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BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of )

Calling Party Pays Service )  
Option in the Commercial Mobile )  
Radio Services )

WT Docket No. 97-207

REPLY COMMENTS OF  
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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The Cellular Telecommunications Industry Association ("CTIA")<sup>1</sup> submits its Reply Comments in the above-captioned proceeding<sup>2</sup> in support of Calling Party Pays ("CPP") service.

**I. INTRODUCTION AND SUMMARY**

For the CMRS industry to reach its competitive potential and to achieve more balanced traffic flows, it must in the near term be permitted the opportunity to provide CPP. Under the wireline pricing model, the calling party is charged for making calls. Wireless should no longer be the exception to this rule; that is,

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<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

<sup>2</sup> Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, *Notice of Inquiry*, FCC 97-341 (rel. Oct. 23, 1997) ("Notice").

mobile phone users should not have to continue paying to receive calls merely because of historical accident.<sup>3</sup>

The record in this proceeding supports the rapid issuance of a Notice of Proposed Rule Making to adopt Federal rules governing CPP service offerings. As many CPP supporters suggest, such rules should be designed to remove any regulatory barriers to the provision of CPP, while leaving other aspects of CPP service development to market forces. Carriers should be allowed to choose the extent and type of CPP offerings, if any, they wish to make.

As CTIA noted in its Comments, the Commission should in devising CPP rules:

- Adopt a uniform national notification program which imposes the least associated costs, including (1) a distinctive tone to signal a charge for a CPP call; and (2) for a limited time (18 to 24 months), a recorded intercept message which informs callers that they will be charged a fee to call the CMRS customer.
- Prohibit contrary State and local CPP regulation in accordance with the State rate and entry preemption provisions of Section 332(c)(3)(A) of the Communications Act of 1934, as amended,<sup>4</sup> as well as traditional Section 2(b) "impossibility" jurisprudence.<sup>5</sup>
- Permit CMRS carriers choosing to offer CPP to file publicly-available data regarding CPP services which can be relied upon by carriers and subscribers to ensure customer notification of key terms, including obligations

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<sup>3</sup> Rhonda L. Wickham, "Andrew Sukawaty: Sprint's High-Yield Manager," Wireless Review, at 28 (January 1, 1998) (the lack of CPP represents one of several "shackles" which must be shed before wireline/wireless competition will grow substantially).

<sup>4</sup> 47 U.S.C. § 332(c)(3)(A).

<sup>5</sup> 47 U.S.C. § 152(b).

to pay for charges incurred and limitations on carrier liability.

In these reply comments, CTIA addresses those commenters who generally oppose CPP conceptually or wish to place unnecessary, costly restrictions on its provision. As demonstrated below, such opposition is entirely unwarranted in light of the potential benefits arising from CPP services.

**II. THE COMMISSION SHOULD REJECT REQUESTS THAT UNNECESSARILY RESTRICT CPP DEVELOPMENT.**

**A. Reciprocal Compensation Does Not Eliminate The Need For CPP Services.**

The Commission's reciprocal compensation rules governing termination charges between CMRS providers and LECs in no way eliminates the need for CPP. Yet according to Bay Springs, CMRS providers recover any costs associated with CPP calls through interconnection compensation with the LECs, thereby eliminating the need to charge for CPP.<sup>6</sup> This assertion reflects a fundamental misunderstanding of the workings of a competitive telecommunications marketplace.

Compensation for termination of traffic and CPP are two entirely separate issues. As noted by AirTouch, "[r]eciprocal compensation is related to interconnection charges which concern how carriers recover their own costs for [termination] services provided to another carrier."<sup>7</sup> CPP, by contrast, concerns the

<sup>6</sup> Comments of Bay Springs Telephone Company, Crockett Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Inc., Roanoke Telephone Co., Inc., and West Tennessee Telephone Co., Inc. at 3-5 ("Bay Springs").

<sup>7</sup> Comments of AirTouch at 4 (emphasis in original).

recovery of charges from consumers for services provided to them. CPP is a service distinct from interconnection termination.

Bay Springs' comments apparently are predicated upon the assumption that CMRS costs for CPP are limited to call termination. This viewpoint fails to account for most of the costs associated with the provision of wireless services, and in particular fails to account for the fixed costs of providing these services. These are recovered through charges to consumers rather than through reciprocal interconnection termination charges.

In the context of the CPP proposal, Bay Springs' assertion that reciprocal compensation situates CMRS providers similarly to monopoly carrier LECs is both irrelevant and incorrect.<sup>8</sup> In fact, a major factor favoring CPP is that it would make wireless communications more like wireline communications. In the latter case, the person initiating the call pays. Assuring that there are no barriers to the implementation of CPP arrangements for wireless companies brings two important advantages: (1) it is familiar to consumers of telecommunications and (2) it is efficient in the sense that the person deciding to invoke costs is the person paying those costs.

