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2D SESSION

H. R. 4319

To require the Federal Communications Commission to promulgate regulations to provide for accurate disclosures of the terms and conditions of prepaid telephone calling cards.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2012

Mr. ENGEL introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To require the Federal Communications Commission to promulgate regulations to provide for accurate disclosures of the terms and conditions of prepaid telephone calling cards.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Calling Card Consumer
5 Protection Act”.

1 **SEC. 2. FCC REGULATIONS REQUIRING DISCLOSURES OF**
2 **TERMS AND CONDITIONS OF PREPAID CALL-**
3 **ING CARDS.**

4 (a) IN GENERAL.—Not later than 1 year after the
5 date of the enactment of this Act, the Commission shall
6 promulgate regulations that require prepaid calling card
7 providers and prepaid calling card distributors to accu-
8 rately disclose the terms and conditions applicable to pre-
9 paid calling cards.

10 (b) INFORMATION REQUIRED TO BE DISCLOSED.—
11 The regulations promulgated under subsection (a) shall
12 require disclosure of the following information with re-
13 spect to a prepaid calling card:

14 (1) The name of the prepaid calling card pro-
15 vider and such provider's customer service telephone
16 number and hours of service.

17 (2)(A) The number of domestic interstate min-
18 utes available from the prepaid calling card and the
19 number of available minutes for all international
20 preferred destinations served by the prepaid calling
21 card at the time of purchase; or

22 (B) the dollar value of the prepaid calling card,
23 the domestic interstate rate per minute provided by
24 such card, and the applicable per minute rates for
25 all international preferred destinations served by the
26 prepaid calling card at the time of purchase.

1 (3)(A) The applicable per minute rate for all in-
2 dividual international destinations served by the card
3 at the time of purchase; or

4 (B) a toll-free customer service number and
5 Web site (if the provider maintains a Web site)
6 where a consumer may obtain the information de-
7 scribed in subparagraph (A) and a statement that
8 such information may be obtained through such toll-
9 free customer service number and Web site.

10 (4) The following terms and conditions per-
11 taining to, or associated with, the use of the prepaid
12 calling card:

13 (A) Any applicable fees associated with the
14 use of the prepaid calling card.

15 (B) A description of any additional charges
16 associated with the use of the prepaid calling
17 card and the amount of such charges.

18 (C) Any limitation on the use or period of
19 time for which the promoted or advertised min-
20 utes or rates will be available.

21 (D) A description of the applicable policies
22 relating to refund, recharge, and any predeter-
23 mined decrease in value of such card over a pe-
24 riod of time.

1 (E) Any expiration date applicable to the
2 prepaid calling card or the minutes available
3 with such calling card.

4 (c) MANNER OF DISCLOSURES.—The regulations
5 promulgated under subsection (a) shall include the fol-
6 lowing requirements with respect to the manner of the dis-
7 closures required by such regulations:

8 (1) CLEAR AND CONSPICUOUS.—Such disclo-
9 sures shall be made in a clear and conspicuous man-
10 ner and location, as follows:

11 (A) CARDS.—Such disclosures shall be
12 printed in plain English language (except as
13 provided in paragraph (2)) in a clear and con-
14 spicuous manner and location on the prepaid
15 calling card, except as the Commission may
16 provide under paragraph (3). If the card is en-
17 closed in packaging that obscures the disclo-
18 sures on the card, such disclosures also shall be
19 printed on the outside packaging of the card.

20 (B) ONLINE SERVICES.—In addition to the
21 requirements under subparagraph (A), in the
22 case of a prepaid calling card that consumers
23 purchase via the Internet, such disclosures shall
24 be displayed in plain English language (except
25 as provided in paragraph (2)) in a clear and

conspicuous manner and location on the Internet Web site that the consumer must access prior to purchasing such card.

(C) ADVERTISING AND OTHER PROMOTIONAL MATERIAL.—Except as the Commission may provide under paragraph (3), such disclosures shall be included in a clear and conspicuous manner and location in any advertising or other promotional material for a prepaid calling card that contains any representation, expressly or by implication, regarding the dollar value, the per minute rate, or the number of minutes provided by the card.

(2) FOREIGN LANGUAGES.—If a language other than English is prominently used on a prepaid calling card or its packaging or in any advertising or other promotional material for such card, such disclosures shall be made in that language in or on such card, packaging, advertising, or promotional material.

