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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)	
In the Matter of)	
_____)	
Calling Party Pays Service Option)	WT Docket No. 97-207
in the Commercial Mobile Radio Services)	
_____)	
_____)	

**OPPOSITION OF THE
UNITED STATES TELEPHONE ASSOCIATION
TO
PETITION FOR EXPEDITED CONSIDERATION**

I. INTRODUCTION

The United States Telephone Association ("USTA") respectfully opposes CTIA's petition for expedited consideration of nationwide rules for Calling Party Pays ("CPP") billing capabilities of CMRS providers.^{1/} The marketplace, not regulation, should govern the deployment of CPP. Commencement of a rulemaking on CPP, as the petition requests, is unnecessary and would wrongly signal to the public a reliance on regulation that could distort the efficient development of CPP capabilities.

USTA's members, approximately 1200 incumbent local exchange carriers ("LECs"), are directly affected by the issues raised in this docket. USTA previously filed comments and reply comments on the notice of inquiry on CPP that the Commission released in

^{1/} See Petition For Expedited Consideration Of The Cellular Telecommunications Industry Association, WT Docket No. 97-207 (filed Feb. 23, 1998) (the "petition"). The Commission requested comment on the petition in FCC Public Notice, WT Docket No. 97-207, DA 98-468 (rel. Mar. 9, 1998) (the "public notice").

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October, 1997.^{2/} As stated in those pleadings, USTA strongly opposes requiring incumbent LECs to bill and collect for CMRS providers' CPP offerings.^{3/} USTA also opposes any requirements that would result in incumbent LECs bearing the financial risks of CMRS providers offering CPP.^{4/}

A rulemaking proceeding on any aspect of CPP is extremely premature. The Commission has not had an opportunity to complete its inquiry on this topic. This is especially important because, contrary to the petition's characterization, the record in response to the NOI showed many areas of fundamental disagreement among the parties.^{5/} Even more significantly, market, technical, and regulatory developments since release of the NOI weigh heavily against further Commission action in this docket.^{6/}

^{2/} See *Calling Party Pays Service Option in the Commercial Mobile Radio Service*, 12 FCC Rcd 17693 (the "NOI"). All references herein to a party's "comments" or "reply comments" refer respectively to comments filed on or about December 16, 1997, or reply comments filed on or about January 16, 1998, in WT Docket No. 97-207.

^{3/} See comments of USTA at 7-8.

^{4/} See reply comments of USTA at 1. USTA stated that the many technical issues raised by CPP should not be the subject of regulation. *Id.* at 2. USTA also asked the Commission to affirm that CMRS providers have the right to collect, or to contract with others to collect, charges from callers for completed calls to CMRS phones, assuming that proper notification of, and affirmative consent by, callers take place. *Id.* at 1-2.

^{5/} Contrast petition at 2 ("Disagreement among the industry regarding CPP is minimal") with reply comments of MCI Telecommunications Corp. at 1-2 ("The record reflects deep divisions within the wireless industry on a wide range of issues....On balance, the record developed to date provides no basis for the Commission to move to the next step, adoption of a Notice of Proposed Rulemaking").

^{6/} The public notice regarding the petition requests comments on, among other things, "technical and marketing developments in the CMRS industry since the release of the *Calling Party Pays NOI* and State regulatory interests and developments." Public notice at 2.

CPP is developing competitively without Commission intervention, as highlighted by AT&T's announcement that it will begin providing CPP in 1998.^{7/} Moreover, CTIA has developed a "standards requirements document" on CPP that industry standards bodies are considering.^{8/} With that industry-led process underway, there is no need for further Commission activity on related issues at this time. As importantly, the National Association of Regulatory Utility Commissioners ("NARUC") adopted a resolution at its 1998 Winter Meeting that cautioned the Commission to "work cooperatively with the states to address the concerns regarding jurisdiction, consumer protection, and asserted necessity of CPP for maintaining local service options."^{9/} NARUC's evident concerns about the legal and policy grounds for further Commission action on CPP also argue against commencement of a rulemaking.

II. THE COMMISSION SHOULD NOT UNDERTAKE THE RULEMAKING REQUESTED IN THE PETITION

The requested rulemaking on CPP is unnecessary and would distort the development of CPP in the United States. The petition broadly asks for a rulemaking "to adopt uniform,

^{7/} See *AT&T Restructuring Ties Cuts To New Products, Compensation, Attitude*, Communications Daily (Wed. Jan. 28, 1998).

^{8/} See *CTIA Service Description For Calling Party Pays (CPP) January 1998*, <http://www.wow-com.com/professional/reference/cppdescrip.cfm> (accessed Apr. 27, 1998) ("CTIA Service Description"). See also *CTIA Finalizes CPP Standard; Issue Now Moves To TIA*, Communications Today (Jan. 13, 1998) (stating that the CPP standards requirements document would "be forwarded to the Telecommunications Industry Association and other appropriate standards-setting bodies for acceptance.")

