



The CommLaw Group

HELEIN & MARASHLIAN, LLC
1483 Chain Bridge Road
Suite 301
McLean, Virginia 22101

Telephone: (703) 714-1300
Facsimile: (703) 714-1330
E-mail: mail@CommLawGroup.com
Website: www.CommLawGroup.com

Writer's Direct Dial Number
703-714-1313

Writer's E-mail Address
jsm@CommLawGroup.com

June 12, 2008

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: RM# 11354 - Locus Telecommunications, Inc.'s Petition for Declaratory Ruling or,
in the alternative, Rulemaking

Dear Ms. Dortch:

Locus Telecommunications, Inc. ("Locus") files the attached Prepaid Calling Card Rules, as proposed by the New Jersey Division of Consumer Affairs. See Attachment 1. The Rules implement legislation signed into law by the Governor of New Jersey and, among other things, require calling card providers to establish and maintain a toll-free customer service telephone number and prohibit providers from imposing any fees or surcharges for a consumer's use of the toll-free customer service line. Locus files the attached proposed NJ Rules to update the record in the above-captioned proceeding and further demonstrate existing and prospective conflicts between state laws and a declaration by the Federal Communications Commission ("FCC") that dial-around compensation is owed on calls completed to a prepaid calling card provider's toll-free customer service numbers.

According to the NJ statute and proposed implementing Rules:

- (a) A provider shall establish and maintain a toll-free customer service telephone number that shall meet the following requirements:
 4. A provider shall not impose a fee or surcharge related to obtaining customer service, including any charge related to connecting with the customer service number or waiting to speak to a live operator.

See N.J.A.C. 13:45A-8.5 (emphasis added); see also Attachment 1 at pg. 10.

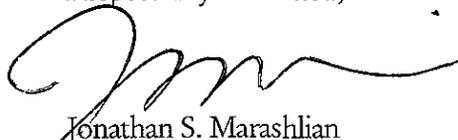
The underlined language clearly establishes that it is the intent of the State of New Jersey to prohibit BOTH “fees or surcharges” for “obtaining” customer service AND “any charge related to connecting” with customer service. The cited provision is clear on its face and mandates 100% “free” toll-free calling to a calling card provider’s toll-free customer service department, regardless if the caller is connected to an IVR customer service platform, a live representative, placed on hold or even if the call is disconnected. In effect, the NJ Rules establishes toll-free calls to a provider’s customer service department as “incomplete” and therefore non-compensable payphone originated calls.

Any other application of the proposed NJ Rules, which become effective on August 1, 2008, would be in direct conflict with an FCC declaration, arising from the instant proceeding, that dial-around compensation is owed for calls to a prepaid calling card provider’s toll-free customer service department. An FCC declaration that such calls are non-compensable, as requested by Locus, is consistent with the proposed NJ Rules and in furtherance of important state consumer protection objectives, such as mandatory, 100% “free” calling to customer service. To rule otherwise would essentially place payphone service providers ahead of consumers that states, like New Jersey, Florida and others, are trying to protect.

The FCC should take such state interests and the existing conflicts into consideration as it works to resolve the controversy and uncertainties identified in Locus’ Petition. Locus urges the Commission to either declare payphone-originated, toll-free calls to a calling card provider’s customer service to be non-compensable. Minimally, the FCC should establish a significantly lower default compensation rate specific to such toll-free customer service calls to ensure the burden of compliance with existing and prospective state laws and Rules is shared on an equitable basis by both the payphone and calling card provider.

Questions regarding this filing should be directed to the undersigned.

Respectfully submitted,



Jonathan S. Marashlian
Counsel for Locus Telecommunications, Inc.

Attachment

ATTACHMENT 1

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office of the attorney general department of law & public safety [OAG home](#)

 *new jersey*
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**NEW JERSEY REGISTER
VOLUME 40, ISSUE 8
ISSUE DATE: APRIL 21, 2008
RULE PROPOSALS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS**

40 N.J.R. 2056(a)

Proposed New Rules: N.J.A.C. 13:45A-8

Prepaid Calling Cards

Authorized By: Lawrence DeMarzo, Acting Director, New Jersey Division of Consumer Affairs.

Authority: P.L. 2007, c. 293.

Calendar Reference: See Summary below for explanation of exemption to calendar requirement.

Proposal Number: PRN 2008-121.

