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1 {York Stenographic Services, Inc.}

2 HIF337.170

3 HEARING ON H.R. 3993, THE CALLING CARD CONSUMER PROTECTION

4 ACT OF 2009

5 THURSDAY, DECEMBER 3, 2009

6 House of Representatives,

7 Subcommittee on Commerce, Trade, and Consumer Protection

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 10:09 a.m.,
11 in Room 2322 of the Rayburn House Office Building, Hon. Bobby
12 Rush [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Rush, Schakowsky,
14 Sarbanes, Butterfield, Space, Engel, Radanovich, Stearns,
15 Whitfield, Pitts, Gingrey, and Scalise.

16 Staff present: Michelle Ash, Chief Counsel; Tim
17 Robinson, Counsel; Angelle Kwemo, Counsel; Anna Laitin,
18 Counsel; Will Cusey, Special Assistant; Sarah Fisher, Special

19 Assistant; Shannon Weinberg, Counsel; Brian McCullough,
20 Professional Staff; Will Carty, Senior Professional Staff;
21 and Chad Grant, Legislative Analyst.

|
22 Mr. {Rush.} Good morning. The subcommittee will now
23 come to order.

24 This hearing is being convened to consider H.R. 3993,
25 the Calling Card Consumer Protection Act of 2009, and the
26 Chair wants to take a quick moment just to welcome all who
27 are gathered, our witnesses, our--the audience, and also I
28 want to welcome all the members to this hearing.

29 And the Chair now recognizes himself for 5 minutes for
30 the purposes of an opening statement. The pre-paid legal
31 calling industry generates more than \$4 billion in annual
32 revenues. It is a highly-fragmented industry comprised of
33 well-known and lesser-known telecommunications companies that
34 are owned and operated on public and private networks, resale
35 of the telecommunications services, and marketing firms and
36 distributors who produce, brand, and deliver the cards to
37 retail outlets and stores.

38 The Chair wants to take a moment to thank my friend and
39 colleague from New York, Mr. Engel, for reintroducing this
40 bill in the House. It would significantly improve the
41 truthfulness of calling card advertisements and pave new
42 avenues of recourse for millions of defrauded and vulnerable
43 classes of consumers in this country.

44 There is a familiar phrase that has been made infamous

45 by the great businessman and showman P.T. Barnum, and he kind
46 of succinctly put us in the proper framework for this time.
47 ``There is a sucker born every minute,`` and these words have
48 helped to set the scene for today's hearing.

49 Fraudulent calling cards is in the stream of commerce
50 day by day. They represent the amount of calling cards that
51 are supplied on the card and high applicable fees and
52 charges. They misrepresent the amount of the calling minutes
53 that are supplied on the calling card and high applicable
54 fees and charges, and time the cards may even provide
55 substandard phone connection, ineffective pin numbers, and
56 non-functional or always-busy customer service contact
57 information.

58 H.R. 3993 would remedy many of these problems. It would
59 require calling card providers and distributors to advertise
60 clearly and conspicuously the relevant and applicable
61 information on the cards. Such disclosures would include
62 contact information for the card service provider, number of
63 minutes applied on the card, and dollar value of the card.

64 I want to, again, want to greet all the witnesses who
65 are here with us today, and I thank them for taking time out
66 of their busy schedules to be here, and I look forward to
67 each and every one of your insights and to your views on this
68 particular matter of H.R. 3993.

69 And allow me to take particular pleasure today to greet
70 Mr. Alie Kabba, who is a witness today. Mr. Kabba is the
71 Executive Director of the United African Organization. He
72 has worked devotedly from the organization's Chicago
73 headquarters on behalf of the more than 100,000 African-
74 American women and children who now make their homes in
75 Illinois. Again, I want to thank each and every one of you
76 for being here today.

77 [The prepared statement of Mr. Rush follows:]

78 ***** COMMITTEE INSERT *****

|
79 Mr. {Rush.} With that I yield back the balance of my
80 time, and now it is my distinct honor to recognize the
81 Ranking Member of the subcommittee, the gentleman from
82 California, Mr. Radanovich, for 5 minutes.

83 Mr. {Radanovich.} Thank you, Mr. Chairman. I
84 appreciate the fact that we are holding this hearing, and
85 last Congress similar legislation was ushered through the
86 committee and onto the House floor, and only a few short
87 weeks before Congress recessed for the term. Doing so
88 reflected our appropriate recognition that fraud and
89 deception in the prepaid calling card market does exist and
90 that it is necessary to address this problem.

91 Intentionally taking advantage of consumers, whether
92 they are immigrant groups or our military serving overseas
93 with prepaid cards that deliver less service than advertised,
94 is no different than stealing. If a consumer purchases a
95 calling card expecting a certain amount of minutes, minus the
96 advertised fees, but later finds out that hidden fees or
97 expiration of minutes reduce the value of what they
98 purchased, this is at very least deceptive and quite possibly
99 fraudulent. We certainly would not accept paying for a full
100 tank of gasoline but driving away with only half a tank.

101 This is not good for consumers, and it is not good for

102 the legitimate businesses who make and sell these cards.
103 Companies generally are not opposed to many of the
104 requirements in legislation as long as they are relevant and
105 adhered to by our competitors. It is often the companies
106 that cannot compete on price or service, however, that hide
107 the fees or intentionally misrepresent the number of minutes
108 the consumer to actually purchasing.

109 This has got to stop. Consumers should have the
110 necessary information to select the card of their choice and
111 are often willing to pay more when they are knowing that they
112 are buying a better service. The important point is that the
113 consumers are able to choose based on available, truthful
114 information.

115 H.R. 3993 is intended to provide additional tools to the
116 FDC and to the States to prohibit certain practices, require
117 specific disclosures, and enforce violations of the Act. I
118 agree it is important to provide meaningful tools to stop
119 abusive or fraudulent practices, but given the available time
120 to examine the legislation more thoroughly this year than
121 last year's end-of-Congress frenetic pace, should take the--
122 we should take the appropriate time to move through regular
123 order and make necessary changes. As the FTC will testify,
124 they have brought a number of cases, and the States have
125 brought over 20 cases since the spring of 2008. This

126 legislation could be helpful as a fraud deterrent, but
127 enforcement of existing law will continue regardless of when
128 Congress may enact legislation.

129 I have concerns regarding certain provisions of the bill
130 and in particular the differences between this version and
131 the one the committee considered in the last Congress.
132 Consolidating enforcement at the FTC is good policy given
133 their history of consumer protection and enforcement against
134 unfair, deceptive practices, but to be effective it requires
135 a legislative change to the existing common carrier exemption
136 under the FCA Act, and without that the vast majority of
137 prepaid service providers would remain outside the reach of
138 the FTC.

139 My concern regarding this provision is whether it
140 effectively consolidates enforcement under the FTC or whether
141 it leaves open the unwanted possibility of dual regulation by
142 both the FTC and the FCC, and I hope that we can work to
143 clarify this language.

144 Additionally and of more concern is to change the
145 permits, the States to regulate the same activity as that
146 proposed by this legislation. The States can do--that States
147 can do and enforce their own laws in this area. As a policy
148 matter, the change to remove the preemption while enacting a
149 new Federal law is an obvious problem. We could respect

150 States' rights and leave it to them to continue to enact and
151 enforce 50 different sets of laws, or we can decide we need
152 to have a strong Federal law that provides a uniform and
153 consistent regime that benefits consumers. Doing both will
154 create conflicts and confusion that accompany up to 50
155 different disclosure requirements and will have little
156 corresponding benefit, which is why I support the one Federal
157 standard.

158 Additionally, there is concern that retail merchants who
159 have no direct relationship or control over the disclosures
160 requires would be subject to this Act. Mr. Engel's original
161 bill defined distributors specifically to not include retail
162 establishments that were engaged only in a point-of-sale
163 transaction. This clarification is no longer the
164 legislation, and I would like to hear the objections and
165 providing--to providing such a protection. I am not aware of
166 other instances where a retailer is liable for the
167 disclosures on a product it merely resells as a merchant.

168 I would like to thank Mr. Engel for his commitment to
169 this issue, and I look forward to discussing and hope to work
170 on a bipartisan manner to improve the legislation. Thank
171 you, Mr. Chairman. I yield back.

172 [The prepared statement of Mr. Radanovich follows:]

173 ***** COMMITTEE INSERT *****

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174 Mr. {Rush.} The Chairman thanks the gentleman.

175 The Chair now recognizes the gentleman from Ohio, Mr.

176 Space, for 2 minutes for the purpose of an opening statement.

177 Mr. {Space.} I will waive my opening statement, Mr.

178 Chairman. Thank you.

179 [The prepared statement of Mr. Space follows:]

180 ***** COMMITTEE INSERT *****

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181 Mr. {Rush.} The Chair thanks the gentleman.

182 The Chair now recognizes the Vice-Chair of the
183 subcommittee, Ms. Schakowsky, for 2 minutes.

184 Ms. {Schakowsky.} Thank you, Mr. Chairman. I am very
185 pleased to be here today to discuss the Calling Card Consumer
186 Protection Act, and I congratulate my colleague, Mr. Engel,
187 for introducing it and the Chairman for holding this hearing.

188 This bill moved very quickly in the Congress, passing
189 the House easily by voice vote. I hope that we can move as
190 quickly this time around as--on this important consumer
191 protection bill. Today more than 276 million American
192 households and 89 percent of the U.S. population have cell
193 phones, but prepaid calling cards remain a huge industry,
194 worth \$4 billion in 2007. They are particularly popular
195 among college students, as well as military personnel and
196 immigrant communities, people who frequently make
197 international calls.

198 My district is one of the most diverse in the Nation.
199 Almost one-third of my constituents are foreign born, first
200 generation American or first generation American residents.
201 So calling cards are very, very important to them.

202 Unfortunately, the calling card industry is full of
203 deceptive advertising and hidden fees. The Illinois Attorney

204 General, Lisa Madigan, is currently investigating about a
205 half dozen companies for their harmful practices. A card
206 might say it is worth 250 minutes, but you could get 200 or
207 100 once you actually use it or even zero minutes. Some
208 cards come with phone numbers that never connect or send you
209 to a busy signal. Too often calling cards have no
210 information listed about connection fees, varying rates per
211 minute, a charge each week that you don't know when you use
212 the card, or even fees for just hanging up. Such abusive and
213 unfair practices must stop.

214 I look forward to hearing from our witnesses, whether
215 they believe the Calling Card Consumer Protection Act is
216 sufficient or whether we need to go even further. I thank
217 you, Mr. Chairman, and I yield back the balance of my time.

218 [The prepared statement of Ms. Schakowsky follows:]

219 ***** COMMITTEE INSERT *****

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220 Mr. {Rush.} The Chair now recognizes the gentleman from
221 Kentucky, Mr. Whitfield, for 2 minutes for the purposes of an
222 opening statement.