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<sup>8</sup> Comments of Bay Springs at 3.

**B. LECs Need Only Make Available Relevant Data To Bill For CPP; Billing and Collection Services Are Not Required At This Time.**

As CTIA has noted, for CPP to be viable, CMRS carriers need access to data necessary to bill callers for CPP calls.<sup>9</sup> Section 251(c)(3) of the Communications Act<sup>10</sup> obligates incumbent LECs to provide requesting telecommunications carriers, on an unbundled basis, information sufficient for billing and collection.<sup>11</sup> Moreover, prior to the 1996 codification, the Commission determined that BNA was a Title II common carrier service to which other interstate common carriers were entitled access.<sup>12</sup> For these reasons, the elements necessary to bill for

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<sup>9</sup> CTIA Service Report, *The Who, What and Why of "Calling Party Pays,"* 13-14 (July 4, 1997) (the Commission's rules currently require access to Automatic Number Identification ("ANI"), the Line Identification Database ("LIDB"), and the Billing Name and Address ("BNA")).

<sup>10</sup> 47 U.S.C. § 251(c)(3), as added by the Telecommunications Act of 1996.

<sup>11</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499 (1996) at ¶¶ 516-17 ("We conclude that operations support systems and the information they contain fall squarely within the definition of 'network element' and must be unbundled upon request under Section 251(c)(3) . . . [T]he information contained in, and processed by operations support systems can be classified as 'information sufficient for billing and collection . . .'").

<sup>12</sup> Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, *Second Report and Order*, 8 FCC Rcd 4478 (1993) (requiring LECs to provide to interstate common carriers non-discriminatory access to the BNA of LEC subscribers using LEC calling cards or authorizing collect or third party calls).

CPP calls are presently available to CMRS providers.<sup>13</sup> Mandating access to billing data, though, is not tantamount to requiring LECs to provide billing and collection services.

Because CPP service carries no compulsion to provide billing and collection services, contrary to commenter assertions,<sup>14</sup> CPP would not infringe upon any LEC rights.<sup>15</sup> In the absence of compulsion, issues of goodwill should not arise. Moreover, the form of customer notification advocated by CTIA and other commenters is designed to eliminate customer confusion, thus limiting as well possible LEC concerns.

On a related note, claims that CPP service may pose a threat to consumers' perception of universal service<sup>16</sup> are also easily dismissed. The national notification program the Commission ultimately adopts can be tailored to ensure that callers of wireless customers do not confuse CPP charges for increases in their wireline local phone bill. In addition, the lack of compulsory LEC billing obligations should further abate this concern.

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<sup>13</sup> See, e.g., Comments of SBC Communications, Inc. at 4-5 (CMRS carriers can use the BNA derived from unbundled network elements ("UNE") to bill customers themselves).

<sup>14</sup> See Comments of Bay Springs at 7.

<sup>15</sup> While the employment of LEC services for billing and collection may be the first choice for most CMRS providers, it is not the sole choice available.

<sup>16</sup> Comments of The United States Telephone Association at 4.

**C. A National Notification Policy Which Informs Callers That They Will Be Assessed A Charge To Complete A CPP Call Will Best Promote The Public Interest.**

CTIA continues to believe that a national policy designed to provide callers with necessary information in an efficient, cost-effective manner best serves the public interest. To minimize customer confusion, and to ensure uniform growth and development of CPP services, a national notification policy is crucial.

Contrary to commenter assertions,<sup>17</sup> an intercept message which includes the exact charge for a CPP call is not only unnecessary and prohibitively expensive but also misleading. The costs associated with such specificity are very high, to both the carrier<sup>18</sup> and the caller.<sup>19</sup> In addition, a CMRS carrier's intercept message likely will be unable to account for the total charges associated with a call, as it cannot necessarily provide accurate assessments of associated wireline charges. Moreover, the more lengthy the message, the higher the probability that callers will become frustrated and terminate the call prior to its completion. Considering the possibility for more efficient

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<sup>17</sup> Comments of the Washington Utilities and Transportation Commission at 5 (FCC should require an intercept message with a specific disclosure of CPP rates); Comments of Omnipoint Communications, Inc. at 25 (CMRS provider must disclose charges).

<sup>18</sup> See, e.g., Comments of U S West, Inc. at n.8 (carrier specific messages which detail specific rates are very costly).

<sup>19</sup> Comments of CTIA at n.19 (longer intercept messages which include rates and other key information may increase the total costs of the call to the caller).

notification mechanisms,<sup>20</sup> imposing these costs seem unjustified especially given the public's experience with billing for long distance services (for example, dial around services).

On a related note, at this stage in its development, artificial constrictions on CPP service offerings are unnecessary and likely harmful. That is, there is no basis at this point to restrict CPP to local offerings only.<sup>21</sup> To the extent that complexities arise with nationwide CPP implementation, the Commission, in the first instance, should remove known regulatory obstacles. Reliance upon the market to resolve any remaining issues is entirely appropriate. Decisions concerning the scope of CPP service offerings, however, should be left to the carriers and their customers.

