or more retail sellers of such cards. Such term shall not include—
  - (A) any retail seller whose only activity with respect to the sale of prepaid calling cards is point-of-sale transactions with end-user customers; or
  - (B) any person whose only activity with respect to the sale of prepaid calling cards is the transport or delivery of such cards.
- (5) The term “wireless hybrid service” is defined as a service that integrates both commercial mobile radio service (as defined by section 20.3 of the Federal Communications Commission’s regulations (47 C.F.R. 20.3)) and VoIP service.
- (6) The term “VoIP service” has the meaning given the term “interconnected Voice over Internet protocol service” by section 9.3 of the Federal Communications Commission’s regulations (47 C.F.R. 9.3). Such term shall include any voice calling service that utilizes a voice over Internet protocol or any successor protocol in the transmission of the call.
- (7) The term “fees” includes all charges, fees, taxes, or surcharges applicable to a prepaid calling card that are—
  - (A) required by Federal law or regulation or order of the Federal Communications Commission or by the laws and regulations of any State or political subdivision of a State; or
  - (B) expressly permitted to be assessed under Federal law or regulation or order of the Federal Communications Commission or under the laws and regulations of any State or political subdivision of a State.
- (8) The term “additional charge” means any charge assessed by a prepaid calling card provider or prepaid calling card distributor for the use of a prepaid calling card, other than a fee or rate.
- (9) The term “international preferred destination” means one or more specific international destinations named on a prepaid calling card or on the packaging material accompanying a prepaid calling card.

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

(a) **REQUIRED DISCLOSURE.**—Any prepaid calling card provider or prepaid calling card distributor shall accurately disclose the following information relating to the terms and conditions of the prepaid calling card:

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

(2)(A) The number of domestic interstate minutes available from the prepaid calling card and the number of available minutes for all international preferred destinations served by the prepaid calling card at the time of purchase; or

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

(3)(A) The applicable per minute rate for all individual international destinations served by the card at the time of purchase; or

(B) a toll-free customer service number and website (if the provider maintains a website) where a consumer may obtain the information described in subparagraph (A) and a statement that such information may be obtained through such toll-free customer service number and website.

(4) The following terms and conditions pertaining to, or associated with, the use of the prepaid calling card:

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

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

(C) Any limitation on the use or period of time for which the promoted or advertised minutes or rates will be available.

(D) A description of the applicable policies relating to refund, recharge, and any predetermined decrease in value of such card over a period of time.

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

(b) **LOCATION OF DISCLOSURE AND LANGUAGE REQUIREMENT.**—

(1) **CLEAR AND CONSPICUOUS.**—

(A) **CARDS.**—The disclosures required under subsection (a) shall be printed in plain English language (except as provided in paragraph (2)) in a clear and conspicuous manner and location on the prepaid calling card, except as the Commission may provide under paragraph (3). If the card is enclosed in packaging that obscures the disclosures on the card, such disclosures also shall be printed on the outside packaging of the card.

(B) **ONLINE SERVICES.**—In addition to the requirements under subparagraph (A), in the case of a prepaid calling card that consumers purchase via the Internet, the disclosures required under subsection (a) shall be displayed in plain English language (except as provided in paragraph (2)) in a clear and conspicuous manner and location on the Internet website that the consumer must access prior to purchasing such card.

(C) **ADVERTISING AND OTHER PROMOTIONAL MATERIAL.**—Any advertising or other promotional material for a prepaid calling card that contains any representation, expressly or by implication, regarding the dollar value, the per minute rate, or the number of minutes provided by the card shall include in a clear and conspicuous manner and location all the disclosures described in subsection (a), except as the Commission may provide under paragraph (3).

(2) **FOREIGN LANGUAGES.**—If a language other than English is prominently used on a prepaid calling card, its packaging, or in point-of-sale advertising, Internet advertising, or promotional material for such card, the disclosures required by this section shall be disclosed in that language on such card, packaging, advertisement, or promotional material.

(3) **DIFFERENT LOCATION OF CERTAIN INFORMATION AS DETERMINED BY COMMISSION.**—Notwithstanding the requirements of paragraph (1), the Commission may determine that some of the information required to be disclosed pursuant to subsection (a) does not need to be disclosed on the prepaid calling card, advertising, or other promotional material, if the Commission by regulation—

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

(B) determines that—

(i) such disclosures provide for easy comprehension and comparison by consumers; and

(ii) the remaining disclosures on the prepaid calling card, advertising, or other promotional material, include sufficient information to allow a consumer to effectively inquire about or seek clarification of the services provided by the calling card.