Submit written comments by June 20, 2008 to:

Burt Liebman
Director of Legislative and Regulatory Affairs
New Jersey Division of Consumer Affairs
124 Halsey Street

P.O. Box 45027
Newark, NJ 07101
Fax No. 973-648-3538
E-mail: proposal@dca.lps.state.nj.us

The agency proposal follows:

Summary

A prepaid calling card, or phone card, is a card representing the right to use telephone time purchased in advance. Phone cards are sold in specific dollar amounts for a specific number of minutes of calling time. Consumers such as travelers, students and people who regularly call overseas, purchase phone cards for the convenience. The telephone time is paid for in advance; the card can be used from any telephone; and the user need not worry about carrying change. Overseas calls made with a phone card are usually less expensive than traditional long distance. Since phone cards are sold in denominations as low as \$ 3.00, \$ 5.00 or \$ 10.00, they are also used by poor immigrants, older people, and other low-income consumers unable to afford conventional phone service or who do not have the credit standing or documentation necessary to obtain conventional telephone service. The market for prepaid calling cards has changed and expanded since they were introduced in the 1980s. Fueled by globalization of the work force, declining international long distance costs, increasingly powerful computers, and sophisticated software, the industry has grown into a \$ 4,000,000,000 industry. Businesses in the pre-paid phone card industry perform several functions. Carriers are responsible for the telephone networks that carry the calls; resellers buy telephone minutes from carriers; issuers set the rates and provide the PIN numbers, manage the minutes and money data and provide customer service and access numbers; distributors get the cards to the retailers, but may also design or create the cards and prepare sales material; and retailers sell the cards. The barriers to entry for issuers, distributors and retailers are low. The Division does not know the number of businesses performing each function.

The Division has received 18 complaints involving prepaid calling cards, since the beginning of last year. The Division believes that it would receive even more complaints about prepaid calling cards except that cards are issued in small denominations so that the amounts involved for any one consumer are small and the cards are popular with an unsophisticated population that frequently is loathe to contact government. Both the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) report that common complaints are:

- Access numbers or PINs that do not work;
- Service or access numbers that are always busy;
- Card issuers that go out of business, leaving people with useless cards;
- Rates that are higher than advertised;
- Hidden connection charges, taxes and surcharges;
- Cards that debit minutes or units even when the call does not go through;
- Poor quality connections; and
- Cards that expire without the holder's knowledge.

The Division purchased and tested cards issued by a variety of prepaid calling card providers. Among the suspect practices that the Division's investigation identified are: failure to deliver the number of minutes prompted on the voice

prompt; failure to state the billing decrement rounding policy; and failure to disclose the policy for applying the following fees: maintenance fee or service fee (the (applicability/amount)); connection fee (amount/timing of when it is charged).

The calling card industry is substantially unregulated. In passing P.L. 2007, c. 293, the Legislature found that the prepaid calling card industry within the State of New Jersey is plagued by the fraudulent, deceptive and unconscionable business practices of certain segments of the industry which is causing undue economic hardships to consumers and businesses in this State and that legislative action was appropriate and necessary to restore a competitive balance in the industry and to provide meaningful protections for consumers and legitimate businesses within the industry. P.L. 2007, c. 293 (the Act) was enacted on January 13, 2008.

