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Carole J. Washburn, Secretary

Washington Utilities and Transportation Commission

P. O. Box 47250

Olympia, Washington 98504-7250

RE: Protection of Customer Prepayments and Prepaid

 Telecommunications Services Rules

 WAG 480-120-058 and WAG 480-120-052

 Docket No. UT-971469

Dear Madam:

The International Telecard Association is the national trade association for the prepaid phone card industry and has worked with a number of states to develop regulations which will go far to protect consumers without imposing untoward costs on the industry or its consumers. The Association has been in operation for approximately four, a period that has coincided with a quadrupling of the size of the market for this new telecommunications service.

We are glad to continue to work with the Commission in the issue of consumer protection and appreciate the opportunity to work with the Commission to provide expertise and to develop regulations which would provide needed consumer information and protection.

Our members include all the major carriers, many of the Regional Bell Operating Companies, several dozen switched-base issuers, distributors and others in the industry. We have approximately 250 members.

There were over 400,000,000 prepaid phone cards sold in the US in 1998, and we estimate that less than ½ of 1% did not provide the service promised. That is still too high a figure.

We have administered a toll-free Consumer Hot Line at the ITA for almost three years, and we have staff working full time to help people with problems or with questions. A cursory review of our records indicate that in the state of Washington, the Hispanic population is one of the hardest hit groups. Typically, this group is very price sensitive, and they have responded to offers of very low rates on calls to Mexico, the Caribbean, and Latin America. Companies may offer cut-rate service for a short period of time, sell large numbers of cards on the basis of a quickly-earned reputation for service, and then not pay their phone bill or just walk away. The unscrupulous might impose undisclosed surcharges on calls or reduce the value of the card for time than a given call took (in addition to industry-norm of one-minute rounding). We have seen an instance, for example of a company which offered to provide calls to Mexico City for $.29 per minute, but then slap on an extra two or three dollar surcharge without telling the customer.

We believe that the Commission should not only develop and adopt regulations which will aid the consumer, but that those regulations not impose such costs on legitimate firms, that some will simply avoid the Washington market or have to produce a Washington-specific card with higher costs imposed on Washington consumers. This would subsequently mean that non-conforming cards would be able to undercut legitimate cards. Those firms that choose to risk enforcement action by the state are also those most likely to rip-off Washington consumer.

The ITA will provide at least one witness at the hearing to be held on January 27, an may have developed added cost-estimates on certain aspects of these proposals.

This statement comments on a number of provisions in the proposed rules issued on December 2, in order they are listed in the proposal. We have no objection to those sections not commented upon.

We are also providing this statement via email and an enclosed diskette in WordPerfect 6/7/8.

The following is the text of the proposed rules in 10-point type, and ITA’s comments in 13-point type.

WAC 4SO-120-052 Prepaid calling services. (1) Prepaid calling services - Defined. Prepaid calling services (PPCS) means any transaction in which a consumer pays for service Prior to use and the prepaid account is depleted as a consumer uses the service. Prepaid calling services may require the use of an access number or authorization code. The transaction often includes an object the size of a credit card which displays relevant information about the service. These objects are defined as Prepaid calling cards.

 (2) Business office requirements for providers of prepaid calling services. A company offering prepaid calling services must provide consumers a without charges telephone number staffed by live personnel during regular business hours. The personnel must be sufficient to respond to all service related inquires and must be capable of answering general account related questions.

 (3) Technical assistance requirements when providing prepaid calling services. A company offering prepaid calling services must provide consumers a without charge number staffed by live personnel twenty-four hours a day, seven days a week. The personnel must be sufficient to respond to all inquires and must be capable of assisting consumers with technical problems or questions related to

their service.

Comment: While the ITA supports customer service provided by live operators around the clock (24/7), most companies do not differentiate between “business office” and “Technical assistance.” This distinction is likely to be confusing to the issuer as to the consumer. Both subsections refer to service-related questions. ITA supports consolidating these sections, so that all account and service questions may be answered at one number. Other states have considered the 24/7 requirement too onerous and have allowed calls to be answered by a recording device, to be responded to within one business day. ITA would have no objection to the latter modification.

