
Government of the District of Columbia



Department of Consumer and Regulatory Affairs

Testimony of

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on

Bill 18-483
“The Prepaid Calling Card Consumer Protection
Disclosure Act of 2009”

Council of the District of Columbia
Committee on Public Services and Consumer Affairs
Muriel Bowser, Chair

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Room 412
John A. Wilson Building
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I. Introduction

Good afternoon, Chairperson Bowser, members, and staff of the Committee on Public Services and Consumer Affairs. I'm Samuel Williams, Program Manager for the Office of Consumer Protection in the Department of Consumer and Regulatory Affairs. I'm here today to testify on Bill 18-483, the Prepaid Calling Card Consumer Protection Disclosure Act of 2009.

Bill 18-483 would address a major consumer protection problem: sellers of prepaid calling cards misleading consumers about the number of minutes of calling time that the cards provide. Many cards have hidden fees that apply when calls are made from pay phones, to cell phones, or to toll-free numbers. Others have special maintenance fees or advertise their rates in Spanish, but have fine-print legalese in English. Some cards debit minutes even when the calls don't go through.

In the District, calling card issuers and distributors are already subject to the general prohibitions of the Consumer Protection Procedures Act, including the prohibitions against misrepresentations of material facts and misleading failures to state material facts. Bill 18-483 would be focused specifically on the prepaid calling card industry.

II. Deceptive Practices in Calling Card Industry

Due to the prevalence of deception in this marketplace, the Federal Trade Commission has qualified its usual advice that consumers should do comparison

shopping to find the best prices. An FTC brochure advises consumers to compare prepaid calling card rates. But the very next sentence states: “Very low rates, particularly for international calls, may be a warning sign that the card won’t deliver the number of advertised minutes.” So in this particular market, one is supposed to shop around for low rates, so long as they don’t appear to be *too* low.

Deception involving the effective rates charged for international calls imposes disproportionate harm on immigrants, who commonly rely on prepaid calling cards to communicate with their families abroad. In addition to being disproportionately victimized by prepaid calling cards that don’t deliver as promised, immigrants and non-English speaking users are also less likely than other users to complain to federal, state, and local consumer protection offices.

III. Regulation of the Industry

At the federal level, oversight of the prepaid calling card industry is divided between the Federal Communications Commission (FCC), which has jurisdiction over the common carriers that provide the calling card services, and the Federal Trade Commission (FTC), which has jurisdiction over calling card distributors.

Of the two, the FTC has enforced more actively in this area. The FTC’s enforcement has not been based on regulations specifically addressing problems in the prepaid calling card industry, but on the FTC Act’s general prohibition of deceptive or unfair practices. Relying on this broad authority to seek court relief

against companies that make material misrepresentations to consumers, the FTC has brought federal court actions against three distributors whose cards were determined by the FTC to provide only about half the calling time advertised.

In contrast to the FTC, state attorneys general can bring actions against both the common carriers that provide calling card services and the distributors that market the prepaid calling cards.

Much of the enforcement work in this area is supported by a joint federal-state task force established in 2007 to address deception in the marketing of prepaid calling cards. This task force – which includes the FTC, the FCC, and the attorneys general in 35 states and the District of Columbia – shares law enforcement information and coordinates investigations.

IV. Pending Federal Legislation

Congress is currently considering legislation that would authorize the FTC to regulate the entire prepaid calling card industry, including common carriers now under FCC jurisdiction. The Prepaid Calling Card Consumer Protection Act of 2009 (S. 562), introduced in the U.S. Senate last March, would require the FTC to promulgate regulations requiring that card providers and distributors disclose important terms and conditions, including the rates for domestic interstate calls and for international destination calls, and the amount and frequency of all fees. It would provide for FTC enforcement and for enforcement by the state attorneys

general, in U.S. District Court, on behalf of the residents of their states, and would preempt any inconsistent state laws.

V. Practical Considerations of Bill 18-483

Bill 18-483 would require the Mayor to issue regulations governing prepaid calling cards. Assuming that this rulemaking authority is delegated to DCRA, the regulations would likely be developed by the Office of Consumer Protection, in consultation with OAG.

Based on the list of required disclosures in Section 3(a) of the bill, any District regulations would need to prescribe which disclosures would have to be placed on the cards, as well as in the accompanying packaging, and which disclosures would have to appear only in the accompanying packaging. If the pending federal legislation were to be enacted, to avoid preemption, the District's regulations would need to be consistent with any regulations promulgated by the FTC.

One concern in Bill 18-483 is that it does not clearly apply to prepaid calling card distributors that are not the original issuers of the cards. The bill would apply to "companies selling prepaid calling cards or services," but the term "company" is defined in Section 2(a) as "an entity or individual that provides calling cards to the public using its own or a resold telecommunications network." As a result, the District would not be able to enforce the bill's requirements against companies that

purchase cards from prepaid calling card providers and distribute the cards to retailers in the District.

Moreover, in situations where District retailers are purchasing the cards from distributors, and not directly from the original issuers of the cards, the District may have difficulty asserting jurisdiction over the original issuers. In contrast to Bill 18-483, the pending federal legislation would expressly cover distributors of prepaid calling cards and would allow the District to enforce the FTC's regulations against distributors whose unlawful marketing practices adversely affect District residents. For this reason, the bill's definition of "company" should be amended to include "an entity or individual that purchases prepaid calling cards and sells or distributes such cards to distributors or retail sellers."

Another suggested change to the bill would be to make a violation of the bill also a violation of the District's Consumer Protection Procedures Act. This would allow the Attorney General to bring enforcement actions in court for injunctive relief and consumer restitution.

Chairperson Bowser, thank you for providing us the opportunity to discuss Bill 18-483. I'm prepared to answer questions you may have at this time.