

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION**

**on**

**PREPAID CALLING CARDS**

**Before the**

**SUBCOMMITTEE ON COMMERCE,  
TRADE AND CONSUMER PROTECTION**

**of the**

**COMMITTEE ON ENERGY AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES**

**WASHINGTON, D.C.**

**September 16, 2008**

## **I. Introduction**

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<sup>1</sup>The written statement presents the views of the Federal Trade Commission. Oral statements and responses to questions reflect the views of the speaker and do not necessarily reflect the views of the Commission or any other Commissioner.



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<sup>3</sup>For example, in *FTC v. Alternatel, Inc., G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Voice Distributors, Inc., Telecom Express, Inc., Lucas Friedlaender, Moses Greenfield, Nickolas Gulakos, and Frank Wendorff*, 08-21433-CI

which is printed on the card. Next, the consumer usually hears an announcement of the monetary value of the card. The consumer then enters the phone number he or she is trying to reach and hears an automated “voice prompt” announcing the number of minutes of time ostensibly available on the card.

As discussed in more detail below, the FTC, our state law enforcement colleagues, and third parties who have tested a wide variety of prepaid calling cards have found that prepaid calling cards offered by a number of industry participants routinely fail to deliver the minutes promised in their advertising and voice prompts. As alleged in two cases recently brought by the FTC, our testing showed that the defendants’ prepaid calling cards delivered about half the number of promised minutes.

### **III. Law Enforcement Actions**

The FTC works closely with the offices of State Attorneys General and other state agencies. In the fall of 2007, the FTC established a joint federal-state task force concerning deceptive marketing practices in the prepaid calling card industry. The task force members include representatives from the offices of more than 35 State Attorneys General and other state and local agencies, and the Federal Communications Commission (“FCC”). Working cooperatively allows us to share information and facilitate law enforcement activity in the prepaid calling card area.<sup>4</sup>

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<sup>4</sup>Representatives from the following Offices of Attorneys General are members of the task force: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Maine, Massachusetts, Minnesota, Missouri, Montana, New Mexico, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin. In addition, the New York State Consumer Protection Board and the New York City Department of Consumer Affairs have participated in the task force.



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*FTC v. Clifton Telecard Alliance One*

Florida, Massachusetts, and New Jersey.<sup>10</sup> In the *Alternatel* case, the Commission alleged that the defendants violated Section 5 of the FTC Act by misrepresenting the number of calling minutes their cards provide and failing to adequately disclose fees and charges associated with their cards. As in the *Clifton Telecard Alliance* case, the FTC conducted extensive testing of the *Alternatel* defendants' prepaid cards and found that the actual number of minutes provided by the cards fell far short of the defendants' advertising claims. In tests of 87 of the defendants' cards, the cards delivered on average only 50.4 percent of the minutes advertised on posters at the point of sale.<sup>11</sup> On May 23, 2008, the federal district court for the Southern District of Florida entered a temporary restraining order in the *Alternatel* matter.

In both the *Clifton* and *Alternatel* actions, the defendants have moved to dismiss the FTC's case on the grounds that the underlying telecommunications carriers are necessary parties

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<sup>10</sup>*FTC v. Alternatel, Inc., G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Voice Distributors, Inc., Telecom Express, Inc., Lucas Friedlaender, Moses Greenfield, Nickolas Gulakos, and Frank Wendorff*, 08-21433-CIV-Jordan/McAliley (S.D. Fla. filed May 19, 2008).

<sup>11</sup>The results of the FTC testing of the defendants' cards in the *Clifton Telecard Alliance* and the *Alternatel* cases are consistent with the testing results of the Hispanic Institute, a non-profit organization that has issued a report on its testing of a wide variety of prepaid calling cards. The Hispanic Institute reports that, on average, the cards it tested delivered only 60% of the minutes promised in voice prompts. See <http://www.thehispanicinstitute.net/research/callingcard/qa> (visited June 18, 2008). They are also consistent with testing results that have been offered in private litigation. See *IDT Telecom, Inc. v. CVT Prepaid Solutions, Inc., et al.*, Civil Action No. 07-1076 (D.N.J.) (Pls. Mem. In Supp. of Their Order to Show Cause Why a Prelim. Inj. Should Not Issue, at 6-10; Ex. 1 to Suppl. Aff. of Gabi Schechter, dated Mar. 26, 2007) (alleging the defendants' calling cards delivered on average only 60% of prompted minutes); *IDT Telecom, Inc. v. Voice Distributors, Inc., d/b/a Voice Prepaid, et al.*, Civil Action No. 07-2465 (Mass. Sup. Ct., Middlesex Cty.) (Compl. ¶ 16) (alleging that the defendants' calling cards delivered on average only 65% of prompted minutes); *IDT Telecom, Inc. v. Diamond Phone Card, Inc., et al.*, Index No. 3682-08 (N.Y. Sup. Ct., Kings Cty.) (Compl. ¶ 15) (alleging that the defendants' calling cards delivered on average only 59% of prompted minutes).