(4) Billing requirements for prepaid calling services.

 (a) Billing increments must be defined in the company's price list, or tariff and presale document. If a company uses an increment based on a time measurement, the increments must not exceed one minute. If the company bills usage in “unit” measurements, units must clearly be defined using both equivalent dollar amounts and time measurement. Unit billing increments can not exceed the equivalent one minute rate.

 (b) Service may be rated only for the actual time a circuit is open that allows for conversation, Conversation time of less than a full billing increment shall not be rounded up beyond that full increment.

 (c) Companies may not reduce the value of a PPCS account by more than the charges specified on the prepaid calling card; prepaid calling card packaging; visible display at the point of sale; rates specified in the presale document; or the rate authorized by the commission at the time of purchase. The PPCS may, however, be recharged by the consumer at a rate different from that specified in the initial presale agreement or the last recharge information so long as the rate and surcharges conform with the company's tariff or price list at the time of purchase. The consumer must be informed of the new rates at the time of recharge.

Comment: New prepaid phonecards coming on the market offer unlimited service for a number of days. A new subsection should be added which states that cards offering unlimited domestic and international service in a given time period need not post their per-minute rates or their decrementing policies, which would be irrelevant. Of course, an unlimited domestic service card that offers per-minute international service, should still inform consumers of the details of the charges that would be imposed -- that there would be per-minute charges, and if it does not provide them, that they are available via the customer service number, etc..

 (d) Companies providing prepaid calling services must be capable of providing consumers, upon request, call detail reports at no charge.

 (e) Companies providing prepaid calling services must maintain call data for a minimum of three years. The data must include the following:

 (i) Dialing and signaling information that identifies the inbound access number called or the access identifier;

 (ii) The number of the originating phone;

 (iii) The date and time the call was Originated;

 (iv) The duration or termination time of the call;

 (v) The called number; and

 (vi) The identification number. personal number (PIN) and/or account

Comment: We support the above subsection which was developed by the ITA in cooperation with the federal Drug Enforcement Administration , the Federal Bureau of Investigation and the Attorney General of the State of New York, to accommodate law-enforcement agency needs to subpoena records – usually to obtain phone call records of suspected felons.

(5) Written disclosure requirements for prepaid calling services prepaid calling cards.

 (a) Information required on prepaid calling cards. At a minimum the cards must contain the following information:

 (i) The company’s name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must clearly indicate that the company is providing the prepaid telecommunication services.

 (ii) The toll-free or without charge number to reach the company’s business office;

 (iii) The toll-free or without charge number to reach the company's technical assistance office, if different than the business office number;

 (iv) The company's toll-free or without charge number used to access the company's service, if applicable;

 (v) Authorization code, if required to access the service;

 (vi) Expiration date, if applicable. If an expiration date is not disclosed on the card it will be considered live indefinitely; and

 (vii) Cards must be voided or otherwise physically marked if they were produced as a "nonlive” card so that it is clear to the user that the card is only a sample and is not active. If the card is not disclosed as a nonoperative card, the card is considered live and the issuing company must honor it.

 (viii) Statement which warns consumers to safeguard their cards, if consumers assume full liability for lost or stolen cards. If the company is unable to place this statement physically on the card, the information must be provided in the presale document.

Comment: We believe that such a statement is superfluous and imposes unneeded costs on the issuer and the consumer. Industry experience is such that the consumer fully understands the risk of losing a phonecard. A survey of the customer service offices of member issuers report that there are occasional calls from those who have lost their cards. However, we have learned that (1.) Such calls come from those who have been given a card and thus believe it is like a credit card; (2.) Such calls are a from those who know that they are responsible for the loss, but hope that a company may replace it, or (3.) Such calls come from those who have used up all the time on their cards, are using it to make the customer service call, hoping that generous customer service operator will give them a PIN worth added time.

