



# California Public Utilities Commission

Headquarters Office: 505 Van Ness Avenue, San Francisco, CA 94102

## Prepaid Phonocard Issues in California

by

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# Overview

- CPUC's Jurisdiction on Prepaid Phonecard Providers
- Consumer Complaints and Issues
- California Business and Professions Code
- CPUC's Enforcement Actions
- Pending Legislative Changes

# Prepaid Phonecard Providers are Required to Register with CPUC

- Section 885(a) of the California Public Utilities Code requires any entity offering the services of telephone prepaid debit cards to register with the Commission unless that entity is already certificated by the Commission to provide telephone service.
- A wireline telephone carrier that has been certificated by the Commission to provide telephone service in California does not have to register separately as a telephone prepaid calling card provider.

# Exceptions to Registration Requirements

- So long as these entities do not purchase and provide access to bulk time at a per minute cost, and/or have access to a switch so as to control rates in offering and administering prepaid calling card services:
  - Under Section 885 (b) (1) retailers who only provide a marketing venue for telephone prepaid debit cards do not have to register with the Commission.
  - Under Section 885 (b) (2) entities who are merely the printer of the cards for the prepaid service providers do not need to register with the Commission.
- Under Section 885 (c), telephone prepaid debit cards offered in a promotional manner shall not subject the provider to the registration requirement, unless the cards are issued in conjunction with the sale of telephone related goods or services.

# Unlicensed Prepaid Phonecard Providers Subject to Fines

- Under Section 886 of the California Public Utilities Code entities that are required to register, but have failed to do so, and entities denied registration but that continue to offer telephone prepaid debit cards shall be subject to fines or other sanctions that may be ordered by the Commission.

# Consumer Complaints and Issues

- Commission receives approximately 50 complaints per year regarding prepaid phonecards
- Common problems include:
  - Service provider not registered with the Commission
  - Actual calling time provided substantially (by as much as 50% to 75%) lower than advertised
  - Misleading and false advertising by overstating achievable calling time or understating unit cost/rate
  - Advertised rates expire after short “promotional period”
  - Charging of substantial undisclosed surcharges and fees that quickly used up the balances in the prepaid phonecard
  - No live operator answering the toll-free customer service number
  - Customer service not provided in the language cards were advertised

# Ca. Business and Professions Code

- **Section 17200** prohibits unfair competition including any unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising.
- **Section 17500** prohibits untrue or misleading advertising. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.
- **Section 17538.9** regulates the advertising and sale of prepaid calling cards and services.

# Ca. Business and Professions Code

- **Section 17538.9** requires:
  - Any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services to include any geographic limitation and disclosure of any additional surcharges or fees
  - Information to be legibly printed on a prepaid calling card, such as name of the company, toll-free customer service and network access number, authorization code expiration date, etc.
  - A company that sells prepaid calling cards and services shall make disclosures on the card and packaging, and the retail vendor shall make disclosures at the point of sale, regarding fees, minimum per-call charge, surcharges, and policies on recharge, refund and expiration
  - A company to maintain a toll-free customer service telephone number: with a live operator 24 hours a day, seven days a week; with sufficient capacity and staffing; and, provided in the language used in the advertising of the card
  - A company to provide a refund within 60 days to any purchaser of a card or services if the network services associated with the card or services fail to operate in a commercially reasonable manner.

# Enforcement Actions

- The Commission's Consumer Protection and Safety Division (CPSD) enforces prepaid phonecard registration requirement through Cease and Desist directives. The Commission also sends enforcement letters to carriers doing business with unlicensed entities.
- Commission staff investigates consumer complaints, conducts testing of prepaid phonecards' disclosures, and has initiated a series of compliance measures that could ultimately escalate into a Commission Order Institution Investigation resulting in fines and penalties.
- CPUC also works jointly with the Ca. Attorney General (AG) in suing prepaid phonecard providers who mislead consumers and falsely advertise the available minutes in the phonecards they sell. For example:
  - Devine Communications: In April 2007 – the Superior Court of California issued a judgment requiring Devine Communications to clearly disclose all fees, surcharges, and other costs (including "maintenance fees") associated with the use of their prepaid calling cards, and prohibits misleading advertising. The judgment also imposes civil penalties of \$118,000 on Devine. The judgment was entered into as a result of a stipulation among the CPUC, the AG, and Devine. The stipulation resolves a complaint by the PUC and AG alleging that Devine operated without a license, engaged in unfair competition, and disseminated untrue and misleading statements. The PUC/AG complaint alleged that Devine overstated the number of minutes of calling time to various destinations and charged substantial undisclosed surcharges.

# Pending Legislative Changes

- Assembly Bill 2885, sponsored by Assembly Member De La Torre would authorize the Commission to enforce the standards and requirements in Business and Professions Code 17538.9.
  - This would enable the Commission to undertake prosecutions of certain violators independent of the Attorney General and enable us to target violations by small prepaid calling card providers that do not warrant high priority attention by the Ca. Attorney General.
- Status of the Bill: Passed by the Assembly; currently in Senate Appropriations Committee

# Pending Legislative Changes

- Assembly Bill 2136, sponsored by Assembly Member Mendoza, seeks to amend Section 17538.9 of the Business and Professions Code. AB 2136 would:
  - Require an advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services to clearly and conspicuously disclose any geographic limitation and all ancillary charges and conditions.
  - Require that, upon a rate increase at the time of recharge, the customer be informed of that increase prior to the customer agreeing to pay for the recharge.
  - Require that disclosures, which are to be printed legibly on a card or packaging, be readable without having to open the packaging, and require that information to be current.
  - Prohibit a person from offering or selling any prepaid calling card or prepaid calling services that do not contain the information required to be disclosed on the card or packaging, and would require a distributor that sells directly to a retail vendor to provide the vendor with the current information required to be displayed by the vendor.
  - Require a company that sells prepaid calling cards and services to provide a voice prompt at the beginning of each call that states the number of minutes that are available for that call.
  - Require a refund based on the failure of network services associated with prepaid calling cards or services to be made within 30 days.
- Status of the Bill: Passed by the Assembly; currently in Senate Appropriations Committee

# Contact Information

- Consumer Complaints: **1-800-649-7570**
- Consumer Info.: [www.calphoneinfo.com](http://www.calphoneinfo.com)
- CPUC: [www.cpuc.ca.gov](http://www.cpuc.ca.gov)
- Telco Fraud Unit: **Chris Poschl**
- Robert Haga: **415-703-3700**