(3) DIFFERENT LOCATION OF CERTAIN INFORMATION AS DETERMINED BY COMMISSION.—Notwithstanding paragraph (1), if the Commission determines that some of the information required to be disclosed by the regulations promulgated under sub-

1 section (a) does not need to be disclosed in or on the
2 prepaid calling card, packaging, advertising, or other
3 promotional material, the Commission may exclude
4 from such regulations any requirement for the dis-
5 closure of such information in that manner, if such
6 regulations—

7 (A) require such information to be other-
8 wise disclosed and available to consumers;

9 (B) provide for easy comprehension and
10 comparison by consumers; and

11 (C) ensure that the remaining disclosures
12 in or on the prepaid calling card, packaging,
13 advertising, or other promotional material in-
14 clude sufficient information to allow a consumer
15 to effectively inquire about or seek clarification
16 of the services provided by the calling card.

17 (d) VOICE PROMPTS.—The regulations promulgated
18 under subsection (a) shall, taking into account the applica-
19 tion of the fees and additional charges required to be dis-
20 closed under such regulations, require the accuracy of any
21 information that—

22 (1) is provided to a consumer by a voice prompt
23 given to the consumer at the time the consumer uses
24 the prepaid calling card; and

1 (2) relates to the remaining value of the calling
2 card or the number of minutes available from the
3 calling card.

4 (e) DISCLOSURES REQUIRED UPON PURCHASE OF
5 ADDITIONAL MINUTES.—The regulations promulgated
6 under subsection (a) shall require that, if a prepaid calling
7 card permits a consumer to add value to the card or pur-
8 chase additional minutes after the original purchase of the
9 prepaid calling card, any changes to the rates, fees, or ad-
10 ditional charges required to be disclosed under such regu-
11 lations shall apply only to the additional minutes to be
12 purchased and shall be disclosed clearly and conspicuously
13 to the consumer before the completion of such purchase.

14 (f) NO FALSE, MISLEADING, OR DECEPTIVE DISCLO-
15 SURES.—The regulations promulgated under subsection
16 (a) shall prohibit the inclusion of any false, misleading,
17 or deceptive representations relating to the terms and con-
18 ditions of the prepaid calling card in or on the prepaid
19 calling card, packaging, advertising, or other promotional
20 material containing a disclosure required by such regula-
21 tions.

22 (g) ADDITIONAL AUTHORITY CONCERNING MANNER
23 OF DISCLOSURES.—The regulations promulgated under
24 subsection (a) may include requirements concerning the
25 order, format, presentation, and design of the required

1 disclosures and may establish and require the use of uni-
2 form terms, symbols, or categories to describe or disclose
3 rates, fees, and additional charges, if the Commission
4 finds that such requirements will assist consumers in mak-
5 ing purchasing decisions and effectuate the purposes of
6 this Act.

7 (h) FACTORS FOR CONSIDERATION.—In promul-
8 gating regulations under subsection (a), the Commission
9 shall—

10 (1) take into consideration the need for clear
11 disclosures that provide for easy comprehension and
12 comparison by consumers, taking into account the
13 size of prepaid calling cards; and

14 (2) take into consideration the views of States.

15 (i) LIMITATION.—In promulgating regulations under
16 subsection (a), the Commission may not specify the rates,
17 fees, or additional charges or the terms and conditions of
18 prepaid calling cards.

19 **SEC. 3. IMPLEMENTATION AND ENFORCEMENT BY FCC.**

20 (a) AUTHORITY OF THE COMMISSION.—The Commis-
21 sion shall implement and enforce this Act in the same
22 manner, by the same means, and with the same jurisdic-
23 tion, powers, and duties as though all applicable terms and
24 provisions of the Communications Act of 1934 (47 U.S.C.

1 151 et seq.) were incorporated into and made a part of
2 this Act.

3 (b) CONSULTATION BETWEEN FCC AND FTC.—

4 (1) IN GENERAL.—In promulgating regulations
5 under section 2(a) and in enforcing such regulations,
6 the Commission shall consult with the Federal Trade
7 Commission.

8 (2) FTC REGULATIONS ON PREPAID CALLING
9 CARD DISCLOSURES.—If the Federal Trade Commis-
10 sion initiates a rulemaking proceeding to establish
11 requirements relating to the disclosure of terms and
12 conditions of prepaid calling cards, the Federal
13 Trade Commission shall consult with the Commis-
14 sion to ensure that any such requirements and the
15 enforcement of any such requirements by the Fed-
16 eral Trade Commission are not inconsistent with the
17 regulations promulgated under section 2(a) and the
18 enforcement of such regulations by the Commission.

