

7312

I N S E N A T E

March 29, 2010

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, the abandoned property law and the general business law, in relation to prepaid telephone calling cards and services; and to repeal section 92-f of the public service law relating to prepaid telephone calling card consumer protections

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 92-f of the public service law is REPEALED.

2 S 2. The public service law is amended by adding a new article 5-A to
3 read as follows:

4 ARTICLE 5-A

5 PREPAID TELEPHONE CALLING CARDS

6 SECTION 103. DEFINITIONS.

7 103-A. CERTIFICATION.

8 103-B. DISCLOSURE REQUIREMENTS.

9 103-C. CUSTOMER SERVICE.

10 103-D. ENFORCEMENT.

11 S 103. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, UNLESS THE
12 CONTEXT OR SUBJECT MATTER OTHERWISE REQUIRES, THE FOLLOWING TERMS SHALL
13 HAVE THE FOLLOWING MEANINGS:

14 1. "ADVERTISEMENT" MEANS THE ATTEMPT, DIRECTLY OR INDIRECTLY, BY
15 PUBLICATION, DISSEMINATION, SOLICITATION, ENDORSEMENT OR CIRCULATION, OR
16 IN ANY OTHER WAY, TO INDUCE DIRECTLY OR INDIRECTLY ANY PERSON TO
17 PURCHASE A PREPAID CARD OR PREPAID SERVICE, WHETHER APPEARING IN ANY
18 NEWSPAPER, MAGAZINE, PERIODICAL, CIRCULAR, IN-STORE OR OUT-OF-STORE
19 SIGN, OR OTHER WRITTEN MATTER PLACED BEFORE THE CONSUMING PUBLIC, OR IN
20 ANY RADIO BROADCAST, TELEVISION BROADCAST, ELECTRONIC MEDIUM, OR DELIV-
21 ERED TO OR THROUGH ANY COMPUTER.

22 2. "PERSON" MEANS AND INCLUDES ANY CORPORATION, COMPANY, ASSOCIATION,
23 FIRM, ENTITY, PARTNERSHIP OR INDIVIDUAL.

24 3. "PREPAID CARD" MEANS ANY OBJECT OR RIGHT OF USE PURCHASED FOR A SUM
25 CERTAIN THAT ENABLES A CONSUMER TO USE A PREPAID SERVICE. SUCH RIGHTS OF

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD06738-01-9

1 USE MAY BE EMBODIED ON A CARD OR OTHER PHYSICAL OBJECT OR MAY BE
2 PURCHASED BY AN ELECTRONIC OR TELEPHONIC MEANS WITHOUT A PHYSICAL
3 OBJECT. THE TERM "PREPAID CARD" SHALL NOT INCLUDE:

4 (A) PREPAID CARDS THAT ARE PROVIDED FOR FREE OR AT NO ADDITIONAL
5 CHARGE AS A PROMOTIONAL ITEM ACCOMPANYING ANOTHER PRODUCT OR SERVICE
6 PURCHASED BY A CONSUMER;

7 (B) PREPAID CARDS PROVIDED PURSUANT TO AN AWARDS, LOYALTY OR REBATE
8 PROGRAM WITHOUT ANY SEPARATE MONETARY CONSIDERATION BEING GIVEN BY THE
9 CONSUMER FOR THE PREPAID CARD; OR

10 (C) AN OBJECT OR RIGHT OF USE THAT PROVIDES ACCESS TO A WIRELESS TELE-
11 COMMUNICATIONS SERVICE (WHETHER PRE OR POST PAID).

12 4. "PREPAID DISTRIBUTOR" MEANS (A) ANY PERSON THAT PURCHASES OR
13 RECEIVES PREPAID CARDS OR PREPAID SERVICE FROM A PREPAID PROVIDER, A
14 TELECOMMUNICATIONS CARRIER OR OTHER PREPAID DISTRIBUTOR, AND SELLS OR
15 DISTRIBUTES THE PREPAID CARDS AND/OR PREPAID SERVICE TO ONE OR MORE
16 PREPAID DISTRIBUTORS OR TO ONE OR MORE PREPAID RETAILERS; AND (B) ANY
17 PERSON THAT OTHERWISE ACTIVELY ENGAGES IN THE PROMOTION, ADVERTISING OR
18 DISSEMINATION OF PREPAID CARDS OR PREPAID SERVICE AND IS NOT A PREPAID
19 PROVIDER. SUCH TERM SHALL NOT INCLUDE ANY PREPAID RETAILER ENGAGED
20 EXCLUSIVELY IN POINT-OF-SALE TRANSACTIONS WITH CONSUMERS.

21 5. "PREPAID PROVIDER" MEANS ANY PERSON THAT IS ENGAGED IN PROVIDING
22 PREPAID SERVICE TO THE PUBLIC USING ITS OWN, A RESOLD TELECOMMUNICATIONS
23 NETWORK, OR VOICE OVER INTERNET TECHNOLOGY.