The Division is proposing a new subchapter regulating prepaid calling cards implementing the Act. Proposed N.J.A.C. 13:45A-8.1 sets forth the scope of the proposed rules. Proposed N.J.A.C. 13:45A-8.2 contains definitions of terms used in the subchapter. Proposed N.J.A.C. 13:45A-8.3 contains disclosures required of providers and distributors for the advertising and sale of prepaid calling cards, including, among other things, the name of the provider; the value of the card; customer service and access numbers; the authorization code or PIN; the expiration date; all fees and charges; the rounding policies; and any geographic, area code or other limitations affecting use, price or unit value. Proposed N.J.A.C. 13:45A-8.3 specifies those disclosures that are required to be made on the card and those that may be disclosed in other places and in other forms. The section also states requirements for presentation and explanation of certain disclosures and the circumstances in which information must be furnished in a language other than English. Proposed N.J.A.C. 13:45A-8.4 states the charges that a provider may deduct from a card's balance, makes a distributor responsible for knowingly distributing cards in violation of the requirements of N.J.A.C. 13:45A-8.3, and makes a retailer responsible for knowingly selling cards that provide fewer minutes than advertised. Proposed N.J.A.C. 13:45A-8.5 requires providers to maintain a toll-free customer service telephone number with sufficient capacity to handle a reasonably anticipated volume of calls, at which a consumer may speak to a live operator. N.J.A.C. 13:45A-8.6 requires a provider to give consumers verbal announcements after a destination number is entered, but prior to processing a call, stating the minutes remaining on the card and provides that the caller must be able to receive all of the minutes announced. N.J.A.C. 13:45A-8.7 requires that the minutes and rates advertised for a card must be achievable by the consumer, subject only to disclosed limitations. N.J.A.C. 13:45A-8.8 requires disclosures relating to billing decrements and monetary rounding. Under proposed N.J.A.C. 13:45A-8.9, a consumer would be entitled to request detailed call data including the call number identified, the number of the originating and destination telephone, the time and date the call originated and when it terminated, and the PIN or account number associated with the call. The proposed rules also contain requirements and limitations relating to activation and recharging (N.J.A.C. 13:45A-8.10), expiration (N.J.A.C. 13:45A-8.11), network performance standards and refunds (N.J.A.C. 13:45A-8.12), surcharges (N.J.A.C. 13:45A-8.13), access numbers (N.J.A.C. 13:45A-8.14), and violations (N.J.A.C. 13:45A-8.15). The Director has determined that the comment period for this proposal shall be 60 days. Therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this proposal is excepted from the rulemaking calendar requirement.

Social Impact

The proposed rules affect the prepaid calling card industry and the users of the cards. Both the FTC and the FCC report and the Division found that some issuers do not disclose their rounding policies and all of their fees. Consumers do not know why they seem to get fewer minutes of actual telephone time than advertised. The proposed rules would require that companies disclose their cards' fees and charges and policies that affect the minutes actually available. Consumers could then make informed choices when purchasing cards. The proliferation of companies in the prepaid calling card

industry results in intense competition, manifested to consumers in cheaper rates and more minutes. The Division's spot check of some industry products indicates that some companies do not deliver all that they promise. The proposed rules would require some of the issuers and distributors to change the way they do business for the benefit of consumers.

Economic Impact

The proposed rules should help consumers by discouraging unfair practices that result in consumers getting fewer minutes of telephone time than they are led to believe. By comparing the fees, charges and policies disclosed, consumers should be able to purchase cards that most economically meet their needs. Consumers should get the value in the card that they bargain for. It is impossible to know how many consumers use prepaid calling cards. The Division does not know how many issuers, distributors and retailers there are. One of the major issuers of prepaid calling cards is headquartered in New Jersey. Compliance with the proposed rules may result in increased costs of doing business, particularly for companies that had been underselling the competition by advertising more minutes for less money than they actually deliver. Costs of compliance may include the cost of producing new cards, packaging, or point of sale material with the additional required disclosures and providing the disclosures through the customer service number or web site or other electronic medium. Issuers may need to acquire additional equipment and staff to accommodate the anticipated calls to the customer service number. They may also need to acquire new hardware or software, or reprogram existing software, to meet the verbal disclosure requirements and required voice prompts, to provide customers with call detail data information, and to maintain call detail data records. Companies that cannot provide commercially reasonable service may be required to issue refunds.

Federal Standards Statement

There are no Federal standards regarding the subject matter of these rules. No Federal standards analysis is required.

Jobs Impact

Companies for which compliance with the proposed rules means increased costs of doing business that may adversely affect their ability to compete, may have to reduce their work force. To the extent that the proposed rules create a "level playing field," companies that are already meeting the requirements of the proposed rules may be better able to compete and maintain or increase market share, avoiding reductions in the work force and perhaps creating additional jobs.

