

ORIGINAL

EIGHTY PINE STREET
NEW YORK, N.Y. 10005-1702
(212) 761-3000
FAX: (212) 269-5420

CAHILL GORDON & REINDEL LLP

SUITE 950
1990 K STREET, N.W.
WASHINGTON, D.C. 20006-1181

TELEPHONE (202) 862-8900
FACSIMILE (202) 862-8958



0000105318

ALGUSTINE HOUSE
6A AUSTIN TRIARS
LONDON, ENGLAND EC2N 2HA
(011) 44 20 7920 9800
FAX: (011) 44 20 7920 9825

CHÉRIE R. KISER | 202-862-8950 | ekiser@egrde.com

November 20, 2009

Arizona Corporation Commission
DOCKETED

NOV 23 2009

DOCKETED BY *[Signature]*

AZ CORP COMMISSION
DOCKET CONTROL

2009 NOV 23 P 3:51

RECEIVED

Via Federal Express

Arizona Corporation Commission
Docket Control
1200 W. Washington Street
Phoenix, AZ 85007-2927

**Re: Docket Nos. T-20517A-07-0135 and T-04045A-07-0135,
Joint Application of STi Prepaid, LLC and Dialaround Enterprises Inc. -
Late-Filed Hearing Exhibit No. 2**

Dear Sir or Madam:

STi Prepaid, LLC ("STi Prepaid") and Dialaround Enterprises Inc. ("Dialaround"), by their attorneys, respectfully submit an original and sixteen (16) copies of STi Prepaid's Initial Comments and Reply Comments filed with the Federal Communications Commission ("FCC") in CG Docket No. 09-158, *Consumer Information and Disclosure*, CC Docket No. 98-170, *Truth-in-Billing and Billing Format*, and WC Docket 04-36, *IP-Enabled Services*. The Initial Comments were submitted electronically to the FCC on October 13, 2009, and the Reply Comments on October 28, 2009.

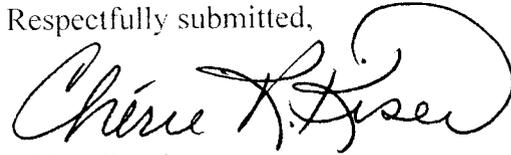
STi Prepaid filed these documents in response to the FCC's request for comments "on whether there are opportunities to protect and empower American consumers by ensuring sufficient access to relevant information about communications services."¹ They provide a factual and legal foundation by which the FCC may expeditiously enact STi Prepaid's proposed baseline disclosure standards for the prepaid calling service industry. It is STi Prepaid's intention that such standards will ultimately ameliorate the "sources of uncertainty and confusion" amongst consumers by providing them with accurate, comprehensive, and usable information concerning prepaid calling services.²

¹ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Notice of Inquiry, ¶ 1 (rel. Aug. 28, 2009).

² *Id.*

Please contact the undersigned if you have any questions concerning this Late-Filed Hearing Exhibit No. 2.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cherie R. Kiser". The signature is fluid and cursive, with a large, looping flourish at the end.

Cherie R. Kiser

Counsel for STi Prepaid, LLC and
Dialaround Enterprises Inc.

Attachments

cc: Service List

Attachment 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Consumer Information and Disclosure)
Truth-in-Billing and Billing Format)
IP-Enabled Service)

CG Docket No. 09-158

CC Docket No. 98-170

WC Docket No. 04-36

INITIAL COMMENTS OF STi PREPAID, LLC

Chérie R. Kiser
Matthew L. Conaty
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8900 (telephone)
202-862-8958 (facsimile)
ckiser@cgrdc.com

Dated: October 13, 2009

Its Attorneys

Table of Contents

I. BACKGROUND: THE PREPAID TELECOMMUNICATIONS SERVICE INDUSTRY... 2

II. CURRENT PRACTICES IN THE PREPAID TELECOMMUNICATIONS SERVICES MARKET ILLUSTRATE THE NEED FOR CLEAR DISCLOSURE RULES AND RIGOROUS FCC REGULATORY ENFORCEMENT 5

III. IMMEDIATE ACTION BY THE COMMISSION IS NECESSARY TO PROTECT AND EMPOWER CONSUMERS OF PREPAID TELECOMMUNICATIONS SERVICES..... 8

CONCLUSION..... 18

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	CG Docket No. 09-158
Consumer Information and Disclosure)	CC Docket No. 98-170
Truth-in-Billing and Billing Format)	WC Docket No. 04-36
IP-Enabled Service)	

INITIAL COMMENTS OF STi PREPAID, LLC

STi Prepaid, LLC (“STi Prepaid”)¹ respectfully makes this submission in response to the request of the Federal Communications Commission (“Commission” or “FCC”) for comments “on whether there are opportunities to protect and empower American consumers by ensuring sufficient access to relevant information about communications services.”² STi Prepaid applauds the FCC’s goal and, by virtue of its extensive industry experience, urges the Commission to focus on a growing portion of the telecommunications market where intervention of this kind is sorely needed: the prepaid calling service industry.³ In the absence of a basic set of disclosure standards, consumer uncertainty over prepaid calling services has steadily increased, exacerbated by enterprises that seek to exploit it for short-term pecuniary gain. Ameliorating the “sources of uncertainty and confusion” through appropriate rulemaking will stabilize the prepaid calling

¹ STi Prepaid is a leading provider of long-distance wireline and wireless telecommunications services. STi Prepaid’s principal products are international prepaid telecommunications services, which are sold in conventional retail locations via cards, with wireless equipment, or through STi Prepaid’s website, www.stiprepaid.com. These telecommunications services are offered in a variety of dollar amounts to over 200 destinations worldwide. In 2008, STi Prepaid sold over 150 million calling cards and carried over seven billion minutes on its network to virtually every country in the world. It also augmented its telecommunications infrastructure by installing a new Voice-over-IP (“VoIP”) switch and purchasing advanced calling platform software. STi Prepaid also offers domestic and international long distance services via 10-10 dial-around calling, pay-as-you-go mobile service, and voice termination services to international carriers around the world.

² FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Notice of Inquiry, ¶ 1 (rel. Aug. 28, 2009) (“*NOI*”).

³ *Id.* ¶ 3.

market, driving out marginal operators and increasing the transparency, utility, and value of its products to the benefit of consumers nationwide.⁴

I. BACKGROUND: THE PREPAID TELECOMMUNICATIONS SERVICE INDUSTRY

From a modest beginning in the wake of deregulation, competitive prepaid calling services have become an integral part of the interstate and international telecommunications marketplace. In the past thirteen years, revenues have multiplied by a factor of six - sales of \$1.1 billion in 1996 have grown to an estimated \$6.4 billion in the past year.⁵ From 1995 to 2002, the market enjoyed a 25.4 percent compounded annual growth rate, with an estimated total market expansion of 73 percent over the past five years.⁶ Consumers placed 11 billion calls through prepaid calling products in 2004 alone, a total that will increase exponentially in the coming years.⁷ Prepaid calling services form an important component of the nation's evolving communications infrastructure, and a vital means of interconnecting customers with their business associates and loved ones.

As a recent International Engineering Consortium study demonstrated, the economic and social inclusiveness of the prepaid calling market embraces a wide variety of consumers. Market segmentation, the study observed, can be cast according to "end-user preference," in which prospective callers may select from a range of calling options that "range from high quality regardless of price to low price regardless of quality."⁸ Another cleavage, "end-user

⁴ *Id.*

⁵ National Consumers League, *NCL to Senate Committee: 'Wild West' Prepaid Calling Cards Industry Unregulated and Preying on Poor, Immigrant, Military Consumers*, NCL News (Sept. 10, 2008), http://www.nclnet.org/news/2008/prepaid_calling_cards_09102008.htm; International Engineering Consortium, *Prepaid Services, White Papers*, at Part 2 (2007) ("IEC White Paper"), http://www.iec.org/online/tutorials/prepaid_serv/topic02.asp; Tracey Longo, *Cheaper Way to Phone Home?*, *Kiplinger's Personal Finance Magazine*, June 1996, at 91.

⁶ U.S. prepaid calling card industry to reach \$6.4 billion by 2008, ATLANTIC-ACM study reveals, 2.5G-3G (Feb. 2003), http://findarticles.com/p/articles/mi_hb6578/is_200302/ai_n25962894/.

⁷ The Hispanic Institute, *THI Praises FTC for Standing Against Calling Card Fraud* (Mar. 31, 2008), <http://thehispanicinstitute.net/research/callingcard>.