(c) MINUTES ANNOUNCED, PROMOTED, OR ADVERTISED THROUGH VOICE PROMPTS.—Any information provided to a consumer by any voice prompt given to the consumer at the time the consumer uses the prepaid calling card relating to the remaining value of the calling card or the number of minutes available from the calling card shall be accurate, taking into account the application of the fees and additional charges required to be disclosed under subsection (a).

(d) DISCLOSURES REQUIRED UPON PURCHASE OF ADDITIONAL MINUTES.—If a prepaid calling card permits a consumer to add value to the card or purchase additional minutes after the original purchase of the prepaid calling card, any changes to the rates or additional charges required to be disclosed under subsection (a) shall apply only to the additional minutes to be purchased and shall be disclosed clearly and conspicuously to the consumer before the completion of such purchase.

(e) NO FALSE, MISLEADING, OR DECEPTIVE DISCLOSURES.—No prepaid calling card, packaging, advertisement, or other promotional material containing a disclosure required pursuant to this section shall contain any false, misleading, or deceptive representations relating to the terms and conditions of the prepaid calling card.

#### SEC. 4. FEDERAL TRADE COMMISSION AUTHORITY.

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

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

(c) RULEMAKING AUTHORITY.—Not later than 1 year after the date of enactment of this Act, the Commission shall, in consultation with the Federal Communications Commission and in accordance with section 553 of title 5, United States Code, issue regulations to carry out this Act. In promulgating such regulations, the Commission shall—

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

(2) give due consideration to the views of the Federal Communications Commission with regard to matters for which that Commission has particular expertise and authority and shall take into consideration the views of States.

In promulgating such regulations, the Commission may prescribe requirements concerning the order, format, presentation, and design of disclosures required by this Act and may establish and require the use of uniform terms, symbols, or categories to describe or disclose fees and additional charges, if the Commission finds that such requirements will assist consumers in making purchasing decisions and effectuate the purposes of this Act. The Commission shall not issue regulations that otherwise specify the rates, terms, and conditions of prepaid calling cards.

(d) SAVINGS PROVISION.—Nothing in this Act shall be construed to limit the authority of the Commission under any other provision of law. Except to the extent expressly provided in this Act, nothing in this Act shall be construed to alter or affect the exemption for common carriers provided by section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)). Nothing in this Act is intended to limit the authority of the Federal Communications Commission.

(e) COORDINATION.—If the Federal Communications Commission initiates a rulemaking proceeding to establish requirements relating to the disclosure of terms and conditions of prepaid calling cards, the Federal Communications Commission shall coordinate with the Federal Trade Commission to ensure that any such requirements are not inconsistent with the requirements of this Act and the regulations issued under subsection (c).

#### SEC. 5. STATE ENFORCEMENT.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State, a State utility commission, or other consumer protection agency has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is pro-

hibited under this Act, the State utility commission or other consumer protection agency, if authorized by State law, or the State, as *parens patriae*, may bring a civil action on behalf of the residents of that State in a district court of the United States of appropriate jurisdiction, or any other court of competent jurisdiction to—

- (A) enjoin that practice;
- (B) enforce compliance with this Act;
- (C) obtain damage, restitution, or other compensation on behalf of residents of the State; or
- (D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE TO THE COMMISSION.—

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

- (i) written notice of the action; and
- (ii) a copy of the complaint for the action.

(B) EXEMPTION.—

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

(ii) NOTIFICATION.—In an action described in clause (i), the State shall provide notice and a copy of the complaint to the Commission at the same time as the State files the action.

(b) INTERVENTION BY COMMISSION.—

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

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

- (A) to be heard with respect to any matter that arises in that action;
- (B) to remove the action to the appropriate United States District Court; and
- (C) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall be construed to prevent an attorney general of a State, a State utility commission, or other consumer protection agency authorized by State law from exercising the powers conferred on the attorney general or other appropriate official by the laws of that State to—

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

(d) ACTION BY THE COMMISSION MAY PRECLUDE STATE ACTION.—In any case in which an action is instituted by or on behalf of the Commission for violation of this Act, or any regulation issued under this Act, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of this Act or regulation.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

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

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

**SEC. 6. APPLICATION.**

This Act shall apply to—

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

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

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

After the date on which final regulations are promulgated pursuant to section 4(c), no State or political subdivision of a State may establish or continue in effect any provision of law that contains requirements regarding disclosures to be printed

on prepaid calling cards or packaging unless such requirements are identical to the requirements of section 3.