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<sup>12</sup>*See McCollum Announces Prepaid Calling Card Settlements, Industry-Wide Reform* (June 11, 2008) available at <http://myfloridalegal.com/newsrel.nsf/newsreleases/79C6666DB24608D785257465004EC901> (visited on August 27, 2008) (announcing settlements with IDT America, Inc.; Union Telecom Alliance; Total Call International, Inc.; Blackstone Calling Card, Inc.; CVT Prepaid Solutions, Inc.; Dollar Phone Enterprise, Inc.; STi Prepaid, LLC; Alternatel, Inc; and Cristel Telecommunications, LLC); *Prepaid Calling Company Reaches Settlement with Attorney General* (July 2, 2008) available at <http://myfloridalegal.com/newsrel.nsf/newsreleases/1439BD5308D470588525747A006423B8> (visited on August 27, 2008) (announcing a settlement with Touch-Tel Partners USA, LLC); *Attorney General Reaches Settlement with 11<sup>th</sup> Prepaid Calling Card Company* (August 21, 2008) available at <http://myfloridalegal.com/newsrel.nsf/newsrelea>

prepaid calling cards.<sup>13</sup> The Texas lawsuit alleges that Next-G Communication has marketed and sold prepaid calling cards throughout Texas that fail to deliver the number of minutes it advertises to customers and that the defendant has failed to disclose fees and charges associated with its calling cards. The Texas Attorney General alleges that Next-G's prepaid calling cards consistently delivered only 40 percent of the minutes claimed on the Next-G's advertising posters and confirmed by Next-G's voice prompt given at the beginning of each call.<sup>14</sup>

The FTC applauds the actions of the Florida and Texas Attorneys General and is grateful for the participation of all of our law enforcement partners in the joint federal-state calling card task force.

#### **IV. Consumer Education and Media Outreach**

In addition to bringing enforcement cases, the Commission has made consumer education and outreach a high priority. The FTC recently updated its consumer education brochure on calling cards, which is available in both English and Spanish on the Commission's website.<sup>15</sup> The Commission also has done extensive outreach about prepaid calling cards to media outlets that cater to non-English and English speaking consumers. The FTC wants to make sure consumers know that it is unlawful to advertise calling cards that misrepresent the number of minutes that the calling cards provide or to fail to clearly and conspic

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<sup>13</sup>*State of Texas v. Next-G Commnc'n, Inc., Taj Khwaja*, 2008CI08149 (Bexar County, TX) (Pet. filed May 23, 2008).

<sup>14</sup>*See Attorney General Abbott Takes Legal Action Against Prepaid Calling Card Company* (May 23, 2008) available at <http://www.oag.state.tx.us/oagNews/release.php?id=2479> (visited on August 27, 2008).

<sup>15</sup>*See Buying Time: The Facts About Pre-Paid Phone Cards* (2008) available at <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro04.pdf> (visited on August 27, 2008).

the fees and charges that reduce the value of the calling cards. The FTC also wants consumers to know that they can and should complain to the FTC if they do not get what they pay for.

## **V. The Proposed Legislation**

As described above, the FTC Act's prohibitions on deceptive and unfair practices provide the Commission with a powerful tool to bring enforcement actions against the distributors of prepaid calling cards. H.R. 3402, the proposed "Calling Card Consumer Protection Act" (the "Act"), would add an important remedy to those already available to the Commission by authorizing the FTC to seek civil penalties for violations of the Act or of rules issued by the FTC pursuant to the Act.

Generally, H.R. 3402 requires prepaid calling card providers and distributors to clearly and conspicuously disclose, among other things, the dollar value of their calling cards, or the number of minutes provided by their calling cards, and material terms and conditions pertaining to their cards, including all fees and limitations on use of their cards. The bill prohibits prepaid calling card providers and distributors from assessing fees or imposing charges if such fees or charges are not adequately disclosed. It also prohibits providers from providing fewer minutes than advertised, and prohibits distributors from distributing cards that they know provide fewer minutes than advertised. The bill gives the FTC discretionary rulemaking authority to carry out the Act. It further provides for the FTC to bring suit alleging violations of the Calling Card Consumer Protection Act as if they were violations of an FTC rule, thus enabling the agency to seek civil penalties for violation of the Act and any FTC rule promulgated pursuant to the Act.