⁸ IEC White Paper.

psychographic make-up/lifestyle segmentation,” draws in the economically embattled - “[f]or example, in the US, it is estimated that one out of every four people is not granted telephone service due to poor credit rating.”⁹ Demographic and geographic segmentation are a vital part of the prepaid calling market as well, given that “in cities with large ethnic populations,” for example, “the demand for cheap, controlled phone services is high.”¹⁰

Prepaid calling is especially important to recent immigrants, for whom inexpensive communication with relatives abroad is a prized commodity. The Hispanic Institute counterpoised the fact that “62% of recent Mexican immigrants earned less than twice the poverty level” with the statistic that “[i]nternational calls made with prepaid phone cards, on average, cost 18 to 64 percent less than calls made with landlines or wireless phones.”¹¹ “Conversely,” notes The Hispanic Institute, “international calls using 10-10 dial-around services cost 22% more, those using traditional long-distance plans cost 58% more, and those using wireless services cost 176% more -- or almost three times as much.”¹² Prepaid telecommunications services have not only contributed the immediate economic well-being of immigrants - “[f]or example, phone service can cost as much as \$1.32/minute for calls to Mexico,” whereas comparable prepaid calling service can generate “savings of \$1 to \$11 per call, or up to \$44/month (assuming four 30-minute calls per month)” - but also to the ability of these individuals to remain in contact with distant relations on a regular basis.¹³ “As prepaid phone cards have grown in popularity,” The Hispanic Institute observed, “the volume of international calls has risen from 200 million in 1980 to 11 billion in 2004.”¹⁴

⁹ *Id.*

¹⁰ *Id.*

¹¹ The Hispanic Institute, Facts & Figures, <http://thehispanicinstitute.net/research/callingcard/scamfacts>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

As the Commission observed in the *NOI*, “extraordinary ferment in the marketplace, including the introduction of new categories of service . . . as well as new pricing plans” have opened a range of telecommunications options to consumers previously restricted to simple wireline telephony.¹⁵ The prepaid calling industry has evolved as well - as one 2006 article observed, “[w]ith the escalating popularity of VoIP services, an imminent boost of the prepaid calling card industry consequently follows. Total market revenue for prepaid calling was \$2.7 billion in 1999. By 2002, about 29 percent of prepaid calls have become VoIP, much higher than its corresponding value in 1999.”¹⁶ Consumers now look to their computers for prepaid calling solutions as readily as a local convenience store, as a host of new service providers, encouraged by low fixed costs and overhead, have entered the market.¹⁷ Websites now offer real-time billing software for the implementation of a “virtual office” that includes “prepaid/postpaid support,”¹⁸ an “E-trepreneur” program to establish a “work at home prepaid phone card business” and “get on board [a] \$4 billion dollar prepaid phone card industry,”¹⁹ and detailed guidance on forming “a plan to avoid pitfalls, to achieve your goals, and to build a profitable home business, such as selling prepaid phone cards.”²⁰

¹⁵ *NOI* ¶ 3.

¹⁶ Earl Juanico, *Synergy between VoIP services and the prepaid calling card industry*, *Turks.us Daily World EU News* (Sept. 1, 2006), http://www.turks.us/article.php?story=prepaid_calling_card_industry_voip.

¹⁷ The impact of VoIP on prepaid calling service, whether in a synergistic or polemical fashion, has yet to be fully realized. See, e.g., Ken Osowski, *Does VoIP Usage Impact Prepaid Calling Services?*, *The Prepaid Press* (Sept. 15, 2009), http://www.prepaid-press.com/news_detail.php?t=paper&id=2807 (“Pure-IP wireless networks delivering VoIP services will start to rollout and reach metropolitan populations that have traditionally been a big market for prepaid calling cards. So the VoIP impact is starting to happen for sure, but we are just at the start of this trend. In the meantime don’t throw away those prepaid calling cards.”).

¹⁸ Sonicwell, asterisk callcenter and billing solution, <http://astercc.org/about-asterbilling>.

¹⁹ US Prepaid, *Start Your Online Calling Card Business*, E-Trepreneur, <http://e.usprepaid.com/>; see also, e.g., Home Income Opportunities: Business Ideas for Entrepreneurs, http://www.homeincome.com/articles/home_business/Home-Based-Business-Opportunity-How-to-select-an-Online-Business-Opportunity-to-Work-from-Home.html (“And opting for doing business online gives you chance to work from anywhere anytime. You have the comfort and freedom of working from your home. All you require is an Internet connection. One such well-liked upcoming business opportunity is selling Prepaid calling cards Online. . . .The use of pre-paid calling card products crosses all socio-economic and ethnic groups which means a broad-based income opportunity for people doing this business online.”).

²⁰ Vanessa A. Doctor, *Prepaid Phone Card Selling As A Home Business*, *Ezine Articles*, <http://ezinearticles.com/?Prepaid-Phone-Card-Selling-As-A-Home-Business&id=646831>.

Prepaid telecommunications services are vital to a diverse and highly competitive market offering individualized calling solutions. Unfortunately, inconsistent and/or insufficient information disclosure have heightened the potential for confusion amongst end-users and limited their ability to make fully informed choices to meet their telecommunications service needs. The *NOI* is timely and uniquely tailored to address this customer confusion through its inquiry regarding "the information available to consumers at all stages of the purchasing process, including: (1) choosing a provider, (2) choosing a service plan, (3) managing use of the service plan, and (4) deciding whether and when to switch an existing carrier or plan."²¹ How can a consumer obtain reliable information on different carriers, some of which may be reselling long-distance service under a variety of names? How should various options - call quality, country or region specificity, number of minutes according to projected talk time - be prioritized when confronted with an array of services? How can the relative value of a prepaid calling product be assessed when high variable fee and surcharge structures are described differently by each carrier? Taking into account the limited English skills of many immigrants, and the plethora of locations where prepaid calling products are advertised, sold, and used,²² it is incumbent upon the Commission "to provide consumers with better access to clear, easily understandable information they need."²³

II. CURRENT PRACTICES IN THE PREPAID TELECOMMUNICATIONS SERVICES MARKET ILLUSTRATE THE NEED FOR CLEAR DISCLOSURE RULES AND RIGOROUS FCC REGULATORY ENFORCEMENT

A cursory look at typical prepaid calling service practices reveals a strong need for a basic level of "clear, easily understandable information" in the prepaid calling industry. Fluid

²¹ *NOI* ¶ 4.

²² Herb Weisbaum, *Prepaid phone card industry under attack*, MSNBC (Oct. 23, 2008), <http://www.msnbc.msn.com/id/27327684/ns/business-consumerman/> ("These cards are used by military families, foreign exchange students, recent immigrants and people with friends overseas. You can buy them at grocery stores, gas stations, newsstands, kiosks and over the Internet.").

²³ *NOI* ¶ 16.

and turbulent, with few extant regulations, certain providers of prepaid telecommunications services frequently cast consumers adrift without providing adequate information. This lack of information, and oftentimes inadequate disclosure, may translate into tangible impacts upon consumers' disposable cash and monthly budgets, punishing those for whom prepaid calling is often the communications option of last resort.

A 2005 University of Georgia consumer economics research project, for example, determined "that the cost-per-minute rates for phone cards can be up to 87 percent higher than expected," with an ostensible rate of 15 cents per minute escalating to a high of 28 cents per minute.²⁴ Researchers fluent in Spanish noted that "information on the front of the card contradicted information on the back. . . . the front of one card read, 'Sin cargo de conexion,' which means 'without connection charge,' but the back read, 'Cargos de conexion aplicaran,' which means 'connection charges apply.'"²⁵ *Kiplinger's Personal Finance Magazine* trumpeted prepaid calling's "easy way around the high rates and outrageous surcharges that hotels and pay phones often extract for long-distance calls," but noted that "finding the best deal among the plethora of cards - or even figuring out true costs - is a major challenge," given that "[a] bargain-basement per-minute rate can easily be obliterated by per-call surcharges."²⁶ *The Oregonian* bemoaned the prevalence of "junk fees" that "leav[e] buyers with far fewer minutes for calls than they thought they were getting," including "connection fees on calls that don't go through because no one is home or the line is busy; post-call service fees and 99-cent hang-up fees on cards that are only worth a few dollars to start with; calling rates that go up when a card is used more than once; activation and weekly maintenance fees; and cards that bill customers in three- or four-minute increments even if they use just a few seconds of calling time."²⁷ While

²⁴ Denise Horton, *Prepaid Phone Cards: Caller Beware*, University of Georgia Research Magazine (Fall 2005), available at <http://researchmagazine.uga.edu/fall2005/printphonecards.htm>.

