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Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Forbearance from Applying Provisions of) WT Docket No. 98-100
Communications Act to Wireless)
Telecommunications Carriers)

COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, files these comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Omnipoint and its affiliates currently provide CMRS services in several U.S. markets, including New York City, Philadelphia, Boston, and Miami. As a general matter, Omnipoint supports PCIA's position that the Commission should forbear from applying the TOCSIA provisions of the Communications Act, 47 U.S.C. § 226, to CMRS operators. Omnipoint is particularly concerned that TOCSIA should not apply to customer notification processes associated with a CMRS calling party pays ("CPP") service. In this proceeding, the Commission should clarify that TOCSIA does not apply to CMRS CPP services; alternatively, the Commission should forbear from such regulation of CPP.

As the Commission has stated in its *CPP NOI*, CPP can "encourag[e] and facilitat[e] competition in the local exchange telephone market."² Omnipoint believes that CPP will significantly enhance and further competition both among wireless carriers, and between wireless and wireline carriers. CPP will help to level the playing field by

¹ Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Dkt. No. 98-100, GN Dkt. No. 94-33, MSD-92-14, FCC 98-134 (rel. July 2, 1998).

² Calling Party Pays Service Option in the Commercial Mobile Radio Services, Notice of Inquiry, WT Docket No. 97-207, 12 FCC Rcd. 17693, ¶ 1 (1997) (the "*CPP NOI*").

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allowing wireless carriers to eliminate the charges levied on their wireless subscribers for incoming calls, making wireless services more attractive to consumers, and promoting wireless services as a feasible substitute for wireline services. These changes will not happen overnight, but wireless services will gradually make inroads into the monopolistic, entrenched local markets. Real competition will occur through gradual, incremental changes in traffic patterns, significantly encouraged by CPP.

Omnipoint also recognizes that some transitional customer notification to the calling party of the CPP charges benefits the consumer and is in the public interest.³ A long term solution for CPP notification is the implementation of NPAs that are Easily Recognizable Codes ("ERCs") for use by CMRS CPP carriers.⁴ For a transitional period, Omnipoint believes that the Commission should also develop a uniform national method to inform calling parties that they will pay for the CMRS portion of the call, and what those charges will be. This transitional CPP notification process is, however, completely different from the objectives of TOCSIA, and so CMRS offering pro-consumer CPP notification should not be subject to the elaborate and restrictive obligations of "operator service providers" under Section 226(b) of the Act.

A. CPP Is Not An Operator Service Subject to TOCSIA

In this proceeding, Omnipoint believes it would be appropriate for the Commission to clarify that TOCSIA does not apply to CMRS CPP service offerings,

³ Omnipoint believes that a notice obligation should be transitional to allow callers to become generally accustomed to the CPP concept in the wireless context, as it is the rule in the wireline context. While a notification system would be helpful at first, such a system could be costly to implement and maintain for an extended period of time. Moreover, consumers will quickly tire of listening to lengthy announcements to process calls they already know are to CPP subscribers. Therefore, customer notification obligations for an indefinite period (such as the TOCSIA requirements) would hamper the introduction of wireless-to-wireline competition.

⁴ Reply Comments of Omnipoint Communications, Inc., WT Dkt. 97-207, DA 98-468, at 8-9 (May 8, 1998).

including CPP notification and associated credit card transactions.⁵ A CMRS operator that provides a CPP notification to a calling party does not function as a "provider of operator services" because it is *not* an offering for "interstate telecommunications service initiated from an aggregator location." 47 U.S.C. § 226(a)(7). Rather, the CPP offering is *initiated* when the call is handed off from the originating carrier to the wireless operator. Thus, the OSP is the carrier that regularly serves the aggregator location with telecommunications, access to the PSTN, and operator assistance services, such as the LEC serving the public phone. The CMRS CPP service does not initiate the call from the aggregator location or offer calling parties with access to the PSTN, and so the CMRS operator is not the OSP.

The Commission's *GTE Declaratory Ruling*⁶ supports that providers of CMRS CPP are not operator service providers. In that decision, the Commission held that GTE's mobile services were operator services because they "provide[] a radio link between the airplane and ground base station, [and] interconnect[] directly to the interstate switched network."⁷ By contrast, the Commission found that GTE was not operator service provider with its Railfone and Mobilnet services because another carrier "connect[s] the calls from Railfone and Mobilnet to the [interstate public] switched network."⁸ Because the CMRS CPP provider offers neither the radio link to the aggregator location nor

⁵ Because the CPP provider does not make telephones available to the public, it is also not an "aggregator." *C.f.*, 47 C.F.R. § 64.708(b).

⁶ *GTE Declaratory Ruling*, 8 FCC Rcd. 6171 (1993).

⁷ *Id.* at ¶ 18; *see also id.* at ¶ 23-24 (Waterway is an OSP because it offers operator assistance, radio link from public phone, and "interconnection to the switched network"); *id.* at ¶ 26 (Petrocom (cellular operator) is OSP because it offers operator assistance, maintains radio link to aggregator location, and "connection with the public switched network").

⁸ *Id.* at ¶21.

provides the calling party with access to the PSTN, it is not an "operator service provider."

