

FCC Proposes Another \$5 Million Prepaid Card Fine

November 30, 2011

Yesterday, the FCC proposed another \$5 million fine for insufficient disclosures on prepaid calling cards. This action is best understood as an echo to the FCC's action in September, when it [proposed four similar \\$5 million fines against other prepaid calling card providers](#). In fact, I believe that this NAL has been circulating at the FCC since shortly before the other four NALs were released.

2011 has been highlighted by an active FCC using Section 201(b) of the Act to engage in consumer-focused enforcement. Although the FCC's authority to use 201(b) in this way is in doubt, the lesson for carriers is clear, especially in the prepaid market. Carriers should clearly and conspicuously disclose all material terms and conditions of their services. Failure to do so risks claims of deceptive marketing or cramming.

The latest [Notice of Apparent Liability](#) was issued against Simple Network, Inc. The NAL largely tracks the previous four NALs. Simple Network's disclosure is slightly different than the disclosure in the other four cases, but the FCC reaches the same conclusion that the disclosure is not prominent enough (para. 9) and is too vague (para. 10). The NAL also dismisses Simple Network's listing of a toll-free number to obtain rate information, stating that this information is not available at the point of sale.

In the end, the FCC appears most skeptical of any assertion of a large number of minutes available only on a single call. The five carriers identified so far have all explained how those minutes may be obtained by consumers, but the NALs conclude that the explanations are not sufficient. Prepaid card providers should compare their disclosures with the five disclosures found insufficient so far.