²⁵ *Id.*

²⁶ Joan Goldwasser, *Calling Card Anxiety*, *Kiplinger's Personal Finance Magazine*, July 2001, at 93.

²⁷ Jim Hays, *Fraud plagues prepaid calling card market*, *The Oregonian* (Oct. 5, 2008), http://www.oregonlive.com/money/index.ssf/2008/10/fraud_plagues_prepaid_calling.html.

competition in most instances is sufficient to permit legitimate service providers to set their rates, terms and conditions without regulation, these rates, terms and conditions must be sufficiently disclosed to ensure consumers can make an informed decision as to which prepaid telecommunications service provider will best meet his or her calling needs.

A review of advertising practices by prepaid calling card companies, many of which issue new calling card brands on a weekly or monthly basis, demonstrates that they rely predominantly on posters to advertise their new cards. These advertisements typically highlight a certain number of minutes available to a certain destination if the entire card is used in one call. In many cases, the minutes are used as a promotional tool - the minutes offered on the first call are typically far below the carrier's cost, and the high total number of minutes are offered at a teaser rate as an inducement to consumers to try out the card. Consequently, most cards apply fees after the first call to significantly reduce remaining card value, or charge a higher per-minute rate on the second and subsequent calls. In addition, fees governing the use of payphone or toll-free 1-800 numbers may apply. Often, these fees are typically disclosed in a very small font on the bottom of posters, if they are disclosed at all.

STi Prepaid takes its regulatory obligations seriously and strives to ensure its current business practices comply with existing regulation. However, a higher standard for customer disclosures and more rigorous enforcement are needed to improve the customer's ability to make an informed choice. STi Prepaid is willing to work with the FCC to set those higher standards.

STi Prepaid therefore urges the Commission to address these three basic problems in this proceeding:

Problem 1: Insufficient Disclosure: While the FTC maintains standards of prominence, presentation, placement, and proximity concerning disclosures that modify advertising, they are frequently ineffective in the case of prepaid calling service carriers.²⁸ Aside from the FTC's limited enforcement abilities over common carriers (*see* Section III, *infra*), carriers may reduce the font size of disclaimers to

²⁸ See, e.g., Federal Trade Commission, FTC Advertising Enforcement: Disclosures In Advertising, <http://www.ftc.gov/bcp/workshops/disclosures/cases/index.html>.

near-illegible levels, separate the limitations of a product from eye-catching ad copy, or deliberately muddle questions of minute expiration or fee applicability. These practices are exacerbated by some carriers' tendencies to obfuscate the carrier actually responsible for the provision of service for a particular prepaid calling product, refusing to even list the carrier responsible for providing the service.

Problem 2: Difficulty in Comparing Options: Even in instances when fees are legibly or clearly disclosed, it is still difficult for consumers to compare purchase options. Carriers routinely advertise large quantities of minutes available for use if a customer places only one call. For example, a poster may advertise hundreds or even a 1000 minutes if the card is used in one call. However, the majority of customers do not use cards for only one call - in STi Prepaid's experience, the average length of a prepaid call is 14.5 minutes. The disconnect between advertised calling time and consumer calling patterns is further exacerbated by fees instituted after the first call or on the second and subsequent calls. These surcharges - vaguely disclosed, if at all - frequently reduce the remaining value of the prepaid calling product substantially.

Problem 3: Posters and Advertising Materials Remain in Place Beyond the Applicable Promotional Period: As noted above, carriers place posters and related advertising materials in prominent locations in retail outlets, introducing new cards and attracting customers. In many cases, posters remain in public view long after the minutes promised on the posters are no longer provided by the carrier. Some carriers actively exploit this temporal discrepancy, luring customers unaware of a poster's expired promises into a purchase. Rates may be dramatically increased following a short promotional period, which may mislead consumers to purchase a product with the expectation of continued value. A few industry leaders (including STi Prepaid) have printed expiration dates on their advertising materials and require retailers to adhere to them and remove posters once expired. By contrast, other carriers have distributed posters with no such conditions or even post them shortly before or after the promotions they describe have expired.

III. IMMEDIATE ACTION BY THE COMMISSION IS NECESSARY TO PROTECT AND EMPOWER CONSUMERS OF PREPAID TELECOMMUNICATIONS SERVICES

Choosing a prepaid calling product is not simply an exercise in identifying the product with the most minutes or lowest rate, but a complicated endeavor shaped by the consumer's experience and knowledge of the product, chosen method of communication (wireline, wireless, or coin-operated pay telephone), intended destination and projected talk time, and relative appraisal of carrier quality. Coupled with the advertising, comparison, and disclosure problems outlined in the preceding section, it is clear that consumers and carriers would benefit from the FCC's provision of additional guidance and standards to the prepaid calling industry.

This proceeding provides the ideal means for providing such guidance and standards to the prepaid telecommunications services industry. Though focused on other telecommunications services, Chairman Genachowski's observations on the genesis of the *NOI* are directly applicable to prepaid calling services:

Today's Notice addresses the protection and empowerment of American consumers. Specifically, we seek to provide them the information, disclosure, and new technologies they need to make the market work. Making sure that consumers have adequate information at each step of this process is essential to enabling smart, informed decisions when it comes to communications services, which increasingly touch every part of our lives. . . . [Today], [m]any Americans are learning to do more with less. A surprise charge on a monthly bill or a new service that does not perform as advertised can be a major budget-buster, especially as household spending on communications grows ever larger. Today's notice will help the Commission build a record on ways to ensure that consumers understand what they are signing up for.²⁹

Prepaid calling consumers, especially those who rely upon these services by dint of economic necessity, need the ability to make "smart, informed decisions" about their purchase, confident in the knowledge that no "surprise charge" will eviscerate its stated value, or that customer service and support cannot be reached.³⁰ "Adequate information" is hard to come by in an industry characterized by a multitude of individualized calling solutions. Ad hoc testimonies, guides, and rating sites on the Internet bear witness to this paucity of information - as one website, [phonecardsreviews.com](http://www.phonecardsreviews.com), states, "As avid users of prepaid phone cards we've noticed there is a lot of confusion in purchasing a phone card. And people should rightfully feel that way. . . . there are many phone card companies that do business on a fair ground but finding them can be a bit tricky."³¹ A set of basic disclosure standards - rules that establish minimally acceptable

²⁹ Statement of Chairman Julius Genachowski, Re: *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-68A2.pdf ("Genachowski Statement").

³⁰ See, e.g., Associated Press, 1-800-SCAMMER: Prepaid Calling Cards Rife With Fraud, FOX News (Oct. 7, 2008), <http://www.foxnews.com/story/0,2933,433425,00.html> ("The problem takes many forms: connection fees on calls that don't go through because no one is home or the line is busy; post-call service fees and 99-cent hang-up fees on cards that are only worth a few dollars to start with; calling rates that go up when a card is used more than once; activation and weekly maintenance fees; and cards that bill customers in three- or four-minute increments even if they use just a few seconds of calling time. These charges and fees often end up leaving buyers with far fewer minutes for calls than they thought they were getting.").

³¹ Phone Cards Reviews, About Us, <http://www.phonecardsreviews.com/about.html>; see also, e.g., Eliza Maledevic Ayson, *Buying Tips for your Prepaid Calling Card*, streetdirectory.com,

standards for the form and content of representations made by prepaid calling service carriers - is urgently needed, so as to enable prospective customers to evaluate the myriad of service offerings in a balanced and accurate manner.³²

In contrast to the Federal Trade Commission ("FTC"), which is statutorily barred³³ from directly regulating the unfair or deceptive acts of practices of common carriers,³⁴ the

http://www.streetdirectory.com/travel_guide/191228/phones/buying_tips_for_your_prepaid_calling_card.html ("There are heaps of websites that offers prepaid calling cards. But take note each prepaid calling card differs with rates, prices and services being offered by each company. It is advisable that customers should understand each prepaid calling card before purchasing in order to come up with the one that suits your needs."); Edwin M. Clark, *Prepaid Calling Card Reviews - Tips on How to Buy*, EZineArticles.com, <http://ezinearticles.com/?Prepaid-Calling-Card-Reviews---Tips-on-How-to-Buy&id=2932115> ("Need information on how to choose a calling card or how to find a reliable company to buy from? You're not the only one. Prepaid calling cards are great for saving money on long distance and especially international calls. Here's how you can find a reliable calling card company on the Internet."). Note that some of these buying guides have been penned by representatives of prepaid calling service carriers - the Ayson article, for example, is associated with FlatRateOnline.net International Calling Card Service - presumably to guide consumers away from suspect purchases that might eviscerate their interest in prepaid calling altogether.