223 Mr. {Stearns.} Thank you, Mr. Chairman. While we can
224 see what a difference a majority has on the Republicans and
225 Democrats because we all supported the Engel bill. We passed
226 it, I think, by voice vote in the last Congress. Wasn't that
227 right, Mr. Engel? Yeah?

228 And now I have to say that as much as I support the
229 intent, I am a little concerned, obviously, with the Federal
230 preemption, and that is the area that I think many of us on
231 this side are concerned. I know that Mr. Barton has also
232 experienced some concern with that, too.

233 This pre-card calling industry is a billion dollar
234 industry. There are some bad actors. Mr. Engel is to be
235 commended for his bill. He is simply asking for accurate and
236 reasonable disclosure of the terms and conditions of prepaid
237 calling cards. So what could be wrong with that? Nothing.

238 But let me just give you one of the concerns that I
239 have. Unlike the one he introduced in last Congress, the new
240 version of the Calling Card Consumer Protection Act does not,
241 does not, let me repeat, contain Federal preemption.
242 Instead, this bill allows States to enact requirements, each

243 and every State, that provide equal or greater protection
244 than the Federal standard.

245 Given the small size of calling cards and the
246 difficulties involved with having to fit lengthy disclosures
247 onto the cards, some in multiple languages, in a clear and
248 conspicuous manner companies may not be physically able to
249 comply with both Federal and multiple-State disclosure
250 requirements.

251 So we have 50 States, you are going to have 50
252 requirements, and you are going to have to reconfigure for
253 each of those States. So I think we need one unified set of
254 rules that will apply all players, to all players on notice,
255 really outlining what their responsibilities are to
256 consumers. I think Mr. Engel would probably agree with that,
257 and so I think this is a point we can work on together in a
258 bipartisan manner to address this issue before we mark up.

259 So I would urge the Chairman, Mr. Waxman, and the
260 Ranking Member, Mr. Rush, to consider that we have a well-
261 intentioned bill that is something that everybody agrees
262 with, but we need to have an understanding that in the area
263 of preemption we cannot have 50 States complying with all
264 these multiple requirements for disclosures on the card and
265 perhaps in multiple languages.

266 So with that, Mr. Chairman, I would say that this is a

267 very good bill with that one reservation. Thank you.

268 [The prepared statement of Mr. Stearns follows:]

269 ***** COMMITTEE INSERT *****

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270 Mr. {Rush.} The Chair now recognizes the gentleman from
271 North Carolina, Mr. Butterfield, for 2 minutes.

272 Mr. {Butterfield.} Thank you very much, Mr. Chairman,
273 for holding this hearing, and thank you, Mr. Engel, for
274 offering it. It is a good bill, and I support it.

275 The bill increases the protections for consumers and
276 will go far to ensure those who use prepaid calling cards
277 know what they are buying and what fees and charges are
278 associated with the use. I say all of the time, I represent
279 the fourth poorest district in the United States of America,
280 where the unemployment rate is just going out of the sky.
281 Many of my constituents, some of the most--are the most
282 poorest in the Nation, and prepaid calling cards are used
283 often by my constituents to communicate with their families.
284 These are the same workers that clean our schools and harvest
285 our food, and they are the same people who are being preyed
286 upon by despicable prepaid calling card companies.

287 Large calling card companies sell these cards in various
288 minute amounts, and what is not clearly disclosed to the
289 consumer is the hefty connection or hang-up fees and other
290 fees associated with each call. A \$20 calling card promising
291 to deliver 100 minutes, for example, could ultimately only
292 yield a small percentage of the minutes. In fact, a 2008,

293 study found that of the 45 prepaid cards surveyed, only 60
294 percent of advertised minutes were actually delivered. These
295 predatory actions force hardworking people into a cycle of
296 being victimized by the fraud and deception practiced by the
297 prepaid calling card companies.

298 H.R. 3993 provides greater transparency for prepaid
299 calling card consumers. It is a good bill. I plan to
300 support it, and thank my friend, Mr. Engel, for offering it.

301 I yield back.

302 [The prepared statement of Mr. Butterfield follows:]

303 ***** COMMITTEE INSERT *****

|
304 Mr. {Rush.} The Chair now recognizes the gentleman from
305 Pennsylvania, Mr. Pitts, for 2 minutes.

306 Mr. {Pitts.} Thank you, Mr. Chairman. Thank you for
307 holding this hearing on H.R. 3993, the Calling Card Consumer
308 Protection Act of 2009.

309 Prepaid calling cards are used by scores of people in
310 the United States, from college students to people with
311 family and friends abroad, to military personnel. American
312 consumers spent roughly \$4 billion on cards in 2007, however,
313 a number of studies have found that there are serious flaws
314 in some of the cards. Many do not deliver the full number of
315 advertised minutes. In addition, cards sometimes lead to
316 poor phone connections and provide toll free and other call-
317 in numbers that are busy or do not work.

318 To address these problems last Congress the Energy and
319 Commerce Committee considered H.R. 3402, which passed by
320 voice vote on the Floor. The bill we are considering today
321 is similar to last year's, but there are a number of concerns
322 with H.R. 3993 that I hope we can reconcile.

323 Unlike the sent version of this bill, H.R. 3993 does not
324 explicitly limit the authority of the FCC, where the FTC has
325 jurisdiction under the bill. I believe it would be harmful
326 to place duplicative and overly-burdensome regulation on

327 industry by mandating they be subject to both the FCC and the
328 FTC.

329 Additionally, preemption is essentially eliminated in
330 H.R. 3993. The previous legislation only permitted
331 continuation of State laws that are identical to the Federal
332 law. Under H.R. 3993 states are now allowed to enact
333 requirements that provide equal or greater protection than
334 the Federal standard. Finally, not exempting retail
335 merchants from the definition of distributor calls into
336 question if the retail merchant industry is now liable for
337 the same card disclosures required of the service providers
338 and distributors.

339 I hope that many of these concerns can be addressed
340 before we move the bill. I look forward to hearing from the
341 witnesses today, and I yield back.

342 [The prepared statement of Mr. Pitts follows:]

343 ***** COMMITTEE INSERT *****

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344 Mr. {Rush.} The Chair now recognizes the gentleman from
345 Maryland, Mr. Sarbanes, for 2 minutes.

346 Mr. {Sarbanes.} I waive my opening.

347 [The prepared statement of Mr. Sarbanes follows:]

348 ***** COMMITTEE INSERT *****

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349 Mr. {Rush.} The Chair thanks the gentleman.

350 The Chair now recognizes the gentleman from Kentucky for
351 2 minutes.

352 Mr. {Whitfield.} Mr. Chairman, thanks very much, and we
353 appreciate your having his hearing on this important
354 legislation.

355 The Federal Trade Commission estimates that
356 approximately half of the \$4 billion of industry revenue from
357 selling these cards can be attributed to fraudulent gains,
358 and so I do believe that this legislation is a step in the
359 right direction but like some others on the committee I have
360 three basic, primary concerns.

361 First of all, any industry operating in inter-State
362 commerce I think it is imperative that there be Federal
363 preemption, because the last thing we want to happen is for a
364 company to have to deal with 50 different regulations on a
365 particular card.

366 The second thing that I am concerned about in this
367 legislation is the possibility of dual regulation between the
368 FCC and the FTC. We all know the difficulty with
369 bureaucracies and without a clear, definitive understanding
370 of which agency will be responsible, I think that is going to
371 be a problem as well.

372 And then the third thing that I do have a concern about
373 is that the retailers who sell these cards, I think it is
374 imperative that if they are knowingly involved in fraudulent
375 activity, then obviously they should suffer the consequences,
376 but I think it is very easy for retailers to sell these cards
377 and not be aware of the fraudulent activity. And so I think
378 that we should take steps to clarify that and make sure that
379 they are not held liable if they are not knowingly aware of
380 it.

381 But I want to thank the Chairman for his continued
382 leadership in this effort and for the Ranking Member as well,
383 and I yield back my 9 seconds.

384 [The prepared statement of Mr. Whitfield follows:]

385 ***** COMMITTEE INSERT *****

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386 Mr. {Rush.} The Chair thanks the gentleman.

387 Now, seeing that there are no other witnesses, no other
388 members who needs to be recognized for opening statements,
389 the Chairman now requests unanimous consent that the author
390 of the bill, Mr. Engel, be allowed to sit in on the committee
391 hearing and participate in the committee hearing, and he will
392 be able to ask questions at the conclusion of the questions
393 by the members of the committee.

394 Hearing no objections, so ordered.

395 And the Chair now recognizes for 5 minutes the author of
396 the legislation, Mr. Engel.

397 Mr. {Engel.} Well, thank you very much, Mr. Chairman.
398 I want to thank you for holding today's hearing on my
399 legislation, H.R. 3993, the Calling Card Consumer Protection
400 Act, and for allowing me to participate as a member of the
401 Energy and Commerce Committee but not a member of this
402 subcommittee. I would also like to welcome Commissioner
403 Acampora from my home State of New York for attending this
404 hearing as well.

405 And I appreciate the comments made by all of my
406 colleagues in support of the bill, even though some may have
407 some questions about certain parts of it. As many of us know
408 calling cards are an invaluable resource for people who don't

409 have long distance telephone service in their home or those
410 who make frequent overseas calls. Calling cards that provide
411 the services the companies advertise can save consumers a
412 great deal of money when they call home, but unfortunately as
413 members have said this, as we are seeing over and over again,
414 many companies fail to keep their advertised terms.

415 About 3 years ago I began hearing from a number of
416 constituents regarding their prepaid calling cards. They
417 were contacting me because their calling cards failed to
418 provide the number of minutes that were advertised. In fact,
419 many were not even close to delivering the promised number of
420 minutes.

421 In independent tests calling cards were shown to provide
422 far fewer minutes than were advertised. One study found that
423 on average the caller only received 60 percent of the minutes
424 guaranteed by the card. I recently read that the prepaid
425 calling card industry takes in \$4 billion a year in revenue.
426 If the cards are only providing 60 percent of the minutes, we
427 can all do the math. This deception is costing consumers and
428 honest companies hundreds of millions of dollars a year.

429 Calling card fraud harms segments of the population as
430 my colleagues have pointed out who are among the most
431 vulnerable to being victimized by unscrupulous companies,
432 only seeking to make a quick profit. These companies are

433 known to target poor, minority, and immigrant populations,
434 and they don't stop there. Even our soldiers in Iraq and
435 Afghanistan have been preyed upon by deceptive practices of
436 calling card companies.