24 6. "PREPAID RETAILER" MEANS ANY PERSON THAT SELLS OR OFFERS TO SELL
25 PREPAID CARDS OR PREPAID SERVICE DIRECTLY TO ONE OR MORE CONSUMERS.

26 7. "PREPAID SERVICE" MEANS ANY TELECOMMUNICATIONS SERVICE THAT (A)
27 MUST BE PAID FOR IN ADVANCE BY A CONSUMER AND (B) ENABLES THE CONSUMER
28 TO ORIGINATE TELEPHONE CALLS BY USING AN ACCESS NUMBER AND AN AUTHORI-
29 ZATION CODE, WHETHER MANUALLY OR ELECTRONICALLY DIALED. THE TERM
30 "PREPAID SERVICE" SHALL NOT INCLUDE ANY SERVICE THAT PROVIDES ACCESS TO
31 A WIRELESS TELECOMMUNICATIONS SERVICE (WHETHER PRE OR POST PAID).

32 8. "PROVIDER CERTIFICATE" MEANS A PROVIDER CERTIFICATE ISSUED BY THE
33 COMMISSION TO A PREPAID PROVIDER PURSUANT TO SUBDIVISION ONE OF SECTION
34 ONE HUNDRED THREE-A OF THIS ARTICLE.

35 S 103-A. CERTIFICATION. 1. PREPAID PROVIDERS. (A) GENERAL. IT SHALL BE
36 UNLAWFUL FOR ANY PREPAID PROVIDER TO OFFER, PROVIDE OR SEEK TO OFFER OR
37 PROVIDE PREPAID SERVICE IN THIS STATE UNLESS THE PREPAID PROVIDER HAS
38 APPLIED FOR AND RECEIVED A PROVIDER CERTIFICATE FROM THE COMMISSION.

39 (B) APPLICATION. APPLICATION FOR A PROVIDER CERTIFICATE SHALL BE ON A
40 FORM PROVIDED BY THE COMMISSION IN ACCORDANCE WITH THIS SUBDIVISION AND
41 SHALL BE ACCOMPANIED BY A FEE IN THE AMOUNT OF FIVE HUNDRED DOLLARS. THE
42 APPLICATION FOR A PROVIDER CERTIFICATE SHALL CONTAIN ANY INFORMATION THE
43 COMMISSION MAY REQUIRE, BUT SHALL INCLUDE AT A MINIMUM:

44 (I) THE NAME, ADDRESS AND TITLE OF EACH OFFICER, DIRECTOR, EXECUTIVE
45 AND PARTNER OF THE PREPAID PROVIDER;

46 (II) A DESCRIPTION OF THE PREPAID SERVICES AND PREPAID CARDS THAT THE
47 PREPAID PROVIDER INTENDS TO OFFER;

48 (III) THE PREPAID PROVIDER'S TWENTY-FOUR HOUR CUSTOMER SERVICE TELE-
49 PHONE NUMBER FOR CONSUMERS WITHIN THIS STATE; AND

50 (IV) THE NAME AND ADDRESS OF THE PREPAID PROVIDER'S REGISTERED AGENT
51 FOR SERVICE OF PROCESS IN THIS STATE.

52 (C) APPROVAL BY COMMISSION. THE COMMISSION SHALL APPROVE AN APPLICA-
53 TION FOR A PROVIDER CERTIFICATE UPON A SHOWING BY THE APPLICANT AND A
54 FINDING BY THE COMMISSION THAT THE APPLICANT POSSESSES SUFFICIENT TECH-
55 NICAL, FINANCIAL AND MANAGERIAL RESOURCES AND ABILITIES TO PROVIDE
56 PREPAID SERVICE. THE COMMISSION SHALL APPROVE AN APPLICATION FOR A

1 PROVIDER CERTIFICATE UPON A SHOWING BY AN APPLICANT THAT THE COMMISSION
2 HAS ISSUED AN APPROPRIATE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSI-
3 TY TO THE APPLICANT OR THE TELECOMMUNICATIONS SERVICE CARRIER WHOSE
4 SERVICE THE APPLICANT IS SEEKING TO RESELL, PROVIDED THAT THE APPLICANT
5 OR TELECOMMUNICATIONS SERVICE CARRIER (AS THE CASE MAY BE) REMAINS IN
6 GOOD STANDING WITH THE COMMISSION. THE COMMISSION SHALL ALSO REQUIRE AS
7 A CONDITION OF APPROVAL THE PROCUREMENT OF A SURETY BOND, OR OTHER
8 AUTHORIZED SECURITY, FROM THE PREPAID PROVIDER IN THE MINIMUM AMOUNT OF
9 FIFTY THOUSAND DOLLARS. THE COMMISSION MAY REQUIRE A LARGER SURETY BOND
10 IF IT DETERMINES THAT A PREPAID PROVIDER HAS ENGAGED IN A PATTERN OF
11 CONDUCT RESULTING IN BONA FIDE CONSUMER COMPLAINTS OF MISCONDUCT AND
12 THAT SUCH INCREASED BOND IS NECESSARY FOR THE PROTECTION OF CONSUMERS.
13 EACH APPROVED PREPAID PROVIDER SHALL RECEIVE A CERTIFICATE NUMBER FROM
14 THE COMMISSION.

