LEGISLATIVE DIGEST
HOUSE REPUBLICAN CONFERENCE | CHAIRMAN ADAM PUTNAM

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H.R. 3402 – The Calling Card Consumer Protection Act

FLOOR SITUATION

H.R. 3402 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Representative Eliot Engel (D-NY) on August 3, 2007. The Committee on Energy and Commerce ordered the bill to be reported, as amended, by voice vote on September 23, 2008.

H.R. 3402 is expected to be considered on the floor of the House on September 25, 2008.

**Note: Similar legislation (S. 2998) has been introduced in the Senate by Senator Bill Nelson (D-FL).*

SUMMARY

H.R. 3402 requires calling card distributors to disclose the following in plain English (or the language predominantly used on the card) either on the card, the packaging of the card, or the appropriate website (if the card is being sold on-line) upon the sale of a pre paid calling card:

- The number of minutes provided by the card or the monetary value of the card and the interstate or preferred international destination rate per minute of the card
- The per minute rates for all international destinations served by the card (this information to be provided by a toll free number as well as on the provider's website if the provider maintains a website) other than the preferred international destination advertised on the card
- The terms of conditions for the use of the card, including all policies, fees, and limitations.
- The name and address of the service provider and a customer service number.

**Note: The legislation also requires these disclosures on any advertising for the pre paid calling cards. Any violation of these disclosure requirements can be treated as and unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act.*

Prepaid wireless carriers and Voice-Over-Internet-Protocol (VOIP) providers are excluded from the requirements of this bill.

The bill also prohibits pre-paid providers and distributors from charging any undisclosed fees and charges or providing fewer minutes than provided to the consumer through advertisements, voice prompts, or point of sale material. Additionally, the bill prohibits providers and distributors from selling a card that expires within one year (unless a different expiration date is printed on the card).

H.R. 3402 allows the attorney general of a State, a State utility commission, or State consumer protection agency (if authorized by State law) to bring civil actions against entities that violate this legislation. States are required to provide the FTC with prior notice of the action (and their complaint) unless prior notification is not feasible.

States are prohibited from enacting or continuing in effect any legislation governing disclosures on prepaid calling cards unless such legislation is identical to the Federal law.

The bill requires a GAO study to report on the effectiveness of this Act.

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BACKGROUND

Pre-paid calling cards are sold to consumers in order to allow for long distance telephone calls for a certain period of time. These cards are often used in lieu of a long distance calling plan or while an individual is not able to use the phone line covered by their long distance plan – both domestically and internationally. In essence, consumers are provided with purchased "minutes" in advance to for telephone calls. Consumers that buy a pre paid card are generally provided with a free access number and a PIN number.

According to Energy and Commerce Committee Republican Staff, the prepaid calling card industry is a $4 to 6 billion a year industry. Approximately half of that amount is generated through fraud or deceptive labeling.

The Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection held a hearing on September 16, 2008 on prepaid calling cards. During this hearing, Federal Trade Commission (FTC) Chairman William Kovacic testified that "Over the last decade, the prepaid calling card industry has grown into a multi-billion dollar a year industry. Prepaid calling cards can provide consumers with a convenient and inexpensive way to call friends and family at home and abroad. Unfortunately, however, purchasers of prepaid calling cards often do not receive the number of calling minutes advertised for the cards they purchase and are charged undisclosed or inadequately-disclosed fees and surcharges that reduce the value of the prepaid calling cards they have purchased."

Chairman Kovacic also testified that investigations at the FTC have found that card providers often don't disclose the number of minutes provided, including two cases in which the cards had about half of the minutes actually advertised.

The sponsor of H.R. 3402, Representative Engel, noted in his introductory remarks that "some consumers find that the calling card rates are higher than advertised or that they must pay surcharges or extra undisclosed taxes. In other cases, the calling card company automatically deducts minutes even if the consumer is unable to connect with the party they attempted to call. Even worse, many consumers find they are being scammed out of minutes and are being cut off in the middle of phone conversations."

The FTC has brought actions against providers of misleading prepaid cards through Section 5 of the FTC Act (15 U.S.C. § 45(a)(2), which makes it unlawful to engage in deceptive or unfair acts within interstate commerce. Several states, including Texas and Florida, have also recently taken actions against deceptive practices of prepaid calling card companies.

COST

The Congressional Budget Office (CBO) has not produced a cost estimate for H.R. 3402 as of September 24, 2008.

STAFF CONTACT

For questions or further information contact Conference Policy Office at 6-2302.