

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Calling Party Pay Service Option)
in the Commercial Mobile Radio)
Services)

WT Docket No. 97-207

PETITION FOR RECONSIDERATION AND CLARIFICATION
AND FURTHER COMMENTS ON JURISDICTIONAL ISSUES
SUBMITTED BY THE
PUBLIC UTILITIES COMMISSION OF OHIO

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BACKGROUND

On March 9, 1998, the Federal Communications Commission (FCC) released a Public Notice (Notice) (DA 98-468) in WT Docket No. 97-207 (WT 97-207) in response to the Cellular Telecommunications Industry Association's (CTIA's) Petition for Expedited Consideration requesting that the FCC adopt uniform nationwide rules for calling party pays service (CPP). In addition to inviting comments on the procedural and substantive aspects of the CTIA Petition, parties commenting were also invited to respond to related issues set forth for comment in the FCC's Calling Party Pays Notice of Inquiry (NOI) released on October 23, 1997, in WT Docket No. 97-207. On September 20, 1998, the Public Utilities Commission of Ohio (Ohio Commission) submitted Comments in this docket and addressed, among other things, the unique jurisdictional issues raised by CPP. On July 7, 1999, in a combined order, the FCC released both a Declara-

tory Ruling (Ruling) and Notice of Proposed Rulemaking (NPRM) (the July 7, 1999 order as a whole will be referred to as the “*CPP Order*”).

As will be discussed below, the *CPP Order* contains ambiguous and potentially conflicting conclusions that should be clarified. Further, to the extent the Ruling portion of the *CPP Order* purports that the FCC has exclusive national jurisdiction over CPP, the order should be reconsidered in the context of a further ruling on the NPRM.

INTRODUCTION

The Ruling concluded that CPP is properly characterized as a commercial mobile radio service (CMRS), under the apparent belief that CMRS services are regulated exclusively by the FCC. See *CPP Order* at ¶¶ 7, 15-19. Based on that jurisdictional conclusion, the NPRM portion of the *CPP Order* entertains the notion that the FCC can establish uniform national standards for CPP service, to the exclusion of varying State requirements. *CPP Order* at ¶¶ 27, 30-33. This entire approach is directly inconsistent with Section 332 and is otherwise misguided.

As a threshold matter, CPP is not properly classified as a CMRS service. Even assuming that CPP is a CMRS service, however, Section 332 only preempts State commissions from rate and entry regulation of CMRS, leaving the other aspects of CMRS regulation as concurrent jurisdiction between the FCC and States. The *CPP Order* does not characterize CPP as “rate regulation” and does not meaningfully discuss that issue. Likewise, the FCC did not address whether CPP falls within Section 332’s “other terms and conditions” reservation of State authority over CMRS—that would be the dispositive issue (assuming *arguendo* that CPP is a CMRS service).

The NPRM does recognize that State commissions “have a legitimate interest, pursuant to the ‘other terms and conditions’ exception provided by Section 332(c)(3)(A),

to regulate matters concerning aspects of consumer protection involved [with CPP], e.g., in customer billing practices.” *CPP Order* at ¶ 37. Yet, in the same order, the FCC appears to assert that it has authority to impose national standards for CPP to the exclusion of State-specific regulations. For these reasons, the Public Utilities Commission of Ohio (“Ohio Commission”) must respectfully request that these important issues be clarified and/or reconsidered by the FCC.

The Ohio Commission has several purposes in filing this Petition for Reconsideration and Clarification. Of course, the Ohio Commission is interested in clarifying the important jurisdictional issues presented by CPP and filed this Petition, in part, to preserve its right to pursue the jurisdictional issues on appeal, if necessary. Because the FCC released the jurisdictional conclusion in the Ruling prior to the NPRM being finalized, some of the jurisdictional issues have been placed on a different procedural track while others remain to be resolved as part of the NPRM. In particular, the Ohio Commission recognizes that the Ruling does not dispose of all the pertinent jurisdictional issues as discussed in the NPRM, although Ohio believes that the jurisdictional issues are inextricably intertwined.

As a result of the FCC’s procedural approach, the Ohio Commission largely addresses the jurisdictional issues in this Petition as one set of issues (including both the issues raised in the Ruling and those raised in the NPRM). In that regard, and given that this filing is made prior to the deadline for filing comments in this docket, the jurisdictional comments relating to the NPRM made herein should also be considered as a supplemental NPRM comments by the Ohio Commission.