15 (D) POSTING BY COMMISSION. THE COMMISSION SHALL POST ON THE COMMIS-
16 SION'S WEBSITE, ON A LINK SOLELY DEDICATED TO PREPAID PROVIDERS, A LIST
17 THAT CONTAINS THE FULL LEGAL NAME OF EACH PREPAID PROVIDER THAT HAS
18 RECEIVED A PROVIDER CERTIFICATE AND THE CUSTOMER SERVICE NUMBER FOR EACH
19 SUCH PREPAID PROVIDER.

20 (E) NOTIFICATION TO PREPAID DISTRIBUTORS. PREPAID PROVIDERS SHALL
21 SUPPLY PROOF OF THEIR PROVIDER CERTIFICATE TO EACH PREPAID DISTRIBUTOR
22 IN THIS STATE TO WHOM THE PREPAID PROVIDER PROVIDES PREPAID SERVICE
23 AND/OR PREPAID CARDS.

24 2. PREPAID DISTRIBUTORS. (A) GENERAL. IT SHALL BE UNLAWFUL FOR ANY
25 PREPAID DISTRIBUTOR TO DISTRIBUTE, SELL OR RESELL PREPAID CARDS AND/OR
26 PREPAID SERVICE IN THIS STATE UNLESS IT IS REGISTERED WITH THE COMMIS-
27 SION IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION.

28 (B) APPLICATION. APPLICATION FOR A PREPAID DISTRIBUTOR SHALL BE ON A
29 FORM PROVIDED BY THE COMMISSION IN ACCORDANCE WITH THIS SUBDIVISION AND
30 SHALL BE ACCOMPANIED BY A FEE IN THE AMOUNT OF THREE HUNDRED DOLLARS.
31 THE APPLICATION SHALL CONTAIN ANY INFORMATION THE COMMISSION MAY
32 REQUIRE, BUT SHALL INCLUDE AT A MINIMUM:

33 (I) THE NAME, ADDRESS AND TITLE OF EACH OFFICER, DIRECTOR, EXECUTIVE
34 AND PARTNER OF THE PREPAID DISTRIBUTOR;

35 (II) A DESCRIPTION OF THE PREPAID SERVICES AND PREPAID CARDS THAT THE
36 PREPAID DISTRIBUTOR INTENDS TO DISTRIBUTE, SELL, RESELL OR OFFER; AND

37 (III) THE NAME AND ADDRESS OF THE PREPAID DISTRIBUTOR'S REGISTERED
38 AGENT FOR SERVICE OF PROCESS IN THIS STATE.

39 (C) APPROVAL BY COMMISSION. THE COMMISSION SHALL APPROVE AN APPLICA-
40 TION OF A PREPAID DISTRIBUTOR UPON A SHOWING BY THE APPLICANT AND A
41 FINDING BY THE COMMISSION THAT THE APPLICANT POSSESSES SUFFICIENT TECH-
42 NICAL, FINANCIAL, AND MANAGERIAL RESOURCES AND ABILITIES TO DISTRIBUTE
43 PREPAID CARDS AND/OR PREPAID SERVICE. THE COMMISSION SHALL ALSO REQUIRE
44 AS A CONDITION OF APPROVAL THE PROCUREMENT OF A SURETY BOND, OR OTHER
45 AUTHORIZED SECURITY, FROM THE PREPAID DISTRIBUTOR IN THE MINIMUM AMOUNT
46 OF TEN THOUSAND DOLLARS. IF THE ANNUAL SALES OF THE PREPAID DISTRIBUTOR
47 IN THIS STATE EXCEED ONE MILLION DOLLARS, THE MINIMUM AMOUNT OF THE
48 SURETY BOND, OR OTHER AUTHORIZED SECURITY, SHALL BE TWENTY-FIVE THOUSAND
49 DOLLARS. EACH APPROVED PREPAID DISTRIBUTOR SHALL RECEIVE A REGISTRATION
50 NUMBER FROM THE COMMISSION.

51 (D) NOTIFICATION. PREPAID DISTRIBUTORS SHALL SUPPLY PROOF OF THEIR
52 REGISTRATION WITH THE COMMISSION TO EACH PREPAID RETAILER OR OTHER
53 PREPAID DISTRIBUTOR IN THIS STATE TO WHOM THE PREPAID DISTRIBUTOR SELLS,
54 PROVIDES OR DISTRIBUTES PREPAID CARDS. PREPAID DISTRIBUTORS SHALL
55 FORWARD THE PROOF SUPPLIED BY EACH PREPAID PROVIDER OF SUCH PREPAID
56 PROVIDER'S CERTIFICATION WITH THE COMMISSION TO EACH PREPAID RETAILER OR

1 OTHER PREPAID DISTRIBUTOR IN THIS STATE TO WHOM THE PREPAID DISTRIBUTOR
2 SELLS, PROVIDES OR DISTRIBUTES PREPAID CARDS.

