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

Prepaid Calling Cards

Proposed: May 4, 2009 at 41 N.J.R. 1970(a).

Adopted: October 9, 2009 by David Szuchman, Director, Division of Consumer Affairs.

Filed: December 16, 2009 as R.2010 d.016, **with a substantive change** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 56:8-180.

Effective Date: January 19, 2010.

Expiration Date: March 21, 2011.

Federal Standards Statement

A Federal standards analysis is not required because the adopted rules are not subject to any Federal standards or requirements. The Federal Telecommunications Act, 47 U.S.C. §222(a) and related FCC regulations requiring telecommunications carriers to employ specific procedures to authenticate a customer's request for call detail information do not apply to non-subscription services.

Full text of the adopted new rules follows (addition to proposal indicated in boldface with asterisks ***thus*** ; deletion from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. PREPAID CALLING CARDS

13:45A-8.1 Scope

- (a) 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.
- (b) The provisions of this subchapter shall not apply to prepaid calling cards printed prior to August 1, 2008 and point-of-sale material relating to such cards printed prior to that date.
- (c) All prepaid calling cards printed after August 1, 2008 and all sales material and voice prompts created, printed,

distributed or aired after that date shall be subject to this subchapter.

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.

"Pay phone surcharge" means the surcharge that a provider may charge a customer when that consumer places a call with a card from a pay phone using a toll-free access number. The pay phone 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 pay phone 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:

[page=500] 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 a device.

"Prepaid calling card distributor" or "distributor" means and includes: any person who purchases or receives prepaid calling cards or service from a prepaid calling service provider, a telecommunications carrier or other distributor and sells or distributes those cards or service 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 or service 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 person who 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 device.

"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 applicable to the advertised price, rate or unit value;
2. The person responsible for issuing a card, whether it be the provider or distributor, or both, shall cause the following information to be conspicuously printed 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 and, if applicable, the distributor issuing the card;
 - 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 person responsible for the packaging of a card, whether it be the provider or distributor, or both, shall cause the following information to be conspicuously printed on the packaging, if any, or on a clear and conspicuous poster or other writing in 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 and, if applicable, the distributor issuing the card;

- 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 such rates or charges, if any, are assessed on a call prior to the dialing of a destination number;
- v. If advertising for a card *[includes rates for calls to a particular region, country or countries or a specific city,]* ***identifies one or more regions, countries, cities or other destinations that may be called by using the card*** 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 pay phone surcharge may be imposed or that the per minute rate may be higher on a call made from a pay phone;
- ix. The minimum charge per call, if any;
- x. The definition of the term "unit," if applicable;
- xi. The billing decrement and monetary rounding policies as provided in N.J.A.C. 13:45A-8.8;
- xii. The recharge policy, if any;
- xiii. The refund policy, if any; and
- xiv. The expiration policy, if any;

4. The person responsible for advertisements that are not at the point of sale or on a website or other electronic medium shall cause the following information to be disclosed in such advertising:

- i. The name of the provider or distributor issuing the card;
 - ii. A toll-free customer service number and notice that at that number the user can obtain complete information about the use of the card, including fees and charges, any restrictions or limitations on the use of the card and the number of minutes remaining on the card for a call to a particular destination number; and
 - iii. The expiration policy, if any;
5. 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;
6. 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 [page=501] was determined. Such number of minutes shall be available to the consumer under the conditions stated;

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 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;

8. 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; and

9. If a language other than English is predominantly used on a prepaid calling card or its packaging, or in point-of-sale advertising or promotion for the prepaid calling card or prepaid calling service, the information required by (a)3 above shall also be disclosed in that language on the card, packaging, advertisement or promotion.

13:45A-8.4 Prohibited practices

(a) A provider shall 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 distribute any prepaid calling card, which they know violates any provision of N.J.A.C. 13:45A-8.3.

(c) Prepaid calling card retailers shall not sell or offer for sale any prepaid calling card, which they know 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. If a language other than English is predominantly used on a card or any advertising for a card or service, such card or advertising shall contain a notice in that other language whether customer service is available in that other language;

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 and, if applicable, the dollar balance, 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. In the event of a dispute, the information specified in N.J.A.C. 13:45A-8.9(a); and

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) The consumer shall not be charged for any busy signal or unanswered call.

(d) 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.

1. If the voice prompt or other audible signal occurs more than one minute before the call time expires, then the voice prompt or audible signal shall indicate the minutes of call time 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.

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 or from 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) In the event of a dispute between a customer and a provider concerning the duration or occurrence of a call, which cannot otherwise be resolved, the provider shall provide the customer with the following information about the

disputed call or calls:

1. The area code or country code of the originating telephone number;
2. The area code or country code of the terminating telephone number; and
3. The date, time and call duration.

(b) A provider shall maintain for at least two years records of all consumer complaints received by live customer service representatives.

(c) A provider shall maintain for at least two years a sample of all prepaid calling cards, card packaging and advertisements, including point-of-sale advertisements; copies of all detailed rate decks for all of provider's cards, including detailed breakdowns of all rates, charges and fees applicable for calls to all destinations on the rate deck and all records showing all modifications made to the rate decks during such period; records of provider's calling card platform settings showing whether voice prompts announcing call duration have been set to correspond with actual call duration; recordings of voice prompts announcing rates, fees [page=502] or charges; and the following call detail information: the dialing and signaling information that identifies the inbound access telephone number called, the number of the originating telephone, the date and time the call originated, the date and time the call terminated, the called telephone number and the PIN and/or account number associated with the call and the PIN decrement records.

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, pay phone 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 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.

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.