

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

PREPAID CALLING CARDS

Before the

**SUBCOMMITTEE ON COMMERCE,
TRADE AND CONSUMER PROTECTION**

of the

**COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

WASHINGTON, D.C.

September 16, 2008

I. Introduction

Chairman Rush, Ranking Member Whitfield, and other members of the Committee, I am William Kovacic, Chairman of the Federal Trade Commission (“Commission” or “FTC”).¹ Thank you for giving the Commission this opportunity to testify before the Committee about consumer protection issues associated with the sale of prepaid calling cards.

The Commission appreciates the Committee’s decision to hold a hearing to shed light on deceptive practices in the calling card industry. 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.

As the nation’s consumer protection agency, the FTC is committed to protecting consumers from deceptive marketing of prepaid calling cards. The FTC recently brought two cases alleging that distributors of prepaid calling cards had been deceptively marketing such cards; the Commission also has other active prepaid calling card investigations.

This statement provides the Committee with background information about the prepaid calling card industry and describes the FTC’s recent law enforcement actions against distributors of prepaid calling cards. It also discusses the FTC’s consumer education and outreach efforts.

¹The written statement presents the views of the Federal Trade Commission. Oral statements and responses to questions reflect the views of the speaker and do not necessarily reflect the views of the Commission or any other Commissioner.

Additionally, it offers comments on H.R. 3402, the “The Calling Card Consumer Protection Act.” Finally, the Commission reiterates its support for the provision of the FTC reauthorization bill that would amend the FTC Act to repeal the exemption for common carriers subject to the Communications Act. Repealing the exemption for telecommunications carriers would ensure that the Commission can bring law enforcement actions against all participants in the prepaid calling card industry that are engaging in deceptive and unfair practices, including those companies that provide the underlying telecommunications services for these cards.

II. Background

Calling card providers market their cards for a variety of uses. Some cards are marketed primarily for use by consumers making calls within the United States. Such cards usually offer consumers the ability to make domestic long distance calls for pennies per minute. Other cards are marketed to U.S. consumers who want to call the United States when they are traveling or working in other countries. Indeed, many such cards are marketed to members of the United States armed forces serving around the world. In addition, a substantial number of prepaid calling cards are sold to recent immigrants to the United States who depend on calling cards to stay in touch with family and friends abroad.² Such calling cards, which typically retail for between \$2 to \$10 each, are generally sold in small retail outlets, including grocery and convenience stores, gasoline stations, and newsstands.

²See Susan Sachs, *Immigrants See Path to Riches in Phone Cards*, N.Y. TIMES, Aug. 11, 2002, available at <http://query.nytimes.com/gst/fullpage.html?res=9800E7D6123AF932A2575BC0A9649C8B63&sec=&spon=&pagewanted=2>; *Talk Isn't So Cheap on a Phone Card*, BUSINESS WEEK, July 23, 2007, available at http://www.businessweek.com/magazine/content/07_30/b4043079.htm; Mark E. Budnitz, Martina Rojo & Julia Marlowe, *Deceptive Claims for Prepaid Telephone Cards and the Need for Regulation*, 19 LOYOLA CONSUMER L. REV. 1 (2006).

To advertise prepaid calling cards directed to consumers making international calls from the U.S., companies distribute eye-catching posters that are displayed on the walls and windows of the stores where such cards are sold. One hallmark of such posters is bold claims, made in large, colorful type, about the number of calling minutes the advertised cards provide for calls to particular countries. In stark contrast to the claims about available calling minutes that dominate the posters, the bottom of the posters generally contains small print disclaimers about a wide variety of fees and surcharges that reduce the value of the cards. The disclaimers are frequently in type so small as to be nearly illegible and in language so vague as to be effectively incomprehensible.³

Consumers typically use their prepaid calling cards as follows: the consumer dials an “access number” printed on the back of the card. A recorded message then prompts the consumer to enter the card’s authorization code or Personal Identification Number (“PIN”),