Another reason for the Ohio Commission filing this Petition is to ensure that the FCC will seriously consider the substantive recommendations contained in the Ohio

Commission's comments in this docket, in light of the jurisdictional concerns being advanced in this Petition. The Ohio Commission does share the FCC's apparent view that CMRS should generally be subject to little regulation, and the Ohio Commission could generally endorse a similar approach to CPP as is being considered in the NPRM (subject to the recommendations made in the Ohio Commission's comments). Even so, it is important that the FCC properly determines that CPP is within the jurisdiction of State commissions. For example, if the FCC decides to adopt now but discontinue after two years a consumer intercept message that contains rate information, the Ohio Commission may wish to continue such a customer notification for a longer period of time. Thus, the jurisdictional issues are not merely academic and should be comprehensively resolved at this time.

The Ohio Commission is clearly not interested in burdening the cellular industry with any unnecessary regulation, as is proven by Ohio's actual track record involving CPP. The Ohio Commission has generally approached CMRS issues with a streamlined regulatory approach where appropriate, and is currently considering further exemptions from regulation of the CMRS industries in Case No. 97-1700-TP-COI. For example, the Ohio Commission does not regulate the retail rates of CMRS services and has not regulated CMRS wholesale rates for the last seven years (well prior to the 1993 amendments to Section 332). CPP does, however, present novel regulatory issues because it is being advanced by CMRS providers while it involves a rate/billing issue that uniquely affects wireline LEC customers.

ARGUMENT

I. **The *CPP Order* contains significant ambiguities regarding the jurisdictional issues that should be clarified by the FCC.**

The FCC concludes that it is “essential” to develop a uniform national notification system for CPP. *CPP Order* at ¶ 27. The order goes on to acknowledge that State commissions have an interest in the same regulations, and seeks to “incorporate the knowledge and concerns of the states with regard to consumer notification and protection.” *CPP Order* at ¶ 30. Similarly, the FCC asks what additional consumer protection measures States could take that would be consistent with a nationwide notification announcement (such as bill inserts and other educational activities). *CPP Order* at ¶ 33. In these ways, the *CPP Order* seems to incorporate a plan to preempt or severely limit the ability of State Commissions to directly address CPP consumer issues.

Elsewhere, the *CPP Order* acknowledges that States have a legitimate interest, pursuant to Section 332(c)(3)(A)’s “other terms and conditions” exception, to regulate matters such as customer billing practices. *CPP Order* at ¶ 37. Meanwhile, as further discussed below, the NPRM entertains in passing the notion that CPP consumer regulation amounts to rate regulation. In short, the FCC’s jurisdictional approach to CPP is unclear, at best. Because the FCC addressed some of the related issues in the Ruling and raised other intertwined issues in the NPRM, the Ohio Commission was forced to file this Petition for Reconsideration to preserve its ability to fully resolve the jurisdictional issues.

Ultimately, the FCC simply directs its staff to “work actively with the states, through NARUC, as well as with interested wireless industry and consumer representatives, to seek to develop a consensus implementation of our calling party notification proposal.” *CPP Order* at ¶ 39. As always, the Ohio Commission appreciates any mean-

ingful opportunity for input into important matters pending before the FCC. Being invited, along with all other interested parties and industry players, to engage in a dialogue concerning these consumer issues with the end goal of gathering consensus to support the FCC's own proposal, is hardly a meaningful compromise and does not convey anything more than the opportunity to participate in this docket (which is already legally required). More directly stated, the invitation to agree with FCC's proposal simply does not meaningfully address, let alone alleviate, Ohio's concerns regarding CPP jurisdiction.

As discussed further below, the Ohio Commission submits that the jurisdictional approach taken in the CPP Order seems to misapprehend the express language of Section 332 and the clear legislative history that reinforces that statutory text. Clarification of the FCC's position on these key issues is appropriate. Either the FCC agrees that the consumer issues being addressed in this docket are within the "other terms and conditions" jurisdiction of the States or it believes that the CPP issues presented somehow require "rate regulation," and are pre-empted. If the FCC is going to attempt to preempt State CPP regulations, it should "come clean" and state its intentions without ambiguity. That is the only way the parties will be able to fairly evaluate the FCC's substantive rules produced by this docket and reasonably evaluate the option to pursue an appeal of the FCC's decision in this case.

