

Testimony of

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Of the
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On behalf of the

National Association of Regulatory Utility Commissioners

before the

Committee on Commerce, Science and Transportation
of the
United States Senate

Hearing on Prepaid Calling Card Consumer Protection Act of 2008 (S. 2998)
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INTRODUCTION

Chairman Inouye, Vice Chair Hutchison and members of the Committee, I appreciate the opportunity to testify today on consumer protection in the prepaid calling card market. This is an important piece of legislation for your constituents. I thank you for calling this hearing and commend Senator Nelson, the sponsors of the bill, and the members of this Committee for your leadership on this important consumer issue.

My name is Patricia Acampora. I am a Commissioner of the New York State Public Service Commission and a member of the National Association of Regulatory Utility Commissioners' (NARUC) Committee on Consumer Affairs. NARUC represents the State utility commissioners in each of your States and the U.S. territories that have oversight responsibilities over all the critical utility infrastructures - telecommunications, energy, and water. NARUC has not yet established a specific position on national standards for prepaid calling card services, but we do have well-established positions on specific issues raised by *The Prepaid Calling Card Consumer Protection Act of 2008* (S. 2998).

As early as July 31, 2002, the NARUC Board of Directors adopted a resolution indicating that "consumers of all telecommunications services" should "receive clear and complete information regarding rates, terms and conditions for services." In July, NARUC's Committee on Consumer Affairs convened a panel on prepaid cards at our Summer Meetings in Portland, Oregon, which I moderated. The panel, which focused on existing State initiatives, was widely attended. You can expect that NARUC and its members will continue to be active on these issues. Shortly before that panel discussion, NARUC did an expedited informal survey finding that 18 of 30 responding NARUC member commissions handle complaints about calling card services. State oversight and interest in this industry segment comes at multiple levels.

Several entities are involved in providing these services. Telephone companies are responsible for the telephone lines that carry calls. Resellers buy telephone minutes from the telephone companies and “resell” them to end-users. Issuers set the card rates and provide toll-free customer service and access numbers. Finally, there are the distributors and retailers. Companies that fall into one or more of the first three categories frequently require certification from many of NARUC’s member commissions. But even where a State commission lacks authority, they frequently attempt to resolve complaints informally or cooperate with other State agencies, e.g., the State Attorneys General, on enforcement efforts.

Fraud and Abuse in the Prepaid Calling Card Market

Many Americans rely on prepaid calling cards to complete intrastate, interstate, and international calls. Analysts believe the main victims of abuse in this market are minorities, immigrants, the elderly, low-income consumers, members of our Armed Services, and others either not inclined or not able to adopt other communications options. It is widely acknowledged that fraud and abuse in this market is more prevalent than complaint data indicates.

My colleagues on the NARUC Consumer Affairs Committee report several issues with calling card providers, including: 1) the provider is either not required to seek Commission registration or certification or they have chosen to ignore that requirement; 2) the calling time provided is substantially lower than advertised; 3) the provider engages in misleading and false advertising by overstating achievable calling time or understating unit cost/rate; 4) the advertised rates expire after short “promotional period”; 5) the provider charges substantial undisclosed surcharges and fees; and 6) the card expires within a short period following the completion of the initial call.

Prepaid calling cards present the usual enforcement challenges for State authorities. As mentioned earlier, frequently providers are headquartered in another jurisdiction and fail to register or seek certification from a State commission (in States that require such certification) or even register an agent for service of process under so-called State long-arm statutes. Moreover, most often, even in States where certification is required, the most easily located entity in the marketing chain – the retail store – is not subject to State Commission oversight.

New York's Public Service law provides consumer protections which have allowed my Commission to help assist customers with calling-card complaints. Some of those complaints are related to completion fees that deplete the card faster than the consumer could have realized. Another common complaint we receive is from consumers who have a defective card that does not allow him or her to complete any calls, and want reimbursement from the card provider, or who are trying to contact the service provider for general customer service issues. Consumers also frequently complain of call completion fees they did not discover until using the card. Both New York's law and S. 2998 require some information to be printed on the calling card, information on the rates and fees. This is a logical step; if this information is more readily available, it can stem the tide of customer dissatisfactions caused by inadequate disclosures. But there is a problem. Some disclosures now are often printed on the packaging material – material which is discarded almost immediately by the consumer.