³For example, in *FTC v. Alternatel, Inc., G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Voice Distributors, Inc., Telecom Express, Inc., Lucas Friedlaender, Moses Greenfield, Nickolas Gulakos, and Frank Wendorff*, 08-21433-CIV-Jordan/McAliley (S.D. Fla. filed May 19, 2008), the FTC has alleged in its complaint that: “in numerous instances defendants’ posters contain vague disclosures about fees in tiny font on the bottom of the poster, stating in relevant part:

by using this card you agree to the following: Prompted minutes are before applicable charges and fees, application of surcharges and fees have an effect of reducing total minutes on cards. One or all of the following may apply: 1) A weekly maintenance fee ranging between .49 and .79. 2) A hang-up fee between .05 and \$1 depending upon length and destination of the call. 3) A destination surcharge of between 0% and 100%. – minutes and/or seconds are rounded to multiple minute increments. – International calls made to cellular phones are billed at higher rates. – Toll free access numbers are subject to an additional fee of up to 4 cents per minute. – Prices are subject to change without notice. – This card has no cash value. – Card expires 3 months after first use or 12 months after activation.”

which is printed on the card. Next, the consumer usually hears an announcement of the monetary value of the card. The consumer then enters the phone number he or she is trying to reach and hears an automated “voice prompt” announcing the number of minutes of time ostensibly available on the card.

As discussed in more detail below, the FTC, our state law enforcement colleagues, and third parties who have tested a wide variety of prepaid calling cards have found that prepaid calling cards offered by a number of industry participants routinely fail to deliver the minutes promised in their advertising and voice prompts. As alleged in two cases recently brought by the FTC, our testing showed that the defendants’ prepaid calling cards delivered about half the number of promised minutes.

III. Law Enforcement Actions

The FTC works closely with the offices of State Attorneys General and other state agencies. In the fall of 2007, the FTC established a joint federal-state task force concerning deceptive marketing practices in the prepaid calling card industry. The task force members include representatives from the offices of more than 35 State Attorneys General and other state and local agencies, and the Federal Communications Commission (“FCC”). Working cooperatively allows us to share information and facilitate law enforcement activity in the prepaid calling card area.⁴

⁴Representatives from the following Offices of Attorneys General are members of the task force: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Maine, Massachusetts, Minnesota, Missouri, Montana, New Mexico, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin. In addition, the New York State Consumer Protection Board and the New York City Department of Consumer Affairs have participated in the task force.

Currently, the Commission is litigating two actions in federal district court, alleging that the defendants deceptively marketed their prepaid calling cards. In addition, as discussed below, the Attorneys General for the states of Florida and Texas recently have taken action against prepaid calling card companies for their allegedly deceptive practices.

A. FTC Enforcement Actions

Under Section 5 of the FTC Act, the FTC has authority to bring cases against companies and individuals for engaging in deceptive or unfair acts or practices in or affecting commerce.⁵ Since the 1990s, the FTC has used this power to bring enforcement actions against entities for deceptively selling prepaid calling cards. The Commission brought its first two prepaid calling card cases against companies that the FTC alleged were deceptively marketing prepaid calling cards by, among other things, misrepresenting the per-minute rates consumers would be charged when using the cards and by failing to clearly and conspicuously disclose connection and maintenance fees associated with the cards.⁶ Since then, the FTC has brought several cases alleging that telemarketers deceptively marketed calling cards to consumers and charged consumers without their authorization.⁷

⁵15 U.S.C. § 45(a)(2).

⁶*FTC v. PT-1 Comm'cns, Inc.*, 99-CIV-1432 (S.D.N.Y.) (Stip. Final Order filed Feb. 25, 1999) (order requiring monetary relief and barring defendants from misrepresenting the value of its prepaid calling cards and from failing to clearly and prominently disclose fees and charges); *FTC v. Trans-Asian Comm'cns, Inc.*, 97-CIV-5764 (S.D.N.Y.) (Stip. Final Order filed Mar. 17, 1998) (order requiring \$1 million performance bond before defendants can advertise or sell prepaid calling cards and barring future material misrepresentations about prepaid calling cards).