Agriculture Industry Impact

The proposed rules will have no impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

Some, if not many, companies in the prepaid calling card industry may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules impose no reporting requirements but do impose compliance and recordkeeping requirements. N.J.A.C. 13:45A-8.3 contains required disclosures on the card and through other media about fees, charges, surcharges, taxes and policies affecting the number of minutes actually available. An

explanation of how the number of minutes is calculated is also required. N.J.A.C. 13:45A-8.5 requires companies to maintain a toll-free customer service telephone number with sufficient capacity and staffing to accommodate a reasonably anticipated number of calls. Under N.J.A.C. 13:45A-8.6, companies are required to provide verbal announcements after the destination number is entered stating how much value remains on the card. N.J.A.C. 13:45A-8.9 requires companies to maintain internal records of changes to their international rates and call data records for at least two years. N.J.A.C. 13:45A-8.12 requires providers to make refunds if services fail to operate in a commercially reasonable manner. The proposed rules will not require professional services. The proposed rules apply to providers and distributors of all sizes. The proposed rules address deceptive practices of businesses in the industry which harm consumers whether the businesses engaging in the practices are large or small.

Smart Growth Impact

The Director does not believe that the proposed rules will have any impact upon the achievement of smart growth or upon the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTERS 6. [THROUGH 8] AND 7. (RESERVED)

SUBCHAPTER 8. PREPAID CALLING CARDS

13:45A-8.1 Scope

The provisions of this subchapter apply to providers offering or selling prepaid calling service or prepaid calling cards to persons in the State and distributors of such cards for resale to persons in the State, but shall not apply to prepaid calling cards printed prior to August 1, 2008 and point of sale materials related to those cards.

13:45A-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Advertisement" means the attempt, directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way, to induce directly or indirectly any person to purchase any prepaid calling card or calling services, appearing in any newspaper, magazine, periodical, circular, in-store or out-of-store sign or other written matter placed before the consuming public, or in any radio broadcast, television broadcast, electronic medium or delivered to or through any computer.

"Government fees" means any and all fees, taxes and charges assessed pursuant to State or Federal law, regulation or other mandate or requirement, including universal service fees and charges.

"Payphone surcharge" means the surcharge that a provider may charge a customer when that consumer places a call with a card from a payphone using a toll-free access number. The payphone surcharge shall be deducted from a card's balance.

"Permitted fee" means the fees and surcharges that a provider may charge to, or deduct from, a card's balance for the use of that card, in addition to the rate per minute to the particular destination called, which includes and is limited to any payphone surcharge, any recharge convenience fee, any directory assistance fee, and any government fees.

"Person" means a natural person, partnership, corporation, limited liability company, or any other entity.

"Prepaid calling card" or "card" means any right of use purchased for a sum certain that contains an access number and authorization code that enables a consumer to use a prepaid calling service. Such rights of use may be embodied on a card or other physical object or may be purchased by an electronic or telephonic means through which the purchaser obtains access numbers and authorization codes that are not physically located on a card or other object. "Prepaid calling card" shall not be construed to include cards or other rights of use that provide access to:

1. Telecommunications service if the card or other rights of use and telecommunications service are provided:
 - i. For free or at no additional charge as a promotional item accompanying a product or service purchased by a consumer; or
 - ii. Pursuant to an awards, loyalty, rebate or promotional program without any separate monetary consideration being given by the consumer solely in exchange therefor; or
2. A wireless telecommunications service account if the purchaser has a pre-existing relationship with the wireless service provider or establishes a carrier-consumer relationship via the purchase of the object.

"Prepaid calling card distributor" or "distributor" means and includes: any person who purchases or receives prepaid calling cards from a prepaid calling service provider or distributor and sells or distributes those cards to one or more distributors of prepaid calling cards or to one or more prepaid calling card retailers; and any person who otherwise actively engages in the promotion, advertising or dissemination of prepaid calling cards and who is not a provider. "Prepaid calling card distributor" shall not include any prepaid calling card retailers engaged exclusively in point-of-sale transactions with consumers.

"Prepaid calling card retailer" means any company that sells or offers to sell prepaid calling cards directly to consumers.

"Prepaid calling service" or "Service" means any prepaid telecommunications service that allows consumers to originate calls through a local, long distance or toll-free access number and authorization code, whether manually or electronically dialed. Prepaid calling service shall not be construed to include any service that provides access to a wireless telecommunications service account through which the purchaser has a pre-existing relationship with the wireless service provider or establishes a carrier-customer relationship via the purchase of a card.

"Provider" means any person providing prepaid calling service to the public using its own, or a resold, telecommunications network or voice over Internet technology.

"Telecommunications network" means the combination of network elements that are required to transmit information in the form of voice, data or video between or among points specified by the user in local or long distance applications without change in the form or content of the information sent and received.