437 My legislation will put a stop to these practices. It
438 would also provide that the government is able to enforce the
439 legislation to try to get rid of the dishonest companies.
440 Calling cards are an extremely useful product for consumers,
441 and I don't want to see honest companies punished. There is
442 absolutely no reason why a company cannot deliver what is
443 promised and still turn an honest profit. If consumers know
444 that the card they purchased will provide the full amount of
445 calling time that is advertised, this will benefit both
446 consumers and the marketplace.

447 And let me just say I think that industry here should
448 support this bill, not get bogged down with ridiculous
449 reasons for opposing it. I commend those segments of the
450 industry that are working with us, but the ones that are
451 dragging their feet, if they have nothing to hide, if their
452 calling cards are not fraudulent, then they should
453 enthusiastically support this legislation.

454 And I want to thank Senator Nelson of Florida, who is
455 sponsoring this bill in the Senate as well. I would strongly
456 encourage the members of the committee, of the subcommittee,

457 to support H.R. 3993.

458 I will show flexibility in working with members to see
459 if we can all come to a conclusion, but we don't want to
460 water down the bill so much that it becomes ineffective. So
461 I think that is the counter to what some of my colleagues
462 have pointed out, but I do appreciate the bipartisan support
463 for this bill, and I strongly urge members of the committee
464 to support it, and I thank you, again, Mr. Chairman, for
465 holding this hearing today and allowing me to participate as
466 a subcommittee member, and I yield back the balance of my
467 time.

468 [The prepared statement of Mr. Engel follows:]

469 ***** COMMITTEE INSERT *****

|
470 Mr. {Rush.} The Chair thanks the gentleman.

471 Now it is my distinct honor and privilege to welcome our
472 witnesses for today's hearing. Beginning on my left we have
473 with us Ms. Lois Greisman. I think I am pronouncing that
474 right. Ms. Greisman is the Director of the Division of
475 Marketing Practices for the Federal Trade Commission. Next
476 to Ms. Greisman is Ms. Sally Greenberg, who is the Executive
477 Director of the National Consumers League.

478 And next to Ms. Greenberg is Ms. Patricia Acampora. She
479 is the Commissioner of the New York State Public Service
480 Commission, and she is a member of the National Association
481 for Regulatory Utility Commissioners. Did I get that right?
482 And next to Ms. Acampora is Mr. Alie Kabba. He is the
483 Executive Director of the United African Organization, and
484 then lastly but not least Mr. Scott Ramminger, who is the
485 President of the American Wholesale Marketers Association.

486 The Chair wants to thank each and every one of you for
487 appearing before this hearing, and it is the practice of this
488 subcommittee to swear in the witnesses, and I will ask that
489 if you would stand and raise your right hand.

490 [Witnesses sworn]

491 Mr. {Rush.} Please let the record reflect that all the
492 witnesses have answered in the affirmative.

493 And now it is--the Chair recognizes Ms. Greisman for 5
494 minutes for the purposes of opening statements.

|
495 ^TESTIMONY OF LOIS GREISMAN, DIRECTOR, DIVISION OF MARKETING
496 PRACTICES, FEDERAL TRADE COMMISSION; SALLY GREENBERG,
497 EXECUTIVE DIRECTOR, NATIONAL CONSUMERS LEAGUE; PATRICIA
498 ACAMPORA, COMMISSION, NEW YORK STATE PUBLIC SERVICE
499 COMMISSION, NATIONAL ASSOCIATION OF REGULATORY UTILITY
500 COMMISSIONERS; ALIE KABBA, EXECUTIVE DIRECTOR, UNITED AFRICAN
501 ORGANIZATION; AND SCOTT RAMMINGER, PRESIDENT, AMERICAN
502 WHOLESALE MARKETS ASSOCIATION

|
503 ^TESTIMONY OF LOIS GREISMAN

504 } Ms. {Greisman.} Thank you very much. Good morning,
505 Chairman Rush, Ranking Member Radanovich, members of the
506 subcommittee. I am Lois Greisman. I am the Associate
507 Director of the FTC's Division of Marketing Practices, and I
508 am very pleased to appear before you today.

509 As you know, the FTC's formal views are presented in its
510 written testimony. My oral remarks and any answers to
511 questions you may have reflect my own views and not those of
512 the Commission or any individual commissioner.

513 I would like to take my time to update you on the FTC's
514 prepaid phone card initiatives and to discuss the
515 Commission's support for H.R. 3993.

516 One need look only at the enlarged poster to your left,
517 which was produced by defendants in one of the actions that
518 the FTC brought, to see how problematic disclosures are in
519 this industry. As is typical, the poster makes large, bold
520 claims about the number of calling card--of calling minutes
521 consumers purportedly will receive in calls to specific
522 destinations.

523 For example, this poster boasts that consumers will
524 receive 124 minutes to the Dominican Republic, 60 minutes to
525 El Salvador. In fact, the FTC's testing showed that the card
526 advertised here delivered on average only about half the
527 advertised minutes. Now, that the card failed to deliver was
528 due in no small part to an array of hefty hidden fees.
529 Buried at the bottom of the poster in fine print that even if
530 I were directly in front of it I would be strained to be able
531 to read, are lines of very small print that is so small and
532 wording so vague as to be nearly incomprehensible.

533 So if an advertisement says that a card will provide 200
534 minutes of calling time to a particular country, it should do
535 just that. Providing 100 minutes or less is unacceptable and
536 indeed, it is illegal. Similarly, hidden, incomprehensible
537 connection, disconnection, maintenance, and other fees or
538 charges are illegal.

539 Last year the Commission testified on the earlier

540 version of H.R. 3993. Since then the Commission has
541 continued to scrutinize the prepaid calling card industry
542 while working very closely with its 35-State partners and the
543 FCC through the Federal State Task Force the Commission
544 created back in 2007. As you have all noted, users of
545 prepaid phone cards, whether recent immigrants, members of
546 the Armed Services, students, or anyone of us sitting here,
547 are entitled to receive what they pay for.

548 Several States, most notably Florida, Illinois, New
549 Jersey, Texas, and California, have been particularly active
550 in this area, investigating or filing many actions against
551 both distributors and carriers to ensure that the marketing
552 of prepaid phone cards is truthful and accurate. And at the
553 same time the FTC has continued its law enforcement efforts,
554 targeting prepaid phone card distributors, reaching
555 settlements in two cases with nearly \$3.5 million in monetary
556 relief and strong injunctive relief, and just this past July
557 the Commission sued another major distributor, Diamond Phone
558 Card and its principles, making similar allegations as in the
559 other cases.

560 Now, as always, complementing the FTC's law enforcement
561 efforts is a targeted consumer education campaign in both
562 English and Spanish to ensure that purchasers of prepaid
563 phone cards know what the cards are supposed to do and know

564 what to look for when making a purchase.

565 Turning now to the bill. H.R. 3993 is designed to
566 provide accurate and improved disclosures and further
567 providing the Commission with civil penalty authority and
568 creating the mechanism for States to enforce the law. It
569 also would provide a strong set of tools to combat fraud in
570 the prepaid phone card industry. Critically, the legislation
571 creates a carve-out to the common carrier exemption that
572 would allow the Commission to sue phone card providers,
573 namely carriers, and obtain civil penalties and other relief
574 against them. Eliminating this common carrier exemption for
575 these purposes will permit the FTC to target the critical
576 segment of the industry that in many cases, no doubt, bears
577 liability for the widespread fraud in this industry.

578 Indeed as I have already mentioned, many of the State
579 actions have targeted carriers, but--and at the risk of
580 sounding ungrateful, the bill's exemption for certain prepaid
581 wireless phone services is problematic. It creates a welcome
582 sign for the worst actors in the industry, inviting them to
583 migrate their business to prepaid wireless products. The
584 nature of the wireless products and services, as well as the
585 advertising and marketing for them, are strikingly similar to
586 those outside of the wireless context. The same rules of the
587 road should apply.

588 Thus, taking prepaid wireless services out of the bill's
589 regulatory coverage does not seem sensible and creates a
590 strong incentive for mischief. I urge the subcommittee to
591 reconsider this point.

592 I very much look forward to working with the
593 subcommittee and to answering any questions you may have.
594 Thank you.

595 [The prepared statement of Ms. Greisman follows:]

596 ***** INSERT 1 *****

|

597 Mr. {Rush.} Thank you very much.

598 The Chair now recognizes Ms. Greenberg for 5 minutes for
599 the purposes of opening statement.

|
600 ^TESTIMONY OF SALLY GREENBERG

601 } Ms. {Greenberg.} Thank you very much, Chairman Rush and
602 Ranking Member Radanovich. Good morning. My name is Sally
603 Greenberg. I am Executive Director of the National Consumers
604 League.

605 The National Consumers League was founded in 1899, which
606 makes us the oldest consumer organization in the United
607 States. As part of our longstanding interest in protecting
608 consumers from fraudulent practices, we operate a fraud
609 center where we accept complaints and educate consumers
610 directly about fraudulent practices. Last year we processed
611 nearly 20,000 complaints. Included in those complaints were
612 concerns that consumers had about prepaid calling cards.

613 When we appeared last before this committee in September
614 of 2008, we equated the prepaid calling card marketplace with
615 the wild west. A little over a year later we are sad to say
616 that the situation for consumers remains more Gunsmoke than
617 Little House on the Prairie. We believe that H.R. 3993 will
618 help protect consumers from fraud by strengthening disclosure
619 requirements in these cards.

620 While we would have liked to have seen outright
621 prohibitions on a number of the most egregious business

622 practices, including high billing increments, pricy
623 connection fees, and finding mandatory arbitration clauses,
624 we are heartened that the bill explicitly protects the rights
625 of States to develop strong consumer protections.

626 The rapid growth in the prepaid calling card industry,
627 which is expected to bring in somewhere between \$2 and \$4
628 billion in annual revenues by 2012, coupled with loose
629 regulation and often lacks enforcement, has enabled consumer
630 fraud to flourish. While these cards provide users with an
631 alternative means of calling friends and family, many card
632 providers employ false and deceptive practices and impose
633 unconscionable terms.

634 Part of the problem we believe is the ease with which
635 con artists can enter the industry. According to Pablo
636 Bressan, a Miami-based telecom consultant and prepaid calling
637 card distributor, it costs as little as \$20,000 to buy the
638 long distance minutes and backend consumer platforms to get
639 into--computer platforms to get into the business. Some
640 companies do not even go that far. They simply resell the
641 cards made by others.

642 The potential for fraud in the prepaid calling card
643 industry is so well known it even merited a mention as a
644 preferred scheme on HBO's ``The Sopranos,' ' with Tony Soprano
645 calling the scheme he was running, ``blankety blank beautiful

646 because it is so easy to run the scam.' ' Fraud is fraud. If
647 a car is sold with the promise of a sunroof and chrome
648 wheels, it better have a sunroof and chrome wheels, and if a
649 phone card promises 500 minutes to El Salvador, it should
650 deliver those 500 minutes.