19 **SEC. 4. ENFORCEMENT BY STATES.**

20 (a) IN GENERAL.—

21 (1) CIVIL ACTIONS.—In any case in which the
22 attorney general of a State, a State utility commis-
23 sion, or other consumer protection agency has rea-
24 son to believe that an interest of the residents of
25 such State has been or is threatened or adversely af-

1 fected by the engagement of any person in a practice
2 that is prohibited by a regulation promulgated under
3 section 2(a), the State utility commission or other
4 consumer protection agency, if authorized by State
5 law, or the State, as *parens patriae*, may bring a
6 civil action on behalf of the residents of such State
7 in an appropriate district court of the United States
8 or any other court of competent jurisdiction to—

9 (A) enjoin such practice;

10 (B) enforce compliance with such regula-
11 tion;

12 (C) obtain damages, restitution, or other
13 compensation on behalf of residents of the
14 State; or

15 (D) obtain such other relief as the court
16 may consider to be appropriate.

17 (2) NOTICE TO THE COMMISSION.—

18 (A) IN GENERAL.—Before filing an action
19 under this subsection, the State shall provide to
20 the Commission—

21 (i) written notice of the action; and

22 (ii) a copy of the complaint for the ac-
23 tion.

24 (B) EXEMPTION.—

1 (i) IN GENERAL.—Subparagraph (A)
2 shall not apply with respect to the filing of
3 an action by a State under this subsection
4 if the attorney general or other appropriate
5 officer determines that it is not feasible to
6 provide the notice described in such sub-
7 paragraph before the filing of the action.

8 (ii) NOTIFICATION.—In an action de-
9 scribed in clause (i), the State shall pro-
10 vide notice and a copy of the complaint to
11 the Commission at the same time as the
12 State files the action.

13 (b) INTERVENTION BY COMMISSION.—

14 (1) IN GENERAL.—On receiving notice under
15 subsection (a)(2), the Commission shall have the
16 right to intervene in the action that is the subject
17 of the notice.

18 (2) EFFECT OF INTERVENTION.—If the Com-
19 mission intervenes in an action under subsection (a),
20 it shall have the right—

21 (A) to be heard with respect to any matter
22 that arises in such action;

23 (B) to remove the action to the appro-
24 priate district court of the United States; and

25 (C) to file a petition for appeal.

1 (c) CONSTRUCTION.—For purposes of bringing any
2 civil action under subsection (a), nothing in this section
3 shall be construed to prevent an attorney general of a
4 State, a State utility commission, or other consumer pro-
5 tection agency authorized by State law from exercising the
6 powers conferred on the attorney general or other appro-
7 priate official by the laws of such State to—

8 (1) conduct investigations;

9 (2) administer oaths or affirmations;

10 (3) compel the attendance of witnesses or the
11 production of documentary and other evidence; or

12 (4) enforce any State law.

13 (d) ACTION BY THE COMMISSION MAY PRECLUDE
14 STATE ACTION.—In any case in which an action is insti-
15 tuted by or on behalf of the Commission for violation of
16 a regulation promulgated under section 2(a), no State
17 may, during the pendency of such action, institute an ac-
18 tion under subsection (a) against any defendant named
19 in the complaint in the action instituted by or on behalf
20 of the Commission for any violation of such regulation al-
21 leged in such complaint.

22 **SEC. 5. EFFECT ON OTHER LAW.**

23 (a) FCC AUTHORITY.—Nothing in this Act shall be
24 construed to—

1 (1) limit the authority of the Commission,
2 under any other provision of law, with respect to dis-
3 closure of the terms and conditions of prepaid call-
4 ing cards; or

5 (2) affect any proceeding initiated by the Com-
6 mission prior to the date of the enactment of this
7 Act with respect to disclosure of the terms and con-
8 ditions of prepaid calling cards.

9 (b) PREEMPTION OF STATE LAW.—After the date on
10 which final regulations are promulgated under section
11 2(a), no State or political subdivision of a State may es-
12 tablish or continue in effect any provision of law that con-
13 tains requirements regarding disclosures to be printed on
14 prepaid calling cards or the packaging of prepaid calling
15 cards or included in advertising or other promotional ma-
16 terial with respect to prepaid calling cards, unless such
17 requirements are identical to the requirements of such reg-
18 ulations.

19 **SEC. 6. STUDIES.**

20 (a) GAO STUDY.—Beginning 2 years after the date
21 on which final regulations are promulgated under section
22 2(a), the Comptroller General of the United States shall
23 conduct a study of the effectiveness of this Act and the
24 disclosures required under this Act and shall submit a re-

1 port on such study to Congress not later than 3 years after
2 the date of the enactment of this Act.

3 (b) FCC STUDY.—The Commission shall, in con-
4 sultation with the Federal Trade Commission, conduct a
5 study of the extent to which the business practices of the
6 prepaid calling card industry intended to be addressed by
7 this Act exist in the prepaid commercial mobile service in-
8 dustry and shall submit a report on such study, including
9 recommendations, if any, to Congress not later than 3
10 years after the date of the enactment of this Act.

