

Joint Concurring Statement of Commissioner Ramirez and Commissioner Brill
FTC v. Diamond Phone Card, Inc.

We write to call attention to deceptive practices in the prepaid calling card industry and to join our fellow Commissioners in urging Congress to give the Federal Trade Commission more powerful tools to combat fraud in this arena. The settlement the FTC announces today in *FTC v. Diamond Phone Card, Inc.*¹ is the third enforcement action against distributors of prepaid calling cards that the Commission has resolved since 2009.² With this settlement, prepaid calling card companies sued by the FTC have collectively paid more than \$4 million in response to allegations that they made false claims about the number of calling minutes their cards deliver and failed to clearly disclose the fees associated with their cards. The FTC settlements prohibit the deceptive marketing of prepaid calling cards and impose rigorous compliance and monitoring requirements. In addition to the FTC's lawsuits, state members of the FTC's joint federal-state task force on prepaid calling card fraud have collectively brought over 20 law enforcement actions to halt deceptive practices by prepaid calling card companies.³

For immigrants from Latin America, Africa, Asia and elsewhere around the world, American military families, and other consumers, prepaid calling cards can serve as a critical lifeline to friends and family. Yet reports of widespread fraud in the multi-billion dollar prepaid calling card industry are legion.⁴ Such reports are consistent with the FTC's extensive testing of prepaid calling cards in connection with its recent enforcement actions, in which cards delivered

¹ No. 09-CV-03257-NGG-VVP (E.D.N.Y.) (filed July 29, 2009).

² The other two prepaid calling card cases recently brought by the FTC are *FTC v. Alternatel, Inc.*, No. 1:08-cv-21433-AJ (S.D. Fla.) (Stipulated Final Order and Judgment entered Apr. 1, 2009), and *FTC v. Clifton Telecard Alliance One LLC*, No. 2:08-CV-01480-PGS-ES (D.N.J.) (Stipulated Final Order and Judgment entered June 12, 2009).

³ Such actions have been brought by the Attorneys General of California, Florida, New Jersey, and Texas, and the Illinois Attorney General is actively investigating a number of calling card companies. We commend these states and the other members of the task force for their efforts in this area.

⁴ See, e.g., Herb Weisbaum, *Prepaid Phone Card Industry Under Attack*, MSNBC, Oct. 23, 2008, available at <http://www.msnbc.msn.com/id/27327684/business-consumer/1-800-SCAMMER:Prepaid Calling Cards Rife With Fraud>, FOXNEWS.COM, Oct. 7, 2008, available at <http://www.foxnews.com/story/0,2933,433425,00.html>; Joelle Tessler, *Fraud is a Hang-Up for Prepaid Calling Card Market*, USA TODAY, Oct. 5, 2008, available at http://www.usatoday.com/tech/products/2008-10-05-calling-card-fraud_N.htm; *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; Susan Sachs, *Immigrants See Path to Riches in Phone Cards*, N.Y. TIMES, Aug. 11, 2002, available at <http://www.nytimes.com/2002/08/11/nyregion/immigrants-see-path-to-riches-in-phone-cards.html>; Joelle Tessler, *Fraud Plagues Prepaid Calling Card Market*, USA TODAY, Jan. 5, 2008, available at http://www.usatoday.com/tech/products/2008-10-05-4060103147_x.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); The Hispanic Institute Calling Card Study (2007), available at <http://www.thehispanicinstitute.net/research/callingcard> (visited Apr. 19, 2010).

on average only half the advertised calling time.⁵ The prepaid calling cards at issue in the FTC's lawsuits also contained a welter of fees that were disclosed, if at all, in language so vague and confusing as to be incomprehensible. The inadequately disclosed fees, moreover, could virtually wipe out the value of the cards. Such practices are seemingly routine in this industry, but neither legal nor acceptable. Indeed, the people cheated by such unscrupulous conduct are often the people who can least afford it — individuals who otherwise lack the means to communicate with family in other countries.

Despite the tenacity of its efforts to combat fraud in the prepaid calling card industry, the FTC has been hamstrung in its ability to protect such vulnerable consumers. Most important, an exemption from the Federal Trade Commission Act for “common carriers” has impeded the FTC's ability to take action against telecommunications service providers involved in unlawful practices.⁶ As a consequence, such companies — which may profit handsomely from deceptive conduct — have evaded FTC prosecution. Nor does the FTC have the authority to ask courts to impose civil penalties on companies or individuals that have deceptively marketed prepaid calling cards. Pending prepaid calling card consumer protection legislation would close these significant gaps in FTC authority and allow the agency to enforce the law more effectively.⁷ Prior to our arrival at the Commission, the FTC endorsed the goals of such legislation and the new authority it would provide.⁸ We agree that the time has come to give the FTC more powerful tools to tackle fraud in the prepaid calling card industry.

⁵ See Prepared Testimony 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, U.S. House of Representatives, at 5 (Dec. 3, 2009), *available at* <http://www.ftc.gov/os/2009/12/P074406prepaidcc.pdf>.

⁶ Congress has exempted common carriers subject to the Communications Act, 47 U.S.C. § 151 *et seq.*, from the FTC Act's prohibition on deceptive and unfair acts or practices. 15 U.S.C. §§ 44, 45(a)(2).

⁷ See Calling Card Consumer Protection Act, H.R. 3993, 111th Cong.; Prepaid Calling Card Consumer Protection Act of 2009, S. 562, 111th Cong.

⁸ See Prepared Testimony 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, U.S. House of Representatives, at 7-10 (Dec. 3, 2009), *available at* <http://www.ftc.gov/os/2009/12/P074406prepaidcc.pdf>; 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, U.S. House of Representatives, at 10-15 (Sept. 16, 2008), *available at* <http://www.ftc.gov/os/2008/09/P074406prepaidcc.pdf>; Prepared Statement of the Federal Trade Commission Before the Committee on Commerce, Science, and Transportation, U.S. Senate, at 10-14 (Sept. 10, 2008), *available at* <http://www.ftc.gov/os/2008/09/P074406prepaidcallingcards.pdf>. Although he supports civil penalty authority in the context of the deceptive marketing of prepaid calling cards, Commissioner Kovacic has dissented from the Commission's endorsement of across-the-board civil penalty authority. See, e.g., Prepared Statement of the Federal Trade Commission Describing the Commission's Anti-Fraud Law Enforcement Program and Recommending Changes in the Law and Resources to Enhance the Commission's Ability to Protect Consumers Before the Subcommittee on Consumer Protection, Product Safety, and Insurance of the Committee on Commerce, Science, and Transportation, U.S. Senate, at 3 n.4 (July 14, 2009), *available at* <http://www.ftc.gov/os/2009/07/P094402antifraudlawtest.pdf>.