**SEC. 8. STUDIES.**

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

(b) **FTC STUDY.**—The Commission shall, in consultation with the Federal Communications Commission, conduct a study of the extent to which the business practices of the prepaid calling card industry intended to be addressed by this Act exist in the prepaid wireless industry and shall submit a report of such study, including recommendations, if any, to Congress not later than 3 years after the date of enactment of this Act.

**PURPOSE AND SUMMARY**

H.R. 3993 was introduced on November 3, 2009, by Rep. Eliot L. Engel (D-NY). H.R. 3993 is intended to prevent fraud and abuse in the prepaid calling card industry and to provide consumers with accurate and understandable information about the rates, fees, terms, and conditions associated with particular cards.

**BACKGROUND AND NEED FOR LEGISLATION**

The prepaid calling card market is a large and growing industry. The cards are appealing because they allow the purchaser to call another phone, even overseas, from anywhere in the United States without committing to a long term relationship with a phone company. Also, they often offer consumers significantly reduced per minute rates. In 2007, American consumers spent roughly \$4 billion dollars on these cards.<sup>1</sup> These cards are generally marketed to particular groups of consumers, including immigrants, college students, and military personnel.<sup>2</sup> For many immigrants living in the U.S., the prepaid calling card is the primary method for staying in touch with family abroad.<sup>3</sup>

Unfortunately, the prepaid calling card market is permeated by fraudulent and deceptive practices. Studies have found that many of the prepaid calling cards sold in the marketplace today fail to deliver the full number of advertised minutes.<sup>4</sup> In 2007, the Hispanic Institute conducted a study of prepaid calling cards to determine what percentage of minutes consumers could expect to receive from the standard prepaid calling card.<sup>5</sup> On average, the study found that consumers could expect to receive only 60% of the minutes promised on the card.<sup>6</sup> Moreover, of the 45 cards tested, eight cards provided less than half of the minutes promised and seven cards failed to produce any minutes at all.<sup>7</sup> Similarly, the Federal Trade Commission (FTC) reviewed consumer complaints in this

<sup>1</sup>Prepaid phone card industry under attack, MSNBC.com (Oct. 23, 2008) (online at <http://www.msnbc.msn.com/id/27327684>).

<sup>2</sup>Mark E. Budnitz, Martina Rojo, and Julia Marlowe, Deceptive Claims for Prepaid Telephone Cards and the Need for Regulation, 19 Loyola Consumer L. Rev. 1 (2006).

<sup>3</sup>Talk Isn't So Cheap on a Phone Card, Business Week (July 23, 2007) (online at [http://www.businessweek.com/magazine/content/07\\_30/b4043079.htm](http://www.businessweek.com/magazine/content/07_30/b4043079.htm)).

<sup>4</sup>Fraud plagues prepaid calling card market, Associated Press (Oct. 6, 2008) (online at <http://www.msnbc.msn.com/id/27052474/>).

<sup>5</sup>The Hispanic Institute, Calling Card Verification Test Plan (2007) (online at <http://thehispanicinstitute.net/files/Test%20Plan.pdf>).

<sup>6</sup>The Hispanic Institute, Facts & Figures (online at <http://thehispanicinstitute.net/research/callingcard/scamfacts>).

<sup>7</sup>The Hispanic Institute, Calling Card Verification Test Plan (2007) (online at <http://thehispanicinstitute.net/files/Test%20Plan.pdf>).

area and noted a range of problems associated with prepaid calling cards. The FTC observed that many prepaid calling cards contain hidden charges, such as connection fees, maintenance fees, disconnect fees, and inconsistent rate-per-minute surcharges, which result in cards that do not produce the number of minutes promised to the consumer at the point of sale.<sup>8</sup> In short, consumers often find that because of misleading information, inconsistent claims, and buried disclosures, they receive significantly less than they bargained for, with little recourse.