3 3. PREPAID RETAILERS. (A) IT SHALL BE UNLAWFUL FOR ANY PREPAID RETAIL-
4 ER TO SELL OR OFFER TO SELL PREPAID CARDS OR PREPAID SERVICE TO ANY
5 CONSUMER IN THIS STATE UNLESS THE PREPAID RETAILER HAS RECEIVED PROOF OF
6 THE PROVIDER CERTIFICATE FOR EACH APPLICABLE PREPAID CARD AND PREPAID
7 SERVICE OFFERED BY THE PREPAID RETAILER.

8 (B) IT SHALL BE UNLAWFUL FOR ANY PREPAID RETAILER TO PURCHASE OR OFFER
9 TO PURCHASE PREPAID CARDS OR PREPAID SERVICE FROM ANY PREPAID DISTRIBUTOR
10 UNLESS THE PREPAID RETAILER HAS RECEIVED PROOF OF THE PREPAID
11 DISTRIBUTOR'S REGISTRATION WITH THE COMMISSION.

12 (C) PREPAID RETAILERS SHALL NOT SELL OR OFFER FOR SALE ANY PREPAID
13 CARD THAT THE PREPAID RETAILER KNOWS PROVIDES FEWER MINUTES THAN THE
14 NUMBER OF MINUTES PROMOTED OR ADVERTISED FOR SUCH PREPAID CARD, INCLUD-
15 ING THE NUMBER OF MINUTES LISTED ON THE PREPAID CARD, ANY ADVERTISING OR
16 POINT-OF-SALE MATERIAL RELATED TO THE PREPAID CARD OR ANY VOICE PROMPT
17 ANNOUNCING THE NUMBER OF MINUTES AVAILABLE FOR A CALL WITH THE PREPAID
18 CARD.

19 (D) PREPAID RETAILERS SHALL POST THE COMMISSION'S TOLL-FREE HOTLINE
20 TELEPHONE NUMBER IN A CONSPICUOUS LOCATION WITHIN EACH STORE.

21 4. AMENDMENTS. EACH PREPAID PROVIDER AND PREPAID DISTRIBUTOR SHALL
22 FILE AN AMENDED APPLICATION WITHIN TWENTY DAYS AFTER ANY CHANGE IN THE
23 INFORMATION CONTAINED IN THEIR APPLICATION. NO FEE SHALL BE REQUIRED FOR
24 THE FILING OF AN AMENDMENT.

25 5. REVOCATION. THE COMMISSION MAY, IN ITS DISCRETION, CANCEL, REVOKE
26 OR SUSPEND THE CERTIFICATE AND/OR REGISTRATION OF ANY PREPAID PROVIDER
27 OR PREPAID DISTRIBUTOR UPON ANY OF THE FOLLOWING GROUNDS:

28 (A) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR DOES NOT PROVIDE OR
29 UPDATE THE INFORMATION REQUIRED BY THIS SECTION;

30 (B) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR FAILS TO PROVIDE OR
31 MAINTAIN THE REQUIRED SURETY BOND OR OTHER AUTHORIZED SECURITY;

32 (C) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR VIOLATES ANY ORDER,
33 DECISION, RULE, REGULATION OR REQUIREMENT ESTABLISHED OR ADOPTED BY THE
34 COMMISSION PURSUANT TO THIS ARTICLE;

35 (D) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR FILES A FALSE STATE-
36 MENT WITH THE COMMISSION; OR

37 (E) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR VIOLATES ANY PROVISION
38 OF LAW.

39 6. OTHER REGISTRATIONS. THE CERTIFICATION AND REGISTRATION REQUIRE-
40 MENTS OF THIS SECTION SHALL BE IN ADDITION TO, AND DO NOT OBTIATE, ANY
41 CERTIFICATION, AUTHORIZATION, REGISTRATION OR OTHER REGULATORY REQUIRE-
42 MENTS IMPOSED ON INTRASTATE TELECOMMUNICATIONS CARRIERS BY THE STATE.

43 S 103-B. DISCLOSURE REQUIREMENTS. 1. PREPAID CARDS. PREPAID PROVIDERS
44 AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THE
45 FOLLOWING INFORMATION ON ALL PREPAID CARDS:

46 (A) THE NAME OF THE PREPAID PROVIDER AS CERTIFICATED BY THE COMMIS-
47 SION;

48 (B) THE PREPAID PROVIDER'S TWENTY-FOUR-HOUR CUSTOMER SERVICE TELEPHONE
49 NUMBER;

50 (C) AN ACCESS NUMBER, IF REQUIRED TO ACCESS THE PREPAID SERVICE;

51 (D) AN AUTHORIZATION CODE, IF REQUIRED TO ACCESS THE PREPAID SERVICE;
52 AND

53 (E) ANY EXPIRATION DATE OR POLICY.