11 **SEC. 7. DEFINITIONS.**

12 (a) INCORPORATION OF DEFINITIONS FROM COMMU-
13 NICATIONS ACT OF 1934.—In this Act, a term that is de-
14 fined in section 3 of the Communications Act of 1934 (47
15 U.S.C. 153) shall have the meaning given such term in
16 such section.

17 (b) ADDITIONAL DEFINITIONS.—The following addi-
18 tional definitions apply in this Act:

19 (1) ADDITIONAL CHARGE.—The term “addi-
20 tional charge” means any charge assessed by a pre-
21 paid calling card provider or prepaid calling card
22 distributor for the use of a prepaid calling card,
23 other than a fee or rate.

24 (2) COMMERCIAL MOBILE SERVICE.—The term
25 “commercial mobile service” has the meaning given

1 such term in section 332 of the Communications Act
2 of 1934 (47 U.S.C. 332).

3 (3) COMMISSION.—The term “Commission”
4 means the Federal Communications Commission.

5 (4) FEES.—The term “fees” includes all
6 charges, fees, taxes, or surcharges applicable to a
7 prepaid calling card that are—

8 (A) required by Federal law or regulation
9 or order of the Commission or by the laws and
10 regulations of any State or political subdivision
11 of a State; or

12 (B) expressly permitted to be assessed
13 under Federal law or regulation or order of the
14 Commission or under the laws and regulations
15 of any State or political subdivision of a State.

16 (5) INTERNATIONAL PREFERRED DESTINA-
17 TION.—The term “international preferred destina-
18 tion” means one or more specific international des-
19 tinations named on a prepaid calling card, on the
20 packaging material accompanying a prepaid calling
21 card, or in the advertising or other promotional ma-
22 terial with respect to a prepaid calling card.

23 (6) PREPAID CALLING CARD.—The term “pre-
24 paid calling card” has the meaning given such term
25 in section 64.5000 of the Commission’s regulations

1 (47 C.F.R. 64.5000). Such term shall also include
2 calling cards that use interconnected VoIP service or
3 a successor protocol. Such term shall also include an
4 electronic or other mechanism that allows users to
5 pay in advance for a specified amount of calling.
6 Such term shall not include—

7 (A) calling cards or other rights of use
8 that are provided for free or at no additional
9 cost as a promotional item accompanying a
10 product or service purchased by a consumer;

11 (B) any card, device, or other right of use,
12 the purchase of which establishes a customer-
13 carrier relationship with a provider of commer-
14 cial mobile service or wireless hybrid service, or
15 that provides access to a commercial mobile
16 service or wireless hybrid service account where-
17 in the purchaser has a pre-existing relationship
18 with the provider; or

19 (C) payphone service (as defined in section
20 276 of the Communications Act of 1934 (47
21 U.S.C. 276)).

22 (7) PREPAID CALLING CARD DISTRIBUTOR.—

23 The term “prepaid calling card distributor” means
24 any entity or person that purchases prepaid calling
25 cards from a prepaid calling card provider or an-

1 other prepaid calling card distributor and sells, re-
2 sells, issues, or distributes such cards to one or more
3 distributors of such cards or to one or more retail
4 sellers of such cards. Such term shall not include—

5 (A) any retail seller whose only activity
6 with respect to the sale of prepaid calling cards
7 is point-of-sale transactions with end-user cus-
8 tomers; or

9 (B) any person whose only activity with re-
10 spect to the sale of prepaid calling cards is the
11 transport or delivery of such cards.

12 (8) PREPAID CALLING CARD PROVIDER.—The
13 term “prepaid calling card provider” has the mean-
14 ing given such term in section 64.5000 of the Com-
15 mission’s regulations (47 C.F.R. 64.5000). Such
16 term shall also include—

17 (A) a provider of a prepaid calling card
18 that uses interconnected VoIP service or a suc-
19 cessor protocol; and

20 (B) a provider of a prepaid calling card
21 that allows users to pay in advance for a speci-
22 fied amount of minutes through an electronic or
23 other mechanism.

24 (9) WIRELESS HYBRID SERVICE.—The term
25 “wireless hybrid service” means a service that inte-

1 grates both commercial mobile service and inter-
2 connected VoIP service.

3 **SEC. 8. DATE OF APPLICATION.**

4 This Act shall apply with respect to—

5 (1) any prepaid calling card issued or placed
6 into the stream of commerce beginning 180 days
7 after the date on which final regulations are promul-
8 gated under section 2(a); and

9 (2) any advertising, other promotional material,
10 or voice prompt regarding a prepaid calling card
11 that is disseminated beginning 180 days after the
12 date on which final regulations are promulgated
13 under section 2(a).

○