Although NARUC has no specific position on this problem, I do have some suggestions. In lieu of printing information related to rates and fees on the card packaging, I would like to suggest two options. Under the first, the service provider is required to include all rates and fees on a piece of card stock included with the calling card when sold. This card would be the same size as the calling card and would have the phrase "**CONSUMER: DO NOT DISCARD**" printed on

both sides in 14pt, boldface type. Another option, less useful to those without Internet access and is referenced in Section 3(a) of the bill, is to require the service provider to print a web address on the calling card which the consumer could access to confirm the rates and terms preprinted on the typically discarded packaging. Even if a consumer does not have access to the Internet or is not Internet savvy, the consumer could provide the consumer complaint call center with the website which would aid the investigation and resolution of a complaint by relevant authorities.

State enforcement of federal rules proposed in S. 2998

The Prepaid Calling Card Consumer Protection Act of 2008 protects consumers by requiring the accurate and reasonable disclosure of the terms and conditions of prepaid telephone calling cards and services. As previously stated, NARUC has not formally taken a position on what federal standards should be, but we have urged – albeit in other contexts – that consumers should receive meaningful disclosures about such services, and that States must be able to enforce any federal standards using existing procedures and penalties.

There are many circumstances that explain why a consumer may not report a complaint. They may not know who to call or where to file a complaint. The value of the card may not justify the hassle of trying to get a refund or assistance. Also language skills and cultural barriers, particularly for recent immigrants, can make it difficult for some consumers to file complaints. There needs to be a proactive outreach effort to ensure consumers know that there are rules that protect them and how to seek assistance.

Many NARUC member commissions actively address calling card abuses. Several States, including Texas, California, and my home State of New York have laws specifying required disclosures, including notice requirements at the point of sale, verbal disclosures at the

beginning of calls, and a required warning one minute before a card is depleted. As in most consumer service matters, a small number of bad actors create the bulk of the consumer complaints. What troubles me is the negative impact those bad actors can have on the industry which is also comprised of many service providers that deliver quality service at reasonable prices. The reputable providers make up the heart of the industry and should embrace the rules proposed in S. 2998.

The fraud and inadequate disclosure problems which are the focus of this bill cannot be handled by market forces. The partnership established in Sections Six and Eight of S. 2998 recognizes that, under State procedures, consumer concerns can be addressed promptly, often through informal processes. Also, Section Eight effectively incorporates NARUC's general positions that (a) federal rules should be "[a] floor, not a ceiling," as "...blanket preemption on consumer affairs will restrict consumer redress in the future," and (b) that "...consumers should NOT have to wait for federal rulemaking every time a new issue arises."

S. 2998 recognizes that, even in those instances when minimum federal consumer protection standards are appropriate, States must be allowed to enforce those standards and to adopt more specific standards where needed. This bill also provides States with flexibility in the method of enforcement. Section Six of the bill empowers a *State AG, PUC or other authorized State consumer protection agency* to bring civil action against a carrier that violates its provisions. This is wholly appropriate.

States vary on their method of enforcement. In some States consumer complaints may go to the Attorney General, in others complaints go to the PUC or another agency. The federal government should not dictate the agency or procedure for State enforcement. Such federal dictates would require States to waste taxpayer dollars to shift resources to different agencies. In

addition, such a change could only cause consumer confusion by changing the current contact State agency.

From an enforcement standpoint S. 2998 is a clear win for consumers because it not only establishes clear national standards, but it also couples those standards with coextensive federal and State enforcement. NARUC does suggest one minor addition to Section 6(c)(5) to make clear that States can use existing administrative penalties as well as procedures to “enforce the provisions of the law of such State.”¹ With this very minor change, the bill clearly ensures multiple “cops on the beat” protecting consumers from bad actors.