54 2. PREPAID CARDS OR PACKAGING. PREPAID PROVIDERS AND PREPAID DISTRIBUTORS
55 SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE ALL MATERIAL TERMS AND
56 CONDITIONS FOR USE OF A PREPAID CARD OR PREPAID SERVICE EITHER ON THE

1 PREPAID CARD OR ITS PACKAGING, WHICH TERMS AND CONDITIONS SHALL BE VISI-
2 BLE TO THE CONSUMER PRIOR TO PURCHASE AT THE POINT OF SALE, INCLUDING
3 WITHOUT LIMITATION THE FOLLOWING ITEMS:

4 (A) THE MAXIMUM AMOUNT AND FREQUENCY OF ANY CHARGE, FEE, TAX OR
5 SURCHARGE (EXCLUDING THE APPLICABLE PER MINUTE RATE) THAT MAY BE APPLI-
6 CABLE TO THE USE OF THE PREPAID CARD OR PREPAID SERVICE FOR CALLS ORIGI-
7 NATING WITHIN THE UNITED STATES;

8 (B) NOTICE THAT ADDITIONAL OR DIFFERENT PER MINUTE RATES, CHARGES,
9 FEES, TAXES OR SURCHARGES MAY APPLY TO USE OF THE PREPAID CARD OR
10 PREPAID SERVICE FOR CALLS ORIGINATING OUTSIDE THE UNITED STATES AND/OR
11 FOR CALLS TO INTERNATIONAL CELLULAR AND WIRELESS TELEPHONE NUMBERS;

12 (C) NOTICE THAT PER MINUTE RATES MAY BE HIGHER FOR CALLS MADE VIA
13 TOLL-FREE ACCESS NUMBERS;

14 (D) THE VALUE OF THE PREPAID CARD OR PREPAID SERVICE, IN DOLLARS OR
15 MINUTES;

16 (E) ANY MINIMUM CHARGE PER CALL; AND

17 (F) ANY APPLICABLE POLICIES RELATING TO REFUND, RECHARGE, DECREMENT
18 AND EXPIRATION.

19 3. POINT-OF-SALE MATERIALS (OTHER THAN PREPAID CARDS AND PACKAGING).
20 PREPAID PROVIDERS AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICU-
21 OUSLY DISCLOSE THE INFORMATION REQUIRED BY SUBDIVISIONS ONE AND TWO OF
22 THIS SECTION ON ALL POINT-OF-SALE MATERIALS (WHICH TERM SHALL NOT
23 INCLUDE THE PREPAID CARDS THEMSELVES AND THEIR PACKAGING) REGARDING A
24 PREPAID SERVICE. ALL POINT-OF-SALE MATERIALS (WHICH TERM SHALL NOT
25 INCLUDE THE PREPAID CARDS THEMSELVES AND THEIR PACKAGING) REGARDING A
26 PREPAID SERVICE SHALL CLEARLY AND CONSPICUOUSLY DISPLAY THE COMMISSION'S
27 TOLL-FREE HOTLINE TELEPHONE NUMBER.

28 4. ADVERTISEMENTS (OTHER THAN POINT-OF-SALE MATERIALS). PREPAID
29 PROVIDERS AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICUOUSLY
30 DISCLOSE THE FOLLOWING INFORMATION ON ALL ADVERTISEMENTS FOR A PREPAID
31 CARD OR PREPAID SERVICE (OTHER THAN POINT-OF-SALE MATERIALS):

32 (A) THE NAME OF THE PREPAID PROVIDER AS CERTIFICATED BY THE COMMIS-
33 SION;

34 (B) THE PREPAID PROVIDER'S TWENTY-FOUR-HOUR CUSTOMER SERVICE TELEPHONE
35 NUMBER; AND

36 (C) ANY EXPIRATION DATE OR POLICY.

37 5. ADVERTISEMENTS OF MINUTES AND/OR RATES. ALL MINUTES AND/OR RATES
38 PROMOTED OR ADVERTISED ON A PREPAID CARD, ANY POINT-OF-SALE MATERIAL
39 RELATING TO THAT PREPAID CARD, ANY ADVERTISEMENT REGARDING A PREPAID
40 SERVICE, OR OTHERWISE RELATING TO ANY PREPAID SERVICE, SHALL BE AVAIL-
41 ABLE AND ACHIEVABLE BY THE CONSUMER, AND THERE SHALL BE NO LIMITATIONS
42 ON THE PERIOD OF TIME FOR WHICH THE PROMOTED OR ADVERTISED MINUTES
43 AND/OR RATES WILL BE AVAILABLE TO THE CONSUMER UNLESS THOSE LIMITATIONS
44 ARE CLEARLY AND CONSPICUOUSLY DISCLOSED IN THE SAME LOCATION WHERE THE
45 MINUTES AND/OR RATES ARE LISTED.