"Toll-free number" means an 800 number, or other telephone number widely understood to be toll-free, which, when called as the destination number or as an access number, shall not result in the calling party being assessed, by virtue of completing the call, any fee, charge or higher rate for the call unless such fee, charge or higher rate is disclosed pursuant to N.J.A.C. 13:45A-8.3(c).

13:45A-8.3 Disclosure requirements

(a) The following standards and requirements for consumer disclosure and services shall apply to the advertising and sale of prepaid calling cards and prepaid calling services:

1. Any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services shall include a disclosure of any geographic, area code, or exchange limitation to the advertised price, rate, or unit value, as well as a disclosure of any additional surcharges, call setup charges, or fees or surcharges applicable to the advertised price, rate, or unit value.
2. The provider or distributor shall conspicuously print the following information on the card, or, if the rights to use the service are not embodied in a card or other physical object, the information shall be furnished as provided in (a)3 below:
 - i. The name of the provider;
 - ii. A toll-free customer service number and notice that at that number the user can obtain the number of minutes remaining on the card for a call to a particular destination number;
 - iii. A network access number, if available, to access service and the charge, if any, for use of that number;
 - iv. The authorization code or PIN, if required to access service, which shall be concealed by opaque security film with a scratch layer, or other means, until uncovered by the user;
 - v. The expiration date, if any, which shall be a fixed date, or the expiration period, which shall be a specified period measured from first use of the card;
 - vi. If applicable, that the card or service is subject to maintenance and other fees and charges;
 - vii. Instructions on how to use the card; and

viii. Instructions on how to obtain complete information about the use of the card, including fees and charges for, and any restrictions or limitations on the use of, the card.

3. The provider or distributor shall make available on the packaging, if any, or on a clear and conspicuous poster or other plain language at the point of sale, and through the customer service number, a web site or other electronic medium, the following information:

i. The name of the provider;

ii. The value of the card or service, in dollars or minutes;

iii. The amount and frequency of any permitted fee that may be applicable to the use of the card or service for calls originating within the United States;

iv. Notice that additional per minute rates or charges, including surcharges, taxes, or fees, including monthly or other periodic fees, maintenance fees, per-call access, connection fees, or disconnection fees, may apply to use of the card or the service for calls to or from international telephone numbers, indicating the applicable respective amounts and which, if any, are assessed on a call prior to the dialing of a destination number;

v. The rates for calls made to the destination or destinations advertised for the card or, in lieu of disclosing each rate, the highest rate for any calls to the destinations advertised for that card;

vi. Notice that additional or different per minute rates, charges, or fees may apply to calls made to or from international cellular and international wireless telephone numbers;

vii. Where a toll-free number is not the exclusive access number, notice that per minute rates may be higher, or a surcharge may be imposed, for calls made via toll-free numbers;

viii. Notice that a payphone surcharge may be imposed or that the per minute rate may be higher on a call made from a payphone;

ix. Notice that charges or fees that apply to use of the card or the service that are separately disclosed under (a)3iii, iv, vi or vii above will increase the effective per minute rate for the card or the service;

x. The minimum charge per call, if any;

xi. The definition of the term "unit," if applicable;

xii. The billing decrement and monetary rounding policies as provided in N.J.A.C. 13:45A-8.8;

xiii. The recharge policy, if any;

xiv. The refund policy, if any; and

xv. The expiration policy, if any.

4. The value of the card and the amount of the various charges, however denominated, that are required to be disclosed by (a)2 and 3 above, shall be expressed in the same format. That is, if the value of a card is expressed in minutes, all charges shall be expressed in minutes based on calls from New Jersey to the advertised destination. If the value of the card is expressed in dollars, all charges shall be expressed in dollars.

5. Any claims made in the information required by (a)3 above regarding the number of minutes available to one or more destinations shall contain an explanation as to how the maximum number of minutes was determined. Such number of minutes shall be available to the consumer under the conditions stated.

6. Where any rates or claims listing the maximum number of minutes available to one or more particular destinations are made in the information required by (a)3 above that is furnished in writing, and such rates or claims are subject to change, the provider or distributor shall include in such written information, the fact that rates are subject to change, the date the written information was printed, the date through which the rates or claims are in effect, if applicable, and how the consumer can contact the provider to determine current rates and terms of service. Rates and terms of service shall not be changed for at least 30 days after the "printed" date listed in the written information.

