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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

FEB 23 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**PETITION FOR EXPEDITED CONSIDERATION OF  
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

**CELLULAR TELECOMMUNICATIONS  
INDUSTRY ASSOCIATION**

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February 23, 1998

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The Cellular Telecommunications Industry Association ("CTIA")<sup>1</sup> submits this Petition for Expedited Consideration ("Petition") in the above-captioned proceeding.<sup>2</sup> CTIA requests that the Commission issue shortly a Notice of Proposed Rulemaking ("NPRM") to adopt uniform, nationwide rules for Calling Party Pays ("CPP") service.

**I. INTRODUCTION**

The CMRS industry has achieved enormous growth in recent years primarily due to Congressional and Commission policies which promote competitive results. For CMRS to reach its full

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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).

competitive potential, however, the Commission must continue to remove unnecessary regulatory barriers. CPP may create more balanced traffic flows between CMRS providers and local exchange carriers ("LECs"), thereby rendering CMRS services more competitive.

The Commission's CPP proceeding, which was initiated in response to CTIA's CPP proposals,<sup>3</sup> has sparked an informed debate within the telecommunications industry. Consistent with CTIA's proposals, there is general agreement within the industry that the FCC should promote the concept of CPP along with the adoption of national consumer protection measures for CPP callers. The record in this proceeding supports the rapid issuance of an NPRM to adopt Federal rules governing CPP service offerings.<sup>4</sup>

Disagreement among the industry regarding CPP is minimal. Only a few issues are still under debate, including, among other topics, the billing and jurisdictional issues surrounding CPP implementation. If the Commission utilizes the proposals CTIA has set forth in an NPRM, these issues may be addressed directly and efficiently.

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<sup>3</sup> See CTIA Service Report, *The Who, What and Why of "Calling Party Pays,"* (July 4, 1997) ("CTIA CPP Report").

<sup>4</sup> Only a few commenters such as SBC Communications, Inc. ("SBC") and a group of rural telephone companies, comprised 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. ("Rural Telcos") seemed to oppose further formal Commission inquiry into CPP. SBC, while supporting CPP, objected to a rule making proceeding because it believes that market forces are appropriate to shape all facets of CPP development.

Of primary importance in this debate is a realization as to the appropriate level of FCC oversight necessary to implement CPP. The CTIA position suggests minimal FCC interference in the CMRS/LEC relationship.<sup>5</sup> Indeed, contracts between CMRS providers and LECs for LEC provision of billing and collection also require minimal regulatory interference.<sup>6</sup> This proposal carries the advantage of addressing LEC concerns, such as those raised by the United States Telephone Association ("USTA"), SBC and the Rural Telcos, about the possible harmful effects to LEC goodwill resulting from LEC billing for CPP.<sup>7</sup> Any concerns regarding goodwill undoubtedly will be factored into resulting negotiations.

**II. THE COMMISSION SHOULD RELY UPON MARKET FORCES TO SHAPE CPP DEVELOPMENT.**

CTIA supports the proposition that the Commission's goal in this proceeding should be the removal of regulatory impediments to the implementation of CPP. In the dynamic, competitive CMRS industry, the Commission should allow a market-based approach to determine whether and when CPP will be implemented. This issue was not highly contested by commenters. In large part, commenters view CPP as a voluntary service offering which should

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<sup>5</sup> See Reply Comments of CTIA at 5-6.

<sup>6</sup> By contrast, calls for Commission intervention unnecessarily complicate the CPP development process at an early stage.

<sup>7</sup> See, e.g., Comments of Rural Telcos at 4; Reply Comments of USTA at 9.

be subject to minimal Commission regulation to promote its development.<sup>8</sup>

**III. THE COMMISSION SHOULD ADOPT A NATIONAL NOTIFICATION POLICY TO INFORM CALLERS THAT THEY WILL BE BILLED FOR COMPLETING A CPP CALL.**

CTIA advocates a uniform, national system of customer notification to promote customer awareness that charges may be incurred. A national approach will, among other things, reduce caller confusion and ensure the uniform, nationwide development of sufficient consumer protections, free of burdensome, unnecessary State oversight. The general industry consensus regarding national notification standards makes this a relatively easy issue for the FCC to address. The government's role should be limited to that of quickly adopting the least burdensome rules to ensure adequate customer notification.

Some commenters, such as the Washington Utilities and Transportation Commission and Omnipoint, favor specific disclosure of CPP rates.<sup>9</sup> As demonstrated in the record, a recorded notification of exact CPP charges is very costly to implement for both carriers and callers, would impose delays in call completion, and, due to the variables involved, may not offer meaningful or clear information to the consumer.<sup>10</sup> An NPRM

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<sup>8</sup> See, e.g., Comments of Sprint Corporation at 2; Comments of AT&T Wireless Services, Inc. at 1; Reply Comments of BellSouth at 1-2; Reply Comments of Motorola, Inc. at 1, 5-6; Reply Comments of Nextel Communications, Inc. at 2.

<sup>9</sup> Comments of Washington Utilities and Transportation Commission at 5; Comments of Omnipoint Communications, Inc. at 25.