46 6. VOICE PROMPTS. ALL MINUTES ANNOUNCED ON ANY VOICE PROMPT GIVEN TO A
47 CONSUMER AT THE TIME THE CONSUMER PLACES A CALL WITH A PREPAID SERVICE
48 SHALL BE IMMEDIATELY AVAILABLE AND ACHIEVABLE BY THE CONSUMER ON THAT
49 CALL. ALL PREPAID PROVIDERS SHALL GIVE A VOICE PROMPT TO A CONSUMER AT
50 THE TIME THE CONSUMER PLACES A CALL WITH A PREPAID SERVICE THAT
51 ANNOUNCES THE NUMBER OF MINUTES AVAILABLE FOR THAT CALL, WHICH NUMBER OF
52 MINUTES SHALL BE INCLUSIVE OF THE APPLICABLE PER MINUTE RATE AND ALL
53 APPLICABLE CHARGES, FEES, TAXES OR SURCHARGES.

54 7. PERMITTED CHARGES. A PREPAID PROVIDER SHALL NOT CHARGE, APPLY OR
55 DEDUCT FROM A PREPAID CARD'S BALANCE ANY CHARGES, FEES, TAXES,
56 SURCHARGES OR OTHER AMOUNTS FOR USE OF THE PREPAID SERVICE EXCEPT:

1 (A) THE PER MINUTE RATE FOR EACH PARTICULAR DESTINATION CALLED BY THE
2 CONSUMER;

3 (B) CHARGES, FEES, TAXES AND SURCHARGES THAT ARE PROPERLY DISCLOSED
4 PURSUANT TO THIS SECTION; AND

5 (C) ANY PER MINUTE RATE, CHARGE, FEE, TAX OR SURCHARGE PERMITTED
6 PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION TWO OF THIS SECTION. A
7 CONSUMER SHALL NOT BE CHARGED FOR ANY BUSY SIGNAL OR UNANSWERED CALL. A
8 PREPAID PROVIDER SHALL NOT IMPOSE ANY FEE OR SURCHARGE THAT IS NOT
9 DISCLOSED AS REQUIRED BY THIS SECTION OR THAT EXCEEDS THE AMOUNT
10 DISCLOSED. THE AMOUNT OF ANY CHARGE, FEE, TAX OR SURCHARGE THAT IS
11 IMPOSED, ASSESSED OR DEDUCTED FROM A PREPAID CARD'S VALUE OR BALANCE
12 SHALL BE EXPRESSED AND DISCLOSED IN THE SAME FORMAT, EITHER DOLLARS OR
13 MINUTES, AS THE VALUE OF THE PREPAID CARD.

14 8. FOREIGN LANGUAGE. IF A PREPAID CARD OR ANY POINT-OF-SALE MATERIAL
15 FOR A PREPAID CARD OR PREPAID SERVICE IS PREDOMINANTLY WRITTEN IN A
16 LANGUAGE OTHER THAN ENGLISH, THEN THE DISCLOSURES REQUIRED BY THIS
17 SECTION SHALL BE DISCLOSED IN THAT OTHER LANGUAGE ON THE APPLICABLE
18 PREPAID CARD OR POINT-OF-SALE MATERIAL.

19 9. PAYPHONE SURCHARGE. A PREPAID PROVIDER MAY PROVIDE A VOICE PROMPT
20 NOTIFICATION OF ANY APPLICABLE PAYPHONE SURCHARGE FOR USE OF A PREPAID
21 SERVICE FROM A PAYPHONE IN LIEU OF PROVIDING NOTICE OF SUCH SURCHARGE AS
22 REQUIRED BY THIS SECTION.

23 10. INTERNET SALES. NOTWITHSTANDING ANY OTHER PROVISION OF THIS
24 SECTION, IN THE CASE OF A PREPAID CARD THAT CONSUMERS PURCHASE VIA THE
25 INTERNET, THE DISCLOSURES REQUIRED BY SUBDIVISIONS ONE AND TWO OF THIS
26 SECTION SHALL BE DISCLOSED CLEARLY AND CONSPICUOUSLY ON THE INTERNET
27 SITE THAT THE CONSUMER MUST ACCESS PRIOR TO PURCHASING THE PREPAID CARD.

28 S 103-C. CUSTOMER SERVICE. 1. GENERAL REQUIREMENTS. ALL PREPAID
29 PROVIDERS SHALL ESTABLISH AND MAINTAIN A TOLL-FREE CUSTOMER SERVICE
30 TELEPHONE NUMBER. PREPAID PROVIDERS SHALL PROVIDE CUSTOMER SERVICE TWEN-
31 TY-FOUR HOURS A DAY, SEVEN DAYS A WEEK. CUSTOMER SERVICE MAY BE PROVIDED
32 BY A COMBINATION OF LIVE OPERATOR, INTERACTIVE VOICE RESPONSE, AND ELEC-
33 TRONIC VOICE RECORDING OF CUSTOMER INQUIRIES AND COMPLAINTS. LIVE OPER-
34 ATOR SERVICE SHALL BE AVAILABLE AT A MINIMUM FROM 9:00 A.M. TO 9:00 P.M.
35 IF AN ELECTRONIC VOICE RECORDER IS USED, THE PREPAID PROVIDER SHALL
36 ATTEMPT TO CONTACT THE CONSUMER NO LATER THAN THE NEXT DAY FOLLOWING THE
37 DATE OF THE RECORDING.