³² With the large number of existing prepaid calling service carriers, and the ease and low cost of entry into the market - equipment and long-distance minutes for resale retailing for as low as \$20,000 by some estimates - a voluntary code of conduct of the sort adopted by CTIA is impractical. *NOI* ¶ 11 (noting mobile carriers decision "to take certain steps to disclose rates and terms of service to consumers"); see, e.g., *1-800 SCAMMER*, *supra* ("[telecom consultant and prepaid calling card distributor Pablo] Bressan estimates it can cost as little as \$20,000 to buy the long-distance minutes and back-end computer platform to get into the business. Some companies simply redistribute cards made by others.").

³³ The FTC is prohibited from directing "common carriers subject to the Acts to regulate commerce . . . from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(2). This exemption defines 'Acts to regulate commerce' to include "the Communications Act of 1934 [47 U.S.C. 151 et seq.] and all Acts amendatory thereof and supplementary thereto" 15 U.S.C. § 44. The FTC has attempted to pursue regulation through alternative means, drawing upon its Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310, and concomitant enforcement powers pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in order to support actions for deceptive marketing. Yet these enabling statutes and regulations are limited in scope when compared to the Commission's own authority under the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227. See, e.g., Federal Trade Commission, *Report to Congress Pursuant to the Do Not Call Implementation Act on Regulatory Coordination in Federal Telemarketing Laws Submitted by The Federal Trade Commission*, at 18 (rel. Sept. 9, 2003), <http://www.ftc.gov/os/2003/09/dnciareport.pdf> (stating that "the jurisdictional sweep of the TCPA and the regulations thereunder is very broad, and is unaffected by any limitations like those that restrict the reach of the FTC's TSR.").

³⁴ While the FTC has taken action against carriers liable for violations of 15 U.S.C. § 45(a), which bars deceptive or unfair acts or practices in or affecting commerce, and 15 U.S.C. § 53(b), which prohibits violations of the FTC Act and permits the FTC to secure case-appropriate equitable relief, including restitution and disgorgement, these are ad hoc measures that do not address the problems endemic to the prepaid calling industry as a whole. See, e.g., *FTC v. Alternatel*, 1:08-CV-21433-AJ (S.D. Fl.) (Stip. Final Order filed Feb. 10, 2009) at 4, 6-7 (defining terms such as "clear and prominent" - disclosures on "any print advertisement, marketing material, promotional material (including all Point-of-Sale Materials), packaging, label, or instructional manuals . . . shall be (1) in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, and (2) in print that contrasts with the background against which it appears") - the Final Order permanently enjoined defendants "from failing to

Commission has extensive authority to comprehensively regulate the actions and practices of carriers.³⁵ As the Commission observed in the 2000's *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, a "proliferation of advertisements for dial-around numbers, long-distance calling plans, and other new telecommunications services, as well as an increase in the number of complaints regarding how these services are promoted, have raised questions about how the principles of truthful advertising apply in this dynamic marketplace."³⁶ To that end, the Commission asserted its authority to take action against "unfair and deceptive marketing practices by common carriers" under Section 201(b) of the Communications Act of 1934, as amended (the "Act"), as "unjust and unreasonable practices" in connection with communications service.³⁷

Carriers, stated the *Joint Policy Statement*, could look to "two common-sense propositions" from the FTC's truth-in-advertising law - "1) advertising must be truthful and not misleading; and 2) before disseminating an ad, advertisers must have adequate substantiation for all objective product claims" - as "helpful guidance" for their statutory compliance responsibilities under Section 201(b).³⁸ Within this framework, the Commission stressed the need for carriers to employ "the greatest care in ensuring the accuracy of their claims related to price, including the clear and conspicuous disclosure of information such as minimum per-call charges, monthly fees, fees for additional minutes beyond the initial calling period, and other

make a clear and prominent disclosure of all Material Limitations, including, but not limited to, a clear and prominent disclosure" of talk minutes, fees, and expiration dates.); *FTC v. Trans-Asian Communications, Inc.*, 97-CIV-5764 (S.D.N.Y.) (Stip. Final Order filed Mar. 17, 1998) (order mandating, *inter alia*, \$1 million performance bond prior to resumption of advertising or sale of prepaid calling cards and prohibiting material misrepresentations).

³⁵ See, e.g., *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, ¶¶ 24, 27 (1999) (subsequent history omitted) (asserting "authority to promulgate rules implementing that requirement [detering carriers from engaging in unjust and unreasonable practices in violation of section 201(b)] as to the provision of interstate services," per the FTC's lack of "jurisdiction over activities of common carriers subject to Title II of the Communications Act." despite being empowered, "in limited circumstances," with "concurrent authority to establish rules relating to certain areas of telephone billing and collection.").

³⁶ 15 FCC Rcd 8654, ¶ 3 (2000) ("*Joint Policy Statement*").

³⁷ *Id.* ¶ 4.

³⁸ *Id.* ¶¶ 4-5.

information that significantly affects the total charge of a particular call or calling plan or service.”³⁹ Noting that “[a]n ad may be deceptive by omission,” the *Joint Policy Statement* indicated that “any significant conditions or limitations on the availability of the advertised rates should also be clearly and conspicuously disclosed,” such as a “significant geographic restriction.”⁴⁰ The Commission also stated that it held these principles to be universal - “[f]or example a misrepresentation or omission of material information in an advertisement for a dial-around service would likely be deceptive if the same misrepresentation or omission occurred in an ad for a long-distance calling plan. . . . the principles of truth and accuracy apply to advertisements conveyed via television, radio, magazines, newspapers, direct mail, telemarketing, the Internet, or oral representations made by customer service operators.”⁴¹ To ensure that disclosures are clear and conspicuous, “advertisers should use clear and unambiguous language, avoid small type, place any qualifying information close to the claim being qualified, and avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure.”⁴² The Commission heralded proximity, prominence, and placement of qualifying information in relation to advertised rates, emphasizing “the clarity and understandability of the text of the disclosure” with an “absence of distracting elements, such as text, graphics, or sound that may distract a consumer's attention away from the disclosure.”⁴³

Section 201(b) has also served as the basis for direct enforcement actions by the Commission against telecommunication service providers for unjust and unreasonable advertising or marketing activities. In *Telecommunications Research and Action Center and Consumer Action v. Central Corporation International Telecharge, Inc.; National Telephone Services, Inc.; Payline Systems, Inc.; and Telesphere Network, Inc.*, the Commission assessed

³⁹ *Id.* ¶ 13.

⁴⁰ *Id.* ¶¶ 7, 14-15.

⁴¹ *Id.* ¶ 9.

⁴² *Id.* ¶ 20.

⁴³ *Id.* ¶ 22 (emphasis omitted).

complaints against "alternative operator services" (AOS) by consumers "claim[ing] they were not adequately informed by the call aggregator or the AOS provider that their call would be handled by an AOS company or what charges would be incurred. . . . [or] were unaware of the existence of numerous AOS companies as opposed to traditional service providers."⁴⁴ The decision determined that inadequately disclosed call-handling and marketing practices served to "distort and impede the operation of a fully competitive operator services industry."⁴⁵ Consequently, "the practice of call blocking, coupled with a failure to provide adequate consumer information," was deemed to be "unjust and unreasonable in violation of Section 201(b) of the Act."⁴⁶ The Commission subsequently ordered the AOS companies to "provide consumer information to their customers in the form of tent cards, phone stickers, or some other form of printed documentation that can be placed on, or in close proximity to, all presubscribed phones" with "the company's identity (name, address and a customer service number for receipt of further information) as well as information to the effect the company's rates will be quoted on customer request."⁴⁷

In *Business Discount Plan, Inc.*, the Commission assessed a forfeiture of \$2,400,000 against Business Discount Plan ("BDP") for violating Section 258 of the Act and the Commission's rules and orders by engaging in slamming. The Commission also determined "that BDP willfully or repeatedly violated section 201(b) of the Act by using unjust and unreasonable telemarketing practices in connection with its slamming violations, such as misrepresenting the nature of BDP's service offering."⁴⁸ BDP argued, *inter alia*, that Section 201(b) imposed no duty on common carriers to be truthful in advertising, citing "state preemption cases in which courts have held that the Communications Act does not indicate a

⁴⁴ 4 FCC Rcd 2157, ¶ 4 (1989).

⁴⁵ *Id.* ¶ 12.

⁴⁶ *Id.*

⁴⁷ *Id.* ¶ 13.

⁴⁸ 15 FCC Rcd 14461, ¶ 1 (2000).

