

Enforcement Alert: Prepaid Card Marketing Investigations Opened

April 7, 2010

Late last week, the FCC sent inquiry letters to a number of prepaid calling card providers concerning their marketing practices. This action represents the first significant entry by the FCC into prepaid calling card marketing practices. Prior to this action, prepaid card enforcement activities have been conducted in private litigation brought by a large prepaid carrier, before a handful of state attorneys general and, in the case of non-carrier distributors, before the Federal Trade Commission. However, the FTC is barred from taking action against common carriers. The FCC's action suggests that the Commission is attempting to close the gap in compliance within the prepaid industry by acting directly against carriers that offer prepaid cards.

Details about the FCC requests are available after the jump.

FCC investigations are not disclosed publicly, so I cannot publish any documents for this entry. However, we understand that identical letters were sent to several carriers that provide prepaid calling card services. The letters seek broad classes of documents, including advertisements for prepaid cards, contracts with distributors and rate decks for the carrier's services. The letters also ask for detailed information about the provisioning of prepaid card services, and an identification of which entities perform certain functions related to the marketing, distribution and use of prepaid calling cards. Carriers are given 30 days from the date of the letter to provide the requested documents and information. All responses must include a sworn declaration from an officer confirming that all requested information was provided.

It is clear from the letters that the FCC seeks to examine the content and sufficiency of a carrier's disclosures to prepaid card consumers. While FCC enforcement of misleading carrier marketing is rare, the Commission has asserted jurisdiction over marketing practices under Section 201's requirement that carrier practices be "just and reasonable." Notably, however, the investigation letters do not cite to this line of cases, nor do they rely on the Commission's Truth in Billing regulations. The letters cite only to the Communications Act as a whole for the agency's authority.