II. The Declaratory Ruling improperly concludes that CPP is a CMRS service.

As referenced above, the FCC concluded that CPP is a CMRS service in the Ruling. That conclusion is erroneous. CPP is not a new CMRS service but is plainly a billing option—one that happens to uniquely affect wireline customers. CPP will create new charges that local wireline customers will pay for calls that are made today without

any additional charge. There is no change in the underlying “service” involving a CPP call versus a traditional wireline-to-cellular call. The wireline and cellular networks will function the same way under CPP as they do today.

It is somewhat encouraging that the FCC recognizes a distinction between CPP and “CPP-like” services that may be offered by LECs. In particular, the FCC stated that the Ruling does not apply to CPP-like services, and the NPRM requests further comment on the regulatory classification of those services. *CPP Order* at note 11, note 42, and ¶¶ 72-74. The Ohio Commission submits that any such service offered by a LEC would unequivocally be an intrastate, non-CMRS service within the regulatory domain of State commissions.¹ That manifest conclusion, however, does not resolve the primary jurisdictional issue involving CPP that is presented for decision in this docket.

Interestingly, the FCC, in the context of addressing the proper regulatory classification of “CPP-like” calls, effortlessly concludes that “the calling party is legally the customer of the originating carrier, such as the LEC, and pays charges determined by the LEC, not the CMRS carrier.” *CPP Order* at ¶ 73. The Ohio Commission submits that there really is no difference in this regard between a CPP call and a CPP-like call. The calling party is still legally the customer of the originating carrier. The FCC’s conclusion that the same customer “becomes” a CMRS customer for the purpose of that

¹ While the Ohio Commission reaches this conclusion in the context of supporting its arguments in this docket, the conclusion is based on a certain set of assumptions regarding such a CPP-like service to be offered by a LEC. This docket, however, is not the proper forum to resolve the jurisdictional issues relating to CPP-like services. The record in this case is utterly void of a specific description of how such services would work and how they would be offered to consumers. Listed below is a mere sample of the many questions regarding CPP-like services that cannot be addressed in this docket (absent additional information and another round of comments). Notwithstanding the NPRM’s solicitation of comments in paragraph 72-74, the Ohio Commission submits that the FCC should refrain from attempting to address such an undefined topic. Doing so would raise due process issues and could unnecessarily compound the jurisdictional issues being disputed.

one call that happens to be made to a CMRS customer that has opted for CPP is pure fiction.

What distinguishes a calling party for purposes of CPP versus CPP-like services? If a LEC offers a CPP-like service, would not all calls placed by that LEC's customers be served through that CPP-like service? How could the customer of a LEC that offers a CPP-like service become a transactional customer of the CMRS provider under the FCC's fictional "casual calling" theory? In that sense, cannot the LEC effectively bypass all CPP services by offering a CPP-like service as the first option to callers placing a call to a CMRS telephone number? The point is that there is very little, if any, difference between CPP and CPP-like services. The Ohio Commission submits that the distinction between CPP and CPP-like services is merely a different choice in billing options. As a result, the FCC should acknowledge that CPP is not really a CMRS service, but is a billing service option. It is not the rate being collected (either by a CMRS provider or a LEC) but the other terms and conditions of CPP that triggers regulatory consumer issues for State commissions.

CMRS providers already have interconnection agreements with LECs, whereby each carrier is already obligated to terminate traffic for the compensation provided in those agreements. All of those agreements would appear to be summarily and significantly affected by the FCC's approach in the *CPP Order*, because not a single call will now be terminated by the CMRS provider to a CPP customer unless and until the caller is forced to become a "transactional customer" of the CMRS provider. Thus, under the FCC's approach, there now appears to be a new and significant condition precedent to a CMRS provider's termination of traffic under the existing LEC-CMRS interconnection agreements, for wireline calls placed to CPP customers.

Likewise, contrary to Paragraph 16 of the Ruling, CPP does not meet the “inter-connected service” criteria for being a CMRS service because CPP does not “give subscribers the capability to communicate to *or receive communications from all other users on the public switched network,*” as required by 47 C.F.R. 20.3. In fact, CPP customers cannot receive *any* call from *any* person on the public switched network, unless the caller affirmatively establishes a contractual relationship with the CPP customer’s CMRS provider (even where the caller’s wireline carrier has an interconnection agreement for terminating calls to the CMRS provider).