'uniquely federal interest' in common carriers' unfair and deceptive telemarketing practices, so as to 'preempt' state efforts to prevent these practices."⁴⁹ The Commission disagreed, noting that Section 201(b) "prohibits 'unjust and unreasonable' practices by common carriers 'in connection with' communication service," and so, because "BDP's telemarketers repeatedly deceived consumers as to BDP's identity and the nature of its service, rendering BDP's telemarketing practices 'unjust and unreasonable'. . . . [t]hese telemarketing practices were related directly to BDP's efforts to provide long distance service to the complainants, and thus were clearly 'in connection with' BDP's communication service."⁵⁰ The Commission further stated that it "need not have a 'uniquely federal interest' in preventing such marketing practices in order to exercise our section 201(b) jurisdiction," citing use of the section "to address unreasonable marketing practices by common carriers" as far back as 1989.⁵¹ In the subsequent Order on Petition for Reconsideration, the Commission found no merit in BDP's contention that Section 201(b)'s reach was limited by want of a phrase like "telemarketing practices" in its text. To the contrary, Congress had chosen not to "enumerate or otherwise limit the specific practices to which this provision applies" in order to afford the Commission "a more general authority to address such practices as they might arise in a changing telecommunications marketplace."⁵²

In *NOS Communications, Inc.*, the Commission found two long distance service resellers "apparently liable for proposed forfeitures in the amount of \$500,000 each" pursuant to their apparent "deceptive marketing of their interstate communication services by failing to disclose clearly and conspicuously material facts regarding their promotional plan offerings and pricing methodology."⁵³ Despite Commissioner Furchtgott-Roth's belief that "Congress indicated that it did not think this Commission possessed general jurisdiction to regulate common carrier

⁴⁹ *Id.* ¶ 14.

⁵⁰ *Id.* ¶ 15.

⁵¹ *Id.* ¶ 16.

⁵² 15 FCC Rcd 24396, ¶ 8 (2000).

⁵³ 16 FCC Rcd 8133, ¶¶ 1-2 (2001).

advertising,”⁵⁴ the Commission held that Section 201(b) was broad enough to encompass the resellers' apparent misdeeds:

NOS's and ANI's failure to make clear and conspicuous disclosures in their rate sheets appear to demonstrate conscious disregard for section 201(b)'s prohibition against unfair and unreasonable marketing practices. The rate sheets support a conclusion that the companies intentionally employed “bait and switch” marketing techniques and withheld information regarding their promotional offerings and call unit rate structure from consumers. And the number of consumer complaints filed with the FCC against NOS and ANI, along with the number of complaints and service cancellations reported by the companies, further suggest widespread consumer confusion.⁵⁵

The Commission has also exercised direct authority over prepaid calling cards according to the underlying telecommunications service they provide to consumers.⁵⁶ This statutory basis for regulation has also been extended to IP-based and menu-based calling cards marketed as a “transmission service,” which “allows the user, by choosing the appropriate entry from the menu, to have the calling card provider transmit ‘between and among points specified by the user . . . information of the user's choosing, without change in the form or content of the information as sent and received.’”⁵⁷ Prepaid calling services are thus amenable to the Commission's enforcement powers under Section 214 of the Act.⁵⁸ Accordingly, “prepaid calling card providers must obtain prior authorization before providing international telecommunications services, consistent with the requirements of section 214 of the Act and section 63.18 of the

⁵⁴ *Id.* at 8152.

⁵⁵ *Id.* ¶ 18.

⁵⁶ See, e.g., *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006); *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, ¶ 4 (2005) (“To date, calling card services have been regulated by the Commission as telecommunications services because they provide transmission of information, without a change in form or content, for a fee directly to the public”); 47 C.F.R. § 153(43), (46).

⁵⁷ *Regulation of Prepaid Calling Card Services* ¶ 13; see also, e.g., *Qwest Services Corp. v. F.C.C.*, 509 F.3d 531, 534 (D.C. Cir. 2007) (“find[ing] no manifest injustice in applying the [*Regulation of Prepaid Calling Card Services*] Order retroactively to IP-transport cards”); *American Telephone & Telegraph Co. v. F.C.C.*, 454 F.3d 329, 332 (D.C. Cir. 2006) (upholding the *AT&T Petition* decision, noting “[b]ecause the classification of AT & T's enhanced prepaid calling card service was before the Commission for the first time, AT & T might gain some support if the Commission's precedents clearly pointed toward the opposite result. But they did not. Here the Commission relied primarily on the statutory definitions of telecommunications and information services, finding that no ‘offer’ of an information service was made to the end users of the cards.”).

⁵⁸ 47 U.S.C. § 214(a).

Commission's rules."⁵⁹ Telecommunications services offered pursuant to prepaid vehicles must identify a registered provider - "[i]f a carrier never identifies itself as a telecommunications provider by properly registering under the Commission's rules, then neither the Commission nor the various program administrators can ascertain whether that carrier has fulfilled its regulatory obligations. . . . [a] telecommunications carrier that fails to register thus can operate outside of the Commission's oversight and evade its federal obligations to contribute toward the vital programs linked to registration."⁶⁰

Several sources of authority empower the Commission to exercise federal leadership to ensure that all similarly situated carriers are treated equally. The level playing field mandate ensures the equal treatment of functionally equivalent telecommunications services through regulatory parity, in order to increase effective competition and protect the interests of consumers.⁶¹ The Commission's interstate commerce and Title I ancillary authority ameliorates

⁵⁹ *Omniate International Telecom LLC d/b/a OMNIAT Telecom*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 4254, ¶ 13 (2009) ("Omniate has been providing prepaid international long distance services to and from the U.S. to the public as a prepaid calling card provider since at least 2002. However, the Commission's International Bureau's Filing System ('IBFS') database has no record that Omniate has applied for or obtained section 214 authorization. Thus, we find by a preponderance of the evidence that Omniate apparently violated section 214(a) of the Act and section 63.18 of the Commission's rules by willfully and repeatedly failing to obtain section 214 authority from the Commission prior to providing international telecommunications service.").

⁶⁰ *ADMA Telecom, Inc.*, Apparent Liability for Forfeiture, 24 FCC Rcd 838, ¶ 14 (2009); *see also id.* at ¶¶ 8, 13 ("ADMA currently provides telecommunications services as a provider of prepaid calling cards for calling to international destinations. . . . We conclude that ADMA has apparently violated section 64.1195(a) of our rules by failing to register with the Commission from the time it began providing telecommunications services until August 1, 2006. ADMA's failure to register constitutes an apparent violation of a vital Commission rule. Section 64.1195(a) unambiguously requires that all carriers that provide, or plan to provide, interstate telecommunications services register with the Commission by submitting specified information.").

⁶¹ *See, e.g., Applicable Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, ¶¶ 55-56 (2007) (establishing that a definition of commercial mobile radio services that excludes mobile wireless broadband Internet access service "supports the Congressional goal of promoting broadband deployment and encouraging competition in the provision of broadband services, by ensuring regulatory parity among all broadband Internet access services - regardless of whether they are offered through wireline, cable, or wireless technology," and holding that such a "uniform, technology neutral regulatory scheme for the provision of all wireless Internet access services. . . . serves the Act's overarching goal of fostering competition by providing a level playing field in the market and removing unnecessary regulatory impediments"); *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Notice of Proposed Rulemaking, 15 FCC Rcd 24203, ¶ 93 (noting that harmonization of spectrum service rules "provides regulatory neutrality to help establish a level playing field across technologies and thereby foster more effective competition") (citing *Principles For Reallocation of Spectrum to Encourage the Development of Technologies for the Telecommunications New Millennium*, Policy Statement, 14 FCC Rcd 19868, ¶ 9 (1999)).

inconsistent state regulation, ensuring that disparate state-by-state requirements do not constitute an artificial barrier to a carrier's national operation.⁶² These measures are vital in the context of prepaid calling services - while some states have gone so far as to specify the precise font size to be used on prepaid calling cards and associated advertisements, others have done little more than held prepaid calling products amenable to general consumer protection statutes.⁶³ Uniform, national disclosure requirements are the only way in which to ensure prepaid telecommunications services provide consistent and sufficient information to consumers to permit them to make an informed choice.