<sup>10</sup> See Comments of CTIA at n.19; Comments of US West at n.8; Reply Comments of CTIA at 7.

which considers the more efficient cost notification mechanisms set forth by CTIA and other commenters will alleviate any concerns.<sup>11</sup>

#### **IV. THE COMMISSION HAS EXCLUSIVE JURISDICTION OVER CPP.**

The record in this proceeding demonstrates that the Commission may assert its exclusive jurisdiction over the implementation of CPP. State bans or delays on CPP implementation operate as the primary obstacles to nationwide CPP implementation. Commenters have asked the Commission to eliminate State bans on CPP pursuant to Section 332's grant of exclusive federal authority over CMRS rates and entry as well as assert its exclusive jurisdiction over national caller notification mechanisms.<sup>12</sup> CPP is appropriately characterized as a CMRS rate mechanism within the purview of the Commission's exclusive jurisdiction. A traditional Section 2(b) analysis offers another basis for exclusive FCC jurisdiction over CPP customer notification mechanisms.<sup>13</sup> The Commission has the authority, pursuant to the "impossibility" jurisprudence, to preempt inconsistent or additional State customer notification procedures which threaten realization of a uniform national plan.<sup>14</sup>

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<sup>11</sup> The Commission should initially adopt the least burdensome regulations. If it ever becomes necessary to protect consumers from demonstrated abuses, the Commission may revisit this issue and impose requirements as warranted.

<sup>12</sup> 47 U.S.C. § 332.

<sup>13</sup> 47 U.S.C. § 152(b).

<sup>14</sup> Comments of CTIA at 17-24; Reply Comments of CTIA at 10.

Commenters provided a multitude of theories regarding the Commission's jurisdiction to regulate CPP offerings. Most jurisdictional assessments rely in large upon the commenters' underlying regulatory classification of CPP. For instance, some commenters believe that CPP is nothing more than a LEC billing and collection service, and thus believe that the FCC has no authority under Section 332 to mandate or regulate CPP, nor can the FCC preempt State authority over CPP. This position, however, fails to recognize that CPP qualifies as a CMRS service regardless of who is providing the billing and collection functions. Once a service is classified as CMRS, Section 332 preempts States from regulating the rates and entry of the carrier providing that service. Moreover, the CMRS carrier or its agent may perform billing and collection for CPP services, and the LECs, except when acting as agents for the CMRS provider, need not be involved in providing the billing and collection. Clearly, when LEC involvement is limited in this way, there is no room for State authority.

Similarly, the Rural Telcos believe that CPP is an intrastate service over which the FCC lacks jurisdiction entirely.<sup>15</sup> In its comments, CTIA demonstrates that this view fails to consider relevant jurisprudence regarding State limitations on the regulation of intrastate CMRS services as well as the fact that CPP services will be at least partially interstate. Simply stated, due to interstate license areas and

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<sup>15</sup> Comments of Rural Telcos at 5.

expanded calling coverage, CMRS calls will likely cross State lines.

Finally, commenters such as PageNet and PCIA do not believe that State preemption is necessary at this time because States are not erecting entry barriers to the provision of CPP.<sup>16</sup> This view, however, fails to account for the Commission's exclusive jurisdiction over CPP development, for lengthy delays which have already been imposed by State regulators,<sup>17</sup> or for the possibility of inconsistent State notification approaches which may effectively bar CPP service.<sup>18</sup>

**V. THE COMMISSION SHOULD ENSURE THAT CARRIERS HAVE THE MEANS TO CREATE BINDING OBLIGATIONS WITH CALLING PARTIES.**

CTIA and other commenters have urged the Commission to give CMRS providers that choose to offer CPP the ability to avail themselves of the traditional common carrier limited immunity from liability as well as the means to ensure the enforceability of CPP charges.<sup>19</sup> Traditionally, a common carrier's disclosure

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<sup>16</sup> Comments of PageNet at 7-8; Comments of PCIA at 9.

<sup>17</sup> For example, the California Public Utilities Commission prohibited cellular provision of CPP for seven years before authorizing a limited market trial. See CTIA CPP Report at 17.

<sup>18</sup> As an illustration, if State regulators in Maryland require a distinct tone with an intercept message, while regulators in D.C. require a unique CPP NXX code and those in Virginia require 1+ dialing, such inconsistent notification mechanisms would likely lead to customer confusion (*i.e.*, a caller from Maryland may mistakenly assume when placing a call that the lack of a unique tone and intercept message means that there is no charge associated with that call) and would render CPP a non-starter for any carrier with a service area crossing several State boundaries. Comments of CTIA at 21-22.

<sup>19</sup> Comments of CTIA at 24-31; Reply Comments of CTIA at 2.

of the key provisions of a service offering within a tariff creates a consumer obligation to pay, allowing for enforceability. Of course, CMRS providers do not file tariffs with the Commission. In an effort to ensure that the traditional common carrier notions are available in a CPP environment, CTIA proposed that the Commission consider permitting CMRS providers to file (1) permissive informational CPP tariff filings similar to those filed by dial-around long distance carriers;<sup>20</sup> (2) informational CPP contracts;<sup>21</sup> or (3) periodic CPP informational reports.<sup>22</sup> CTIA's position regarding protections for liability and enforcement appeared to generate no heated debate. Paging Network, Inc. supports CTIA's request for the use of informational tariffs to provide notification/liability limits.<sup>23</sup>

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20 See 47 U.S.C. § 203.

21 See 47 U.S.C. § 211.

22 See 47 U.S.C. § 219.

23 Reply Comments of PageNet at 7.

**CONCLUSION**

CPP clearly has the potential to revolutionize the competitive development of the CMRS industry. For this reason, the Commission should issue, without delay, an NPRM to adopt CPP service rules consistent with the record in this proceeding. CTIA respectfully requests that the Commission grant its Petition for Expedited Consideration.

Respectfully submitted,

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February 23, 1998

**CERTIFICATE OF SERVICE**

I, Dennette Manson, hereby certify that on this 23rd day of February, 1998 a copy of the foregoing Petition for Expedited Consideration of The Cellular Telecommunications Industry Association was served by hand delivery upon the following:

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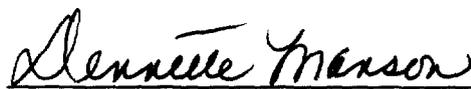
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