651 The ultimate victims of fraud and deception in the
652 prepaid calling card market are the most vulnerable
653 consumers; immigrants, working poor, military families, and
654 those with lower incomes. By some estimates Hispanic
655 consumers alone may have been losing \$1 million per day
656 because of the fraudulent phone cards. Independent analysis
657 by the Hispanic Institute and the FTC found that the average
658 calling card only delivered between--cards only delivered
659 between 50 and 67 percent of the minutes advertised. The
660 cost per minute rates for prepaid phone cards can be up to 87
661 percent higher than expected, and an expected call rate of 15
662 cents per minute, for example, may end up costing 28 cents
663 per minutes.

664 Now, some attorneys general had done a commendable job
665 in prosecuting fraudulent practices, including in Florida and
666 Texas. The Federal Trade Commission has also conducted
667 investigations as Ms. Greisman has pointed out and has worked
668 very closely with the States, and we commend them for that.
669 While the FTC and State actions in this area have certainly

670 benefited consumers, we feel that--we fear that millions of
671 dollars in losses continue to flow into the pockets of
672 scammers. And also that calling card fraud too often goes
673 under-reported or unreported, and that is why we need basic
674 federal protections to stem the tide of the many deceptive
675 practices in the industry.

676 NCL believes that giving the FTC greater authority as
677 called for in H.R. 3993 would help to level the playing field
678 for providers. As called for in the bill, the regulations
679 should also include requirements that providers and
680 distributors disclose the terms and the conditions of the
681 cards and list the per-minute rates, preferred international
682 designation rates, and any fees or surcharges. In short, we
683 believe consumers should know what they are buying, what--
684 they get what they paid for, and have an accessible avenue
685 for redress if they are harmed.

686 We want to add some recommendations onto what is already
687 available in H.R. 3993. First with regard to disclosure, we
688 recommend that this section of the bill be expanded to
689 include a requirement that every calling card provider
690 publish a website listing the cards' rates, taxes, fees, and
691 surcharges. Currently Section 3A of H.R. 3993 only requires
692 that providers list rates if they maintain a website.

693 Secondly, if the GAO study mandated in Section 8 of the

694 bill presents evidence indicating that greater disclosure has
695 not curbed the abuses, we recommend further action be
696 considered by this committee. And specifically, we would
697 like the committee to consider requiring--one, requiring all
698 credit card providers to be licensed and post a bond before
699 marketing cards to consumers. Such a move would address the
700 issue of the extreme ease of entry into the industry, which
701 invites fraudsters.

702 Secondly, we would like to require all providers to--we
703 think there ought to be a requirement that providers have a
704 24-hour, 7-day-a-week toll-free consumer line staffed by live
705 representatives that are fluent in the language the card is
706 marketed in.

707 Third, we would like to see a provision requiring
708 sellers to inform consumers via website or toll-free phone
709 number of any proposed changes in terms and conditions with
710 the consumers given a chance to reject those changes and
711 receive a refund without a fee.

712 Fourth, we would like to see a requirement for uniform
713 terms in all prepaid calling card contracts so the consumers
714 can more easily comparison shop, and finally, we would like
715 to see a prohibition on binding mandatory arbitration and
716 preserving a private right of action.

717 Thank you, Mr. Chairman. We look forward to answering

718 any questions and working with the committee to see this
719 legislation enacted.

720 [The prepared statement of Ms. Greenberg follows:]

721 ***** INSERT 2 *****

|

722 Mr. {Rush.} The Chair thanks Ms. Greenburg.

723 And now the Chair recognizes Ms. Acampora for 5 minutes

724 for opening statements.

|
725 ^TESTIMONY OF PATRICIA ACAMPORA

726 } Ms. {Acampora.} Thank you, Chairman Rush, Ranking
727 Member Radanovich, Mr. Engel, and members of the committee.
728 My name is Patricia Acampora. I am Commissioner with the New
729 York State Public Service Commission. I am testifying today
730 for the National Association of Regulatory Utility
731 Commissioners or NARUC.

732 NARUC represents the agencies in each of your States
733 that have oversight responsibilities for telecommunications.
734 These commissioners are, like you, all focused on what is
735 best for your State and your constituents. On behalf of
736 NARUC I want to commend Chairman Rush, Ranking Member
737 Radanovich, and Mr. Engel, my fellow New Yorker, for their
738 leadership on this important issue. We want to specifically
739 thank each of you, in particular, your excellent staffers,
740 Britt McArrid and Anna Laitin.

741 I have submitted written testimony, but in my oral
742 remarks I will briefly touch on why this is a good bill and
743 then provide a few suggested improvements.

744 H.R. 3993 is a good bill. Abuse in the prepaid calling
745 card market is well documented. By definition the fraud and
746 inadequate disclosure problems targeted cannot be handled by

747 market forces. That is why reputable providers that make up
748 the heart of this industry should embrace the joint Federal,
749 State enforcement regime presented.

750 The State--the Federal, State partnership established in
751 Sections 5 and 7 of the bill is critical. It maximizes the
752 avenues for consumer redress. It assures States don't waste
753 tax dollars reshuffling existing enforcement regimes. It
754 allows more protective State fines and remedies to remain
755 intact. It leverages State and Federal enforcement activity
756 to produce the greatest possible deterrents to bad actors.
757 There is never a good reason to take State consumer cops off
758 the beat or to limit your constituents' avenues for redress.
759 H.R. 3993 does neither.

760 Significantly, the bill also mandates disclosure of all
761 information that consumers need to make informed decisions
762 and also Federal and State authorities need to investigate
763 bad actors. This legislation is, in fact, an excellent
764 template for how Federal and State authorities can best
765 partner to protect consumers. This is a good bill, and NARUC
766 supports it.

767 That said, I do have a couple of personal suggestions
768 and one NARUC proposal to further improve what is already a
769 very good bill.

770 NARUC suggests changing the definition of prepaid

771 calling card and calling card service. The current
772 definitions reference existing regulatory classifications
773 that are increasingly outdated as technology evolves.
774 Definitions that reference specific technology is like void,
775 and old classifications can only serve as target for bad
776 actors to find loopholes, something history has conclusively
777 demonstrated they are very, very good at.

778 The subcommittee should focus on a functional definition
779 that is not tied to any particular technology like the one
780 used in Senate companion bill S.562. That approach was also
781 used by Representative Engel in H.R. 1258.

782 I also have a couple of personal recommendations. My
783 Commission and others have difficulty pursuing prepaid
784 calling card complaints because the rates and fees
785 information related to the card is printed on the packaging,
786 which is normally thrown away. I would like to commend
787 Congressman Engel as this bill fills the gap by requiring
788 that disclosure of rates and fees, as well as contact
789 information, be printed on the calling card itself, not just
790 the packaging.

791 Further, if the disclosure printed on the card is
792 obscured by the packaging, this legislation requires the
793 disclosure also be printed on the packaging. However, I
794 remain concerned that providing full disclosure on the

795 calling card itself may result in unreadable print size. To
796 improve the readability, I suggest service providers be
797 required to include all rates and fees on a piece of
798 cardstock included with the calling card. This card should
799 be the same size as the calling card and have the phrase,
800 consumer, do not discard, printed on both sides in large
801 type.

802 Another personal recommendation would be to require all
803 calling card providers to maintain a website with information
804 on the rates, terms, and conditions of the card and the
805 website to be displayed on the card. As currently drafted,
806 the bill only requires online disclosure if a provider
807 maintains a website. This opens the door to abuse. It is
808 not unreasonable to require a provider to maintain a website
809 outlining rates, terms, and conditions. It is certainly not
810 expensive nor difficult.

811 Thank you again for allowing me to have this opportunity
812 to testify.

813 [The prepared statement of Ms. Acampora follows:]

814 ***** INSERT 3 *****

|

815 Mr. {Rush.} The Chair thanks Ms. Acampora.

816 Now the Chair recognizes Mr. Kabba for 5 minutes for the

817 purposes of opening statement.

|
818 ^TESTIMONY OF ALIE KABBA

819 } Mr. {Kabba.} Mr. Chairman and the subcommittee, I am
820 Alie Kabba, Executive Director of the United African
821 Organization and the Vice President of the Illinois Coalition
822 for Immigrant and Refuge Rights. Thank you very much for the
823 opportunity to share my perspectives on prepaid telephone
824 cards. This hearing is very timely.

825 The United African Organization and the Illinois
826 Coalition for Immigrant and Refuge Rights recognized that
827 prepaid phone cards are often the only means for immigrants
828 from Africa, Asia, Latin America, and the Caribbean to stay
829 in touch with family members abroad. The cards are generally
830 marketed through ethnic stores in neighborhoods with
831 significant immigrant populations. They are easily
832 accessible and on the surface cheap compared to rates by
833 major providers. However, appearances are often deceiving,
834 particularly for consumers with limited English proficiency.

835 Prepaid phone cards too often do not provide the actual
836 minutes advertised or announced due to a myriad of fees.
837 Limited English-proficient consumers, including immigrants,
838 refugees, and the low income, are faced with unnecessarily
839 small, fine print to decipher as usage fees. By all accounts

840 prepaid phone cards are predominantly used by some immigrants
841 who can't qualify for phone service from major providers like
842 AT&T and Verizon because they lack needed documentation or
843 they do not have credit history.

844 Alas, Mr. Chairman, this vulnerable group of
845 undocumented consumers of prepaid phone cards is the least
846 likely to complain about poor customer status, deceptive
847 practices, or deficiencies as the user of the cards. Fees
848 may not always be fully disclosed, and even if they are
849 disclosed, they usually are not understood. When you factor
850 in the problem with low-completion rate of calls, hidden fees
851 can easily account for a hefty portion of the cost per call.

852 Short expiration dates have become a practice,
853 presumably to increase calling card sales. Unsuspecting
854 consumers are out of minutes if they hold onto the card
855 beyond the short expiration dates. Immigrant customers are
856 likely to buy a few extra cards in case of a family emergency
857 in faraway places like the Democratic Republic of Congo or
858 Trinidad and Tobago. The short expiration dates often leave
859 customers with worthless cards due to no fault of their own.

860 Short expiration dates are sometimes related to yet
861 another hidden problem with prepaid phone cards. Some calls
862 do not simply reach their destinations. An unsuspecting
863 customer may try repeatedly over an extended period of time

864 to reach their loved ones in say Bolivia or Liberia without
865 giving much attention to the expiration dates. Consequently,
866 they are hit with a double whammy of losing their money and
867 not being able to talk to their loved ones abroad.