Neither the CMRS provider nor the CPP customer has any control over whether a call is received from a user of the public switched network. Only the calling party can choose whether to allow a CPP customer to receive a call from the public switched network. As long as the CMRS customer remains a CPP subscriber, that customer cannot receive calls from the public switched network unless a caller also “becomes” a customer of the same CMRS provider. Of course, if the caller refuses to become a customer of that CMRS provider, then the CPP customer is unable to receive a call from the public switched network. Thus, the CPP customer is not connected to the public switched network, as required by Rule 20.3, but is only connected to other customers of the same CMRS provider. Thus, CPP only connects a CMRS customer to a private network consisting of only the customers of that same CMRS provider and does not connect a CPP customer to the public switched network. Being connected to receive a call from the public switched network is beyond the control of a CMRS provider or a CMRS customer who has opted for CPP — it depends entirely on the caller. This situation is unlike any other service and it fails to meet the definitional requirement of Rule 20.3.

The FCC should acknowledge that CPP is not really a new CMRS service, but is merely a billing option.

III. Even assuming that CPP is properly classified as a CMRS service, the FCC lacks authority to impose mandatory uniform national rules regarding CPP because the FCC and State commissions clearly have concurrent jurisdiction over the consumer issues discussed in the NPRM.

Congress enacted Section 332 as part of the Omnibus Budget Reconciliation Act of 1993 (OBRA). Section 332 preempts State regulation over the “entry of or the rates charged by” CMRS providers. Thus, State commissions cannot regulate CMRS rates directly or restrict entry of new providers into the CMRS market. The Ohio Commission and others (including NARUC, SBC, and US West) argued before the FCC that the FCC and State commissions should have concurrent jurisdiction over CPP, pursuant to Section 332(c)(3)’s reservation of jurisdiction to States over “other terms and conditions” of CMRS services. *CPP Order* at ¶ 11. In response to the jurisdictional arguments made in the comments of the Ohio Commission and others, the FCC simply declared that CPP is a commercial mobile radio service under Section 332. *CPP Order* at ¶¶ 15-19. Although the Ohio Commission disagrees with the conclusion that CPP is properly classified as a CMRS service (as discussed above), that conclusion does not resolve the potential jurisdictional conflict that has been staged by the FCC’s *CPP Order*.

Even the FCC’s own prior rulings concluded that CPP was properly subject to State regulation. As a result, the FCC found it necessary as part of the Ruling to reverse its prior ruling in *Petition of Arizona Corp. Comm.*, GN Docket 93-252, Report and Order on Reconsideration, 10 FCC Rcd. 7824 (1995) (“*Arizona Decision*”). *CPP Order* at ¶ 19. In the *Arizona Decision*, the FCC concluded that “concerning ‘calling party pays’ . . . billing practices are considered ‘other terms and conditions’ of CMRS offerings, *not rates*, and

the [Arizona Commission] retains authority to regulate such practices." *Arizona Petition*, 10 FCC Rcd. at 7837 (emphasis added).

The *Arizona Petition* decision was properly based on the structure and terms of Section 332, whereas the *CPP Order's* reversal of the *Arizona Decision* (as convenient as that may be for the FCC's current purposes) conflicts with Section 332. Although the FCC can overrule its own prior decisions (albeit without basis and while creating due process issues for the parties involved in that prior decision), the FCC cannot unilaterally amend Section 332 or alter the applicability of applicable Federal court decisions. Consequently, the FCC should reconsider its jurisdictional approach to CPP.

Section 332 provides in pertinent part:

Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.

47 U.S.C. Section 332(c)(3)(A) (West 1999) (emphasis added). The preface to the limited statutory preemption of CMRS rate/entry regulation by States is important. Congress' use of the phrase "notwithstanding section 152(b)" unequivocally demonstrates that the plenary State authority over intrastate CMRS services was retained except for the specific preemption of rate/entry regulation.

The Federal statute and legislative history reserved substantial authority over CMRS services to States:

It is the intent of the Committee [in passing Section 332(c)(3)] that the states still would be able to regulate the terms and conditions of [CMRS] services. By "terms and conditions" the Committee intends to include such matters as *customer billing information and practices and billing disputes and other consumer protection matters . . . or such other matters as fall within a*

state's lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."

H.R. Rep. No. 111, 103d Cong., 1st Sess. 2 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 588 (emphasis added). There is absolutely no basis to conclude that the FCC has exclusive jurisdiction over CMRS services. On the contrary, Congress explicitly indicated that State have jurisdiction over the other terms and conditions of CMRS services (*i.e.*, all non-rate, non-entry intrastate CMRS regulation). To the extent that the *CPP Order* suggests otherwise, it fundamentally misapprehends the law.

