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

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**FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Calling Party Pays Service Option)
in the Commercial Mobile Radio Services)

WT Docket No. 97-207

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**COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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The Personal Communications Industry Association ("PCIA")¹ hereby respectfully submits its comments in response to the Notice of Inquiry in the above-captioned proceeding.² As detailed below, the Commission should exert strong leadership in making it possible for broadband commercial mobile radio service ("CMRS") providers to offer calling party pays ("CPP") service on a nationwide basis.

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² *Calling Party Pays Service Option in the Commercial Mobile Radio Services*, WT Docket No. 97-207, FCC No. 97-341 (rel. Oct. 23, 1997) ("NOI").

I. INTRODUCTION AND SUMMARY

The *NOI* invites the discussion of a range of issues associated with the provision of a CPP service option by CMRS providers.³ Specifically, the Commission seeks commenters' views on whether the wide-spread availability of CPP is in the public interest and, if so, how the FCC can be of assistance in promoting the broader availability of, and accessibility to, calling party pays services.

As discussed below, and in the context of broadband CMRS providers only, PCIA strongly supports the FCC's initiative and urges the Commission to establish a national policy promoting calling party pays. Jurisdictionally, the Commission has broad authority to establish such a policy pursuant to its Section 332(c) and 201 authority to regulate interconnected commercial mobile services such as calling party pays. This authority was recently bolstered by the Eighth Circuit in its review of the portions of the Commission's *Local Competition Order* that regulated billing and compensation for interconnection between local exchange carriers ("LECs") and CMRS providers. Thus, the Commission is clearly empowered to establish a federal policy for this service.

Further, industry analysts and members of the wireless community generally agree that implementation of a uniform, nationwide policy for calling party pays could significantly increase domestic wireless telephone usage and greatly enhance the competitive potential of wireless alternatives vis-à-vis traditional local exchange service providers. In turn, additional traffic will promote more efficient use of spectrum by increasing wireless network utilization and by taking full advantage of the benefits of wireless technologies. Given the interstate nature of

³ *Id.*

wireless telecommunications services, the pronouncement of a federal policy in support of calling party pays and establishment of uniform, nationwide rules for this service is essential to the wide-spread introduction and ultimate acceptance of CPP.

The Commission's nationwide policy should encourage, but not require, the deployment of CPP and ensure that local exchange carriers, CMRS providers, and equipment manufacturers work to address calling party pays implementation issues. In particular, these entities should be guided to develop nationwide standards for: (1) inter-carrier data transfer and signaling procedures; and (2) customer notification practices that give customers a sufficient quantity of truthful information about calling party pays but do not distort this information in such a way that discourages the use of CPP or makes the notification too expensive. National standards, as opposed to state-by-state requirements, will greatly enhance the ability of CMRS providers to offer their customers the numerous benefits of calling party pays.

II. THE FCC HAS CLEAR STATUTORY AUTHORITY TO ESTABLISH A NATIONWIDE POLICY ON COMMERCIAL MOBILE SERVICES SUCH AS CALLING PARTY PAYS

Preliminarily, calling party pays is a commercial mobile service as defined in the Communications Act of 1934, as amended, ("Communications Act") rather than a mere billing practice. A "mobile service" is "radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves"⁴ Section 332(d)(1) goes on to define "commercial mobile service" as "any mobile service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such

⁴ 47 U.S.C. § 153(27).

classes of eligible users as to be effectively available to a substantial portion of the public”⁵

Calling party pays — or the placing of a call by a landline customer, its delivery to a mobile customer, and the exchange of the appropriate customer billing data between the LEC and the CMRS provider — clearly falls within the definition of commercial mobile service. First, calling party pays is radio communication between mobile stations and land stations. Second, calling party pays is plainly provided for profit and offered to the public. Finally, calling party pays relies extensively on LEC-CMRS interconnection for both call completion and the exchange of customer data.