⁷*FTC v. 9131-4740 Quebec, Inc.*, CV-02242 (N.D. Ohio) (Compl. filed July 25, 2007) (pending); *FTC v. T2U, Inc.*, 101-CV-811 (N.D. Ohio) (Stip. Final Order filed Sept. 13, 2001); *FTC v. Enhanced Billing Servs., Inc.*, 101-CV-1060 (D.D.C.) (Stip. Final Order filed Aug. 1, 2001).

This spring, the FTC filed two cases against major distributors of prepaid calling cards. On March 25, 2008, the FTC sued Clifton Telecard Alliance, a national distributor of prepaid calling cards based in New Jersey, and the company's principal.⁸ The FTC alleged that the defendants, which market their cards chiefly to recent immigrants, engaged in deceptive marketing practices by: (1) misrepresenting the number of calling minutes provided by their cards; (2) failing to adequately disclose fees and charges associated with their cards; and (3) failing to adequately disclose that the value of their cards may be reduced even when a call does not connect. In support of its case, the FTC tested 46 of Clifton Telecard Alliance's calling cards purchased at various retail outlets.⁹ In the FTC's tests of these cards, none delivered the number of calling minutes advertised in posters displayed at the point of sale. Three of the 46 cards failed to work at all, and, on average, the remaining 43 cards delivered only 43 percent of the advertised calling minutes. On April 2, 2008, the federal district court in New Jersey granted the FTC's motion for a temporary restraining order.

On May 19, 2008, the FTC filed a similar action, *FTC v. Alternatel*, against several companies alleged to act as a common enterprise in distributing prepaid calling cards out of

⁸*FTC v. Clifton Telecard Alliance One LLC, d/b/a Clifton Telecard Alliance and CTA, Inc., and Mustafa Qattous*, 2:08-cv-01480-PGS-ES (D.N.J. filed Mar. 25, 2008).

⁹The FTC has been able to test prepaid calling cards thanks in part to the invaluable assistance of El Salvador's Defensoría del Consumidor, Colombia's Superintendencia de Industria y Comercio, the Egypt Consumer Protection Authority, Mexico's Procuraduría Federal del Consumidor (PROFECO), Panama's Autoridad de Protección al Consumidor y Defensa de la Competencia, and Peru's Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI). In this area, as in so many others, international cooperation has proved to be vital to the Commission's law enforcement actions.

Florida, Massachusetts, and New Jersey.¹⁰ In the *Alternatel* case, the Commission alleged that the defendants violated Section 5 of the FTC Act by misrepresenting the number of calling minutes their cards provide and failing to adequately disclose fees and charges associated with their cards. As in the *Clifton Telecard Alliance* case, the FTC conducted extensive testing of the *Alternatel* defendants' prepaid cards and found that the actual number of minutes provided by the cards fell far short of the defendants' advertising claims. In tests of 87 of the defendants' cards, the cards delivered on average only 50.4 percent of the minutes advertised on posters at the point of sale.¹¹ On May 23, 2008, the federal district court for the Southern District of Florida entered a temporary restraining order in the *Alternatel* matter.

In both the *Clifton* and *Alternatel* actions, the defendants have moved to dismiss the FTC's case on the grounds that the underlying telecommunications carriers are necessary parties

¹⁰*FTC v. Alternatel, Inc., G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Voice Distributors, Inc., Telecom Express, Inc., Lucas Friedlaender, Moses Greenfield, Nickolas Gulakos, and Frank Wendorff*, 08-21433-CIV-Jordan/McAliley (S.D. Fla. filed May 19, 2008).