^{9/} See NARUC, *Resolution Regarding the FCC Inquiry on the CMRS "Calling Party Pays" Service Option*, <http://www.naruc.org/Resolutions/winter98.htm> (accessed Apr. 27, 1998).

nationwide rules for [CPP] service."^{10/} It calls for the Commission to use that rulemaking as a vehicle to (i) develop a national caller notification policy, (ii) assert exclusive jurisdiction over CPP, and (iii) ensure that CMRS providers as common carriers have limited immunity from liability and can enforce payment of their CPP charges.^{11/}

However, the petition fails to make any showing that "uniform, nationwide" CPP rules would serve the public interest at all. The current marketplace for wireless services is adequate to permit CPP to develop efficiently and without burdening either incumbent LECs or their customers with unneeded or harmful regulation. Particularly in light of the high costs of implementing mandatory CPP,^{12/} market-driven deployment is by the far the best alternative. AT&T's announcement of its plans to offer CPP in 1998 -- without Commission regulation -- is but one indication that CMRS providers are responding to market signals in determining whether to make CPP available to the public. Private industry's initiative in considering the CTIA Service Description is another demonstration that industry can and should take the lead in addressing the technical aspects of CPP. The competitive market, not Commission regulations, should provide the basis for nationwide CPP development.

A. Industry, Not The Commission, Should Develop Caller Notification Practices

As USTA has stated, wireline customers should receive adequate notification of potential charges associated with CPP and a means of providing affirmative consent to pay

^{10/} Petition at 1.

^{11/} See *id.* at 4-8.

^{12/} See, e.g., comments of Centennial Cellular Corp. at 18.

for their calls.^{13/} However, Commission rules are not necessary to ensure that proper notification and affirmative consent take place when CPP is offered. CMRS providers and incumbent LECs have strong incentives to make sure that such procedures are in place when CPP is implemented, in order to protect consumers, reduce potential confusion about billing practices, and minimize uncollectibles.

Notification and consent measures can be implemented in many ways.^{14/} The ingenuity of service providers and manufacturers, not regulation, should drive the deployment of these measures. Although the petition raises the issue of possible customer confusion due to potentially different state-mandated notification requirements,^{15/} this concern is highly speculative at present. As noted above, CMRS providers and incumbent LECs are motivated to make sure that notification and consent procedures are easy for consumers of all states to understand and execute, even if the content of such procedures varies slightly with location. A rulemaking on these matters is not needed at this time.^{16/}

^{13/} See comments of USTA at 5.

^{14/} *Id.* Various notification and consent mechanisms are possible. See, e.g., Bell Atlantic, *Calling Party Pays: The Service Your Subscribers Have Been Asking For*, http://www.bell-atl.com/carrier/wlcpp_main.htm (accessed Apr. 27, 1998) printed page 2 of 2 (listing service options and features).

^{15/} See petition at 7 n. 18.

^{16/} See reply comments of Paging Network, Inc. at 7 ("The FCC should allow the industry to develop and test its own standards based on the marketplace need for notifying customers regarding CPP service options").

B. Under A Market-Based Policy Regarding CPP, There Is No Need To Address Jurisdictional Issues

In asking the Commission to assert exclusive, and preemptive, jurisdiction over CPP service, the petition requests action contrary to NARUC's recent plea for cooperative federal-state examination of CPP issues. However, it is unnecessary for the Commission even to address the jurisdictional issue framed in the petition, let alone preempt the states regarding CPP.

Because CPP is developing successfully in the marketplace, a federal-state jurisdictional contest over CPP would be wasteful and unproductive.^{17/} The petition provides, at most, an unproven basis for a Commission decision to preempt, since conflicts between federal and state policies on CPP are both hypothetical and ill-defined. FCC Commissioners have rightly expressed skepticism about the need for such Commission action.^{18/}

In the absence of a definitive need for the Commission to assert authority over CPP, the Commission should be guided by the policy of section 11 of the Communications Act, which requires the Commission to review all regulations in effect in 1998 that "apply to the

^{17/} Indeed, in the record responding to the NOI, parties differ widely on the jurisdictional nature of CPP. *See, e.g.*, reply comments of SBC Communications Inc. ("SBC") at 4-9 (arguing that the Commission does not have jurisdiction over CPP); Personal Communications Industry Association at 6-9 (arguing that Commission jurisdiction over CPP is based on section 332 of the Act); AirTouch Communications, Inc. at 6-8 (arguing that the Commission should assert Title I jurisdiction over CPP).