**D. The Commission Has Exclusive Jurisdiction Over CPP.**

The Commission has exclusive jurisdiction over CPP service offerings, to the exclusion of State and local rate and entry regulation.<sup>22</sup> According to Bay Springs' jurisdictional analysis, Section 2(b)<sup>23</sup> and the Eighth Circuit's observation in Iowa

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<sup>20</sup> As CTIA noted in its Comments, the Commission can adopt more efficient means, independent of the intercept message, to ensure disclosure of carrier rates, including, (1) permissive CPP tariff filings under Section 203, 47 U.S.C. § 203; (2) informational CPP contracts under Section 211, 47 U.S.C. § 211; or (3) periodic CPP informational reports in accordance with Section 219, 4 U.S.C. § 219. Comments of CTIA at 24-31.

<sup>21</sup> See Comments of Centennial Cellular Corp. at 15 (advocating CPP on a local basis only based upon the concern that CPP may thwart CMRS development as a competitor to landline services).

<sup>22</sup> Comments of CTIA at 12-24.

<sup>23</sup> 47 U.S.C. § 2(b).

Utilities Board v. FCC<sup>24</sup> that "'section 2(b) 'fences off' intrastate matters from FCC regulation,'"<sup>25</sup> justify the conclusion that CPP is an intrastate service over which the Commission has no jurisdiction. Bay Springs reasons that because LECs will be required to charge their wireline subscribers for calls terminated by CMRS providers, and most of these calls will be local,<sup>26</sup> Section 2(b) as interpreted by the Eighth Circuit prohibits Commission regulation.

Bay Springs' analysis is flawed on several levels. First, it is based upon the factual assumption that CPP service can only be provided by requiring LECs to bill their customers for CPP calls. As CTIA has noted, access to BNA and other data is not akin to requiring a LEC to provide billing and collection. Moreover, to the extent it seems to rely upon Iowa Utilities, Bay Springs fails to account for the Eighth Circuit's holding with respect to CMRS-LEC interconnection. As the Court of Appeals acknowledged, Congress expressly amended Section 2(b) to permit the Commission to issue "rules of special concern" for CMRS providers.<sup>27</sup>

Finally, Bay Springs fails to consider that the States' jurisdiction under Section 2(b) is limited "to the extent that it stands as an obstacle to the accomplishment and execution of the

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<sup>24</sup> 120 F.3d 753, 796 (8th Cir. 1997) ("Iowa Utilities").

<sup>25</sup> Comments of Bay Springs at 5.

<sup>26</sup> Id. at 6.

<sup>27</sup> Iowa Utilities, 120 F.3d at n.21 (referencing 47 U.S.C. § 332(c)(3)(A) and § 332(c)(1)(B)).

full purposes and objectives of Congress."<sup>28</sup> As CTIA explained in its Comments, Commission regulation of CPP would meet the "impossibility" exception to Section 2(b).<sup>29</sup> Moreover, as Bay Springs acknowledges, CPP services will be at least partially interstate,<sup>30</sup> and this interstate component necessarily imparts Commission jurisdiction.<sup>31</sup> CPP cannot and should not be labeled a purely intrastate service. Given CMRS carrier service boundaries, with 82 percent of MTA-based PCS license areas and 23 percent of BTA-based PCS license areas crossing state boundaries, and the development of regionalized interstate cellular service coverage,<sup>32</sup> CPP services will likely cross state lines.

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28 Louisiana Pub. Serv. Comm'n v. F.C.C., 476 U.S. 355, 374 (1986) (citations omitted).

29 Comments of CTIA at 17-24.

30 Comments of Bay Springs at 6.

31 See National Ass'n of Regulatory Util. Comm'rs v. F.C.C., 746 F.2d 1492, 1498 (D.C. Cir. 1984) ("purely intrastate facilities and services used to complete even a single interstate call may become subject to FCC regulation to the extent of their interstate use"); see also Puerto Rico Tel. Co. v. F.C.C., 553 F.2d 694, 700 (1st Cir. 1977) ("no matter how frequently or infrequently a subscriber places interstate calls, he is entitled to have the conditions placed on access to the interstate telephone system measured against federal standards of reasonableness").

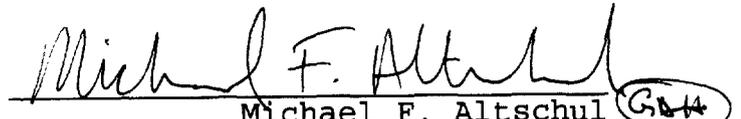
32 Comments of CTIA at 19.

**III. CONCLUSION**

CTIA respectfully requests that the Commission adopt rules governing CPP services consistent with the proposals raised herein and in its Comments.

Respectfully submitted,

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