Obviously, the phrase "other terms and conditions" is a default reservation of authority to State commissions over non-rate, non-entry CMRS regulation. Even though the examples expressly delineated by the legislative report are broad enough to encompass the kind of consumer regulations being discussed in this docket, Congress emphasized that the list was illustrative only and not all-inclusive of the CMRS authority reserved to States. That principle is fortified by the express language of Section 332 referring to Section 152(b), as discussed above.

Unless consumer regulations like those advocated by the PUCO in the *CPP* docket can be properly characterized as "rate regulation," such State regulation is not preempted by Section 332. The only "discussion" of the rate regulation concept in the entire *CPP Order* is buried in footnote 86, in a passing reference to CTIA's arguments. In that context, the FCC asks "[t]o the extent that rate information is included in the notification, we seek comment on whether the agency with authority over rates also has the authority over the system to communicate these rates to consumers." *CPP Order* at note 86. The clear answer to this question is "no."

On the limited and remote chance that such a penumbral theory of jurisdiction would otherwise be viable, Section 332 clearly refutes that line of reasoning. As will be discussed below, existing Federal case law and prior FCC decisions also severely undercut that type of bootstrapping approach to preemption. Consequently, the FCC should not entertain any notions of concluding that the consumer regulations being discussed in this docket amount to "rate regulation." To do so would be unreasonable and unlawful.

The primary task in determining whether a federal law preempts a State law is to ascertain Congress' intent in enacting the federal statute at issue. *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 95 (1983). The purpose of Congress is the ultimate touchstone. *Allison Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985). As will be discussed below, CTIA's passing suggestion that the CPP consumer issues amount to rate regulation is inconsistent with Section 332 and its legislative history. CTIA's sweeping approach to Section 332 preemption also violates the cardinal principle that the beginning point is a presumption against Federal preemption, particularly in areas of historic State authority such as public utility regulation. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Finally, CTIA's theory plainly ignores the important distinction between federal statutes preempting State laws "regulating rates" (like § 332) and federal statutes preempting State laws "relating to rates," by improperly placing Section 332 in the latter category. *Morales v. Trans World Airlines, Inc.*, 119 L.Ed 2d 157, 168 (1992).

The Ohio Commission's initial comments to the FCC argued that Section 332 requires that the Ohio Commission be permitted to ensure that such consumer safeguards are in place and directly regulate those matters under Ohio law (as it has done for several years). The United States Court of Appeals for the Sixth Circuit has held, in

affirming the Ohio Commission's ability to address alleged anti-competitive conduct involving CMRS rates and services, "[t]he preemptive reach of section 332 is limited" and must be examined in the context of applicable State regulatory law to determine whether the limited reach of section 332 actually preempts State law. *See GTE Mobilnet of Ohio v. Johnson*, 111 F.3d 469, 477 (6th Cir. 1997).

In *GTE Mobilnet of Ohio*, the Sixth Circuit properly recognized that the determination of whether a State regulation is preempted under Section 332 "must focus on whether [the State regulation] requires the Commission to regulate market entry or rates charged or whether it falls into the sphere of 'other terms and conditions.'" *GTE Mobilnet of Ohio*, 111 F.3d at 477. Thus, after characterizing Section 332's preemptive reach as "limited," the Sixth Circuit properly acknowledged the resulting dichotomy of preempted rate/entry CMRS regulation versus retained State authority over all non-rate/entry CMRS regulation.

At issue in *GTE Mobilnet of Ohio* was whether the Ohio Commission's adjudication of a complaint amounted to rate regulation. The complaint in question involved allegations that the CMRS spectrum provider engaged in discriminatory conduct in providing cellular service for resale to unaffiliated resellers. *GTE Mobilnet of Ohio*, 111 F.3d at 472. In particular, the complaint alleged that the spectrum provider refused to provide the unaffiliated reseller the same rates and charges as its affiliated reseller; offered retail rate plans that were lower than the wholesale rate plans offered to the unaffiliated reseller; and entered into agreements regarding roaming rates that were discriminatory. *GTE Mobilnet of Ohio*, 111 F.3d at 473.