Further, both the called and the calling parties perceive CPP as a “service” separate from current cellular service in the same manner in which they perceive landline operator services as a “service” separate from direct-dialed service.⁶ Specifically, customers perceive operator assisted calls differently because customers use the service in different circumstances and change their calling patterns based on the “operator assisted” nature of the service. Similarly, when utilizing CPP, the calling party will use the service differently because they now will expect to pay for the call, while the called party will alter its behavior by leaving his or her telephone on, and distributing his or her telephone number to others. Therefore, CPP is a commercial mobile radio service within the definition of Section 3 of the Communications Act.

⁵ 47 U.S.C. § 332(d)(1).

⁶ Section 226(a)(7) defines “operator services” as “any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both” 47 U.S.C. § 226(a)(7).

Based on Sections 332(c) and 201 of the Communications Act and the Eighth Circuit's interpretation of these sections, the Commission has clear authority to set forth nationwide policies on commercial mobile services such as calling party pays. In 1993, Congress substantially revised and amended Section 332(c) of the Communications Act to give the Commission exclusive and far reaching authority over commercial mobile radio services. Among the powers vested in the Commission was the authority to order interconnection between all common carriers and CMRS providers.⁷ The Act prevents states from regulating either the rates charged by CMRS providers or CMRS market entry, but allows states to regulate a narrow range of issues relating to the "other terms and conditions of commercial mobile services."⁸

In revising Section 332(c), Congress also enacted a conforming amendment to the Commission's jurisdictional statute — Section 2(b) — to give the Commission explicit regulatory authority over the both the interstate and the intrastate aspects of CMRS.⁹ The purpose of this legislation was to "establish a Federal regulatory framework to govern the offering of all commercial mobile services,"¹⁰ thereby "foster[ing] the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure"¹¹

⁷ 47 U.S.C. §332(c)(1)(B). Section 201 state in pertinent part that "[i]t shall be the duty of every common carrier ... in accordance with the orders of the Commission ... to establish physical connections with other carriers" 47 U.S.C. § 201(a).

⁸ 47 U.S.C. § 332(c)(3)(A).

⁹ See 47 U.S.C. § 152(b).

¹⁰ H.R. Conf. Rep. No. 103-213, at 490 (1993) ("Conference Report").

¹¹ H.R. Rep. No. 103-111, at 260 (1993) ("Committee Report").

Following the passage of the revisions to Section 332(c), the Commission issued its *CMRS Second Report and Order*,¹² in which it clarified the obligation of LECs to interconnect with CMRS carriers. Based on Section 201, the Commission determined that “state regulation of the right and type of interconnection would negate the important federal purpose of ensuring CMRS interconnection to the interstate network.”¹³ The Commission then declared that in providing interconnection to CMRS providers, LECs must: (1) provide for mutual compensation; (2) establish reasonable interconnection charges; and (3) not deny a CMRS provider any form of interconnection arrangement that the LEC makes available to any other carrier or customer, unless the LEC can demonstrate that such an arrangement is not technically feasible or not economically reasonable.¹⁴

More recently, in the context of implementing the local competition provisions of the Telecommunications Act of 1996 (“1996 Act”),¹⁵ the Eighth Circuit bolstered the Commission’s jurisdiction over both the intra- and interstate aspects of commercial mobile service offerings. Specifically, in *Iowa Utilities Board v. FCC*,¹⁶ the court held that Section 332(c) and the amended Section 2(b) give the Commission “the authority to order LECs to interconnect with

¹² *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services* (Second Report and Order), 9 FCC Rcd 1411 (1994) (“*CMRS Second Report and Order*”).

¹³ *CMRS Second Report and Order*, 9 FCC Rcd 1411, ¶ 230.

¹⁴ *Id.*, ¶¶ 232-234.

¹⁵ 47 U.S.C. §§ 251, 252.