 (b) Prepaid calling card Presale or point of sale documents. The following information must be legibly printed on the card, packaging, or display visible in a prominent area at the point of sale of the prepaid calling card in such a manner that the consumer may make an informed decision prior to purchase. If the information below is to be displayed at the point of sale the company must ensure by contract with its retailers or distributors that the information is provided to the consumer.

 (i) Maximum charge per billing increment for prepaid calling card service. If a company charges varying rates for intrastate, interstate and international calls all applicable rates must be provided. The rates displayed must be no more than those approved in the tariff or price list of the company at the time of retail purchase;

 (ii) Approved charges for all services, and surcharges, fees, and taxes, if applicable and the method of application;

 (iii) Expiration policy, if applicable. If an expiration date is not disclosed the service will be considered live until the prepaid balance is depleted;

Comment: We note that some firms have issued cards which are live indefinitely, but impose a monthly line-maintenance charge if the card isn’t used in six months. The shortage of “800" numbers requires firms to reuse these cards and PINS – we urge that Washington adopt the language used in the state of Florida:

“Cards without a specific expiration period 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 first use, or if recharged, from the date of the last recharge.”

 (iv) Recharge policy, if applicable. If an expiration date is not disclosed at the time service is recharged the service will be considered live indefinitely; and

 (v) A statement that indicates if a consumer is unable to resolve a complaint with the company that the consumer has the right to contact the state regulatory agency which has oversight within the state where prepaid service originally purchased.

Comment: This subsection ((v)) is impossible to conform to. Industry norms involve quarterly modification of international rates -- usually to the great benefit of the consumer. Card packaging and point-of-sale documents can not accommodate such changes and may lead to consumers receiving poor information. We believe it is sufficient and in the best interest of consumer knowledge, that such information be alternately available via a toll-free number.

A statement on a card or packaging which says “If a consumer is unable to resolve a complaint with the company that the consumer has the right to contact the state regulatory agency which has oversight within the state where prepaid service originally purchased,” There is no space on an individual card for such a statement. And might result in printing all information -- much very important -- in such small type that none can be read. This is three-point type: “If a consumer is unable to resolve a complaint with the company that the consumer has the right to contact the state regulatory agency which has oversight within the state where prepaid service originally purchased,” We feel that this is a statement that will not be read, will result in providing no significant added information for the WTUC about firms in violation of rules, and simply increase costs.

 (c) When requested by a Washington state consumer, the company's business office and technical assistance office must provide the consumer the number for the Washington utilities and transportation commission.

Comment: we have no objection to this provision, and believe it to be a far better solution to the problem addressed in paragraph (b)(v) above.

(6) Written disclosure requirement for prepaid calling service other than prepaid calling cards.

 (a) Presale agreement The following information shall be provided in a presale document to an applicant prior to consumer prepayment and initiation of service:

 (i) The company's name as registered with the commission A "doing business as” name may only be used if officially filed with the commission. The language must clearly indicate that the company is providing the prepaid telecommunication services.

 (ii) The toll-free or without charge number to reach the company's business office;

 (iii) The toll-free or without charge number to reach the company's technical assistance office, if different than the business office number;

 (iv) The company's toll-free or without charge number used to access the company's network, if applicable;

 (v) Authorization code, if required to access the service;

 (vi) Maximum charge per billing increment for prepaid calling service. If a company charges varying rates for intrastate, interstate and international calls all applicable rates must be provided. The rates displayed shall be no more than those approved in the tariff or price list of the company at the time of retail purchase;

 (vii) Approved charges for all services, and surcharges, fees, and taxes if applicable, and the method of application;

 (viii) Expiration date, if applicable;

 (ix) Recharge policy, if applicable; and

 (x) A statement that indicates if a consumer is unable to resolve a complaint with the Company that the consumer has the right to contact the state regulatory agency which has oversight within the state where prepaid service originally purchased.

 (b) When requested by a Washington state consumer, the company's business office and technical assistance office must provide the number for may be directed to the Washington utilities and transportation commission at l-800-562-6150.