The Ohio Commission argued that it retained authority under Section 332 to regulate discriminatory conduct, even where there was an indirect affect on rates;

whereas, Section 332's preemption of State rate regulation encompassed direct rate regulation. In that context, the Sixth Circuit could not definitively conclude whether "the language of Section 332 refers to simply setting rates or whether it refers to any type of adjustment to rates, no matter how indirect." *GTE Mobilnet of Ohio*, 111 F.3d at 478. Consequently, the Court refused to conclude that the Ohio Commission's adjudication of the complaint was pre-empted "rate regulation" under Section 332. *Id.*

The FCC also had direct opportunity to voice any concerns regarding Ohio's adjudication of that complaint case in the context of rate deregulation. As a preliminary matter, the FCC stated: "Unlike some of the opponents of the [Ohio Commission's] Petition, *we do not view the statutory preference for market forces rather than regulation in absolute terms. If Congress had desired to foreclose state and Federal regulation of CMRS entirely, it could have done so easily.*" *In the Matter of Ohio Petition*, PR Docket 94-109, Report and Order (May 19, 1995), 10 FCC Rcd. 7842, at ¶ 9 (emphasis added). The FCC then held:

First, although Ohio may not prescribe, set, or fix rates in the future because it has lost authority to regulate "the rates charged" for CMRS rates, *it does not follow that its complaint authority under State law is entirely circumscribed.* Complaint proceedings may concern carrier practices, separate and apart from their rates. * * * [Ohio can also continue to regulate "other terms and conditions" and certain contractual arrangements] to the extent that such review does not *directly affect end-user rates.*

* * *

Moreover, nothing in OBRA indicates that Congress intended to circumscribe a state's traditional authority to monitor commercial activities within its borders. *Put another way, we believe Ohio retains whatever authority it possesses under state law to monitor the structure, conduct, and performance of CMRS providers in that state.*

Id. at ¶¶ 43-44 (emphasis added) (footnotes omitted).

Unlike the issue presented in the *GTE Mobilnet of Ohio* case and the *In re Ohio Petition* case, the CPP consumer issues at issue in this docket do not even have an indirect

impact on rates; thus, it is far more clear that State authority is preserved over CPP consumer regulation. The consumer regulations being discussed in the *CPP Order* cannot be fairly characterized as "rate regulation." There is generally no suggestion of rate-making, rate review, tariff regulation, contract approval or any other form of rate regulation.² The regulatory policy issues being discussed are aimed at consumer notification and billing issues. The fact that Congress has explicitly indicated that rate regulation versus billing and consumer issues are mutually exclusive concepts irrefutably supports Ohio's position that States retain authority over CPP consumer regulations. If that were not convincing enough, the decisions of the Sixth Circuit and the FCC itself involving Section 332 strongly suggest that same result.

The manifest conclusion resulting from Section 332, the legislative history, all of the Federal case law, and the FCC's own precedents, is that States have authority over the consumer regulations discussed in the *CPP Order*. By contrast, there is no legal basis in this docket (of record or otherwise) to characterize CPP consumer regulations as rate regulation. Any conclusion that the FCC has authority to impose national uniform CPP standards to the exclusion of State standards is without basis and would unlawfully eliminate Congress' express reservation of State authority in Section 332.

Even though the Ohio Commission may largely agree with the FCC's tentative conclusions regarding CPP consumer safeguards, this jurisdictional question is important because CPP directly affects the rates paid by landline customers for calls that are local in nature. In other words, the Ohio Commission's interest is focused not on the CMRS aspects of CPP, but upon the aspects which affect wireline LEC customers. The

² The sole exception is the discussion at Paragraphs 53-54 of the NPRM regarding supracompetitive rate levels and potential remedies. The Ohio Commission agrees that such action would be within the exclusive domain of the FCC.

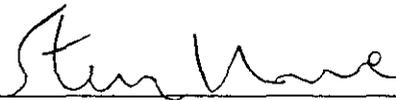
FCC must recognize concurrent State authority over CPP consumer regulations. Doing so will not impede or jeopardize the FCC's goal (which is shared by the Ohio Commission) to promote competition and diversity for CMRS services.

CONCLUSION

For the foregoing reasons, the Ohio Commission respectfully requests that the FCC reconsider and clarify the *CPP Order* consistent with this Petition.

Respectfully submitted,

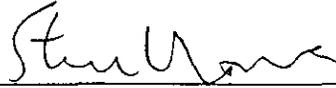
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the PETITION FOR RECONSIDERATION was served by regular U.S. mail, postage prepaid, or hand-delivered upon the following parties of record this 13th day of August, 1999.



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