¹¹The results of the FTC testing of the defendants' cards in the *Clifton Telecard Alliance* and the *Alternatel* cases are consistent with the testing results of the Hispanic Institute, a non-profit organization that has issued a report on its testing of a wide variety of prepaid calling cards. The Hispanic Institute reports that, on average, the cards it tested delivered only 60% of the minutes promised in voice prompts. See <http://www.thehispanicinstitute.net/research/callingcard/qa> (visited June 18, 2008). They are also consistent with testing results that have been offered in private litigation. See *IDT Telecom, Inc. v. CVT Prepaid Solutions, Inc., et al.*, Civil Action No. 07-1076 (D.N.J.) (Pls. Mem. In Supp. of Their Order to Show Cause Why a Prelim. Inj. Should Not Issue, at 6-10; Ex. 1 to Suppl. Aff. of Gabi Schechter, dated Mar. 26, 2007) (alleging the defendants' calling cards delivered on average only 60% of prompted minutes); *IDT Telecom, Inc. v. Voice Distributors, Inc., d/b/a Voice Prepaid, et al.*, Civil Action No. 07-2465 (Mass. Sup. Ct., Middlesex Cty.) (Compl. ¶ 16) (alleging that the defendants' calling cards delivered on average only 65% of prompted minutes); *IDT Telecom, Inc. v. Diamond Phone Card, Inc., et al.*, Index No. 3682-08 (N.Y. Sup. Ct., Kings Cty.) (Compl. ¶ 15) (alleging that the defendants' calling cards delivered on average only 59% of prompted minutes).

that the FTC cannot join because of the exemption in the FTC Act for common carriers subject to the Communications Act. The FTC has opposed defendants' motions, and is confident that it will win on the merits. As final relief in both cases, the FTC seeks a permanent injunction and consumer redress and/or disgorgement of ill-gotten gains.

B. State Law Enforcement Actions

Two states recently brought law enforcement actions against a number of prepaid calling card companies. Over the last few months, the Florida Attorney General has announced that he has entered into Assurances of Voluntary Compliance (“AVC”) with eleven prepaid calling card companies doing business in Florida.¹² These settlements are the culmination of a broad investigation into the prepaid calling card industry launched by the Florida Attorney General in July of 2007. Notably, while the FTC has brought its lawsuits solely against distributors of prepaid calling cards, the Florida Attorney General entered into AVCs with eleven companies that include both distributors and telecommunications service providers for prepaid calling cards.

On May 23, 2008, the Texas Attorney General filed a lawsuit against Next-G Communication, Inc., a telecommunications service provider that produces, sells and distributes

¹²See *McCollum Announces Prepaid Calling Card Settlements, Industry-Wide Reform* (June 11, 2008) available at <http://myfloridalegal.com/newsrel.nsf/newsreleases/79C6666DB24608D785257465004EC901> (visited on August 27, 2008) (announcing settlements with IDT America, Inc.; Union Telecom Alliance; Total Call International, Inc.; Blackstone Calling Card, Inc.; CVT Prepaid Solutions, Inc.; Dollar Phone Enterprise, Inc.; STi Prepaid, LLC; Alternatel, Inc; and Cristel Telecommunications, LLC); *Prepaid Calling Company Reaches Settlement with Attorney General* (July 2, 2008) available at <http://myfloridalegal.com/newsrel.nsf/newsreleases/1439BD5308D470588525747A006423B8> (visited on August 27, 2008) (announcing a settlement with Touch-Tel Partners USA, LLC); *Attorney General Reaches Settlement with 11th Prepaid Calling Card Company* (August 21, 2008) available at <http://myfloridalegal.com/newsrel.nsf/newsreleases/C410C546EB409C93852574AC006C9499> (visited on August 27, 2008) (announcing settlement with Cinco Telecom Corp. d/b/a Orbitel).

prepaid calling cards.¹³ The Texas lawsuit alleges that Next-G Communication has marketed and sold prepaid calling cards throughout Texas that fail to deliver the number of minutes it advertises to customers and that the defendant has failed to disclose fees and charges associated with its calling cards. The Texas Attorney General alleges that Next-G's prepaid calling cards consistently delivered only 40 percent of the minutes claimed on the Next-G's advertising posters and confirmed by Next-G's voice prompt given at the beginning of each call.¹⁴

The FTC applauds the actions of the Florida and Texas Attorneys General and is grateful for the participation of all of our law enforcement partners in the joint federal-state calling card task force.

