

Testimony of

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of the
New York State Public Service Commission

on behalf of the

National Association of Regulatory Utility Commissioners

before the

United States House of Representatives
Subcommittee on Commerce, Trade, and Consumer Protection
of the Committee on Energy and Commerce

Hearing on Calling Card Consumer Protection Act (H.R. 3993)
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INTRODUCTION

Chairman Rush, Ranking Member Radanovich and members of the Subcommittee, I appreciate the opportunity to testify today on consumer protection in the prepaid calling card market. This is important legislation to your constituents. I thank you for calling this hearing and commend Representative Engel, the sponsors of the bill, and the members of this Subcommittee for your leadership on this important consumer issue.

My name is Patricia Acampora. I am a Commissioner of the New York State Public Service Commission and member of the National Association of Regulatory Utility Commissioners' (NARUC) Committee on Consumer Affairs. NARUC represents the State utility commissioners in each of your States (and in U.S. territories) focused on what is best for your State and your constituents. NARUC's members have oversight responsibilities for all the critical utility infrastructures - telecommunications, energy, and water. NARUC has not yet established a specific position on what the national standards for prepaid calling card services should be, but we do have well-established positions on specific issues raised by *The Calling Card Consumer Protection Act of 2009* (H.R. 3993). From NARUC's perspective, the modifications to H.R. 3993 from the version introduced during the last Congress are an improvement.

The bill improved in two key areas: First, it requires carriers to "accurately" disclose information on rates, terms and conditions. This focus on accuracy is a small but extremely important point. Full disclosure without accuracy is useless to consumers. Second, the bill

preserves existing and future State consumer protections on prepaid calling cards. *These changes are a win-win for consumers.*

As early as July 31, 2002, NARUC adopted a resolution indicating that “consumers of all telecommunications services” should “receive clear and complete information regarding rates, terms and conditions for services.” In July 2008, NARUC’s Committee on Consumer Affairs convened a panel on prepaid cards at our Summer Meetings in Portland, Oregon, which I moderated. The panel, which focused on existing State initiatives, was widely attended. Shortly before that panel discussion, NARUC did an informal survey finding that 18 of 30 responding member commissions currently handle complaints about calling-card services.¹ As a direct result of the panel, NARUC adopted a resolution that “supports action to improve consumer protection with regard to prepaid calling-card services, *“provided that State consumer protections and enforcement are not diminished”* at our Annual Meeting in November of 2008. (See Appendix A). As discussed in more detail below, the bill’s focus on accuracy, as well as the explicit reservation of State authority to enforce existing laws in Section 5 (c)(4) and to provide stronger protections outlined in Section 7, are on all fours with NARUC’s resolutions.

Fraud and Abuse in the Prepaid Calling-Card Market

Several entities are involved in providing calling-card services. Telephone companies are responsible for the telephone lines that carry calls. Resellers buy telephone minutes from the

¹ See, e.g., *Prepaid Calling Cards*, Georgia Governor’s Office of Consumer Affairs, available online at: http://www.georgia.gov/00/article/0,2086,5426814_39039081_39217721,00.html. (Accessed Nov. 30, 2009) See also, *Prepaid Calling Cards: A Buyer’s Guide*, Washington Utilities and Transportation Commission, available at: <http://wutc.wa.gov/webdocs.nsf/0492664a7ba7ed8b88256406006bf2ca/d2a27b466109a0008825679700810fd8!OpenDocument>.

telephone companies and “resell” them to end-users. Issuers set the card rates and provide toll-free customer service and access numbers. Finally, there are card distributors and retailers. Companies that fall into one or more of the first three categories often require certification from a NARUC member commission. But even where a State commission lacks authority, they frequently attempt to resolve complaints informally or cooperate with other State agencies, e.g., the State Attorneys General, on enforcement efforts.

Many Americans rely on prepaid calling cards to complete intrastate, interstate, and international calls. They are popular among travelers, students, people who frequently call overseas, and those who do not have a preferred long distance telephone company. The main victims of abuse in this market are minorities, immigrants, the elderly, low-income consumers, members of our Armed Services, and others either not inclined or not able to adopt other communications options.² It is widely acknowledged that fraud and abuse in this market is more prevalent than complaint data indicates.