38 2. SPECIFIC REQUIREMENTS. CUSTOMER SERVICE MUST ENABLE A CONSUMER TO
39 ACCURATELY AND CLEARLY OBTAIN ALL APPLICABLE INFORMATION REGARDING A
40 PREPAID CARD OR PREPAID SERVICE, INCLUDING:

41 (A) A DESCRIPTION OF ALL APPLICABLE FEES AND SURCHARGES;

42 (B) SPECIFIC PER MINUTE RATES TO SPECIFIC DESTINATIONS;

43 (C) BALANCE REMAINING; AND

44 (D) MINUTES AVAILABLE AND REMAINING FOR USE IN A SINGLE, UNINTERRUPTED
45 CALL TO A SINGLE, REQUESTED DESTINATION.

46 3. REFUNDS. A PREPAID PROVIDER SHALL PROVIDE A REFUND TO ANY CONSUMER
47 WHO PURCHASES A PREPAID CARD IF THE TELECOMMUNICATION NETWORK SERVICES
48 ASSOCIATED WITH THE PREPAID SERVICE FAIL TO OPERATE IN A COMMERCIALY
49 REASONABLE MANNER. THE REFUND SHALL BE IN AN AMOUNT NOT LESS THAN THE
50 VALUE REMAINING ON THE PREPAID CARD AT THE TIME OF THE FAILURE AND IN
51 THE FORM OF EITHER A REPLACEMENT PREPAID CARD OR BY ADDING THE REFUND
52 AMOUNT TO THE PREPAID CARD'S CURRENT BALANCE. ALL REFUNDS SHALL BE
53 PROVIDED TO THE CONSUMER WITHIN SIXTY DAYS FROM THE DATE OF RECEIPT OF
54 NOTIFICATION FROM THE CONSUMER THAT THE PREPAID SERVICE HAS FAILED TO
55 OPERATE IN A COMMERCIALY REASONABLE MANNER.

1 4. EXPIRATION. PREPAID CARDS WITHOUT A SPECIFIC EXPIRATION DATE OR
2 POLICY PRINTED ON THE PREPAID CARD AND WITH A BALANCE OF PREPAID SERVICE
3 REMAINING SHALL BE CONSIDERED ACTIVE FOR A MINIMUM OF ONE YEAR FROM THE
4 DATE OF ACTIVATION, OR IF RECHARGED, FROM THE DATE OF THE LAST RECHARGE.

5 5. SERVICE SUSPENSION. A PREPAID PROVIDER HAS THE RIGHT TO SUSPEND USE
6 OF A PREPAID CARD AND ITS ACCESS TO PREPAID SERVICE WHEN IT REASONABLY
7 BELIEVES THAT (A) THE PREPAID CARD HAS BEEN STOLEN, OR (B) THE PREPAID
8 SERVICE HAS BEEN OBTAINED FRAUDULENTLY, OR (C) THE PREPAID CARD OR
9 SERVICE IS BEING USED IN AN ILLEGAL OR FRAUDULENT MANNER. IF THE PREPAID
10 PROVIDER SUSPENDS USE OF THE PREPAID SERVICE, THE PREPAID PROVIDER SHALL
11 DIRECT AN AFFECTED CONSUMER TO CONTACT CUSTOMER SERVICE WHERE AN EXPLA-
12 NATION SHALL BE PROVIDED.

13 S 103-D. ENFORCEMENT. 1. VIOLATIONS. THE COMMISSION SHALL HAVE THE
14 POWER AND AUTHORITY TO ASSESS A PENALTY AGAINST ANY PERSON THAT VIOLATES
15 ANY PROVISION OF THIS ARTICLE OR ANY REGULATION OR ORDER OF THE COMMIS-
16 SION IMPLEMENTING OR ENFORCING THE PROVISIONS OF THIS ARTICLE. THE
17 PENALTY FOR A FIRST VIOLATION SHALL NOT EXCEED FIVE THOUSAND DOLLARS AND
18 THE PENALTY FOR EACH SUBSEQUENT VIOLATION SHALL NOT EXCEED TEN THOUSAND
19 DOLLARS. ALL MONEYS COLLECTED FROM ANY PENALTY SHALL BE PAID INTO THE
20 GENERAL FUND.

21 2. REGULATIONS. THE COMMISSION SHALL ADOPT ANY RULES AND REGULATIONS
22 NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ARTICLE.

23 3. PRIVATE RIGHT OF ACTION. ANY PERSON WHO SUFFERS DAMAGES AS THE
24 RESULT OF, OR IS OTHERWISE AGGRIEVED BY, A VIOLATION OF ANY PROVISION OF
25 THIS ARTICLE, MAY COMMENCE A CAUSE OF ACTION OR ASSERT A COUNTERCLAIM IN
26 A COURT OF COMPETENT JURISDICTION.