¹⁶ 120 F.3d 753, 800 n.21 (8th Cir. 1997), *petitions for cert. filed*, 66 U.S.L.W. 3397 (U.S. Nov. 17, 1997) (No. 97-826); (U.S. Nov. 17, 1997) (No. 97-829); (U.S. Nov. 18, 1997) (No. 97-830); (U.S. Nov. 19, 1997) (No. 97-831).

CMRS carriers” and to issue “rules of special concern to the CMRS providers . . .” that address the compensation scheme for the transport and termination of traffic between LECs and mobile service providers.¹⁷

In light of this body of law, the Commission is clearly empowered to develop nationwide calling party pays policies for both CMRS providers and LECs. Most importantly, this authority is part and parcel of the Commission’s Section 332(c) mandate to “establish a Federal regulatory framework to govern the offering of all commercial mobile services,”¹⁸ and the Commission’s Section 201(a) authority to regulate the inter-carrier aspects of LEC-CMRS interconnection. As an interconnected commercial mobile service, calling party pays falls squarely within these federal jurisdictional statutes.

Further, the authority to order the transfer of information necessary to configure the service and bill calling parties for calls made to CMRS customers is closely related to the Commission’s power to promulgate rules for interconnection between LECs and CMRS carriers. This information interchange is at the very heart of calling party pays, and without these carrier-to-carrier exchanges, calling party pays cannot be implemented. Finally, requiring carriers to share this information also is critical to promoting inter-carrier competition, consistent with the purposes underlying the 1996 Act.

¹⁷ In particular, the court upheld 47 C.F.R. §§ 51.701 (scope of transport and termination pricing rules); 51.703 (reciprocal compensation obligation of LECs); 51.709(b) (rate structure for transport and termination); 51.711(a)(1) (symmetrical reciprocal compensation); 51.715(d) (interim transport and termination pricing); 51.717 (renegotiation of existing non-reciprocal arrangements).

¹⁸ Conference Report at 490.

In the *NOI*, the Commission sought comment on its *Arizona Decision*,¹⁹ in which the FCC, pursuant to Section 332(c)(3)(A), denied the State of Arizona's petition requesting authority to continue regulating rates and market entry for CMRS providers operating in that state. The Commission rejected the petition because Arizona produced insufficient evidence to demonstrate that "market conditions for the service at issue fail to protect subscribers adequately from unjust, unreasonable, or unreasonably discriminatory rates."²⁰

In rejecting Arizona's ratemaking petition, the Commission made an ancillary determination that "calling party pays customer billing" does not relate to CMRS rates, but rather represents "other terms and conditions" of CMRS offerings.²¹ Therefore, the Commission concluded, states are empowered to "regulate such practices."²²

In the context of promulgating a nationwide calling party pays policy, there are a number of reasons why the *Arizona Decision* should not be controlling. First, as demonstrated earlier, CPP is a commercial mobile service that the states are precluded from regulating. The *Arizona Decision* focused solely on the "customer billing" aspects of calling party pays, rather than the carrier-to-carrier interconnection aspects of such a scheme. Admittedly, Section 332(c)(3)(A) gives states jurisdiction over "other terms and conditions" of CMRS offerings, including

¹⁹ *NOI*, ¶ 28 (citing *Petition of Arizona Corporation Commission To Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services and Implementation of Sections 3(n) and 332 of the Communications Act*, 10 FCC Rcd 7824 (1995) ("*Arizona Decision*")).

²⁰ *Arizona Decision*, 10 FCC Rcd 7824, ¶ 56 (citing 47 U.S.C. § 332(c)(3)).

²¹ *Id.*, ¶ 59.

²² *Id.*

“customer billing information and practices and billing disputes . . .”²³ Calling party pays is not, however, strictly a matter of customer billing. Rather, as noted above, the bulk of calling party pays involves establishing necessary interconnection arrangements and the transfer of information between interconnecting LECs and CMRS providers. As such, the Commission has broad jurisdiction under Sections 332(c) and 201 to regulate these inter-carrier arrangements.

