

M e m o r a n d u m

Date: May 8, 2008

To: The Commission
(Meeting of May 15, 2008)

From: Pamela Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2885 (De La Torre) – Mobile telephone service: prepaid service.**
As introduced February 22, 2008

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL:

This bill would require the California Public Utilities Commission (“CPUC” or “Commission”) to adopt rules to protect consumers of prepaid calling cards and services, as defined, from undisclosed charges.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- Current Business and Professions (B&P) Code Section 17538.9 already requires a company that sells prepaid calling cards and services to make certain disclosures regarding fees and surcharges, and regulates the manner in which these fees are imposed. The Commission opposes.
- The CPUC instead recommends the rulemaking requirement be deleted and AB 2885 be amended to grant the CPUC authority to enforce B&P Code Section 17538.9.
- If these amendments were adopted, the CPUC would be able to enforce B&P Code Sec. 17538.9 violations separately from the state Attorney General (AG). With this enhanced enforcement authority, the CPUC would be able to directly pursue bad actors, and could especially target violations by small prepaid calling card providers which may not warrant high priority attention by the state Attorney General.
- The CPUC could pursue violators via cease and desist orders, citations, or formal investigations resulting in stiff penalties. Such enforcement work would be initiated

by complaint or internally by the CPSD. CPSD has recently established a Telephone Fraud Unit and this Unit could absorb the additional workload that would result from the CPUC's enhanced enforcement authority.

- In addition, the amendments would save the state the cost of an unnecessary rulemaking proceeding.

SUMMARY OF SUGGESTED AMENDMENTS:

- The following amendments are recommended:
 - Delete the rulemaking requirements.
 - Grant the CPUC authority to enforce B&P Code Section 17538.9.

DIVISION ANALYSIS (Communications Division):

- The CPUC, at its discretion, can open a rulemaking to establish rules to protect prepaid calling card consumers from undisclosed charges. This bill would mandate that the CPUC do so. However the CPUC has twice rejected this option in recent proceedings, noting that such rules already exist:
 - CPUC expressed the view when it adopted the Consumer Protection Initiative in D. 06-03-013 that "duplication of existing laws and rules may be inefficient and may create confusion. In many situations the existence of law and regulations precludes the need for further CPUC action." (See page 38.)
 - In D. 06-03-013, the CPUC also found that the Business & Professions Code Sec. 17538.9(b) contains detailed rules governing the advertisement and provision of prepaid calling cards and services, including disclosure requirements in advertisements on cards at the point of sale and also the point of use. (See page 42). The CPUC concluded that many of the problems in consumer protection lay not with a lack of rules, but rather, in the lack of public knowledge of these protections, and with the CPUC's enforcement of existing rules and laws. (See page 43.)
 - In D.07-07-043, where the CPUC addressed the needs of telecommunications consumers who have limited English proficiency, the CPUC declined from establishing rules for prepaid calling cards and instead directed staff to continue working closely with the Attorney General in prosecuting providers who defraud or otherwise take advantage of vulnerable consumers. (See page 107).
- If this bill were enacted the CPUC would have to promulgate a new set of regulations enforceable separately by the CPUC. Given the existing regulations, there is no need for new CPUC regulations. Instead the CPUC should be given the authority to directly enforce the B&P Code Sec. 17538.9 and any necessary amendments to disclosure requirements should be made to the B&P Code Sec. 17538.9.

PROGRAM BACKGROUND:

- During the years 2005-2008 YTD, the Commission's Consumer Affairs Bureau received the following number of consumer complaints/ inquiries that were identified as subcategory "Prepaid Calling Card."

- 2005 -	36
- 2006 -	110
- 2007 -	58
- 2008 YTD-	14
- Under current Public Utilities Code Section 885, prepaid calling card providers are required to register with the CPUC. The Consumer Protection and Safety Division (CPSD) of the CPUC enforces this requirement as authorized by PU Code Section 886 through cease and desist orders and formal investigations.
- The enforcement of violations of the Business and Professions Code Section 17500 lies primarily with the Attorney General and District Attorney ("DA"). (See *Greenlining Institute v. PUC*, 103 Cal.App.4th 1324 (1st Dist. 2003) holding that the Commission lacks jurisdiction to adjudicate claims under Business and Professions Code Sections 17200 et seq, and 17500).
- Currently the CPUC and the state Attorney General are jointly pursuing prepaid calling card providers for misleading and false advertising practices under B&P Code Section 17538.9. The CPUC works closely with the AG to inform them of potential violations of Section 17500, and our investigators work in tandem with the AG where appropriate.

LEGISLATIVE HISTORY:

A proposed bill, H.R. 3402 Calling Card Consumer Protection Act (Engel, NY) is currently pending before Congress. The bill would 1) require prepaid telephone calling service providers or prepaid telephone calling card distributors to disclose certain information, including the total value in dollars or the number of calling minutes, a description of all terms and conditions, and the service provider's name, customer service number, and hours of service; 2) make it unlawful for any provider or distributor to impose any charge or fee not so disclosed, or provide fewer minutes than disclosed, 3) regulate card expiration; 4) make it unlawful to charge for unconnected calls; and 5) treat a violation as an unfair or deceptive act or practice under the Federal Trade Commission Act and require the Federal Trade Commission (FTC) to enforce the Act. The bill would provide for state enforcement by state attorneys general. There has been no action on the bill.

AB 2136 (Mendoza), also on today's agenda and pending before the Assembly Appropriations Committee, would establish additional standards and disclosure

requirements on the advertising and sale of prepaid calling cards and prepaid calling services (B&P Code Section 17538.9).

FISCAL:

A new full-time Public Utilities Counsel III position would require a permanent CPUC budget increase of \$144, 216. However, this fiscal impact would be lower than the cost to the state of a CPUC rulemaking proceeding which would be required by AB 2885 as introduced.

STATUS:

AB 2885 is currently on the Assembly Appropriations Committee Suspense File.

SUPPORT/OPPOSITION:

Support: Latino Issues Forum (sponsor)

Opposition: None on file.

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Date: May 8, 2008

BILL LANGUAGE:

BILL NUMBER: AB 2885 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member De La Torre

FEBRUARY 22, 2008

An act to add Section 887 to the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2885, as introduced, De La Torre. Telecommunications: mobile telephony service: prepaid service.

(1) Existing law authorizes the Public Utilities Commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation is preempted by federal law. Existing law generally requires an entity offering the services of telephone prepaid debit cards to register with the commission. An unregistered entity is prohibited from offering the services of telephone prepaid debit cards.

Other existing law regulating the sale of prepaid calling cards and services requires a company that sells prepaid calling cards and services to make certain disclosures regarding fees and surcharges, and regulates the manner in which these fees are imposed.

This bill would require the commission to adopt rules to protect consumers of prepaid calling cards and services, as defined, from undisclosed charges.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime. Because this bill would be part of the act and require an order or other action of the commission to implement its provisions and a violation of that order or action would be a crime, the bill would impose a state-mandated local program by expanding the definition of a crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 887 is added to the Public Utilities Code, to read:

887. The commission shall adopt rules to protect consumers of prepaid calling cards and services, as defined in Section 17538.9 of the Business and Professions Code, from undisclosed charges.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.