My colleagues on the NARUC Consumer Affairs Committee report several recurring issues with calling card services, including: (1) the provider either fails or is not required to seek State commission registration or certification; (2) the calling time provided is substantially lower

² See, *THI Praises FTC for Standing Against Calling Card Fraud*, Press Release, March 31, 2008 ([T]he typical calling-card scam involves deceptive advertising, publicizing a certain number of minutes but delivering far fewer. West says Hispanics, including many low-income immigrants, are hit particularly hard. “Our studies have revealed that the average calling card delivers only 60% of the minutes promised . . . Consumers can lose up to a million dollars a day because of fraudulent phone cards.”) See also, *The Hispanic Institute’s Calling Card Verification Test Plan*, both available online at: <http://thehispanicinstitute.net/research/callingcard>.

than advertised, e.g., the provider's advertising overstates achievable calling time,³ understates unit cost/rate, or charges substantial undisclosed surcharges and fees⁴; (3) the advertised rates expire after short "promotional period"; and (4) the card expires within a short period following the completion of the initial call.

Prepaid calling cards *can* present enforcement challenges for State authorities. Often providers are headquartered in another jurisdiction and fail to register or seek certification from a State commission (in States that require such certification) or even register an agent for service of process under so-called State long-arm statutes. Moreover, most often, even in States where certification is required, the most easily located entity in the marketing chain – the retail store – is not subject to State commission oversight.

New York's Public Service law provides consumer protections which have allowed my commission to assist customers with calling-card complaints. Some of those complaints are related to completion fees that deplete the card faster than the consumer could have realized, or

³ See, e.g., *PUC AND ATTORNEY GENERAL COMPLAINT OF DECEPTIVE MARKETING LEADS TO SUPERIOR COURT JUDGMENT AGAINST CALLING CARD PROVIDER SAN FRANCISCO*, April 13, 2007 - The California Public Utilities Commission (PUC) today announced that as a result of its work with the California Attorney General (AG), the Superior Court of California has issued a ground-breaking judgment that requires [two] California prepaid calling card companies . . . to clearly disclose all fees, surcharges, and other costs (including "maintenance fees") associated with the use of their prepaid calling cards, and prohibits misleading advertising. The judgment also imposes civil penalties of \$118,000. . . The PUC is pursuing investigation of other prepaid calling card providers in response to consumer complaints and recent market activities suggesting rampant consumer abuse. . . The PUC is committed to pursuing fraudulent market behaviors . . . as announced in its Decision (D. 06-03-013) . . . The judgment, stipulation, and complaint are available on the PUC's website at www.cpuc.ca.gov/static/aboutcpuc/divisions/consumer+protection/enforcement+branch/030221_phonecards.htm.

⁴ *FTC Halts Bogus Prepaid Phone Card Claims, Cards Failed to Deliver the Number of Minutes Promised in Ads*, rel. June 2, 2008 ("[A]ds . . . fail to clearly disclose there are other random fees, such as "hang-up" and "maintenance" fees and "destination surcharges" that can wipe out the value of the card after even one short call. Such fees are disclosed in tiny font and in vague terms that are mostly incomprehensible in any language."), available online at: <http://www.ftc.gov/opa/2008/06/alternatel.shtm>.

customers receiving far fewer minutes than they were promised and paid for. Another common complaint we receive is from consumers who have a defective card that does not allow him or her to complete any calls, and want reimbursement from the card provider, or who are trying to contact the service provider for general customer service issues. Consumers also frequently complain of call completion fees they did not discover until using the card. However, the NYS commission and other State commissions often have difficulty pursuing these complaints because the rates and fees information related to the card is printed on the packaging which is normally thrown away by the consumer, thereby impeding investigation and resolution of such complaints.

H.R. 3993 fills this gap by requiring that disclosure of rates and fees, as well as contact information, be printed on the calling card itself, *not just the packaging*. Further, if the disclosure printed on the card is obscured by the packaging, H.R. 3993 requires the disclosure to also be printed on the packaging.

Adequate Disclosures

As mentioned earlier, NARUC endorses accurate disclosure of terms and conditions, but the association has no specific position on this problem. *However, I personally have two suggestions I believe will assure greater transparency of rates and fees.*

First, I am concerned that providing full disclosure on a calling card may result in print size so small as to be unreadable. To assure the disclosures can be read, I would like to suggest an alternative. The service provider could be required to include all rates and fees on a piece of

card stock included with the calling card when sold. This card would be the same size as the calling card and would have the phrase “**CONSUMER: DO NOT DISCARD**” printed on both sides in boldface type.