868 Cost-per-minute rates are up to higher than those
869 advertised. The joke in the community is that it does not
870 matter whether the prepaid phone card is marketed under the
871 brand name of African Safari, African Kilimanjaro, or African
872 Sky. The actual cost per minute is as mysterious as the
873 night sky over the Sahara Desert. In other words, prepaid
874 calling cards are like books whose covers tell you nothing
875 about their context. You simply hope and pray to the Holy
876 Spirit that you have your money's worth.

877 And to add insult to injury, Mr. Chairman, customers
878 have no recourse to lodge their complaints. Even in the rare
879 instance is where you can reach a customer service
880 department, customer service personnel may not be available
881 or their customer service department speak the language of
882 the customers. Since a significant percentage of their
883 customers consist of limited English proficient households,
884 with at least one relative aboard, it flies in the face of
885 logic that many prepaid phone card providers do not have
886 customer service departments or departments with
887 linguistically-competent staff. This lack of commitment to

888 customers, customer needs implies a cynical business
889 strategy, relying on the captive customers who will accept
890 cutthroat rates and poor service because they have no viable
891 alternatives.

892 There is the perennial complaint about billing
893 increments, the units the companies use to deduct minutes.
894 For example, if using one bill increment on a
895 5-cent-per-minute card, they deduct 5 cents for the call even
896 if the call lasts for 1 minute or just 30 seconds. If the
897 card applies a 5 billing increment, that same 30-second call
898 could cost 25 cents. Clearly, the customer ends up with
899 fewer minutes than previously advertised.

900 It is crystal clear that the empirical basis of the
901 above consumer complaints point to one conclusion.
902 Information provided by prepaid phone card issuers is often
903 confusing, incomplete, and deceptive.

904 In conclusion, in requiring accurate and reasonable
905 disclosure of the terms and conditions of prepaid telephone
906 calling cards and services, we strongly believe that H.R.
907 3993 addresses all pertinent consume complaints in our
908 diverse immigrant and low-income communities.

909 Furthermore, we believe that careful wording of what is
910 meant by fruitful disclosure of minutes available is
911 imperative if per call and periodic fees are allowed. If

912 fees are allowed, there must be standardization of terms and
913 only one term for each fee. Consumers shall have better
914 information prior to purchase. Prepaid phone card providers
915 can facilitate this process by using simple, plain English.

916 Thank you, Mr. Chairman.

917 [The prepared statement of Mr. Kabba follows:]

918 ***** INSERT 4 *****

|
919 Mr. {Rush.} The Chair thanks the gentleman.

920 The Chair now recognizes for 5 minutes Mr. Ramminger for
921 the purpose of opening statement.

|
922 ^TESTIMONY OF SCOTT RAMMINGER

923 } Mr. {Ramminger.} Thank you, Mr. Chairman. I am Scott
924 Ramminger, President of American Wholesale Marketers
925 Association. Our association represents distributors to
926 convenience stores across the country. Our members supply
927 about \$85 billion worth of product through convenience stores
928 like 7-11, for example.

929 Simply put, they purchase products from manufacturers,
930 they purchase snacks and candy and tobacco products from the
931 manufacturers, they aggregate that product and deliver it and
932 sell it to the convenience stores, and of course, one of the
933 things that they do along with the consumable products is
934 supply some of these prepaid calling cards, which they
935 purchase from the manufacturers of those cards.

936 On behalf of AWMA I would like to thank the subcommittee
937 for holding the hearing and for working to ensure that
938 consumers are protected from unfair and deceptive practices
939 with respect to these cards. We support that goal
940 wholeheartedly, however, we would like to urge that any
941 legislation ultimately approved by the committee include
942 language that imposes liability for false labeling or
943 advertising on our member distributors only if they know

944 about this falsity. Unfortunately, the legislation currently
945 before the committee contains no such provision providing
946 this necessary protection for law-abiding distributors.

947 Under the current legislation H.R. 993, a distributor,
948 much like a retailer, would be held liable and could be
949 punished simply by acting as a conduit, purchasing these
950 cards from the manufacturer and supplying them to the
951 convenience stores, even if the distributor was completely
952 unaware that there was any sort of discrepancy or problem
953 with the cards.

954 This would create an unfair burden of liability for the
955 distributors, and I want to urge the committee to ensure that
956 the legislation promoting the consumer protection on the
957 prepaid calling cards includes protection for the law-abiding
958 distributors who unwittingly could be acting as go-betweens
959 on these products.

960 The H.R. 993 would add the subject of calling cards to
961 the Federal Trade Commission Act, directs the FTC to write a
962 rule governing calling cards, and spells out the consumer
963 disclosures that calling card vendors must provide. The
964 penalties for violation of the FTC rules or injunctions,
965 money damages, and fines. The bill gives States Attorney
966 Generals similar authority. We believe that it is only fair
967 that wholesale distributors are exempt from liability for

968 incorrect disclosure if the distributor has no control over
969 the scope or services that the manufacturer has delivered.

970 While it is true that a distributor could tell whether
971 or not there was a clear and conspicuous notice on the card
972 about fees and minutes, the distributor would have no way of
973 knowing whether, in fact, the card had the correct number of
974 minutes on it or not.

975 In previous Congress a similar bill on this issue, H
976 3402, addressed the problem by making it unlawful for the
977 distributor to distribute the cards if the distributor knows
978 that the prepaid telephone card provides fewer minutes than
979 the number promoted or advertised. As I said, unfortunately,
980 this new bill does not have this much-needed provision.

981 On behalf of all members of the American Wholesale
982 Marketers Association, I would like to offer the following
983 fix aimed at ensuring the fairness and reasonableness of the
984 measure.

985 Section 2(4) defines prepaid calling card distributor.
986 This section could be amended by adding the following clause
987 at the end. But such termed as not include distributors who
988 sell such cards in the same form and packaging as acquired
989 from a prepaid calling card service provider or distributor.

990 Alternatively, a provision could be added to the
991 directions given to the FTC that would read, in promulgating

992 each such regulation, the Commission shall not issue
993 regulations which hold the prepaid calling card distributor
994 liable for deceptive disclosure of services or rates which
995 the distributor was unable to know or control.

996 And just--I would just like to add, I think there is
997 some--a little bit of nomenclature problem perhaps, because
998 sometimes our members who are real wholesale distributors who
999 are purchasing typically goods, you know, canned goods or
1000 candy from a manufacturer and reselling it, we refer to as
1001 distributors. But--and sometimes the makers of these cards
1002 are referred to as distributors. That is--we are talking
1003 about two different sorts of distributors entirely. Our guys
1004 are not buying the minutes and producing the cards. They are
1005 buying the cards from someone and simply selling them along
1006 with other goods to the retailer.

1007 I would again like to commend the subcommittee for these
1008 efforts. It is clearly an important issue. I represent
1009 small businesses, and I clearly can appreciate this
1010 significant problem, and I hope you will consider our
1011 concerns as you go forward on this important issue. Thank
1012 you, Mr. Chairman.

1013 [The prepared statement of Mr. Ramminger follows:]

1014 ***** INSERT 5 *****

|
1015 Mr. {Rush.} The Chair thanks you, and the Chair thanks
1016 all of the witnesses for their fine opening statements.

1017 Before we begin our line of questioning, I request
1018 unanimous consent--I am requesting the submission of two
1019 items that were submitted to the subcommittee for entry into
1020 the record of today's hearing. Item number one is a
1021 statement for the record of Mr. Walter B. McCormick Jr. He
1022 is the President and CEO of the U.S. Telecom Association, and
1023 the second item is the statement and the comments of Mr. John
1024 Eichberger. He is the Vice President of the National
1025 Association of Convenience Stores.

1026 Hearing no objection so ordered.

1027 [The prepared statement of Mr. McCormick follows:]

1028 ***** INSERT 6 *****

|

1029 [The prepared statement of Mr. Eichberger follows:]

1030 ***** INSERT 7 *****

|

1031 Mr. {Rush.} The Chair--

1032 Dr. {Gingrey.} Mr. Chairman.

1033 Mr. {Rush.} --recognizes himself now for 5 minutes.

1034 Dr. {Gingrey.} Mr. Chairman. Mr. Chairman, could I ask

1035 unanimous consent to submit my opening statement for the

1036 record?

1037 [The prepared statement of Dr. Gingrey follows:]

1038 ***** COMMITTEE INSERT *****

|
1039 Mr. {Rush.} Hearing no objections, so ordered.

1040 The Chair recognizes himself for 5 minutes, and the
1041 Chair directs this question to Ms. Greisman.

1042 Ms. Greisman, this legislation provides the FCC with the
1043 authority over common carriers solely for the purpose of
1044 enforcing the provisions of the bill. Although the FCC is
1045 generally prohibited from exercising any authority over
1046 common carriers, precedence on this kind of carve-out
1047 authority as a similar problem with giving it to the FCC
1048 regarding pay-per-call services.

1049 The question that I ask of you is what could the FCC do
1050 differently if it had this special carve-out authority
1051 regarding these calling cards?

1052 Ms. {Greisman.} Mr. Chairman, the answer is very
1053 simple. It could sue carriers, which it cannot currently do.
1054 The three cases brought by the FDC have been against prepaid
1055 phone card distributors. We do not have the statutory
1056 authority currently to sue the carriers, many of whom we
1057 believe are also responsible and should be held liable for
1058 the fraudulent claims that were made.

1059 Mr. {Rush.} In your testimony you argued for a complete
1060 repeal of the common carrier exemption. Why do you believe
1061 that this is necessary?

1062 Ms. {Greisman.} We think that exemption is outdated.
1063 The telecommunications industry today looks incredibly
1064 different from how it looked back in the early 1900s. We see
1065 convergence among telecommunications and internet service
1066 providers, and we simply think it does not make sense and it
1067 actually impedes our law enforcement activities as it has in
1068 the prepaid calling card context, and it complicates
1069 litigation which we have seen in cases where we have brought
1070 involving cramming, which is the unauthorized placement of
1071 charges on telephones, telephone bills.

1072 Mr. {Rush.} Are there any other witnesses who have
1073 either similar or contrary comments or answers to this
1074 question? Are there any other witnesses who would like to
1075 comment on Ms. Greisman's response to the question?

1076 Ms. {Greenberg.} Mr. Chairman, we--in our testimony we
1077 support the carve-out for the specific purposes of allowing
1078 the FDC to have jurisdiction over the common carriers in this
1079 situation because they play a big role in servicing the
1080 consumers who buy these cards. So, yeah, we do support the
1081 FDC's role in this area.

1082 Mr. {Rush.} Anyone else? Any other comments?

1083 I am going to move to another line of questioning here.
1084 Mr. Kabba, for many immigrants living in the U.S., and you
1085 clearly stated it, but I want to you to state it again, but

1086 it is not only immigrants. We got college students and
1087 military personnel, and the prepaid calling card is a primary
1088 method for staying in touch with families and friends. But
1089 has been stated earlier, prepaid calling cards in most
1090 instances or in many instances fails to deliver the full
1091 number of advertised minutes.