 (7) Verbal disclosure requirements for prepaid calling services. Companies offering prepaid calling service must:

 (a) Provide an announcement at the beginning of each call indicating the time remaining on the prepaid account or prepaid calling card;

 (b) Provide an announcement when the prepaid account or prepaid calling card balance is about to be depleted. This announcement must be made at least one minute prior to depletion

 (8) Requirements for refund of unused balances. When a customer contends that a company has failed to provide service at rates provided in presale documentation or quoted at the time an account is recharged, or that the company has failed to meet technical standards, companies offering prepaid calling services must provide refunds for any unused service or provide equivalent credit in services offered. Refunds must equal the value remaining on the prepaid calling account or prepaid card. The customer is allowed to choose either the refund or equivalent service option.

Comment: We feel that this section should be changed to require refunds only if a company has, in fact, failed to provide service promised. To do other is to invite massive costs which must be passed on to the consumer. Further, we believe that any refund should be able to be made in-kind at the issuer’s discretion.

(9) Performance standards for prepaid calling services. Each company shall ensure that:

 (a) A minimum of ninety-nine percent of all call attempts are completed to the called party's number. Station busies and unanswered calls will be considered completed calls.

 (b) A minimum of ninety-nine percent of all call attempts are completed to a company's business office number. Station busies and unanswered calls will not be counted as completed calls.

 (c) A minimum of ninety-nine percent of all call attempts are completed to the company's technical assistance number. Station busies and unanswered calls will not be counted as completed calls.

Comment: ITA recognizes that tracking error may make the 99% level difficult to document, and we have no objection to modifying these provisions to 95% levels.

(10) Requirements when a company ceases operations in the state of Washington. When a company ceases operations in the state, the company must:

 (a) Provide the commission with thirty days advance notice in writing.

 (b) At least twenty-one days before termination, provide written notice to customers at the address on file with the company, if applicable, indicating that service will be ending, and explain how customers may receive a refund on any unused service,

Comment: This paragraph should be deleted: no phonecard issuer knows the identity of its customers. We would have no objection if this provision was modified to read, “... provide written notice to customers whose addresses are on file with the company......” Such would likely include distributors and retailers who should be informed of such termination.

 (c) Beginning at least fifteen days before termination, provide oral notice of termination at the beginning of each call originated in Washington, including the date of termination and a number to call for more information.

 (d) Provide information to consumers via its customer service number outlining the procedure for obtaining refunds and continue to provide this information for sixty days from the date Company ceases operations.

 (e) Within twenty-four hours after ceasing operations, provide the commission and the company's bonding agent a list of all account numbers with unused balances. The list must include the following:

 (i) The identification number used by the company on each account for billing/debit purposes;

 (ii) The unused Portion of any prepaid monthly fee on each account;

 (iii) The unused time, stated in units or minutes as applicable on each account and the equivalent dollar amount.

(11) Compliance requirements for prepaid calling services.

All presale and point of purchase documents displayed or offered to the public and all prepaid calling cards offered for sale in the state of Washington must be in compliance with this rule within ninety days of the effective date of this rule.

Comment: This time period is too short, and we favor a minimum of nine months. Card inventories are often ordered six-to-twelve months in advance to enable firms to get lower printing costs which enable them to offer the cards at more reasonable rates. One printer reports a relatively small job of 50,000 cards for which he charged $.08 per card, and made delivery over a 10-month period of time, in 1,000 card-increments. If he had to print the cards in 1,000 lots, he would have to charge $.16 each. After distributor discounts, this change would translate into a per minute cost increase to the consumer of $.01 - $.03, depending on the card denomination.

 (12) Other regulatory requirements. Companies providing prepaid calling services must comply with all other laws and commission rules relating to provision of telecommunications services unless the company has filed for and received waiver from the Commission.