In light of the principles promulgated by the *Joint Policy Statement* and the Commission's significant statutory authority, and the outstanding needs of consumers for accurate, comprehensive, and usable information concerning prepaid calling services, the Commission can eliminate much of the potential for consumer confusion in the prepaid calling service industry by instituting the following requirements for posters and advertising:

- All limitations on advertised minutes or rates should be disclosed in direct proximity to the advertised minutes or rates themselves. These limitations should be rendered in a font size no less than 50% of that used for the advertised minutes or rates.
- The name of the Section 214 licensed carrier providing the service should be clearly indicated on the face of the advertisement, along with a customer service number rendered in a legible font.
- Any expiration date attributed to the advertisement should be rendered in a font size no less than 30% of that used for the advertisement itself.
- All rates advertised should be valid for at least 30 days.
- The rate per minute applied to the first and subsequent calls during the advertised period should be clearly disclosed.

⁶² See, e.g., *Vonage Holdings Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶ 41 (2004) (applying preemption “[b]ecause DigitalVoice is not constrained by geographic boundaries and cannot be excluded from any particular state, inconsistent state economic regulation could cripple development of DigitalVoice and services like it. If Vonage's DigitalVoice service were subject to state regulation, it would have to satisfy the requirements of more than 50 jurisdictions with more than 50 different sets of regulatory obligations.”).

⁶³ See, e.g., *Talk Isn't So Cheap on a Phone Card*, BusinessWeek (July 23, 2007), available at http://www.businessweek.com/magazine/content/07_30/b4043079.htm (“Only 11 states, including California, Connecticut, Florida, and Illinois, have laws on calling cards. Other states rely on generic consumer protection regulations, but those are rarely applied to cards.”); compare, e.g., Vermont Pub. Serv. Rule 7.610 (2006) with NY CLS Pub Ser § 92-f (2009), the text of which is attached as Exhibit A.

CONCLUSION

As more and more consumers embrace prepaid calling with the expectation of receiving high-quality, low-cost telecommunications services, it is incumbent upon the Commission to ensure that they enjoy it. The measures proposed in these Initial Comments will provide a minimum starting point to ensure consumers obtain the appropriate information, affording prospective customers the means to knowledgably select and confidently utilize prepaid calling products, secure in the knowledge that value promised is value received. STi Prepaid is prepared to work with the Commission to establish these much needed initial disclosure standards.

Respectfully submitted,

STi PREPAID, LLC

/s/ Chérie R. Kiser

Chérie R. Kiser

Matthew L. Conaty

Cahill, Gordon & Reindel LLP

1990 K Street, NW, Suite 950

Washington, D.C. 20006

202-862-8900 (telephone)

202-862-8958 (facsimile)

ckiser@cgrdc.com

Dated: October 13, 2009

Vermont Pub. Serv. Rule 7.610 (2006)

(A) In advertising of prices for service or devices, carriers will disclose material charges and conditions related to the advertised prices, including, if applicable and to the extent the advertising medium reasonably allows:

- (1) Activation or initiation fees.
- (2) Monthly access fees or base charges.
- (3) Any required contract term.
- (4) Early termination fees.
- (5) Terms and conditions related to receiving a product or service for "free."
- (6) The times of any peak and off-peak calling periods.
- (7) Whether different or additional charges apply for calls outside of the carrier's network or outside of designated calling areas.
- (8) Whether prices or benefits apply only for a limited time or promotional period, and, if so, any different fees or charges to be paid for the remainder of the contract term;
- (9) Whether any additional taxes, fees or surcharges apply.

(B) Mass marketing efforts. No carrier shall make any offer for services in any public media, including print, television, radio, or promotional literature without:

- (1) stating clearly, conspicuously, and in close proximity to the words stating the offer whether any material exclusions, reservations, limitations, modifications, or conditions apply to the service being offered; and
- (2) identifying the exclusions or providing a toll-free contact number by which customers may learn of the restrictions.

(C) Disclosures in plain language. Any disclosures required to be provided by carriers shall be clear and conspicuous such that they are rendered in a size, color, contrast, location, duration and audibility that it is readily noticeable, readable and understandable.

NY CLS Pub Ser § 92-f (2009)

2. Disclosure requirements. Any company that provides prepaid calling services through prepaid calling cards shall be required to print legibly on each card the following information:

- a. name of the company;
- b. toll-free customer service number;
- c. toll-free network access number, if such number is required to access service;
- d. authorization code, if such code is required to access service;
- e. any expiration date or expiration policy; and
- f. instructions for use of the card.

3. Any company that provides prepaid calling services through prepaid calling cards shall print legibly on each card or packaging the following information:

- a. any surcharges or fees, including monthly fees per-call access fees, or surcharges for the first minute of use that may be applicable to the use of the prepaid calling card or prepaid calling services within the United States;
- b. any additional or different prices, rates, or unit values applicable to international usage of the prepaid calling card or prepaid calling services;
- c. any minimum charge per call, such as a three minute minimum charge;
- d. any charge for calls that do not connect; and,
- e. any recharge policy.

4. Customer service requirements.

a. Any company that provides prepaid calling services shall establish and maintain a toll-free customer service telephone number with a live operator to answer incoming calls twenty-four hours a day, seven days a week to receive customer complaints and to provide information, including, but not limited to, the following:

- i. description of rates, surcharges and fees;
- ii. description of the company's recharge, refund, and expiration policies;
- iii. if applicable, the amount of value remaining on the consumer's account; and
- iv. terms and conditions of service and monthly service charges.

b. Any company offering prepaid cellular telephone services shall be deemed to be in compliance with the requirements of this section if, when a request for information is made outside of normal business hours, that company provides the information requested on the next business day. . . .

7. In the case of prepaid calling cards or services utilized at a pay phone, the company may provide a voice prompt notification of any applicable pay phone surcharges, in lieu of providing notice of surcharges as required by subdivision three of this section

Attachment 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)	
In the Matter of)	CG Docket No. 09-158
)	
Consumer Information and Disclosure)	CC Docket No. 98-170
Truth-in-Billing and Billing Format)	
IP-Enabled Service)	WC Docket No. 04-36
_____)	

REPLY COMMENTS OF STi PREPAID, LLC

Chérie R. Kiser
Matthew L. Conaty
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8900 (telephone)
202-862-8958 (facsimile)
ckiser@cgrdc.com

Dated: October 28, 2009

Its Attorneys

Table of Contents

**I. FILED COMMENTS DEMONSTRATE STRONG SUPPORT FOR CLEAR
DISCLOSURE RULES AND RIGOROUS FCC REGULATORY ENFORCEMENT 1**

**II. COMMENTERS' OBJECTIONS TO ENHANCED DISCLOSURE STANDARDS
ARE INAPPLICABLE TO THE PREPAID CALLING SERVICE INDUSTRY 5**

CONCLUSION 10

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	CG Docket No. 09-158
Consumer Information and Disclosure)	CC Docket No. 98-170
Truth-in-Billing and Billing Format)	WC Docket No. 04-36
IP-Enabled Service)	

REPLY COMMENTS OF STi PREPAID, LLC

STi Prepaid, LLC (“STi Prepaid”) respectfully makes this submission in response to the request of the Federal Communications Commission (“Commission” or “FCC”) for comments “on whether there are opportunities to protect and empower American consumers by ensuring sufficient access to relevant information about communications services.”¹ The initial comments in this docket reflect that there is strong support for ameliorating the “sources of uncertainty and confusion” in the telecommunications industry through comprehensive truth-in-billing rulemaking.² In accordance with these comments, the Commission should take expeditious steps to enact STi Prepaid’s proposed set of baseline standards governing prepaid calling.

I. FILED COMMENTS DEMONSTRATE STRONG SUPPORT FOR CLEAR DISCLOSURE RULES AND RIGOROUS FCC REGULATORY ENFORCEMENT

In its initial comments, STi Prepaid proposed five basic disclosure standards for prepaid carrier advertising. These standards, commensurate with the Commission’s recognized statutory authority to regulate telecommunications carrier practices,³ fulfill the outstanding need of consumers for accurate, comprehensive, and usable information concerning prepaid calling services:

¹ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Notice of Inquiry, ¶ 1 (rel. Aug. 28, 2009) (“NOI”).

² *Id.*

³ See FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Initial Comments of STi Prepaid, LLC, at 8-17 (filed Oct. 13, 2009) (“STi Prepaid Initial Comments”). As STi Prepaid demonstrated, the Commission possesses extensive authority to regulate unjust and unreasonable acts and practices of carriers under 47 U.S.C. § 201(b); regulate

- All limitations on advertised minutes or rates should be disclosed in direct proximity to the advertised minutes or rates themselves. These limitations should be rendered in a font size no less than 50% of that used for the advertised minutes or rates.
- The name of the Section 214 licensed carrier providing the service should be clearly indicated on the face of the advertisement, along with a customer service number rendered in a legible font.
- Any expiration date attributed to the advertisement should be rendered in a font size no less than 30% of that used for the advertisement itself.
- All rates advertised should be valid for at least 30 days.
- The rate per minute applied to the first and subsequent calls during the advertised period should be clearly disclosed.⁴

While no comments other than those of STi Prepaid focused specifically on prepaid calling services, numerous parties stressed the need for enhanced disclosure that will limit the potential for consumer confusion and ensure that consumers are provided with adequate information to make informed purchasing decisions. It is upon these principles that STi Prepaid's proposed standards rest, and it is from these principles that the Commission's 21st-century truth-in-billing rulemaking should proceed.