To address these issues, H.R. 3993 would require calling card providers and distributors to clearly and conspicuously disclose all relevant and applicable information to consumers. These disclosures would include contact information for the provider, the number of minutes available or the dollar value of the card. Entities also would be required to disclose any applicable fees, additional charges, limitations, changes in value, or expiration dates associated with the use of the card. In some cases, these disclosures also would be required to appear on calling card advertisements and voice prompts. The bill would provide the FTC with the authority to enforce these requirements and to promulgate regulations to carry out the Act. States also are authorized to enforce the Act.

#### LEGISLATIVE HISTORY

The Calling Card Consumer Protection Act was first introduced on August 3, 2007, by Rep. Engel in the 110th Congress as H.R. 3402. The House passed the bill under suspension of the rules by a voice vote on September 25, 2008.

In the 111th Congress, Rep. Engel re-introduced the Calling Card Consumer Protection Act on November 3, 2009, and H.R. 3993 was referred to the Committee on Energy and Commerce. The bill was referred to the Subcommittee on Commerce, Trade, and Consumer Protection on November 4, 2010, and the Subcommittee held a legislative hearing to examine the bill on December 3, 2009. Testimony was heard from witnesses representing the Division of Marketing Practices of the FTC; the National Consumer League; the New York State Public Service Commission as a member of the National Association of Regulatory Utility Commissioners; the United African Organization; and the American Wholesale Marketers Association.

#### COMMITTEE CONSIDERATION

On March 24, 2010, the Subcommittee met in open markup session to consider H.R. 3993. The Subcommittee approved a manager's amendment by Mr. Rush and subsequently forwarded H.R. 3993, amended, favorably to the full Committee by a voice vote.

On May 5, 2010, the Committee on Energy and Commerce met in open markup session to consider H.R. 3993 as approved by the Subcommittee. The Committee agreed to a manager's amendment to the bill by a voice vote. The Committee subsequently ordered H.R. 3993 favorably reported to the House, amended, by a voice vote.

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<sup>8</sup>Federal Trade Commission, *Buying Time: The Facts About Pre-Paid Phone Cards* (Mar. 2008) (online at <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro04.shtm>).

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. There were no record votes taken during consideration and passage of H.R. 3993. The Committee agreed to a motion by Mr. Waxman to order H.R. 3993 favorably reported to the House, amended, by a voice vote.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report, including those regarding fraud and deceptive practices in the prepaid calling card market.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority and revenues regarding H.R. 3993 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee finds that H.R. 3993 would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 3993 are reflected in the descriptive portions of this report, including the need to provide consumers with clear and conspicuous information regarding prepaid calling cards.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the constitutional authority for H.R. 3993 is provided in Article I, section 8, clauses 3 and 18 of the Constitution of the United States.

## EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 3993 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

## ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b) of the Federal Advisory Committee Act.

## APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public



services and accommodations. H.R. 3993 requires commercial entities that provide or distribute calling cards to disclose the terms, conditions, and fees related to the prepaid calling cards. This bill does not relate to employment or access to public services and accommodations in the legislative branch.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office pursuant to Section 423 of the Congressional Budget and Impoundment Control Act of 1974 (as amended by section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4).

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate of H.R. 3993 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 3993 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JUNE 7, 2010.

Hon. HENRY A. WAXMAN,  
*Chairman, Committee on Energy and Commerce,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3993, the Calling Card Consumer Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 3993—Calling Card Consumer Protection Act*

H.R. 3993 would establish new requirements for information that must be displayed on prepaid telephone calling cards, on their packaging, and in advertisements for the cards. The bill would require the Federal Trade Commission (FTC) to develop regulations within one year of enactment that would specify the information to be displayed, including the company name, the number of minutes available, the dollar amount of the card, and the expiration date. Within three years of enactment of H.R. 3993, the FTC and the Government Accountability Office would be required to report to the Congress on the results of studies on the business practices of the calling card industry and the effectiveness of the disclosures required by the bill.

Based on information from the FTC, CBO estimates that implementing the bill's requirements would cost about \$1 million over

the 2011–2015 period, assuming appropriation of the necessary amounts, to cover the costs to write and enforce new regulations and prepare reports. Enacting H.R. 3993 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

H.R. 3993 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would preempt laws in at least four states that require disclosures to be printed on calling cards. The bill also would impose notification requirements and limitations on State Attorneys General, utility commissions, and consumer protection agencies. Because the limits on state authority would not require the expenditure of funds and because the notification requirements would result in minimal additional spending, CBO estimates that the costs of the mandates would be small and would not exceed the threshold established in UMRA (\$70 million in 2010, adjusted annually for inflation).