Second, personally, I think *all* calling card providers should be required to maintain a website with information on the rates, terms and conditions of the card. Obviously, the weblink should also be displayed on the card. As currently drafted, Section 3(a) of H.R. 3993 only requires online disclosure if a calling card provider maintains a website. This provides bad actors with a loophole. It is not unreasonable to require a provider to maintain a website outlining the rates, terms and conditions of their products. Any company providing communications services should be technologically savvy enough to maintain a website – it is not expensive or difficult. Requiring a provider to print both a toll free number and website on the card will improve the ability of the consumer to make informed choices. More importantly, the information could prove invaluable to State and federal officials. If a web address is printed on the card, the consumer could provide the consumer complaint call center with the website which would aid the investigation and resolution of a complaint by relevant authorities.

Partnership – Not Preemption
Leveraging Dual Enforcement and Remedies: Keeping State “Consumer” Cops on the Beat

The Calling Card Consumer Protection Act protects consumers by requiring the accurate and reasonable disclosure of the terms and conditions of prepaid telephone calling cards and services. NARUC has urged that consumers receive meaningful disclosures about such services, that States must be able to enforce any federal standards using existing procedures and penalties,

and that more protective and alternate State-level protections remain intact. As drafted, H.R. 3993 meets all three NARUC requirements.

There are many circumstances that explain why a consumer may not report a complaint. They may not know who to call or where to file a complaint. The value of the card may not justify the hassle of trying to get a refund or assistance. Also language skills and cultural barriers – particularly for recent immigrants – can make it difficult for some consumers to file complaints. There needs to be a proactive and combined federal and State outreach effort to ensure consumers know that there are rules that protect them and how to seek assistance.

Like our federal counterparts, many State commissions actively address calling card abuses. Several States, including Texas⁵, California, Alaska, and my home State of New York have laws specifying required disclosures. New York law requires notice at the point of sale, verbal disclosures at the beginning of calls, and a required warning one minute before a card is depleted. As in most consumer service matters, a small number of bad actors creates the bulk of the consumer complaints. What troubles me is the negative impact those bad actors can have on the industry which is also comprised of many service providers that deliver quality service at reasonable prices. The reputable providers make up the heart of the industry and should embrace the enforcement regime proposed in H.R. 3993.

By definition, the fraud and inadequate disclosure problems at the focus of this legislation cannot be handled by market forces. The federal-State partnership established in Sections 5 and

⁵ Written Statement Public Utility Commission of Texas Chairman Barry Smitherman before the Senate Committee on Commerce, Science, and Transportation, Washington, D.C., July 30, 2008.

7 of H.R. 3993 is critical. It allows more protective State remedies to remain intact. It maximizes the avenues for consumer redress. It leverages State and federal fining and enforcement activities to produce the greatest possible deterrence to bad actors. There is never a good reason to take State consumer “cops” off the beat or limit consumer avenues for redress. H.R. 3993 does neither.

The bill recognizes that there is considerable value in existing State enforcement options, which often allow consumer concerns to be addressed more quickly, often through informal processes. Section Seven recognizes that to assure maximum deterrence, (a) federal rules should be “[a] floor, not a ceiling,” as “...blanket preemption on consumer affairs will restrict consumer redress in the future,” and (b) that “...consumers should NOT have to wait for federal rulemaking every time a new issue arises.”

The bill also recognizes that, even in those instances when minimum federal consumer protection standards are appropriate, States must be allowed to enforce those standards and to adopt more specific standards where needed. This bill also provides States with flexibility in the method of enforcement. Section Five of the bill empowers a *State AG, PUC or other authorized State consumer protection agency* to bring civil action against a carrier that violates its provisions. Section 5 (c)(4) assures States can continue to enforce existing laws using existing procedures. This is wholly appropriate. States vary on their method of enforcement. In some States consumer complaints may go to the Attorney General, in others complaints go to the PUC or another agency. The federal government should not dictate the agency or procedure for State enforcement. Such federal dictates would require States to waste taxpayer dollars to shift

resources to different agencies. In addition, such a change could only cause consumer confusion by changing the current contact State agency.