1092 For example, in 2007, the Hispanic Institute conducted a
1093 study and concluded that on average of prepaid calling cards
1094 60 percent of the minutes that were advertised, and this is
1095 totally unacceptable. In what remaining time I have a want
1096 to explore, dig into the impact these fraudulent calling
1097 cards can have on American consumers. You represent
1098 immigrants in Chicago. What impact do these fraudulent cards
1099 have on the many immigrants that you help on a daily basis?

1100 Mr. {Kabba.} Clearly if you look at the deceptive
1101 practices, what we see on a daily basis in our communities is
1102 that they are generally low-income households, hence you lose
1103 more money than the service that gets returned, and I think
1104 that this is important, you know, because these are the
1105 households that really need to diverse significant portions
1106 of their household income to basic necessities, you know,
1107 food, making sure that it can pay the rent and not be
1108 homeless, to pay for childcare, you know, for their children,
1109 or they need actually to have a place before they can go to

1110 work.

1111 And so when we look at the complaints that we receive
1112 every time, Mr. Chairman, it is clear that there is, indeed,
1113 an outflow of income from these households to businesses that
1114 are clearly not providing the services that they purport to
1115 provide for the community.

1116 And more importantly I think that it sends the message
1117 that, in our communities at least, that there is no recourse
1118 for these households to turn to in terms of their legitimate
1119 complaints, and this, I think, bill helps us to deal with
1120 that problem, because there is a way for them to call a
1121 place. Even a toll-free number, you know, that is dedicated
1122 to customer complaints that we can direct them to. That will
1123 be far more empowering and help them to know that they are
1124 not vulnerable to these predators, because that is really
1125 what the practice is.

1126 Each card comes in different names, and you attempt to
1127 buy the cards that perhaps is restricted with your homeland,
1128 you know, if you are from Trinidad and Tobago, you see a card
1129 that talks about some Trinidadian music, and you think, oh,
1130 that is great. Calypso and you buy it, but then it is really
1131 the same thing as African Kilimanjaro, you know, but it is
1132 targeted towards these households that are not able to really
1133 react to the deceptive practices that we have documented.

1134 And these documentations, in fact, have been highlighted
1135 in the University of Chicago study of 2004, which clearly
1136 supports many of the statements that you have made here, that
1137 people who buy phone cards generally do not get their money's
1138 worth. And so we are really talking about a community that
1139 is significantly losing money and not getting the services,
1140 and I think this bill will help stop that bleeding from their
1141 households.

1142 Mr. {Rush.} The Chairman's time is up.

1143 The Chair now recognizes the Ranking Member, Mr.
1144 Radanovich, for 5 minutes.

1145 Mr. {Radanovich.} Thank you, Chairman Rush. Welcome to
1146 the subcommittee, and we appreciate all of your testimony.

1147 Ms. Greisman, if I may, I would like to quiz you on one
1148 particular item, and that is the retail end of this concern
1149 in legislation. During the Floor debate last year the
1150 gentleman from New York, Mr. Engel, the author of the bill,
1151 stated very clearly that he believes that the intent of the
1152 legislation, at least last year's legislation, was to address
1153 the bad actors manufacturing these cards and not go after Mom
1154 and Pop retailers. And I commend him for his hard work on
1155 this legislation and efforts to target the source of the
1156 problem.

1157 And, Mr. Chairman, I do have a transcript of a colloquy

1158 that was done on the Floor with--by Mr. Engel and I believe
1159 Mr. Whitfield, and I would ask unanimous consent to submit
1160 that for the record.

1161 Mr. {Rush.} Hearing no objections, so ordered.

1162 [The information follows:]

1163 ***** INSERT 8 *****

|
1164 Mr. {Radanovich.} Thank you, Mr. Chairman.

1165 My question is does the FTC concur with Mr. Engel's
1166 policy intent on this legislation to exempt retailers?

1167 Ms. {Greisman.} Speaking on my own behalf, which is all
1168 I can do at the moment, yes, that is consistent with my
1169 understanding of the bill.

1170 Mr. {Radanovich.} All right, and so you do agree that
1171 Mom and Pop stores who have done nothing wrong but rather
1172 than--they shouldn't be on the hook for the bad actors?

1173 Ms. {Greisman.} They have not been a target of the FTC
1174 enforcement, and I would not anticipate looking toward them
1175 in any foreseeable future.

1176 Mr. {Radanovich.} Okay. The FTC staff provided
1177 technical comments in a redline version of H.R. 3402 in the
1178 previous Congress. The Commission's comments did not delete
1179 the original language that carved out retail merchants, only
1180 engaged in point-of-sale transaction with consumers but
1181 rather only made a technical change to it. The language was
1182 removed as it moved to the House Floor for consideration.

1183 Does the Commission believe that there is any harm if
1184 that limitation is placed back in the legislation?

1185 Ms. {Greisman.} I would have to look at the precise
1186 language. I don't remember it specifically.

1187 Mr. {Radanovich.} If it were as simple as just, you
1188 know, making sure that retailers were not Mom and Pop stores
1189 and such were not held liable under this legislation.

1190 Ms. {Greisman.} Our concern in that context I believe
1191 would be that a carve-out is not needed and it is not
1192 necessary and as a general matter we disagree with carve-outs
1193 to bills.

1194 Mr. {Radanovich.} So you didn't--did the FTC support
1195 the deletion of the exemption?

1196 Ms. {Greisman.} I honestly don't remember. I will have
1197 to check.

1198 Mr. {Radanovich.} If you could get back to me on that,
1199 that would be great. Thank you.

1200 What is the current civil penalty for violation of
1201 Section 18 of the FTC Act?

1202 Ms. {Greisman.} Sixteen thousand dollars per violation.

1203 Mr. {Radanovich.} Uh-huh. Does that mean that without
1204 some sort of legislative limitation such as a definitional
1205 exemption or injunctive relief for not knowing violations,
1206 that Mom and Pop stores or bodega stores could be liable for
1207 up to \$16,000 if it unwittingly sells a \$5 prepaid card that
1208 omits particular disclosures?

1209 Ms. {Greisman.} Under the Federal Trade Commission Act
1210 there is a knowledge standard that FTC would have to satisfy

1211 in order to impose a civil penalty on any entity.

1212 Mr. {Radanovich.} Uh-huh. Would the FTC support
1213 amending the bill to include a retainer exemption? I am
1214 sorry. You addressed that before, but are you speaking as a
1215 commissioner or as the Commission or--

1216 Ms. {Greisman.} I am speaking solely on my own behalf,
1217 and on my own behalf I do not believe we would support that.

1218 Mr. {Radanovich.} Because you feel that that exemption
1219 is not necessary.

1220 Ms. {Greisman.} Correct.

1221 Mr. {Radanovich.} Alternatively would the FTC support
1222 limiting relief against those--these point-of-sale retailers
1223 in case of not knowing, non-knowing violations to injunctions
1224 similar to the limitations for State actions in the bill?

1225 Ms. {Greisman.} I am sorry. I am not sure I follow
1226 your question, sir.

1227 Mr. {Radanovich.} Would the FTC support limiting relief
1228 against these point-of-sale retailers in cases of non-knowing
1229 violations to injunctions similar to the limitation of State
1230 actions in the bill?

1231 Ms. {Greisman.} I think for the same reasons I just
1232 stated that as a general manner--matter we disfavor any
1233 particular exemptions. We probably would not support that.

1234 Mr. {Radanovich.} All right. Thank you very much, and

1235 Mr. Chairman, I yield back.

1236 Mr. {Rush.} The Chair thanks the gentleman.

1237 The Chair now recognizes the Ranking Member, Ms.

1238 Schakowsky, for 5 minutes for questions.

1239 Ms. {Schakowsky.} Thank you, Mr. Chairman. I want to
1240 give a special welcome to Mr. Kabba. I like to welcome
1241 people from our hometown but also to say that I have worked
1242 very closely with the Illinois Coalition for Immigrant and
1243 Refuge Rights, and I appreciate your work. And, again, as I
1244 said in my opening statement, it has particular residence in
1245 my district, which is so immigrant rich, and people coming
1246 from all over the world.

1247 Let--who was it that talked about technologies not being
1248 too specific? Was that you, Ms. Greenberg? Oh, you did. My
1249 understanding is that--and I don't know if they exist right
1250 now, but actual telephones, cheap telephones that--instead of
1251 cards that could be sold. In other words, you know, instead
1252 of a card or other technologies where this--it would have
1253 exactly the same affect, but this legislation wouldn't cover
1254 it because it is not a card.

1255 Is that what you were concerned about?

1256 Ms. {Acampora.} It was being not so specific because
1257 technology keeps changing, so actually we recommended the
1258 language that was in the Senate bill.

1259 Ms. {Schakowsky.} Which--

1260 Ms. {Acampora.} Which doesn't go into some of these
1261 technologies, because technology keeps changing.

1262 Ms. {Schakowsky.} Are you referring to a card versus
1263 something else? Is that what you are saying?

1264 Ms. {Acampora.} It could be. Yes. It could be that
1265 there will be changes so it won't be a card and so that if
1266 the bill is just specific, you are leaving loopholes open to
1267 these people who are very inventive and who are the bad
1268 actors. They will find a loophole in the law, and they will
1269 look to do something else.

1270 Ms. {Schakowsky.} Ms. Greisman, would you comment on
1271 that as well?

1272 Ms. {Greisman.} We would have to take a look at the
1273 specific language of the bill. I can't address whether there
1274 are any loopholes at the moment. It is certainly something
1275 we will look into.

1276 Ms. {Schakowsky.} Well, at the moment but I am
1277 wondering if you could--if you have any advice on drafting
1278 legislation that would have some staying power.

1279 Ms. {Greisman.} Yes. We specifically do oppose the
1280 exemption for wireless prepaid providers.

1281 Ms. {Schakowsky.} Okay. Let me see. When you said
1282 that there are no remedies, Mr. Kabba, do you see any--is

1283 that a matter of consumer education in your view or the fact
1284 that there really aren't any remedies right now, that people
1285 are left at the mercy of the calling cards companies?

1286 Mr. {Kabba.} I think it is really the fact that
1287 currently there are no remedies all across diverse
1288 communities we see this, you know, the fact that we do not
1289 even have one standardized place for people to turn to, even
1290 if it is a toll-free number that we can say this complaint
1291 can be lodged there. That I think would be helpful.