CONCLUSION

NARUC supports the jurisdictional balance struck in *The Prepaid Calling Card Consumer Protection Act of 2008*. As drafted, the bill provides consumers with increased national disclosure requirements and ensures strong enforcement of national standards by allowing States to enforce those standards. It also efficiently preserves existing State options for consumer relief.

Thanks again for the opportunity to testify. I look forward to your questions.

¹ Specifically, Section 6(c)(5) should be revised to read: “to establish or utilize existing administrative procedures *or penalties* to enforce the provisions of the law of such State.”

NARUC - APPENDIX A

Statement by
Chairman Barry Smitherman
Public Utility Commission of Texas

Senate Committee on Commerce, Science, and Transportation

Washington, D.C.
July 30, 2008

Executive Summary

On May 23, 2008, the Texas Attorney General filed the state's first enforcement action against a prepaid calling card company, Next-G Communications, Inc. The investigation which led to the enforcement action was done in conjunction with the Public Utility Commission of Texas, and determined that Next-G's calling cards consistently delivered only 40% of the minutes on international calls claimed in the advertising for the cards.

The results of the investigation show that Next-G inadequately disclosed the fees and charges associated with each call, reducing the number of minutes available for calling. The Texas Attorney General filed the enforcement action under the Texas Deceptive Trade Practices-Consumer Protection Act.

History

Beginning in 2004, staff from the Consumer Protection Division of the Public Utility Commission of Texas investigated whether calling card companies were following the advertising and disclosure requirements under the Public Utility Commission Substantive Rule 26.34. The initial investigation revealed that calling card companies were not following the Commission rule related to accurate disclosure of rates and charges on the card or at the point of sale. The Commission rule also requires that enforcement actions for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices will be coordinated with the Texas Attorney General in order to ensure consistent treatment of specific alleged violations. Customer Protection notified the Texas AG's Office of the issues relating to the accurate disclosure of information to customers, and during the summer and fall of 2007, worked with the Texas Attorney General's Office to test the calling cards from Next-G Communications to determine the number of minutes that the cards provided.

During the investigation on the Next-G calling cards, Customer Protection staff made calls to numbers in Honduras and El Salvador using \$5.00 and \$10.00 calling cards purchased in San Antonio, which are typical of the calling cards purchased at convenience and grocery stores. Consumer Protection Staff made several different types of calls using different calling cards: "straight line" calls to the target phone numbers, where a call is made until it is terminated by the provider, five-minute calls, and 10-minute calls. When calls were made using the calling cards, a voice prompt is given at the beginning of each call stating the number of minutes available for each call. The minutes stated in the voice prompt were compared to that actual number of minutes received or to the minutes stated in a subsequent call using the same card.

The results of the investigation showed that callers often received less than half of the minutes advertised. For example, when calls were made to Honduras using the five-dollar calling cards, the voice prompt indicated that there was 35 minutes of calling time. Callers

received only 12 minutes for these calls. With calls to El Salvador using the five-dollar cards, the first five-minute call would use up 18 minutes of calling time, and the first 10-minute call would use 25 minutes of calling time, as indicated by comparing the minutes stated on the voice prompt in subsequent calls.

Based on the results of the investigation, the Texas Attorney General filed a lawsuit asserting that Next-G engaged in false, deceptive and misleading acts and practices, specifically, not providing the minutes offered in the advertisements or voice prompt at the beginning of phone calls, and using advertising with vague, misleading, and confusing disclosures about fees and charges. The Attorney General requested that the defendant disgorge all money fraudulently taken from individuals and businesses, and requested a temporary and permanent injunction against Next-G selling cards that do not give all the minutes advertised or indicated in the voice prompt. The lawsuit is currently proceeding in State District Court in San Antonio.

Conclusion

Based on the investigation of the Next-G calling cards, it is obvious that some calling card companies mislead and confuse customers by including vague disclosures on charges and rates that dramatically alter the number of minutes available to a customer. Customers that use calling cards, especially for international calls, are generally immigrant or low income individuals attempting to contact families or friends. Calling card companies should be required to accurately disclose the fees and charges, rather than use incomplete and misleading language. By putting these precise terms up front, customers will be aware of what they are paying for, and can make better decisions in choosing their telecommunications needs.