As STi Prepaid explained in its Initial Comments, prospective prepaid calling service customers are confronted with a torrent of promotional materials at the point of sale. Unlike traditional wireline and wireless services - forms of telecommunication that often present terms and conditions on

prepaid calling services according to the underlying telecommunications services they provide, per 47 C.F.R. § 153(43) and (46), and thus under the carrier registration provisions of 47 U.S.C. § 214(a) as well; and apply its level playing field mandate, interstate commerce, and Title I ancillary powers to ensure that all similarly situated carriers are treated equally under state market entry requirements and regulations. *See also, e.g.*, FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Consumer Federation Of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge, at 31-35 (filed Oct. 13, 2009) ("Consumer Federation Comments") (describing Commission's Section 201(b) and Title I authority to make "rules to ensure that carriers and other entities provide consumers with the information necessary to make informed decisions when purchasing and using the wireless, wireline, video, and broadband Internet access services of their choice."); FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of MetroPCS Communications, Inc., at 18 ((filed Oct. 13, 2009) "MetroPCS Comments") (citing *NOI* ¶ 56 and *NCTA v. Brand X*, 525 U.S. 967, 996 (2005) for proposition for court recognition of "Commission's ancillary jurisdiction under Title I to impose certain regulatory obligations on broadband Internet access service providers."); FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of Dish Network, L.L.C., at 7 (filed Oct. 13, 2009) (explaining general scope and applicability of Commission's Title I authority).

⁴ STi Prepaid Initial Comments at 17.

an upfront basis, and levy charges through easily comparable monthly statements - prepaid calling is largely an ad hoc, trial-and-error experience. Qwest is correct - service providers do “aggressively vie for consumers, touting facts about their own service offerings and often going to great lengths to ensure that consumers are aware of how their services are superior to competing options.”⁵ The unfortunate reality is that “there continues to be a disconnect between advertised prices and clear, conspicuous disclosures of all costs and fees,”⁶ belying the notion that consumers possess “ample information to make educated choices and to navigate the selection of products among a wide range of service providers.”⁷ In a market where the cost-per-minute rate for long-distance service may be up to 87 percent higher than expected,⁸ “[c]arriers should inform consumers of all charges, including fees and surcharges, associated with a particular service, so that consumers will have a reasonable expectation of what they will pay”⁹

“In the current [telecommunications] market,” observed the Consumer Federation Of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge, “consumers are forced to choose and manage providers and services with minimal information. These problems begin with the initial research into service prices and features, as

⁵ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of Qwest Communications International, Inc., at iii (filed Oct. 13, 2009) (“Qwest Comments”).

⁶ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Attorneys General of American Samoa, Arizona, Arkansas, Connecticut, Delaware, Florida, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming, at 6 (filed Oct. 13, 2009) (“Attorneys General Comments”).

⁷ Qwest Comments at iv; *contra* Consumer Federation Comments at 8 (“Service advertisements, whether in marketing materials or in the ordering process, do not give consumers a good indication of the true cost of service. Service providers deliberately obscure the true monthly cost of services through numerous strategies, including fees and surcharges, mandatory bundles, and promotional periods. By obscuring true cost, consumers cannot make meaningful comparisons when shopping for service, and instead will make decisions on the basis of misleading promotional prices.”).

⁸ STi Prepaid Initial Comments at 6, n. 24 (citing Denise Horton, *Prepaid Phone Cards: Caller Beware*, University of Georgia Research Magazine (Fall 2005), available at <http://researchmagazine.uga.edu/fall2005/printphonecards.htm>).

⁹ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of California Public Utilities Commission and the People of the State of California, at 5 (filed Oct. 14, 2009).

advertisements and point-of-sale information often fail to disclose hidden fees and limitations to the service. They continue with service usage and management, as information of importance to consumers is buried in the fine print and short on detail, particularly through the use of vague and overbroad terms of service.”¹⁰ As the Organization for the Promotion and Advancement of Small Telecommunications Companies noted, “[t]he Commission should consider that a consumer’s choice of service provider, and the services they subscribe to, are based in large part on information provided by customer service representatives, advertising, and other sources unrelated to the end-user bill.”¹¹ AT&T, like many other commenters, has called for providers to “include clear and non-misleading information in marketing and advertising campaigns and sales promotions” and “disclose the information necessary for consumers to make inquiries or complaints”¹² Accordingly, the Commission should meet the unfilled “need for meaningful rules that protect consumers with regard to billed charges, billing statements and descriptions, point-of-sale and post-sale disclosures of terms and conditions of service,” through “action . . . expanded to other sectors of the communications industry that have long operated largely free from any constraints on their business practices.”¹³

The disclosure standards proposed by STi Prepaid represent the most effective and least intrusive form of this action - “[b]y mandating the clear and consistent disclosure of service pricing, the

¹⁰ Consumer Federation Comments at 7.

¹¹ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, at 4 (filed Oct. 13, 2009) (“OPASTCO Comments”).

¹² FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of AT&T, Inc., at 37 (filed Oct. 13, 2009).

¹³ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Initial Comments of the National Association of State Utility Consumer Advocates in Response to Notice of Inquiry, at 15 (filed Oct. 13, 2009) (“NASUCA Comments”); *see also id.* at 29-30 (“[t]he Commission should extend the ‘net impression’ analysis articulated in the *Joint Advertising Policy* in adopting rules extending to any communications provider’s billing practices and any marketing or other disclosures directed at consumers and designed to induce them to subscribe to the provider’s service, to remain subscribed to that service, or make material changes to that service that have a material, adverse effect on the consumer”).

Commission can place providers and consumers on the same page”¹⁴ As STi Prepaid illustrated in its Initial Comments, users of prepaid calling services are dissatisfied with providers that utilize confusing advertising tactics.¹⁵ In providing the basic limitations and conditions on advertised rates in a readable form on an upfront basis, STi Prepaid’s proposed standards “respond narrowly to an existing, significant problem, as demonstrated by valid consumer complaints and specific evidence of communications providers’ practices”¹⁶

II. COMMENTERS’ OBJECTIONS TO ENHANCED DISCLOSURE STANDARDS ARE INAPPLICABLE TO THE PREPAID CALLING SERVICE INDUSTRY

While many respondents to the *NOI* have called upon the Commission to update and enhance extant truth-in-billing rules, several comments allege that the competitive telecommunications market has matured to a point where comprehensive disclosure regulations are largely superfluous. Emphasizing the putative efficacy of industry self-regulation, SouthernLINC Wireless claimed that “[d]issatisfied customers can, and do, ‘vote with their feet’ and will freely leave a carrier that does not provide them with the services, value, and experience that they expect and demand.”¹⁷ USTelecom cited the Federal Trade Commission for the proposition that “[i]n the highly competitive communications marketplace, service providers have an economic incentive to provide information to consumers and to offer favorable terms of service.”¹⁸ “In a competitive market,” postulated the

¹⁴ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the City of Chicago’s Department of Business Affairs and Consumer Protection, at 4 (filed Oct. 16, 2009).

¹⁵ See STi Prepaid Initial Comments at 5-8.

¹⁶ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Independent Telephone & Telecommunications Alliance, at 1 (filed Oct. 13, 2009) (“ITTA Comments”); see also Qwest Comments at 12 (“The better policy, even in situations of imperfect consumer information, is to mandate information disclosures only when there is evidence of significant consumer harm.”).

¹⁷ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of SouthernLINC Wireless, at 2 (filed Oct. 13, 2009).