1292 The consumer education is not as difficult as I would
1293 imagine if we have a clear language; simple, clear language
1294 from the providers. The fact that they are using extra-fine
1295 print in language that we do not even, as advocates,
1296 understand, less, you know--so when you are talking about
1297 limited-English proficient households, you know, that, in
1298 effect, makes it harder. But I do know that right now the
1299 fact that there is no way to lodge complaints, you know, and
1300 when you are dealing with cards that keep on changing their
1301 plan names, the target households, making sure that, yes,
1302 people who are from Asia can feel like, oh, this card is
1303 special because it has something that reminds them of their
1304 home. You know, or in the case of Africa, come up with a
1305 card and when, in fact, it is really the same provider if you
1306 read the fine print.

1307 We need to make sure that we really have a place to
1308 lodge complaints.

1309 Ms. {Schakowsky.} Okay. Does the State of New York
1310 have any remedies, and I am assuming because you are here,
1311 your view is that national legislation certainly would be
1312 preferable.

1313 Ms. {Acampora.} We do have a law, and, of course, our
1314 law as compared to what a new national standard would be
1315 would be less, but we do like the flexibility issue for
1316 States because, as I said in my statement, the State cops,
1317 when something happens, people are coming to the local
1318 officials, and so that the flexibility that allows us to
1319 address a problem right away is crucial, but the uniformity
1320 is still a good thing to have. We still could use more teeth
1321 in legislation. Yes.

1322 Ms. {Schakowsky.} Okay. Ms. Greenberg.

1323 Ms. {Greenberg.} I think Mr. Kabba mentioned an
1324 interesting idea. One thing we might think about is having a
1325 statement on the card, if you have issues or concerns about
1326 use of this card, call this toll-free number, and it could be
1327 a place that would log complaints and see which providers are
1328 raising the biggest or creating the biggest problems. I
1329 think, you know, we would begin to have a database of where
1330 the rip-offs were happening.

1331 And one other thing--

1332 Ms. {Schakowsky.} And would the FTC be the right place
1333 for that?

1334 Ms. {Greenberg.} We will see if Ms. Greisman agrees to
1335 that, and she probably won't on the spot, but, yeah, I would
1336 think it would have to be a, you know, a Federal
1337 clearinghouse for this kind of information.

1338 One other thing I want to say is that I lived abroad for
1339 a year. I lived in Australia, and when you buy a calling
1340 card there, and it says you are going to get 500 minutes, you
1341 get--you always get those minutes. So this is not rocket
1342 science. It can be done. They just have tougher
1343 regulations, and here I use cards here all the time and
1344 routinely they, you know, use them once, they are--the value
1345 dissipates almost immediately.

1346 So I know this can be done, and I am sorry to use up
1347 your time.

1348 Ms. {Schakowsky.} Yeah. No. My time--although, Mr.
1349 Chairman, I--if we could later, I do have one or--

1350 Mr. {Rush.} The Chair wants to inform the Vice Chair
1351 that we will have a second round for 2 minutes each for each
1352 member to ask a second round of questions.

1353 The Chair now recognizes the gentleman from
1354 Pennsylvania, Mr. Pitts, for 2 minutes. Five minutes.

1355 Mr. {Pitts.} Thank you, Mr. Chairman.

1356 Ms. Greisman, the FTC works with the FCC and State AGs
1357 and other State and local agencies to combat unfair and
1358 deceptive calling card practices. How do all these agencies
1359 divide up enforced responsibilities? And with all these
1360 entities involved in enforcement do you end up with
1361 duplicative efforts?

1362 Ms. {Greisman.} No, sir, we do not. Dual Federal and
1363 State enforcement really is more the norm than the exception,
1364 and we see that most particularly in the telemarketing area
1365 where this type of dual enforcement scheme has been
1366 enormously effective and productive, and in fact, working
1367 through task forces such as the Prepaid Phone Card Task Force
1368 that we created back in 2007. We do allocate resources and
1369 share information and work in a very cooperative manner.

1370 Mr. {Pitts.} Do inconsistent State laws place service
1371 providers in an untenable situation by prohibiting activities
1372 in one State that are permitted in another? Are prepaid
1373 calling card services usually tailored on a State-by-State
1374 basis, or are they generally uniform throughout the United
1375 States?

1376 Ms. {Greisman.} What I can say is that there are 11
1377 States currently that have specific statutes or regulations
1378 addressing the prepaid phone card industry, and I am not

1379 aware of problems that those different laws have presented or
1380 posed.

1381 Mr. {Pitts.} Would it be easier or more efficient to
1382 coordinate with the States on enforcement actions if there
1383 were a single standard? If there is a single standard, isn't
1384 it easier to catch fraudulent actors?

1385 Ms. {Greisman.} I don't believe that is necessarily the
1386 case. I think what we have now are different standards among
1387 the various States and at the Federal level, and for example,
1388 in the telemarketing area. That has not been a problem at
1389 all.

1390 Mr. {Pitts.} Now, Mr. Ramminger offers two proposed
1391 solutions to the concern of distributor and retail merchant
1392 liability, and his proposals involve either a change to the
1393 definition or a change to require the FTC to address it
1394 through its required rulemaking.

1395 What do you think of those proposals?

1396 Ms. {Greisman.} Well, I would like to take this
1397 opportunity to correct a misstatement I made in response to
1398 Mr. Radanovich's question. Actually, as I understand it,
1399 distributors, the way distributors currently is defined in
1400 the bill is a way that would exclude pure retailers, which I
1401 think is an issue that was raised earlier. I would have to
1402 look at the type of proposal that Mr. Ramminger is proposing

1403 with respect to distributors, but as a general matter, as I
1404 said before, my position is that we would not favor excluding
1405 any particular entity.

1406 And the three cases the FTC has brought have, in fact,
1407 been against distributors.

1408 Mr. {Pitts.} Ms. Greenberg, at what point do too many
1409 disclosures overwhelm consumers to the point where they
1410 disregard them or never read them?

1411 Ms. {Greenberg.} Yes, sir. That certainly is a
1412 concern, and that is why we recommended something much more
1413 uniform, some sort of uniform text on every card because, you
1414 know, with the fine print as we can see there with this very
1415 good example, you know, at some point it is too small to
1416 read, and people don't really know what to do with the
1417 information.

1418 So if we could have some uniformity on these cards, I
1419 think that would be a great benefit to consumers.

1420 Mr. {Pitts.} And as Mr. Kabba said, it should be in
1421 simple, plain English.

1422 Ms. {Greenberg.} That is correct.

1423 Mr. {Pitts.} Yeah. Should calling card companies not
1424 be allowed to set their own rates and fees as long as they
1425 disclose them completely?

1426 Ms. {Greenberg.} That is a question for me? Yeah.

1427 We--this is why we call this the wild west because right
1428 now they can, these companies could set whatever fees they
1429 wish. They can promise--the rules can change at any moment.
1430 So we are really calling for much more oversight on--both on
1431 the part of the FTC and this bill to try to curb some of the
1432 worst practices.

1433 Mr. {Pitts.} Mr. Kabba, do you know if the FCC has
1434 received complaints about the prepaid wireless market, and if
1435 so, do you know what the FCC has done to resolve those
1436 complaints?

1437 Mr. {Kabba.} Not to the best of my knowledge but I do
1438 know that it is a concern to us, you know, and I hope that
1439 there will be some standardized way for us to really lodge
1440 those complaints.

1441 Mr. {Pitts.} We don't have much time, but what
1442 percentage of the market would you say, Mr. Kabba, are bad
1443 actors?

1444 Mr. {Kabba.} At this point I can really say that the
1445 vast majority, you know, and that is why this problem needs
1446 to be addressed, and I really commend the subcommittee for
1447 focusing on it. It is very hard to really pick out the good
1448 actors, you know. Last month alone I used probably four
1449 different cards, and I can show you that all the cards did
1450 not deliver the number of minutes. So it is not a case where

1451 you have a good apple in the bag of bad apples. It is really
1452 the bag that you need to look at, the whole bag.

1453 Mr. {Pitts.} My time has expired. Thank you, Mr.
1454 Chairman.

1455 Mr. {Rush.} The Chair now recognizes Dr. Gingrey for--
1456 no. Mr. Stearns. I am sorry. Mr. Stearns for 5 minutes.

1457 Mr. {Stearns.} Thank you, Mr. Chairman.

1458 Ms. Greisman, under the law the jurisdiction of the FCC
1459 and the FTC would share jurisdiction, but I don't think they
1460 necessarily overlap if I understand. If the jurisdiction in
1461 this area was to overlap, for instance, by removing the
1462 common carrier exemption so that the FTC can bring actions
1463 against FCC-regulated entities, the question would be could
1464 common carriers find themselves at risk of being compliant
1465 with one agency's rules but subject to a different
1466 enforcement regime by a different agency, enforcing the same
1467 rule?

1468 Ms. {Greisman.} I don't believe so, sir. I think the
1469 rules of the road would be remarkably consistent, and that is
1470 what we have seen in the telemarketing area where both the
1471 FTC and the FCC enforce very similar rules involving the
1472 telemarketing industry, and I don't believe we have seen any
1473 consistent or any inconsistent or duplicative efforts. For
1474 example, I think do not call is a prime example of that.

1475 Mr. {Stearns.} Would the FTC support the inclusion of
1476 language that is similar to that in the Senate bill that
1477 essentially limits the FCC enforcement in this area where the
1478 FTC enforcement authority exists?

1479 Ms. {Greisman.} I don't recall that specifically in the
1480 Senate bill, but I--the FTC's--

1481 Mr. {Stearns.} My staff says it is in there so--

1482 Ms. {Greisman.} Okay. I certainly would take your word
1483 for that. I just can't recall it myself.

1484 Mr. {Stearns.} Yeah. Let us just go under that
1485 assumption. I think people in the audience are nodding, so
1486 let us just assume that and then just see if you can answer
1487 the question with that premise in mind.

1488 Ms. {Greisman.} If I understand your question, the
1489 FTC's view is that the common carrier exemption is outdated,
1490 and lifting it will not create inconsistent or duplicative
1491 enforcement efforts by the FTC and the FCC.

1492 Mr. {Stearns.} Uh-huh. I think this is probably a
1493 reiteration of what you have already answered, but you have
1494 testified it is never a good idea to limit--this is for
1495 Acampora. You said that it is never a good idea to limit
1496 State consumer protection.

1497 However, without preemption is it, isn't it farfetched
1498 to see that if disclosure is required by the Federal

1499 Government and even one-third of the States, let alone all
1500 50, that the legally-required disclosure can end up looking
1501 something much like that poster over there? And I think it
1502 was suggested earlier that people obviously are not going to
1503 read it if it looks similar to that poster over there.

1504 You suggest requiring disclosure on cardstock, and I
1505 guess the question is would the cardstock distribute with
1506 cards? Will the cardstock distributed with cards have to be
1507 as big as that poster to fit all those disclosures? I mean,
1508 that is what we are thinking about.