^{18/} *See CTIA asks FCC to take on calling-party-pays issues; Some FCC members hesitate to jump on bandwagon*, RCR (Mar. 2, 1998) at 8 (reporting that Commissioner Powell stated at CTIA's convention that if the FCC "totally attempted to bulldoze the states out of the way, in the short term, you won't get the certainty you want"); *FCC Treats CPP With Reservation*, Wireless Week (Mar. 2, 1998) at 1 (reporting that Commissioner Furchtgott-Roth stated at CTIA's convention that the FCC is already "swamped with jurisdictional fights with states").

operations or activities of any provider of telecommunications service" and determine whether any such regulation is "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."^{19/} Consistent with the spirit of this command, the Commission should not unnecessarily assert jurisdiction or adopt regulations regarding CPP in the midst of the section 11 biennial review.

The petition's attempt to distinguish CPP from billing and collection services for jurisdictional purposes^{20/} should not be permitted to open the door to unwarranted re-regulation of incumbent LECs' billing and collection operations. As USTA has explained, the Commission should not seek to specially benefit CMRS service providers by reversing its decision in 1986 that deregulated billing and collection services.^{21/} Denying the petition is the simplest and most direct way for the Commission to reaffirm its successful policy of permitting incumbent LECs to offer billing and collection services on a competitive, unregulated basis.

C. A Rulemaking Is Not Necessary To Clarify That CMRS Providers Have the Right To Collect Charges From Callers That Agree To CPP Arrangements

The petition asks the Commission to "ensure" the enforceability of charges associated with CPP by proposing in a rulemaking proceeding some type of system by which CMRS

^{19/} See 47 U.S.C. § 161.

^{20/} See petition at 6.

^{21/} See comments of USTA at 7-8; reply comments of USTA at 5-8.

providers would undertake to file tariffs, contracts, or reports with the Commission.^{22/}

Creation of such a system would be complex and controversial and is totally unnecessary.

Instead of a proceeding to establish a new regime of filings with the Commission by CMRS providers, USTA believes that the Commission should declare, based on the record compiled in this docket and pursuant to section 1.2 of its rules,^{23/} that CMRS providers, as common carriers, have the right to collect, or to contract with others to collect, charges from callers for completed calls to CMRS phones, assuming that proper notification and affirmative consent take place.^{24/}

The declaration would be based on the fact that CMRS providers are common carriers under the Communications Act,^{25/} and that notification and affirmative consent would constitute the commencement of a carrier-customer relationship between the CMRS provider and the end user. Such a declaration would be consistent with the Commission's finding in the Casual Calling Reconsideration Order that an enforceable obligation exists, on an implied-in-fact contract theory, where the customer uses the carrier's service with knowledge of the carrier's charges.^{26/} The declaration would remove uncertainty about the enforceability of such arrangements without imposing unnecessary regulation. It would be an important initial step in assuring the commercial stability of CPP offerings. The Commission

^{22/} See petition at 7-8. The petition also seeks the "traditional common carrier limited immunity from liability" for CMRS providers that choose to offer CPP. *Id.* at 7.

^{23/} 47 C.F.R. § 1.2.

^{24/} See comments of USTA at 5.

^{25/} See 47 U.S.C. § 332(c)(1)(A).

^{26/} See *Policy and Rules Concerning The Interstate, Interexchange Marketplace*, 12 FCC Rcd 15014 (1997) ¶ 28.

should announce this declaration in an order terminating this docket and denying the petition.^{27/}

III. CONCLUSION

The evolution of Calling Party Pays ("CPP") should be governed by the marketplace, not by Commission regulations. The announcements of planned CPP offerings and proposed standards that have occurred since January, 1998, indicate that the marketplace apparently is functioning well. In light of those developments and the concerns recently expressed by state regulators' regarding the jurisdictional and policy issues of CPP regulation, the Commission should not adopt a notice of proposed rulemaking as requested by the petition. Instead, the Commission should affirm the legal right of CMRS providers to collect their charges for

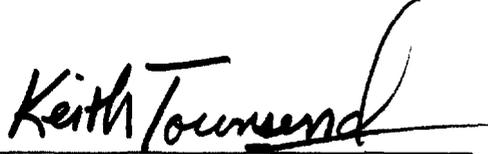
^{27/} In all events, the Commission should terminate this docket. If the Commission decides not to issue the declaration that USTA seeks in order to reduce uncertainty, CMRS providers may nonetheless assert their right to payment under the implied-in-fact contract theory discussed above, so long as proper notification and affirmative consent take place. *See* comments of SBC at 21.

completed calls to CMRS phones, assuming that callers are provided adequate notification of potential charges and provide affirmative consent to pay for their calls.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By:

A handwritten signature in black ink that reads "Keith Townsend". The signature is written in a cursive style and is positioned above a horizontal line.

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