By requiring the providers of prepaid calling cards to disclose information about the provider and the terms and conditions of the service on each calling card, its packaging, and advertisements, the bill would impose a private-sector mandate as defined in UMRA. According to industry sources, most providers already adhere to the requirements in the bill as part of their standard business practice. Further, those sources indicate that the incremental cost to providers that do not meet the standards in the bill would be small. Therefore, CBO estimates that the aggregate cost of the mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie (for federal costs), Elizabeth Cove Delisle (for the state and local impact), and Sam Wice (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

Section 1 provides that the Act may be cited as the “Calling Card Consumer Protection Act”.

##### *Section 2. Definitions*

Section 2 contains the definitions that apply to the act.

Paragraph (1) identifies “Commission” as referring to the Federal Trade Commission (FTC).

Paragraph (2) provides that “prepaid calling card” has the meaning given the term by Federal Communication Commission (FCC) regulation (47 C.F.R. 64.5000(a)). The term also includes Voice over Internet Protocol (VoIP) and electronic or other mechanisms that would allow a user to pay in advance for a specified amount of calling. The term excludes calling cards that are provided to consumers free of charge, prepaid wireless service, and payphone services as defined by the Communications Act of 1934.

Paragraph (3) incorporates the definition of “prepaid calling card provider” as set forth in FCC regulation (47 C.F.R. 64.5000(b)), and

also includes providers that utilize VoIP, as well as providers who allow their customers to pay in advance for their service electronically or otherwise.

Paragraph (4) defines “prepaid calling card distributor” as an entity that purchases prepaid calling cards from a prepaid calling card provider or other distributor and then sells or resells those cards to other distributors or retail sellers. The term excludes any retail seller engaged solely in point-of-sale transactions of prepaid calling cards and any distributor who merely transports or delivers such cards.

Paragraph (5) defines “wireless hybrid service” as a service that integrates both commercial mobile radio service (as defined in FCC regulation 47 C.F.R. 20.3) and VoIP service.

Paragraph (6) defines the term “VoIP service” to have the same meaning as the term “interconnected Voice over Internet Protocol service” in 47 C.F.R. 9.3. It also includes any voice calling service that utilizes VoIP or any successor protocol in the transmission of the call.

Paragraph (7) defines “fees” as referring to all charges, fees, taxes, or surcharges applied to a prepaid calling card that either are required or expressly permitted by federal, state, or local laws and regulations.

Paragraph (8) defines “additional charge” as any charge assessed by a prepaid calling card provider or prepaid calling card distributor on a calling card that is neither a fee nor a rate.

Paragraph (9) defines the term “international preferred destination” as one or more specific international destinations named either on a prepaid calling card or on the accompanying packaging materials.

### *Section 3. Required disclosures of prepaid calling cards*

Section 3(a) requires prepaid calling card providers and prepaid calling card distributors to accurately disclose certain information relating to the terms and conditions of the prepaid calling card. Required disclosures include: the name of and contact information for the provider; information about the number of available minutes at the time of purchase or the dollar value of the card with the applicable per minute rates at the time of purchase; any applicable fees, additional charges, limitations of use, refunds or decreases in card value; and expiration dates associated with the use of the prepaid calling card.

Section 3(b) requires that the disclosures must be clear and conspicuous and must be located on the prepaid calling card unless the FTC determines otherwise through rulemaking. Section 3(b) also requires clear and conspicuous disclosures on Web sites that sell calling cards, as well as on advertising and promotional materials that contain any representation regarding the card’s dollar value, per minute rate, or the number of minutes. In addition, if a language other than English is used on a prepaid calling card, its packaging, or certain advertising or promotional materials, the disclosures required under section 3(a) must also be in that language. Finally, section 3(b) provides the FTC with the flexibility to require shorter disclosures on calling cards and advertisements or other promotional materials, but not on Web sites that sell calling cards.

Section 3(c) requires that any information provided to consumers by way of voice prompts concerning the remaining value of the card or the number of minutes available, must be accurate and take into account the various fees and charges associated with the card.