Second, the Commission’s *Arizona Decision* finding that calling party pays is subject to state jurisdiction is dicta because it is not relevant to its holding that the CMRS market in Arizona was sufficiently competitive to protect consumers from unreasonable rates. Finally, nothing in the *Arizona Decision* precludes federal jurisdiction over CPP service notwithstanding state jurisdiction over certain aspects of CPP. Under such a jurisdictional scheme, the Commission would have the power to ensure that interconnecting carriers exchange sufficient information to make it possible to bill the calling party, without interfering with states’ jurisdiction to protect consumers from false or misleading practices. Such a plan would harmonize the Commission’s plenary authority to regulate LEC-CMRS interconnection with the states’ traditional authority to protect their citizens from deceptive trade practices. If the Commission will not, however, interpret the *Arizona Decision* as empowering it to set forth nationwide guidelines for CPP, then it should overrule the portions of the decision that are inconsistent with this power.

In light of the foregoing, the Commission does not need to address preemption at this time. Rather, the Commission should only set forth nationwide guidelines governing this service, and only preempt state actions that are found to be inconsistent with these guidelines.

²³ Committee Report at 261.

By using its preemptive authority sparingly, the Commission will encourage federal-state comity, and allow industry to work with the states to develop creative solutions in implementing calling party pays.

III. THE ARTICULATION OF A NATIONWIDE POLICY PROMOTING THE AVAILABILITY OF A CALLING PARTY PAYS SERVICE OPTION WILL ENCOURAGE COMPETITION BETWEEN WIRELESS AND WIRELINE SERVICES

The wider availability of calling party pays service will promote Congress's and the Commission's goals by materially increasing domestic wireless telephone usage and enhancing the competitive potential of wireless offerings vis-à-vis traditional landline local exchange services. Available reports indicate that the pricing structure that is currently used for broadband wireless services in the United States — which requires wireless subscribers to pay for *both* incoming and outgoing calls — is a significant deterrent to consumer acceptance of wireless offerings and a major impediment to wireless telephone usage.²⁴ Consumers are accustomed to the billing model used in the wireline context, where the *calling* party pays. Use of the *called* party pays billing methodology for broadband wireless calls in the United States has, in many consumers' minds, contributed to a perception that wireless phone usage is overpriced.

In particular, research shows that many American wireless customers limit the use of their telephones to emergency situations.²⁵ In addition, because wireless users are obligated to pay for calls they make as well as calls they receive, subscribers often do not leave their phones

²⁴ See *Report Cautions Carriers To Position Services As Complement To Landline To Ensure Continued Success*, Mobile Phone News, Jan. 20, 1997 (Vol. 15, No. 3).

²⁵ See *id.*; Shawn Steward, *The Enigma of the Killer App.*, Cellular Business, July 1, 1996 (Vol. 13, No. 7).

turned on and generally refuse to distribute their phone numbers or to publish them in directory assistance.²⁶ Taken together, these behaviors reinforce the common misperception that wireless services, while convenient when there is no access to a landline telephone, are too expensive to serve as a customer's primary means of communication.

This proceeding can therefore serve as an important first step in countering this tendency of wireless customers to turn off their phones, and encouraging the emergence of broadband CMRS as a full fledged competitor to wireline services. The creation of a regulatory environment that allows wireless service providers to compete with landline carriers is consistent with the Commission's proposal to allow wireless carriers to provide fixed, local loop services,²⁷ and with Congress's pro-competitive rationale for enacting the Telecommunications Act of 1996.

Finally, the Commission should not confound calling party pays services with service options that provide the first minute of incoming calls for free.²⁸ With "first minute free" services, the wireless carrier is providing a service without recovering its costs from the cost-causer. Calling party pays, on the other hand, does not purport to make the costs of incoming calls disappear, but merely shifts the burden of paying for these calls to the calling party, as is typical in the landline context. Thus, rather than being seen as a substitute for calling party pays

²⁶ Jon J. Auerbach, *Lessons From Europe Drive Frantic Scramble In Telephone Industry*, Wall Street Journal, July 16, 1997, at A8; *Calling Party Pays, Prepaid May Be Answer To Reduce Churn, Open Revenue Streams*, Mobile Phone News, Nov. 25, 1996 (Vol. 14, No. 47).