27 S 3. Subdivision (g) of section 103 of the abandoned property law, as
28 added by chapter 170 of the laws of 2004, is amended to read as follows:

29 (g) "Gift certificate" shall mean a written promise or electronic
30 payment device that: (i) is usable at a single merchant or an affiliated
31 group of merchants that share the same name, mark, or logo, or is usable
32 at multiple, unaffiliated merchants or service providers; and (ii) is
33 issued in a specified amount; and (iii) may or may not be increased in
34 value or reloaded; and (iv) is purchased and/or loaded on a prepaid
35 basis for the future purchase or delivery of any goods or services; and
36 (v) is honored upon presentation. Gift certificate shall not include an
37 electronic payment device linked to a deposit account, or prepaid tele-
38 phone calling cards regulated under [section ninety-two-f] ARTICLE
39 FIVE-A of the public service law. Gift certificate also shall not
40 include flexible spending arrangements as defined in Section 106(c)(2)
41 of the Internal Revenue Code, 26 U.S.C. S 106(c)(2); flexible spending
42 accounts subject to Section 125 of the Internal Revenue Code, 26 U.S.C.
43 S 125; Archer MSAs as defined in Section 220(d) of the Internal Revenue
44 Code, 26 U.S.C. S 220(d); dependent care reimbursement accounts subject
45 to Section 129 of the Internal Revenue Code, 26 U.S.C. S 129; health
46 savings accounts subject to Section 223(d) of the Internal Revenue Code,
47 26 U.S.C. S 223(d), as amended by Section 1201 of the Medicare
48 Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L.
49 No. 108-173; or similar accounts from which, under the Internal Revenue
50 Code and its implementing regulations, individuals may pay medical
51 expenses, health care expenses, dependent care expenses, or similar
52 expenses on a pretax basis. Gift certificate also shall not include a
53 prepaid discount card or program used to purchase identified goods or
54 services at a price or percentage below the normal and customary price;
55 provided that the expiration date of the prepaid discount card or
56 program is clearly and conspicuously disclosed. Gift certificate also

1 shall not include payroll cards or other electronic payment devices
2 which are linked to a deposit account and which are given in exchange
3 for goods or services rendered.

4 S 4. Subdivision 1 of section 396-i of the general business law, as
5 amended by chapter 170 of the laws of 2004, is amended to read as
6 follows:

7 1. For the purposes of this section, "gift certificate" shall mean a
8 written promise or electronic payment device that: (i) is usable at a
9 single merchant or an affiliated group of merchants that share the same
10 name, mark, or logo, or is usable at multiple, unaffiliated merchants or
11 service providers; and (ii) is issued in a specified amount; and (iii)
12 may or may not be increased in value or reloaded; and (iv) is purchased
13 and/or loaded on a prepaid basis for the future purchase or delivery of
14 any goods or services; and (v) is honored upon presentation. Gift
15 certificate shall not include an electronic payment device linked to a
16 deposit account, or prepaid telephone calling cards regulated under
17 [section ninety-two-f] ARTICLE FIVE-A of the public service law. Gift
18 certificate also shall not include flexible spending arrangements as
19 defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C. S
20 106(c)(2); flexible spending accounts subject to Section 125 of the
21 Internal Revenue Code, 26 U.S.C. S 125; Archer MSAs as defined in
22 Section 220(d) of the Internal Revenue Code, 26 U.S.C. S 220(d); depend-
23 ent care reimbursement accounts subject to Section 129 of the Internal
24 Revenue Code, 26 U.S.C. S 129; health savings accounts subject to
25 Section 223(d) of the Internal Revenue Code, 26 U.S.C. S 223(d), as
26 amended by Section 1201 of the Medicare Prescription Drug, Improvement,
27 and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts
28 from which, under the Internal Revenue Code and its implementing regu-
29 lations, individuals may pay medical expenses, health care expenses,
30 dependent care expenses, or similar expenses on a pretax basis. Gift
31 certificate also shall not include a prepaid discount card or program
32 used to purchase identified goods or services at a price or percentage
33 below the normal and customary price; provided that the expiration date
34 of the prepaid discount card or program is clearly and conspicuously
35 disclosed. Gift certificate also shall not include payroll cards or
36 other electronic payment devices which are linked to a deposit account
37 and which are given in exchange for goods or services rendered.

38 S 5. This act shall take effect on the first of the calendar month
39 commencing immediately after the ninetieth day after it shall have
40 become a law; provided that any rules and regulations, or any other
41 actions, necessary to implement the provisions of this act on its effec-
42 tive date are authorized and directed to be completed on or before such
43 date. This act shall only apply to prepaid cards printed on or after
44 such effective date, and to advertisements, promotions, point-of-sale
45 materials and voice prompts relating to a prepaid service that is
46 created, aired, printed, distributed or otherwise disseminated on or
47 after such effective date.