1509 Ms. {Acampora.} Well, the cardstock would be the same
1510 size as the calling card, and it would simply have on there
1511 the warning to consumers not to throw that card out, and it
1512 would have information for them, which sometimes is on that
1513 packaging getting thrown out, and then they can't see it.

1514 So we thought we would kick this around at the NARUC
1515 committees from commissioners from all the States, and this
1516 is something that was brought up that everyone agreed with
1517 could be helpful.

1518 Mr. {Stearns.} You have closed on a House before, and
1519 did you read all the fine print on the mortgage statement of
1520 the--you know how complicated it is? Sometimes it is 30
1521 pages.

1522 Ms. {Acampora.} I didn't, but my husband did.

1523 Mr. {Stearns.} Oh, you have a lawyer do it?

1524 Ms. {Acampora.} No, he is not a lawyer, but he is a
1525 very precise man.

1526 Mr. {Stearns.} But most people have a lawyer. I mean,
1527 at the rate we are going if you have that card, you are going
1528 to need a lawyer once you buy the card to get this whole
1529 thing. You are going to need a lawyer to see what it is. I
1530 mean, obviously, wouldn't you think you would want to make it
1531 simplified?

1532 Ms. {Acampora.} I think this is simplified.

1533 Mr. {Stearns.} With 50 States having separate,
1534 different connotations on the card?

1535 Ms. {Acampora.} Well, you have to give the States
1536 flexibility. I mean, we like the idea of the Federal
1537 Government having a standard but--

1538 Mr. {Stearns.} And remember, we passed this bill
1539 without this by unanimous agreement in this--so both--
1540 bipartisan bill, the Engel bill passed, everybody supported
1541 it without what you are requesting, so I think--

1542 Ms. {Acampora.} Well, you are jumping from card to now
1543 to the various--

1544 Mr. {Stearns.} Okay.

1545 Ms. {Acampora.} --degrees. So let us just look at the
1546 flexibility that States need, but also I believe in the bill

1547 the language, the Federal law would prevail is there was a
1548 problem.

1549 Mr. {Stearns.} All right. As I understand it each
1550 State would have the flexibility to do what they want, and
1551 the Federal law--

1552 Ms. {Acampora.} They do but if there was a case where
1553 it was brought to--where the Federal Government would be
1554 involved, the Federal law would prevail.

1555 Mr. {Stearns.} Okay. My time has--but you would agree
1556 that something that complex on a small card would be very
1557 difficult to convey to--

1558 Ms. {Acampora.} That wouldn't be on the small card.
1559 The information that consumers would need to make a phone
1560 call or to go on a website, that is the information that
1561 would be on that card, not that.

1562 Mr. {Stearns.} You don't think this would create a lot
1563 of litigations?

1564 Mr. {Rush.} And the gentleman's time is up. We have--
1565 there is a vote occurring on the Floor, and we want to try to
1566 finish up the questioning before we would have to recess for
1567 the vote.

1568 The--Mr. Scalise, the gentleman from Louisiana. I am
1569 sorry. Dr. Gingrey is recognized for 5 minutes.

1570 Dr. {Gingrey.} Mr. Chairman, thank you. Sometimes

1571 myself and Mr. Scalise get confused. He likes to walk around
1572 saying he is Dr. Scalise, but we know better. Mr. Chairman,
1573 thank you.

1574 I want to address my question, the first question to Mr.
1575 Ramminger. In your testimony you discussed the need to hold
1576 the prepaid calling industry accountable for the current
1577 abuse of the system, abuses of the system. However, you also
1578 discussed the need for your industry to be held accountable,
1579 only if they know about the incorrect information on the
1580 calling cards that are being distributed.

1581 Under the bill previously considered by the subcommittee
1582 that ultimately passed the House, there was an exemption for
1583 point-of-sale retailers if they sold these cards. Under the
1584 current version of this bill that exemption for retailers no
1585 longer exists.

1586 So my question is this. How does this potentially
1587 affect your industry, and if you can speculate the point-of-
1588 sale retailers for whom you, I guess you work.

1589 Mr. {Ramminger.} Yes. We supply. I mean, what we are
1590 basically asking for is that the protection that was in the
1591 original legislation last time around that protected the
1592 retailers be extended to our distributor members, and I,
1593 again, want to make the distinction between our distributors
1594 who are buying candy and gum and snacks and phone cards and

1595 selling it to the retailers and the ``distributors,' ' that
1596 are sometimes called distributors, they are buying minutes
1597 from a long distance company and making cards. That is a
1598 different kind of distributor.

1599 So, yes, sir. What could happen is if through no fault
1600 of his own one of my members buys these cards from what is
1601 essentially a manufacturer of the cards and sells them to a
1602 retailer, believing what the manufacturer of the card has
1603 said, that there are 10,000 minutes or however many minutes
1604 it says there are, the person who should be--the entity that
1605 should be held accountable if there are not that many minutes
1606 is the entity that created the card we believe, not the
1607 distributor or the retailer. And we don't believe it would
1608 be appropriate for our distributors to be fined \$16,000 every
1609 time they sell a phone card that--

1610 Dr. {Gingrey.} Mr. Ramminger, thank you. I understand
1611 your response.

1612 And let me go back then to Ms. Greisman, because I got a
1613 little confused. You, just a moment ago you asked to correct
1614 something that you had said. Do you disagree with Mr.
1615 Ramminger, or do you now agree with him that point-of-sale
1616 folks are different than those who are the so-called
1617 distributors who buy the minutes, who put them on the card
1618 and the bad actors that can monkey around with what is

1619 really--is there any disagreement with what he just said and
1620 your opinion?

1621 Ms. {Greisman.} My interpretation of the bill is that
1622 virtue of the way distributors is a defined term there, that
1623 retailers are not covered. So retailers are out of this
1624 particular bill. I would not support taking distributors
1625 out, and I would cite to the fact that the three cases the
1626 FTC has brought have involved retailers. Excuse me. Have
1627 involved distributors.

1628 Dr. {Gingrey.} So you wouldn't be in favor of taking
1629 the point-of-sale folks out of--

1630 Ms. {Greisman.} Point-of-sale people to the extent they
1631 are the ones I would characterize as retailers already are
1632 out of the bill as drafted.

1633 Dr. {Gingrey.} Let me ask you, Ms. Greisman, another
1634 question. Do inconsistent State laws place service providers
1635 in an untenable situation by prohibiting activities in one
1636 State that are permitted in another? Are prepaid calling
1637 card services usually tailored on a State-by-State basis, or
1638 are they generally uniform throughout the United States?

1639 Ms. {Greisman.} Sir, my understanding is that 11 States
1640 have discreet statutes or regulations that do, in fact,
1641 tailor the treatment of prepaid phone card industry
1642 currently. I am not aware that that has led to conflicting

1643 results or problems in an industry that by all calculations
1644 appears to be thriving.

1645 Dr. {Gingrey.} Yeah, but wouldn't it be easy and more
1646 efficient to coordinate with the States on enforcement
1647 actions if there was a single standard?

1648 Ms. {Greisman.} It might be, but I don't believe having
1649 different standards has created any problems to date or
1650 necessarily would going forward.

1651 Mr. {Rush.} Dr. Gingrey, it seems like your time is
1652 complete.

1653 Dr. {Gingrey.} Mr. Chairman, thank you. I didn't
1654 realize I had--

1655 Mr. {Rush.} I didn't either.

1656 Dr. {Gingrey.} I yield back. Thank you.

1657 Mr. {Rush.} Thank you so much.

1658 Now, Dr. Scalise.

1659 Mr. {Scalise.} I only play when we are talking about
1660 the healthcare debate, I guess. Thank you, Mr. Chairman. I
1661 know we have votes. I will try to run through this real
1662 quick.

1663 First, Ms. Greisman, on--earlier I think in your
1664 testimony you talked about some of the bad actors, the worst
1665 actors in the prepaid industry and now moving over to the
1666 wireless market.

1667 First, do you have a list of those worst actors, and
1668 have you all been taking any action against them as they have
1669 been doing things both in dual industries, both prepaid and
1670 wireless?

1671 Ms. {Greisman.} Sir, we don't have jurisdiction over
1672 them. We are talking about carriers that would migrate into
1673 the wireless space. We currently have no jurisdiction over
1674 common carriers. But what I can say is that we have seen the
1675 advertising and marketing for the wireless prepaid phone card
1676 services looks significantly similar to--in the non-wireless
1677 space, and in particular we do see that they are targeting
1678 immigrant populations.

1679 Mr. {Scalise.} Have you taken action against them on
1680 the prepaid side?

1681 Ms. {Greisman.} We do not have--our prepaid phone court
1682 cases have involved only distributors.

1683 Mr. {Scalise.} And if I could go back on, Mr.
1684 Ramminger, I know it seems like there is a little, I don't
1685 know if it is a rift or the definitions, and obviously there
1686 is a dispute between a distributor, is the definition of
1687 distributor first in a way that you feel is fair, but also
1688 when the statement that retailers are out of the bill, is
1689 that--are you all comfortable with that, too? Do you feel
1690 that the people that really don't have any part in--if there

1691 is fraud going on, they have no part in it, but are they
1692 really being pulled into it?

1693 Mr. {Ramminger.} Yes. I mean, I think it is fair to
1694 say that we certainly support taking the retailers, the
1695 liability away from the retailers. What we are saying is we
1696 also believe that our distributor members, similar to the
1697 retailers, are buying from effectively a manufacturer.
1698 Occasionally the people who make these cards, because they
1699 are buying minutes, they are not selling widgets. They are
1700 buying minutes and putting them on a card, those guys are
1701 referred to as distributors, too. That is why I think the
1702 confusion is coming in. Our guys are not buying minutes and
1703 putting them on a card. They are simply buying the cards and
1704 selling them to the retailer, who is selling them to the
1705 consumer, and we don't think we should have to be liable
1706 unless, you know, it can be shown that somehow--

1707 Mr. {Scalise.} Think you are doing something deliberate
1708 or there is harm intended. I appreciate it. I know we have
1709 got to go, so I yield back.

1710 Mr. {Rush.} The Chair thanks the gentleman.

1711 The Chair thanks all the witnesses for the gracious use
1712 of your time. You have sacrificed a portion of your busy day
1713 to us, and we really appreciate your testimony. It has been
1714 very enlightening for us all, and you certainly have

1715 illuminated a path for us as we proceed with this matter.

1716 I would just ask that you be available to us for members
1717 to submit their questions to you in writing and then if you
1718 would respond within 2 weeks to those questions, we would be
1719 delighted.

1720 And, again, we thank you so much for your time. We do
1721 have a vote, so we will rush over to the Floor in order to
1722 cast four votes. Thank you very much for your presence, and
1723 the subcommittee is now adjourned.

1724 [Whereupon, at 11:45 a.m., the Subcommittee was
1725 adjourned.]