²⁷ *See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, 11 FCC Rcd 8965 (1996).

²⁸ NOI, ¶ 14.

services, first free minute should be seen as an alternative that is used because nationwide CPP is presently not available.

IV. THE COMMISSION SHOULD ENCOURAGE INDUSTRY REPRESENTATIVES TO WORK TOGETHER TO ADDRESS CALLING PARTY PAYS IMPLEMENTATION ISSUES WHILE ALLOWING CARRIERS TO CHOOSE WHETHER OR NOT TO OFFER THIS SERVICE

PCIA urges the Commission to utilize its jurisdiction over commercial mobile services to work with equipment manufacturers, CMRS providers, local exchange carriers, and state regulators to develop a national policy that promotes the growth and development of calling party pays services. Such a national policy should address both inter-carrier technical issues and customer notification issues.

Technically, calling party pays cannot flourish if LECs and CMRS providers are unable to exchange data necessary for routing and billing a call. Thus, industry standards setting groups should be encouraged to develop signaling and data procedures that allow carriers to exchange this data if they choose to avail themselves of the CPP market opportunity. Such nationwide standards will simplify the provision of calling party pays by allowing any broadband CMRS provider using any air interface to offer this service in conjunction with any LEC or intervening carrier, such as an IXC. Further, nationwide standards are essential if roamers are to share in the benefits of calling party pays.

PCIA also believes that customer notification practices is an issue that requires a national solution crafted by carriers. The manner in which customer notification is provided can significantly detract from market acceptance of CPP. If such customer notification is presented in a manner that confuses the caller, unnecessarily interferes with his or her ability to place the

call in an expedient fashion, or disparages the service by presenting it as unduly expensive, then calling party pays will not flourish. Also, the FCC may wish to seek input from states regarding consumer issues related to notification in light of the states' traditional role in consumer protection. However, there should be nationwide standards that strike the appropriate balance between identifying CMRS calls for which callers must pay and not discouraging customers from making calls to CMRS customers.

There also should be an agreed upon set of standards for billing calls, in particular, to prevent unbillable calls from transient phones such as pay telephones or hotels. Because inter-carrier billing is essential to the success of calling party pays, nationwide guidelines for sharing information for proper billing that are fair to LECs, IXCs, and CMRS carriers must be developed.

As described above, while the aforementioned standards are being negotiated and promulgated, the FCC need only take steps to regulate CPP services if roadblocks to deployment develop. Most notably, these roadblocks might include state regulations that either prohibit carriers from offering calling party pays services, or mandate the deployment of such services by carriers, or a refusal by LECs to offer the interconnection arrangements necessary to provide CPP. In such cases the FCC should take appropriate action to ensure that such state activities do not interfere with the ability of carriers to offer calling party pays services according to a national blueprint, or not to offer these services at all.

Such flexibility is appropriate because affording wireless carriers the option of either offering or not offering CPP will not prevent the deployment of this service. Given the competitive nature of the wireless market, a number of carriers in each market will inevitably offer calling party pays as a means of distinguishing their services from those offered by other

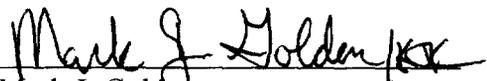
providers. In addition, such a market-driven process is more efficient than mandating that all CMRS carriers offer calling party pays, because it allows *consumers* to drive the choice of whether they want this feature, and, if so, how much they are willing to pay for it.

V. CONCLUSION

Until today, domestic introduction of calling party pays service has been severely limited because of the lack of uniform, nationwide mechanisms for billing and collection, technical implementation, and consumer notification practices. To help overcome these impediments and make nationwide CPP service a reality, PCIA urges the Commission to establish a national policy promoting wide-spread implementation of CPP.

Respectfully submitted,

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