The FTC supports the goal of H.R. 3402 and appreciates the proposed authority to seek civil penalties. Three aspects of the bill raise concerns, however. First, the bill apparently does not give the Commission authority to enforce the provisions of the Act against common carriers



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<sup>18</sup>Some participants in the prepaid calling card industry are beginning to offer prepaid wireless services. As the cost of providing cellular phones and calling minutes continues to decrease, the incentive to move consumers to prepaid wireless accounts from more traditional prepaid calling cards has increased.

See

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<http://www.ftc.gov/os/testimony/P034101reauth.pdf>; *Prepared Statement of the Federal Trade Commission*, Before the Subcommittee on Interstate Commerce, Trade, and Tourism Committee on Commerce, Science and Transportation United States Senate (Sept. 12, 2007), *available at* <http://www.ftc.gov/os/testimony/070912reauthorizationtestimony.pdf>; Prepared Statement of the Federal Trade Commission On FTC Jurisdiction Over Broadband Internet Access Services, Before the Committee on the Judiciary, United States Senate (Jun. 14, 2006), *available at* <http://www.ftc.gov/opa/2006/06/broadband.shtm>; *The Reauthorization of the Federal Trade Commission: Positioning the Commission for the Twenty-First Century: Hearing Before the Subcomm. on Commerce, Trade and Consumer Protection of the H. Comm. on Energy and Commerce*, 108th Cong. (2003) (“*FTC 2003 Reauthorization Hearing*”) (statement of the FTC), *available at* <http://www.ftc.gov/os/2003/06/030611reauthhr.htm>; see also FTC 2003 Reauthorization Hearing (statement of Thomas B. Leary, FTC Commissioner), *available at* <http://www.ftc.gov/os/2003/06/030611learyhr.htm>; *FTC Reauthorization Hearing: Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transportation*, 107th Cong. (2002) (so47etoE1.00000 0.0000 0.0000thorization Hear

common carrier exemption. Furthermore, even when the Commission has identified and brought enforcement actions against non-common carriers, the common carrier exemption can impose additional litigation costs on the FTC. For example, as noted above, in both the *Clifton Telecard Alliance* and *Alternatel* cases, which the FTC has brought against distributors of prepaid calling cards, the defendants have moved to dismiss the FTC's cases on the grounds that the FTC has not sued and cannot sue the underlying carriers, which defendants allege to be necessary parties. While the Commission is confident that it will prevail in its opposition to these motions, the burden of having to respond to such motions is not insubstantial.

To enable the Commission to enforce H.R. 3402 more effectively and to create a level playing field, we recommend that the bill be amended to clearly grant to the FTC jurisdiction over the activities of common carriers providing prepaid calling card services. More fundamentally, the FTC respectfully continues to recommend that Congress repeal altogether the FTC Act exemption for common carriers subject to the Communications Act. The FTC has extensive expertise with such areas as advertising, marketing, billing, and collection, areas in which significant problems have emerged in the telecommunications industry.<sup>20</sup> In addition, the FTC has powerful procedural and remedial tools that could be used

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<sup>20</sup>For example, the FTC has brought numerous cases involving the cramming of unauthorized charges onto consumers phone bills. *See, e.g., FTC v. Verity Int'l Ltd.* 335 F. Supp. 2d 479 (S.D.N.Y. 2004), *aff'd in part, rev'd in part*, 443 F.3d 48 (2d Cir. 2006), *cert. denied*, 127 S. Ct. 1868 (2007); *FTC v. Audiotex Connection, Inc.*, C-97 0726 (DRH) (E.D.N.Y. 1997); *FTC v. Int'l Telemidia Assocs., Inc.*, 1-98-CV-1925 (N.D. Ga., 1998); *FTC v. Sheinkin*, 2-00-363618 (D.S.C., 2000); *FTC v. Mercury Marketing of Delaware, Inc.*, 00-CV-3281 (E.D. Pa. 2000); *FTC v. Epixtar Corp.*, 03-CV-8511 (DAB) (S.D.N.Y. 2003); *FTC v. Nationwide Connections, Inc.*, 06-80180-CIV-Ryskamp/Vitunac (S.D. Fla. 2006); *FTC v. Websource Media, LLC*, Civ. No. H-06-1980 (S.D. Tex. 2006).

effectively to address developing problems in the telecommunications industry if the FTC were authorized to reach them.

## **VII. Conclusion**

The Commission will continue its aggressive law enforcement and consumer outreach and education programs in the prepaid calling card arena. The Commission thanks this Committee for focusing attention on this important issue and for the opportunity to discuss its law enforcement program.