 (13) Penalties for Provision of services by an unregistered telecommunications company. When a penalty is imposed upon finding that an unregistered Company has provided prepaid calling services within the state of Washington, the commission may assess penalties of up to one hundred dollars per day per violation under RCW 80.04.405 and/or up to one thousand dollars per day per violation under RCW 80.04.380.

**NEW SECTION**

 WAC 460-120-058 Protection of customer Prepayments (1) A company that intends to collect customer prepayments must first demonstrate to the commission that it meets (a) , (b) or (c) of this subsection.

 (a) The Company has a corporate debt rating, according to Standard & Poor's of BBB or higher, or according to Moody's of BAA or higher, with respect to Outstanding debt obligation; or

 (b) The company has a performance bond satisfactory to the commission sufficient to cover any customer prepayments; or

 (c) The company has made provision for deposit of customer prepayments in a federally insured interest bearing trust account maintained by applicant solely for customer advances. The prepayments must be deposited in a bank, savings and loan association, mutual savings bank or licensed escrow agent with access to such funds only for the purpose of refunding prepayments to customers. The funds must be maintained in an account within the state of Washington. In any order granting certification, the commission may require either bond or trust account or escrow as a condition.

 (2) Reporting requirements for every bond or trust account.

 (a) Each Company Collecting customer prepayments must submit to the commission a report within fifteen days after the end of each calendar quarter. The report must contain the following information Specific to state of Washington operations:

 (i) Total outstanding balance of Customer prepayments at the beginning of the reporting Period;

 (ii) Dollar amount of prepaid services sold during the reporting period;

 (iii) Depleted usage of prepaid services during the reporting period; and

 (iv) Total outstanding prepaid service balances at the end of the reporting period.

 (b) Nothing in this rule precludes Commission staff from requesting current company financial or operating information at any time.

 (c) A Company may Petition the commission for a reduction in reporting requirements The Commission may grant or deny the request by letter from the commission secretary.

 (3) Calculation of trust or bond levels.

 (a) The initial level of the bond or trust must comply with the provisions of subsection Cl) (b) or Cc) of this section.

 (b) The Company must adjust the subsequent level of the bond or trust based upon quarterly reports data and the company must notify the commission of that adjustment.

 (4) A Company may Petition for and the commission may grant waiver of the bond/trust requirement either at the time of registration or at such later time as the Company Can demonstrate to the commission's satisfaction that it meets standards for waiver of the bond/trust The Petitioning Company must provide documentation to the commission in support of the petition, The commission may grant or deny the request by letter from the commission secretary. The commission will evaluate the following to determine whether a waiver of the bond/trust requirement will be granted:

 (a) Certified financial statements establishing adequate financial resources sufficient to provide service to consumer of prepaid telecommunications service;

 (b) Confirmation that the Company has received approval for and has been providing comparable services Satisfactorily in one or more other state jurisdictions. The documentation must consist of information from the regulatory agency in the other state and must demonstrate that the Company has complied with that states' rules and regulations and has provided adequate levels of service for twelve consecutive months;

 (c) Compliance, following registration with the commission, with Washington rules and provision of adequate levels of service for at least twelve consecutive months;

 (d) Documentation that the company has established a bond rating as provided for in subsection Cl) (a) of this section

Comment (WAC 460-120-058): The reporting requirements would lead even the most conscientious issuer to inventing numbers, and crude guestimating. The reporting requirements assume that the Washington-state outstanding balances can be determined . They can not. A major distributor may sell cards in numerous states, and the issuers may not know where those cards go. A secondary distributor may have no business connection at all with the issuer. We must also observe that this kind of detailed report is practically never analyzed.

However, a company can determine its traffic within a state. The State of Delaware, for example, requires a bond equal to 2.5 times the value of the previous quarter’s intrastate traffic, adjusted on a semi-annual basis. We recommend Washington adopt such a requirement -- bonds would have to be adjusted regularly and would reflect a fair estimate of the Washington state overhang.

I would be glad to help find answers to any other questions you might have, and I look forward to the hearings in January.

Sincerely,

Howard Segermark

Executive Director

Enclosures