IV. Consumer Education and Media Outreach

In addition to bringing enforcement cases, the Commission has made consumer education and outreach a high priority. The FTC recently updated its consumer education brochure on calling cards, which is available in both English and Spanish on the Commission's website.¹⁵ The Commission also has done extensive outreach about prepaid calling cards to media outlets that cater to non-English and English speaking consumers. The FTC wants to make sure consumers know that it is unlawful to advertise calling cards that misrepresent the number of minutes that the calling cards provide or to fail to clearly and conspicuously disclose

¹³*State of Texas v. Next-G Commnc'n, Inc., Taj Khwaja*, 2008CI08149 (Bexar County, TX) (Pet. filed May 23, 2008).

¹⁴*See Attorney General Abbott Takes Legal Action Against Prepaid Calling Card Company* (May 23, 2008) available at <http://www.oag.state.tx.us/oagNews/release.php?id=2479> (visited on August 27, 2008).

¹⁵*See Buying Time: The Facts About Pre-Paid Phone Cards* (2008) available at <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro04.pdf> (visited on August 27, 2008).

the fees and charges that reduce the value of the calling cards. The FTC also wants consumers to know that they can and should complain to the FTC if they do not get what they pay for.

V. The Proposed Legislation

As described above, the FTC Act's prohibitions on deceptive and unfair practices provide the Commission with a powerful tool to bring enforcement actions against the distributors of prepaid calling cards. H.R. 3402, the proposed "Calling Card Consumer Protection Act" (the "Act"), would add an important remedy to those already available to the Commission by authorizing the FTC to seek civil penalties for violations of the Act or of rules issued by the FTC pursuant to the Act.

Generally, H.R. 3402 requires prepaid calling card providers and distributors to clearly and conspicuously disclose, among other things, the dollar value of their calling cards, or the number of minutes provided by their calling cards, and material terms and conditions pertaining to their cards, including all fees and limitations on use of their cards. The bill prohibits prepaid calling card providers and distributors from assessing fees or imposing charges if such fees or charges are not adequately disclosed. It also prohibits providers from providing fewer minutes than advertised, and prohibits distributors from distributing cards that they know provide fewer minutes than advertised. The bill gives the FTC discretionary rulemaking authority to carry out the Act. It further provides for the FTC to bring suit alleging violations of the Calling Card Consumer Protection Act as if they were violations of an FTC rule, thus enabling the agency to seek civil penalties for violation of the Act and any FTC rule promulgated pursuant to the Act.

The FTC supports the goal of H.R. 3402 and appreciates the proposed authority to seek civil penalties. Three aspects of the bill raise concerns, however. First, the bill apparently does not give the Commission authority to enforce the provisions of the Act against common carriers

providing prepaid telecommunications services. Although the Act would prohibit providers of prepaid telecommunications services from engaging in certain deceptive practices, the bill provides for FTC enforcement “in the same manner, by the same means, and with the same jurisdiction” as the FTC Act. Common carriers subject to the Communications Act are excluded from the FTC’s jurisdiction under the FTC Act. Therefore, the Calling Card Consumer Protection Act would appear to exempt common carriers acting as providers of prepaid calling services from FTC enforcement of the Calling Card Consumer Protection Act.