Particularly from an enforcement standpoint, H.R. 3993 is a clear win for consumers because it not only establishes clear national standards, but it also couples those standards with coextensive federal and State enforcement. On behalf of NARUC, I would like to again thank Representative Engel for working with us to ensure the bill provides maximum consumer benefits.

Functional, Technologically Neutral Definition of Covered Services

NARUC strongly supports Mr. Engel's legislation. We genuinely appreciate both Mr. Engel and his staff's incorporations of some suggested improvements into the bill. We also appreciate Mr. Engel's receptivity to proposed improvements to the bill and we do have one remaining suggestion we believe will improve the bill.

The modification NARUC suggests is changing the definition of prepaid calling card and calling-card service in the legislation. As currently drafted the bill refers to the FCC definition of a "prepaid calling card" that references regulatory classifications that are increasingly outdated as technology evolves. The bill seeks to compensate for this limiting definition by including a definition of the latest technology, Voice over Internet Protocol (VoIP), and as a catch-all brings in use of "successor" protocols.

Such references are not necessary and can only serve as target for bad actors to find loopholes – something history has conclusively demonstrated that they are very, very good at. Since calling cards are used exclusively for voice service, NARUC suggests that the Subcommittee remove these “silo-” based definitions and focus instead on a functional definition that is not tied to any particular technology. Section 2(4) and 2(6) of Senate bill (S. 562) provides one useful definitional approach, which was also used by Rep. Engel in the *Truth in Caller ID Act* (H.R. 1258) approved by voice vote this October by the Subcommittee on Communications, Technology, and the Internet. Section 2(6) of S. 562 eschews a definition tied to specific technologies or old definitions in favor of a functional approach. It defines a “prepaid calling card service” to mean “any real time voice communications service, regardless of technology or network utilized, paid for in advance by a consumer, that allows a consumer to originate voice telephone calls through a local, long distance, or toll-free access number and authorization code, whether manually or electronically dialed.” We respectfully suggest this legislation adopt the same approach.

CONCLUSION

NARUC supports the jurisdictional balance struck in *The Calling Card Consumer Protection Act*. As drafted, the bill provides consumers with increased national disclosure requirements and ensures strong enforcement of national standards by allowing States to enforce those standards in the manner which best fits their circumstances. It also clearly preserves existing and future State options for consumer relief. The combination of State enforcement of federal standards on preservation of State-level protection provides consumers with maximum

protection from bad actors. The inclusion of the minor modifications recommended here would further refine what is already good legislation.

Thank you again for the opportunity to testify. NARUC supports H.R. 3993 and looks forward to working with this subcommittee, the full committee, and Congress as this bill moves forward. I would be happy to answer any questions you may have.

APPENDIX A

Resolution on Prepaid Calling Card Issues

WHEREAS, Despite the growth in wireless phone subscribership, VoIP and other new technologies, many Americans continue to rely on prepaid calling cards to complete intrastate, interstate, and international calls; *and*

WHEREAS, Many State and federal regulatory bodies receive consumer complaints about fraud and deceptive practices in the prepaid calling-card industry that have brought this issue to the attention of State public utility commissions, State attorneys general, the Federal Communications Commission, the Federal Trade Commission, many consumer groups as well as federal and State legislators; *and*

WHEREAS, The main victims of fraud and abuse in the prepaid calling-card market are primarily minorities, immigrants, U.S. Service men and women, the elderly, low income, and other distinct groups that are not inclined to or cannot afford to adopt new emerging technologies, or move often; *and*

WHEREAS, In response to growing concerns in this market, enforcement actions and civil cases have been initiated and are currently pending in several States against bad actors but concerns still remain. State regulators and attorneys general have been effective in enforcing consumer protections where possible and must continue to have the authority to enforce State consumer protection laws; *and*

WHEREAS, Legislation on this issue was adopted by the House and Senate in the 110th Congress. However, the differences were not resolved in conference. The sponsors, Senator Bill Nelson of Florida and Representative Elliot Engel of New York respectively, intend to reintroduce their legislation in the 111th Congress. The legislation would establish federal requirements for the disclosure of rates and services, outline unlawful conduct and allow for State enforcement of the federal standard – thus keeping more “cops on the beat” protecting consumers; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has previously expressed its commitment to competitive neutrality regardless of the technology utilized and that consumers benefit from full disclosure and application of all charges and fees in making an informed decision when purchasing communications service; *now, therefore, be it*

RESOLVED, That NARUC, convened at its 2008 Annual Convention in New Orleans, Louisiana, supports action to improve consumer protection with regard to prepaid calling-card services, provided that State consumer protections and enforcement are not diminished; *and be it further*

RESOLVED, That NARUC directs its General Counsel, with the consent of NARUC leadership, to communicate this resolution, including supporting initiatives that meet the above referenced goals regarding prepaid calling-card services, to federal and State agencies and Congress.