Section 3(d) provides that if the rates change or additional charges are imposed when a consumer purchases additional minutes or adds value to a prepaid calling card, such rate changes or additional charges shall only apply to the additional minutes being purchased. In addition, the new rates or additional charges must be clearly and conspicuously disclosed to the consumer before the completion of the purchase.

Section 3(e) prohibits false, misleading, or deceptive representations about the prepaid calling card terms and conditions on any calling card, packaging, advertisement, or other promotional material containing a disclosure required by the Act.

#### *Section 4. Federal Trade Commission authority*

Section 4(a) states that a violation of section 3 shall be treated as a violation of a rule defining an unfair or deceptive act or practice under section 18(a)(1)(b) of the FTC Act (15 U.S.C. 57a(a)(1)(b)).

Section 4(b) provides the FTC with authority to enforce the Act in the same manner and by the same means as though the Act incorporated the FTC Act and with jurisdiction over common carriers for purposes of this Act.

Section 4(c) provides the FTC with the authority to issue regulations pursuant to section 553 of title 5, United States Code. In promulgating regulations under this section, the FTC must take into consideration the need for clear disclosures and give due consideration to the views of the FCC and the states. In addition, the FTC is provided with the discretion to promulgate rules that prescribe requirements concerning the order, format, presentation, and design of disclosures required under this Act, as well as concerning the use of a common set of terms, symbols, and categories to describe a prepaid calling card's fees or charges. The FTC may not, however, issue any regulations that otherwise specify the rates, terms, and conditions of prepaid calling cards.

Section 4(d) provides that nothing in the Act is intended to limit the authority of the FTC or the FCC. Section 4(d) also states that except to the extent expressly provided in the Act, nothing in the Act shall be construed to alter or affect the exemption for common carriers set forth in the FTC Act.

Section 4(e) provides that if the FCC should initiate a rule-making proceeding to establish requirements relating to the terms and conditions of prepaid calling cards, the FCC must coordinate with the FTC to ensure consistency with the requirements of this Act and the regulations issued by the FTC.

#### *Section 5. State enforcement*

Section 5 gives the states the authority to enforce the provisions of this Act. Before bringing an action under the Act, a state must provide the FTC with written notice of the action and a copy of the complaint, unless the provision of notice is not feasible. In addition, the FTC is entitled to intervene in any action brought by a state under the Act.

*Section 6. Application*

Section 6 provides that the requirements of the Act apply to prepaid calling cards that are issued, and advertisements that are disseminated, 180 days after the date on which the FTC issues final regulations pursuant to section 4(c) of the Act.

*Section 7. Effect on state laws*

Section 7 preempts state laws that contain requirements regarding disclosures to be printed on prepaid calling cards or packaging unless the requirements are identical to the disclosure requirements in this Act.

*Section 8. Studies*

Section 8(a) requires Government Accountability Office to conduct a study on the effectiveness of the Act two years after the final regulations are promulgated by the FTC.

Section 8(b) requires the FTC, in consultation with the FCC, to conduct a study of the extent to which the business practices of the prepaid calling card industry intended to be addressed by this Act exist in the prepaid wireless industry.

## EXPLANATION OF AMENDMENTS

At Subcommittee markup of H.R. 3993, Chairman Rush offered a bipartisan manager's amendment that made several technical and substantive changes to the bill. The amendment excluded from the definition of "prepaid calling card distributor" certain retail merchants and persons who merely engage in the transport or delivery of prepaid calling cards. In addition, the amendment clarified that no calling card, packaging, advertisement, or other promotional material containing a disclosure required by the Act shall contain any false, misleading, or deceptive representation relating to the terms and conditions of the card. The amendment also clarified section 4(c) to ensure that the FTC has adequate rulemaking authority to develop disclosures that will protect consumers and allow users of prepaid calling cards to comparison shop. Furthermore, the amendment included a limited preemption section similar to the preemption language in the bill as it passed the House in the 110th Congress. Finally, the amendment required the FTC, in consultation with the FCC, to conduct a study of the prepaid wireless industry.

During the full Committee markup, Chairman Waxman offered a manager's amendment that made one technical change to the bill. The bipartisan amendment provides the FTC with flexibility to narrow the disclosures required to be placed on advertising and other promotional material. The FTC already has this flexibility under the bill with respect to prepaid calling cards.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes in existing federal law made by the bill, as reported.