

Prepared Testimony and Statement for the Record of

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Hearing on HR 3993

Before the

**U.S. Subcommittee on Commerce, Trade and Consumer Protection
U.S. House of Representatives**

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Thank you for providing the opportunity to testify on HR 3993, legislation aimed at preventing pre-paid calling card fraud and promoting consumer protection. My name is Scott Ramminger and I am the President of the American Wholesale Marketers Association (AWMA). AWMA represents convenience distributors nationwide and our distributor members represent more than \$85 billion in U.S. convenience product sales. Associate members include manufacturers, brokers, retailers and others allied to the convenience product industry. The products our members distribute include candy, foodservice, general merchandise, snacks, health and beauty items as well as pre-paid calling cards.

On behalf of AWMA, I would like to thank the subcommittee for holding this hearing and for working to ensure that consumers are protected from unfair and deceptive practices with respect to these pre-paid calling cards. We support that goal wholeheartedly. However, we urge that any legislation ultimately approved by the committee include language that imposes liability for false labeling or advertising on a distributor of pre-paid calling cards *only if the distributor knows of the falsity*.

Unfortunately, the legislation currently before this subcommittee contains no such provision providing necessary protection for the law-abiding distributor of these products. Under the current legislation – HR 3993, a distributor would be held liable and could be punished simply by acting as conduit between the manufacturer of these pre-paid calling cards and the convenience store even if the distributor was completely unaware of the discrepancy and fraudulent nature of the calling card. This would create an unbearable and unfair burden of liability for distributors and I urge the committee to ensure that legislation promoting consumer protection with respect to pre-paid calling cards include protections for law-abiding distributors unwittingly acting as go-betweens for these products.

HR 3993 would add the subject of calling cards to the Federal Trade Commission Act. It directs the FTC to write a rule governing calling cards and spells out the consumer disclosures that calling card vendors must provide. The penalties for violations of FTC rules are injunctions, money damages and fines. The bill gives state attorneys generals similar authority. We believe that it is only fair that wholesale distributors are exempt from liability for incorrect disclosure if the distributor has no control over the scope of the services or the truth of the labeling. While it is true that a distributor can tell whether or not there is a “clear and conspicuous” notice on the card about fees and minutes etc, it is also true that a distributor has no way of knowing whether that information is accurate. In the previous congress a similar bill on this issue – HR 3402 – addressed this problem by making it unlawful for the distributor to distribute if “the distributor knows that the prepared telephone calling card provides fewer minutes than

the number of minutes promoted or advertised”. Unfortunately, the new bill offered by Rep. Engel – HR 3993 – does not include this much-needed provision.

On behalf of the American Wholesale Marketers Association I offer the following “fix” aimed at ensuring the fairness and reasonableness of this measure. Section 2(4) defines “prepaid calling card distributor”. This section could be amended by adding the following clause at the end, “but such term does NOT include distributors who sell such cards in the same form and packaging as acquired from a prepaid calling card service provider or distributor.” Or, alternatively, a provision could be added to the directions given to the FTC that would read “In promulgating such regulations, the Commission shall not issue regulations which hold a prepaid calling card distributor liable for deceptive disclosure of services or rates which the distributor was unable to know or control.”

I commend the subcommittee for its efforts to protect consumers, however, as currently drafted, HR 3993 would unfairly penalize law-abiding distributors – many of whom represent small, family-owned businesses which are currently struggling in this economy and can ill-afford such liability. I hope you will consider our concerns as you go forward on this important issue and I appreciate the opportunity to submit this testimony on behalf of the American Wholesale Marketers Association. Thank you.