7. Where any rates or claims listing the maximum number of minutes available to one or more particular destinations are made in the information required by (a)3 above that is furnished through the customer service number, a web site or other electronic medium, the rates or minutes shall be those in effect when the information is furnished.

8. If a language other than English is predominantly used on the card or packaging to provide dialing instructions to place a call or to contact customer service, the information required by (a)3 above shall also be disclosed in that language.

9. If a language other than English is predominantly used in the advertising of the card or prepaid calling services or is used on the card or packaging, other than for dialing instructions, the information required by (a)3 above shall also be disclosed in that language.

13:45A-8.4 Prohibited practices

(a) A provider may not charge, apply or deduct from a card's balance any fees, taxes, surcharges or other amounts for use of the card, except:

1. The rate per minute for the particular destination called;
2. Any permitted fees; and
3. Any rate per minute, fee or charge disclosed pursuant to N.J.A.C. 13:45A-8.3(a)3.

(b) Prepaid calling card distributors shall not knowingly distribute any prepaid calling card that violates any provision of N.J.A.C. 13:45A-8.3.

(c) Prepaid calling card retailers shall not knowingly sell or offer for sale any prepaid calling card that provides fewer minutes than the number of minutes promoted or advertised for that card, including the number of minutes listed on the card, any advertising or point of sale material related to the card or any voice prompt indicating the number of minutes available for a call with the card.

13:45A-8.5 Required toll-free telephone number

(a) A provider shall establish and maintain a toll-free customer service telephone number that shall meet the following requirements:

1. Customer service may be provided by a combination of a live operator, interactive voice response, and electronic voice recording of customer inquiries and complaints, but live operator service shall be available 24 hours a day, seven days a week. If an electronic voice recorder is used, the provider shall attempt to contact the customer no later than the next day following the date of the recording.

2. The telephone number shall have sufficient capacity and staffing to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue wait. The provider shall provide customer service in each language used on a prepaid calling card or its packaging and in the advertising or promotion of the prepaid calling card or prepaid calling services. The provider shall advise the customer that if the customer requests to speak with a customer service representative in a language other than English, the provider shall contact such customer no later than the next day following the date of the recording.

3. The telephone number shall allow consumers to lodge complaints and obtain information on all of the following:

i. All rates, surcharges, taxes, and fees;

ii. The minutes available and remaining on the card for use in a single, uninterrupted call to a single, requested destination through the card and prepaid calling service;

iii. The provider's recharge, refund, and expiration policies; and

iv. The call history and the dollar balance of use available in the consumer's account, if applicable.

4. A provider shall not impose a fee or surcharge related to obtaining customer service, including any charge related to connecting with the customer service number or waiting to speak to a live operator.

13:45A-8.6 Verbal disclosure requirements

(a) Providers shall provide a verbal announcement, which may be automated, immediately after a destination number is entered and prior to the processing of the call, stating the minutes remaining on the prepaid calling services account or prepaid calling card for a call to the number entered and offering the caller the opportunity to cancel the call, followed by a pause giving the caller reasonable time to terminate the call without incurring any charge for the call.

(b) The voice prompt shall state only the number of minutes available for that call to the dialed destination. The caller must be able to receive 100 percent of the minutes of prepaid calling service that have been announced on the voice prompt for such call. The provider or distributor may not disclaim liability under this section by providing notice that the announced minutes are subject to, or before the application of, fees or charges, or by utilizing other disclaimers or limitations. Other than information about the number of minutes available to the destination dialed by the consumer on the particular call, providers shall not advertise or promote minutes or rates available for calls to other destinations through voice prompts after the entry of the destination number dialed by the caller.

(c) When, during a call, the prepaid account or card balance is about to be completely depleted, the provider shall provide a voice prompt or other audible signal at least one minute or billing increment before the time expires, indicating the minutes remaining.

13:45A-8.7 Availability of minutes advertised or promoted

All minutes or rates, or both, promoted or advertised on any prepaid calling card, any point of sale material relating to that card or otherwise relating to any prepaid calling service, shall be available and achievable by the consumer, and there shall be no limitations on the period of time for which the promoted or advertised minutes or rates, or both, will be available to the consumer unless those limitations are clearly and conspicuously disclosed in the same location on the card, advertising or point of sale material where the minutes or rates, or both, are promoted or advertised. All minutes promoted, advertised or disclosed on any voice prompt given to a consumer at the time the consumer places a call with the card, whether or not required by this subsection to be given to the consumer, shall be immediately available and achievable by the consumer on that call. The consumer shall not be charged for any busy signal or unanswered call.