This statutory distinction is consistent with the underlying purposes of TOCSIA because callers to CPP customers -- whether from public phones or private phones -- will be treated in the same manner. As the Commission noted, "[t]he provisions of TOCSIA ensure that transient users of public telephones enjoy the same benefits they would have if they were using private telephones."⁹ Since public phone users are not subject to discriminatory conduct in the CPP context, the public interest concerns underlying TOCSIA are not implicated with CMRS CPP. To the extent the Commission finds that notification to calling parties is in the public interest, that issue should be resolved in the CPP Proceeding (WT Dkt. 97-207) and TOCSIA should not confuse these issues.

B. Alternatively, The Commission Should Forbear from Applying TOCSIA to CMRS CPP Service

As stated above, Omnipoint strongly believes that applying TOCSIA to CMRS CPP service would not serve the public interest concerns underpinning TOCSIA. In passing TOCSIA, Congress meant to protect public telephone callers from "unreasonably high rates and anticompetitive practices"¹⁰ of aggregators and OSPs. Unlike the problems encountered with traditional wireline operator services, there is no evidence that CMRS operators offering CPP would somehow raise rates against calling parties from public telephones, nor would it make economic sense for CMRS operators to engage in such discrimination. Moreover, while aggregators and traditional OSPs may agree to impose higher long-distance rates on the transient telephone user,¹¹ the CPP offering does

⁹ Memorandum Opinion and Order, at ¶ 74.

¹⁰ S. Rep. No. 101-439 at 1 (1990).

¹¹ Memorandum Opinion and Order, at n. 190 ("In the landline context, aggregators contract with an OSP and often receive a commission from the OSP for the

not enable the CMRS operator to set high rates, or compensate the aggregator, to the detriment of the wireline payphone user. Thus, TOCSIA was intended to address issues that do not arise in the CMRS CPP context. Forbearance is appropriate in this case because there is no public interest served in excessive regulation of innovative CMRS offerings such as CPP.

Moreover, unlike the transient user dependent on wireline OSPs with high long-distance charges, the rates charged by CMRS operators for CPP calls are likely to be "just and reasonable." As Omnipoint has previously shown,¹² subscribers will opt for the CPP service options only if the calling party rates -- the rates charged to their family, friends, business associates, customers -- are reasonable. With today's increasingly competitive CMRS market,¹³ CMRS operator that fails to offer reasonable rates will quickly suffer loss of revenue and market share, which is a much more effective deterrent than the threat of regulatory compliance proceedings. Thus, market forces can be relied on to protect consumers by keeping CPP prices and practices reasonable.¹⁴

Omnipoint also believes that TOCSIA requirements are "not necessary for the protection of consumers." 47 U.S.C. § 160(a)(2). As discussed above, market competition will keep CPP rates and practices reasonable. While notification to the calling party is also an important issue, it is one that has been fully addressed in the CPP context on the record before the Commission in WT Docket 97-207. The Commission

arrangement.").

12 Reply Comments of Omnipoint Communications, Inc., WT Dkt. No. 97-207, at 6-7 (Jan. 16, 1998).

13 Third Annual CMRS Competition Report, FCC 98-91, at 2 (rel. June 11, 1998).

14 47 U.S.C. § 160(a)(1) (forbearance may be warranted where enforcement of statute is "not necessary to ensure that the charges, practices; classifications . . . are just and reasonable"). Furthermore, we note that the Commission's formal and informal complaint processes are available to consumers who face isolated incidences of unreasonable or discriminatory rates.

should expeditiously resolve all CPP issues, including notification issues, so that CPP may move forward in a pro-consumer and pro-competitive manner. There is no need to overlay TOCSIA matters onto the CPP notification issue.

Moreover, the public interest is served through forbearance because it would eliminate a number of TOCSIA regulations that would be difficult, if not impossible, to comply with in the CPP context. 47 U.S.C. § 160(a)(3); *id.* at § 161(a)(2) (FCC should eliminate unnecessary regulatory compliance obligations). For example, it is unclear how a CMRS operator with a CPP service would identify calls originating from a wireline public telephone. Notice of Proposed Rulemaking, at ¶ 93. Even if such calls could be identified, TOCSIA would presumably require a separate CPP notification process, even though the CMRS operator would otherwise treat the private and public telephone callers in substantially the same way. The regulatory burden of two separate call procedures would seemingly serve no public purpose. Likewise, it is unclear how CMRS operators offering a CPP service could meet the requirement to ensure that aggregators comply with their disclosure requirements. 47 C.F.R. § 64.703(e). The CMRS operator has no relationship whatever with the underlying aggregator by which to ensure compliance, either through contract or tariff. Since the wireline OSP serving the aggregation location does have such a contractual relationship with the aggregator, and is presumably also responsible for ensuring the aggregator's compliance, enforcement of this TOCSIA regulation against the CMRS operator would be entirely duplicative.

Finally, forbearance would "promote competitive market conditions." 47 U.S.C. § 160(b). As discussed at length in the record in WT Docket No. 97-207, CPP offerings will enhance CMRS carrier competition with incumbent LECs. It is beyond debate that facilities-based competition from all technologies, including wireless, is exactly what is called for in the Telecommunications Act of 1996 and Commission forbearance should serve that goal. Resolving the uncertainties of CPP regulation in a manner that minimizes

regulatory burdens, including those imposed by TOCSIA, can only expedite the market introduction of competitive CPP services.

Conclusion

Omnipoint urges the Commission to forbear from TOCSIA regulation of CMRS CPP services.

Respectfully submitted,

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