¹⁸ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the United States Telecom Association, at 12 (filed Oct. 13, 2009) (“USTelecom Comments”) (citing Comments of the Federal Trade Commission, *In the Matter of A National Broadband Plan for Our Future*, at 3 (“Competition pressures producers to offer consumers the most attractive

Independent Telephone & Telecommunications Alliance, “providers would be ill-advised to alienate customers with obscure or misleading practices. . . . carriers will be moved by the market to provide the information consumers want most.”¹⁹

STi Prepaid disagrees with this analysis. While it may be that oligopolistic “carriers have powerful incentives to ensure that increasingly well-informed consumers have access to accurate, timely and helpful information,”²⁰ there exists a strong “competitive advantage to non-participation” in industry best practices in the fractured prepaid calling market.²¹ In contrast to established providers like STi Prepaid, some providers can tailor their business model for quick profitability by maximizing customer confusion. These providers post eye-catching rates in convenience stores and bodegas without reference to hidden fees and surcharges - by the time consumers object, the provider has left the market, never bothering to arrange for customer support or even share the identity of the underlying resold long-distance carrier. Such practices harm all industry participants, “not only creat[ing] artificial distortions in the marketplace, but also confus[ing] and frustrat[ing] consumers who are unlikely to understand or appreciate nuanced differences among their current or potential providers.”²² As “the free flow of information to potential customers is the bedrock for . . . competition,” it is incumbent upon the Commission to adopt STi Prepaid’s proposed baseline standards

array of choices with respect to price, quality, and other options. Competitive firms are constantly searching for superior profit opportunities as they seek to win the favor of customers, who effectively vote for preferred products and services with their dollars.’)).

¹⁹ ITTA Comments at 7.

²⁰ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of Sprint Nextel Corporation, at 10 (filed Oct. 13, 2009).

²¹ NASUCA Comments at 34.

²² *Id.* at 24.

for disclosure.²³ Only then will “a flexible model which relies on competition as supplemented by industry ‘best practices’ and existing law” operate to the advantage of all prepaid calling participants.²⁴

Even if seamless transition from supplier to supplier is the rule in the subscription-based wireless or wireline industries, it does not easily translate to the prepaid calling market. As STi Prepaid explained in its initial comments, prepaid carriers often serve as the providers of last resort for rural, low-income and immigrant individuals.²⁵ Ideal economic equilibrium is quickly destabilized by a paucity of disposable dollars - as The Hispanic Institute noted of recent Mexican immigrants, 62% of whom earned less than twice the poverty level, “international calls using 10-10 dial-around services cost 22% more [than comparable prepaid calling services], those using traditional long-distance plans cost 58% more, and those using wireless services cost 176% more -- or almost three times as much.”²⁶ The notion that prepaid calling service users, unhappy with overall market trends, will simply transition *en masse* to a comparable long-distance solution ignores their motivations for selecting prepaid service in the first place.

In addition, transitioning *between* prepaid providers according to “service, value, and quality” is stymied by the very shortcomings in disclosure that STi Prepaid urges the Commission to address in this proceeding. While “personalization or customization” may be an attractive feature in industries with a baseline level of disclosure,²⁷ and “information overload”²⁸ a concern in markets with a substantial “richness of information,”²⁹ providers must be “required to supply fundamental information

²³ Consumer Federation Comments at 36.

²⁴ FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of Verizon and Verizon Wireless, at 53 (filed Oct. 13, 2009) (“Verizon Comments”).

²⁵ See STi Prepaid Initial Comments at 2-3.

²⁶ The Hispanic Institute, *Facts & Figures*, <http://thehispanicinstitute.net/research/callingcard/scamfacts>.

²⁷ Qwest Comments at iv; see, e.g., *id.* at 3 (“Because the communications market has become so competitive, each provider has its own suite of offerings, often easily tailored or customized. It is precisely this aspect of personalization or customization -- the antithesis of standardization -- that so many customers find appealing.”).

²⁸ *Id.* at 22.

²⁹ USTelecom Comments at 1.

needed by customers to make informed decisions³⁰ for the prepaid calling market to operate in a rational, equitable fashion. STi Prepaid agrees with MetroPCS that while competition is generally a powerful force for ensuring equitable service in the telecommunications market, it “can only be expected to act as an effective governor of carrier conduct if the competition is fair and being played out on a level playing field.”³¹ To the extent that “[e]ach potential customer has his or her own information (and product) needs,” an accurate and comprehensible presentation of advertised rates and their limitations “is critical to establishing a meaningful and fulfilling supplier-customer relationship.”³²

Several parties echoed the Commission in insisting on the promulgation of “disclosure policies that have a high ratio of consumer benefit to industry cost.”³³ This calculation weighs heavily in favor of STi Prepaid’s proposed disclosure standards. In contrast to the “‘perestroika-like’ revolution in terms of the free flow of information between consumers and carriers” heralded in Sprint’s assessment of the wireless market, the confusion and uncertainty of the prepaid calling market has grown exponentially with each iteration of prepaid product development.³⁴ Moreover, as USTelecom observed, low-income and rural individuals - the sorts of consumers who are often most dependent on prepaid calling solutions - are “the very groups that we should be most concerned are aware of information about communications services” and the very “groups who may be less able than others to access and understand disclosures or independently search out information.”³⁵ As weighed against the

³⁰ Consumer Federation Comments at 5.

³¹ MetroPCS Comments at 11.

³² Qwest Comments at 3.

³³ *NOI* ¶ 5; *see, e.g.*, FCC 09-68, *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Wireless Communications Association International, Inc., at 2 (filed Oct. 13, 2009); OPASTCO Comments at 5.

³⁴ Sprint Comments at 9.

³⁵ USTelecom Comments at 12. This reliance of particular groups on information presented at the point of sale detracts from the force of Qwest’s insistence that “[t]o the extent advocacy groups claim there is insufficient (or insufficiently clear) information available to consumers, they have an obligation to supply some of it themselves and to become more active in their outreach and education efforts.” Qwest Comments at 4.

low cost of reformatting disposable advertising media to existing and potential carriers (some of which can enter the prepaid calling market for as little as \$20,000),³⁶ the “benefits of general requirements for clear and conspicuous disclosures, both in advertising and at the point-of-sale . . . [and] material terms, conditions, costs, and fees”³⁷ retain their supremacy.

The efficacy of Section 201(b) of the Communications Act of 1934, as amended (the “Act”) has also been called into question as the means by which the Commission may update its truth-in-billing rules. As a general principle, STi Prepaid agrees with MetroPCS that the Commission has repeatedly demonstrated the federal government’s “substantial interest in ensuring that consumers are able to make intelligent and well-informed commercial decisions in an increasingly competitive marketplace.”³⁸ Accordingly, STi Prepaid disputes Verizon’s assertion that Congress could not “have intended to give the Commission such broad authority [to regulate advertising generally] through Section 201(b),”³⁹ and disagrees with Qwest’s belief that measures other than “targeted enforcement actions” under Section 201(b) will “impose excessive costs and fail to provide necessary flexibility among carriers.”⁴⁰ As demonstrated in STi Prepaid’s Initial Comments, the Commission has consistently and definitively asserted its authority to take action against “unfair and deceptive marketing practices by common carriers” as “unjust and unreasonable practices” in connection with communications service” through both broad mandates and targeted enforcement actions.⁴¹

³⁶ See STi Prepaid Initial Comments at 10, n. 32.

³⁷ Attorneys General Comments at 8.

³⁸ MetroPCS Comments at 9 (citing *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, ¶¶ 61; *NOI* ¶ 21).

³⁹ Verizon Comments at 51.

⁴⁰ Qwest Comments at 34.

⁴¹ *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, 15 FCC Rcd 8654, ¶ 3 (2000); see STi Prepaid Initial Comments at 10-15.

CONCLUSION

Stating that “[t]here always will be ‘opportunities’ for the Commission to adopt additional regulatory requirements pertaining to information disclosure,” MetroPCS emphasized the importance of restricting regulatory policies to instances in which “market forces have broken down to the point where such policies are *necessary*.”⁴² It is STi Prepaid’s contention that the continued potential for customer confusion in the prepaid calling services market have made more rigorous enforcement of existing rules and adoption of additional disclosure regulations necessary. Mindful of the fact that “a lack of information leads to abuses in the marketplace that diminish competition, waste consumers’ time and money, and generally thwart a functioning market” the Commission should expeditiously adopt STi Prepaid’s proposed standards for prepaid calling advertising and disclosure.⁴³

Respectfully submitted,

STi PREPAID, LLC

/s/ Chérie R. Kiser

Chérie R. Kiser

Matthew L. Conaty

Cahill, Gordon & Reindel LLP
1990 K Street, NW, Suite 950
Washington, D.C. 20006
202-862-8900 (telephone)
202-862-8958 (facsimile)
ckiser@cgrdc.com

Dated: October 28, 2009

⁴² MetroPCS Comments at 4 (emphasis in original).

⁴³ *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170; *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Utility Consumers’ Action Network, at 13 (filed Oct. 13, 2009).