13:45A-8.8 Billing decrement rounding and monetary rounding

(a) The billing decrement required to be disclosed under N.J.A.C. 13:45A-8.3(a)3xii shall be the policy that applies to the use of the prepaid calling card or calling service for calls from New Jersey to the advertised destination no matter where the caller is when the call is placed. The disclosure shall also give notice, if applicable, that additional or different billing decrement policies may apply to usage of the prepaid calling card or prepaid calling service to other destinations;

(b) A provider or distributor shall not be required to print a billing decrement rounding policy when calls are rounded no higher than to the nearest minute.

(c) A provider or distributor shall not be required to print a monetary rounding policy when rates are rounded no higher than the nearest cent.

13:45A-8.9 Call detail information; records

(a) A provider shall provide customers the following call detail data information, upon request, which may be verbal, at no charge:

1. Dialing and signaling information that identifies the inbound access telephone number called;
2. The number of the originating telephone;
3. The date and time the call originated;
4. The date and time the call terminated;
5. The destination telephone number; and
6. The PIN and/or account number associated with the call.

(b) A provider shall maintain internal records of changes to its international rates and call detail data records and recordings of voice prompts for at least two years.

13:45A-8.10 Activation and recharging.

(a) If a card is not available for use until activated by a point of sale terminal or comparable means, notice shall be provided on the card or on the front of the card's packaging in language that reasonably explains that the card has no value until activated.

(b) If a customer contacts the provider to recharge the card, the provider shall inform the customer, upon request, of the per minute rate and all charges and/or fees that apply to the use of the card for calls within the continental United States made from New Jersey, including, but not limited to, maintenance fees, payphone surcharge, and connection fees.

13:45A-8.11 Minimum active period; maintenance fees

(a) A card shall expire at the earlier of the expiration date or the end of the expiration period stated on the card. Cards without a specific expiration date or policy printed on the card, and with a balance of service remaining, shall be considered active for a minimum of one year from the date of sale, or if recharged, from the date of the last recharge.

(b) No maintenance or dormancy fee shall be charged against a card for any period prior to the time it is first used to dial a destination number.

13:45A-8.12 Required refunds

(a) A provider that issues prepaid calling cards or prepaid calling services shall provide a refund to any purchaser of a

prepaid calling card or prepaid calling services if the network services associated with that card or services fail to operate in a commercially reasonable manner. The refund shall be in an amount not less than the value remaining on the card or in the form of a replacement card, and shall be provided to the consumer within 60 days from the date of receipt of notification from the consumer that the card has failed to operate in a commercially reasonable manner.

(b) Network services shall not be deemed to operate in a commercially reasonable manner unless:

1. Consumers can complete a minimum of 98 percent of all call attempts to called parties' valid, correctly dialed numbers. For this purpose, the provider shall consider any busy signals or unanswered calls as completed calls; and
2. Consumers can complete a minimum of 98 percent of all call attempts to the provider. For this purpose, the provider shall not consider any busy signals or unanswered calls as completed calls.

13:45A-8.13 Surcharges

(a) A provider shall not charge any fee or surcharge that is not disclosed as required by this subchapter or that exceeds the amount disclosed by the provider.

(b) A provider shall not charge a consumer for, or impose a fee or surcharge on, any call if the consumer is not connected to the number called. For this purpose, a call shall not be considered connected to the number called if the consumer receives a busy signal or the call is unanswered.

(c) In the case of prepaid calling cards or services utilized at a pay phone, the provider shall provide voice prompt notification of any applicable pay phone surcharges, in addition to the notice required by N.J.A.C. 13:45A-8.3(a)3vii so long as the provider affords users of prepaid calling cards or services reasonable time to terminate the call after notification of applicable pay phone surcharges without incurring any charge for the call.

13:45A-8.14 Access number

A provider shall maintain access numbers with sufficient capacity to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue delay.

13:45A-8.15 Violations

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in the Consumer Fraud Act.

If you wish to submit comments about this rule proposal, please fill out the form below. When you have completed the form, click the "Submit Your Comments" button below.