Second, the Calling Card Consumer Protection Act would include a knowledge standard for holding prepaid calling card distributors liable if they violate the Act by distributing calling cards that provide fewer minutes than advertised or announced on the voice prompt given when a consumer places a call.¹⁶ Incorporating a knowledge standard into the law could create an additional -- and potentially very challenging -- evidentiary burden on the FTC when seeking injunctive relief in a civil case.¹⁷

The Commission’s final concern is that the bill explicitly exempts from its coverage prepaid wireless phone services where the consumer has a pre-established relationship with the

¹⁶The bill does not have a parallel knowledge requirement for prepaid calling card service providers.

¹⁷Indeed, under general consumer protection principles and traditional jurisprudence under Section 5 of the FTC Act, 15 U.S.C. § 45, the Commission need not show knowledge or intent in order to stop an entity from engaging in unfair or deceptive practices. Notably, however, Section 5(m)(1) of the FTC Act includes a knowledge standard for instances where the FTC is seeking civil penalties for violations of an FTC Rule, as opposed to equitable relief, such as an injunction. 15 U.S.C. § 45(m)(1) (“The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this chapter respecting unfair or deceptive acts or practices . . . with actual knowledge or knowledge fairly implied on the basis of objective circumstances.”). Eliminating the knowledge threshold from the bill would not change the Commission’s elevated burden for obtaining monetary relief in civil penalty cases.

wireless carrier or creates a customer-carrier relationship by purchasing a wireless phone. The Commission is concerned that the bill's exception for some wireless prepaid services would provide a powerful incentive for the worst actors in the prepaid calling card industry to migrate their business practices to prepaid wireless handsets and refill cards, and thereby avoid the mandates of the proposed law.¹⁸

To enable the Commission to address problems with deceptive conduct involving prepaid calling cards more effectively, the Committee might also consider giving the Commission authority to bring actions seeking civil penalties in its own right against prepaid calling card providers and distributors rather than through the Department of Justice. Giving the FTC authority to bring its own civil penalties cases in this area would help ensure that the Commission does not have to forego quick relief in order to seek civil penalties.

The Commission recognizes that the agency and the Committee share the same goal: stopping unscrupulous calling card companies from defrauding vulnerable consumers. The Commission looks forward to working with the Committee regarding the language of the legislation as the Committee moves forward.

VI. The Common Carrier Exemption

On several occasions, the Commission has testified in favor of the repeal of the common carrier exemption.¹⁹ The Commission continues to endorse its repeal, and thanks the Committee

¹⁸Some participants in the prepaid calling card industry are beginning to offer prepaid wireless services. As the cost of providing cellular phones and calling minutes continues to decrease, the incentive to move consumers to prepaid wireless accounts from more traditional prepaid calling cards has increased.

¹⁹See *Prepared Statement of the Federal Trade Commission*, Before the Subcommittee on Interstate Commerce, Trade, and Tourism Committee on Commerce, Science and Transportation United States Senate (April 8, 2008), *available at*

for its continued support for this measure. As previously noted, the FTC Act exempts from the FTC's jurisdiction common carriers subject to the Communications Act. This exemption originated in an era when telecommunications services were provided by highly-regulated monopolies. The Commission believes that the exemption is now outdated. In the current marketplace, firms are expected to compete in providing telecommunications services. Congress and the FCC have dismantled much of the economic regulatory apparatus formerly applicable to the industry. Removing the exemption from the FTC Act would not alter the jurisdiction of the FCC, but would give the FTC the authority to protect consumers against unfair and deceptive practices by common carriers in the same way that it can protect against unfair and deceptive practices by non-common carriers involved in the provision of similar services.