Sponsored by the Committee on Consumer Affairs

Recommended by the NARUC Board of Directors, November 18, 2008

Adopted by the Committee of the Whole, November 19, 2008

APPENDIX B

Statement by
Chairman Barry Smitherman
Public Utility Commission of Texas

Senate Committee on Commerce, Science, and Transportation

Washington, D.C.
July 30, 2008

Executive Summary

On May 23, 2008, the Texas Attorney General filed the state's first enforcement action against a prepaid calling card company, Next-G Communications, Inc. The investigation which led to the enforcement action was done in conjunction with the Public Utility Commission of Texas, and determined that Next-G's calling cards consistently delivered only 40% of the minutes on international calls claimed in the advertising for the cards.

The results of the investigation show that Next-G inadequately disclosed the fees and charges associated with each call, reducing the number of minutes available for calling. The Texas Attorney General filed the enforcement action under the Texas Deceptive Trade Practices-Consumer Protection Act.

History

Beginning in 2004, staff from the Consumer Protection Division of the Public Utility Commission of Texas investigated whether calling card companies were following the advertising and disclosure requirements under the Public Utility Commission Substantive Rule 26.34. The initial investigation revealed that calling card companies were not following the Commission rule related to accurate disclosure of rates and charges on the card or at the point of sale. The Commission rule also requires that enforcement actions for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices will be coordinated with the Texas Attorney General in order to ensure consistent treatment of specific alleged violations. Customer Protection notified the Texas AG's Office of the issues relating to the accurate disclosure of information to customers, and during the summer and fall of 2007, worked with the Texas Attorney General's Office to test the calling cards from Next-G Communications to determine the number of minutes that the cards provided.

During the investigation on the Next-G calling cards, Customer Protection staff made calls to numbers in Honduras and El Salvador using \$5.00 and \$10.00 calling cards purchased in San Antonio, which are typical of the calling cards purchased at convenience and grocery stores. Consumer Protection Staff made several different types of calls using different calling cards: "straight line" calls to the target phone numbers, where a call is made until it is terminated by the provider, five-minute calls, and 10-minute calls. When calls were made using the calling cards, a voice prompt is given at the beginning of each call stating the number of minutes available for each call. The minutes stated in the voice prompt were compared to that actual number of minutes received or to the minutes stated in a subsequent call using the same card.

The results of the investigation showed that callers often received less than half of the minutes advertised. For example, when calls were made to Honduras using the five-dollar calling cards, the voice prompt indicated that there was 35 minutes of calling time. Callers

received only 12 minutes for these calls. With calls to El Salvador using the five-dollar cards, the first five-minute call would use up 18 minutes of calling time, and the first 10-minute call would use 25 minutes of calling time, as indicated by comparing the minutes stated on the voice prompt in subsequent calls.

Based on the results of the investigation, the Texas Attorney General filed a lawsuit asserting that Next-G engaged in false, deceptive and misleading acts and practices, specifically, not providing the minutes offered in the advertisements or voice prompt at the beginning of phone calls, and using advertising with vague, misleading, and confusing disclosures about fees and charges. The Attorney General requested that the defendant disgorge all money fraudulently taken from individuals and businesses, and requested a temporary and permanent injunction against Next-G selling cards that do not give all the minutes advertised or indicated in the voice prompt. The lawsuit is currently proceeding in State District Court in San Antonio.

Conclusion

Based on the investigation of the Next-G calling cards, it is obvious that some calling card companies mislead and confuse customers by including vague disclosures on charges and rates that dramatically alter the number of minutes available to a customer. Customers that use calling cards, especially for international calls, are generally immigrant or low income individuals attempting to contact families or friends. Calling card companies should be required to accurately disclose the fees and charges, rather than use incomplete and misleading language. By putting these precise terms up front, customers will be aware of what they are paying for, and can make better decisions in choosing their telecommunications needs.