Prepaid calling cards are a case in point. In contrast to the State Attorneys General, who are able to bring enforcement actions to stop both telecommunications providers and distributors offering prepaid calling cards from engaging in unfair and deceptive practices, the FTC has targeted only the deceptive practices of prepaid calling card distributors, because of the FTC Act

<http://www.ftc.gov/os/testimony/P034101reauth.pdf>; *Prepared Statement of the Federal Trade Commission*, Before the Subcommittee on Interstate Commerce, Trade, and Tourism Committee on Commerce, Science and Transportation United States Senate (Sept. 12, 2007), *available at* <http://www.ftc.gov/os/testimony/070912reauthorizationtestimony.pdf>; *Prepared Statement of the Federal Trade Commission On FTC Jurisdiction Over Broadband Internet Access Services*, Before the Committee on the Judiciary, United States Senate (Jun. 14, 2006), *available at* <http://www.ftc.gov/opa/2006/06/broadband.shtm>; *The Reauthorization of the Federal Trade Commission: Positioning the Commission for the Twenty-First Century: Hearing Before the Subcomm. on Commerce, Trade and Consumer Protection of the H. Comm. on Energy and Commerce*, 108th Cong. (2003) ("*FTC 2003 Reauthorization Hearing*") (statement of the FTC), *available at* <http://www.ftc.gov/os/2003/06/030611reauthhr.htm>; see also FTC 2003 Reauthorization Hearing (statement of Thomas B. Leary, FTC Commissioner), *available at* <http://www.ftc.gov/os/2003/06/030611learyhr.htm>; *FTC Reauthorization Hearing: Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transportation*, 107th Cong. (2002) (statement of Sheila F. Anthony, FTC Commissioner), *available at* <http://www.ftc.gov/os/2002/07/sfareauthtest.htm>.

common carrier exemption. Furthermore, even when the Commission has identified and brought enforcement actions against non-common carriers, the common carrier exemption can impose additional litigation costs on the FTC. For example, as noted above, in both the *Clifton Telecard Alliance* and *Alternatel* cases, which the FTC has brought against distributors of prepaid calling cards, the defendants have moved to dismiss the FTC's cases on the grounds that the FTC has not sued and cannot sue the underlying carriers, which defendants allege to be necessary parties. While the Commission is confident that it will prevail in its opposition to these motions, the burden of having to respond to such motions is not insubstantial.

To enable the Commission to enforce H.R. 3402 more effectively and to create a level playing field, we recommend that the bill be amended to clearly grant to the FTC jurisdiction over the activities of common carriers providing prepaid calling card services. More fundamentally, the FTC respectfully continues to recommend that Congress repeal altogether the FTC Act exemption for common carriers subject to the Communications Act. The FTC has extensive expertise with such areas as advertising, marketing, billing, and collection, areas in which significant problems have emerged in the telecommunications industry.²⁰ In addition, the FTC has powerful procedural and remedial tools that could be used

²⁰For example, the FTC has brought numerous cases involving the cramming of unauthorized charges onto consumers phone bills. *See, e.g., FTC v. Verity Int'l Ltd.* 335 F. Supp. 2d 479 (S.D.N.Y. 2004), *aff'd in part, rev'd in part*, 443 F.3d 48 (2d Cir. 2006), *cert. denied*, 127 S. Ct. 1868 (2007); *FTC v. Audiotex Connection, Inc.*, C-97 0726 (DRH) (E.D.N.Y. 1997); *FTC v. Int'l Telemedia Assocs., Inc.*, 1-98-CV-1925 (N.D. Ga., 1998); *FTC v. Sheinkin*, 2-00-363618 (D.S.C., 2000); *FTC v. Mercury Marketing of Delaware, Inc.*, 00-CV-3281 (E.D. Pa. 2000); *FTC v. Epixtar Corp.*, 03-CV-8511 (DAB) (S.D.N.Y. 2003); *FTC v. Nationwide Connections, Inc.*, 06-80180-CIV-Ryskamp/Vitunac (S.D. Fla. 2006); *FTC v. Websource Media, LLC*, Civ. No. H-06-1980 (S.D. Tex. 2006).

effectively to address developing problems in the telecommunications industry if the FTC were authorized to reach them.

VII. Conclusion

The Commission will continue its aggressive law enforcement and consumer outreach and education programs in the prepaid calling card arena. The Commission thanks this Committee for focusing attention on this important issue and for the opportunity to discuss its law enforcement program.