

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

In the Matter of)
)
Calling Party Pays Service Offering) WT Docket No. 97-207
In the Commercial Radio Services)

Comments of Motorola, Inc.

1. Introduction

Motorola Inc. (“Motorola”) submits the following comments in the Federal Communications Commission’s Notice of Proposed Rulemaking (“Notice”) in WT Docket No. 97-207.¹ The Commission has proposed to remove regulatory obstacles to the offering of Calling Party Pays (“CPP”) service by commercial mobile radio service (“CMRS”) providers. Motorola is one of the world's leading providers of wireless communications, semiconductors and advanced electronic systems, components and services. Major equipment businesses include cellular telephone, two-way radio, paging and data communications, personal communications, automotive, defense and space electronics and computers.

Motorola commends the Commission for its initiative to promote Calling Party Pays service. CPP would enable CMRS subscribers to select a service option that would have parties

¹ Calling Party Pays Offering in the Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 97-207, FCC 99-137 (rel. July 7, 1999).

who call them billed for all or part of the charges for the calls. Today, it is almost exclusively the case that the CMRS subscriber pays for all calls that the subscriber receives. While this *status quo* is beginning to change slightly as the result of novel pricing plans being introduced by CMRS providers, CPP has been hampered by the potential for incompatible state regulatory requirements and difficulties in establishing new billing arrangements. The existing billing structure is undoubtedly a factor in the current imbalance between incoming and outgoing traffic on CMRS networks. It is generally recognized that CMRS customers are reluctant to give out their wireless phone numbers because they do not wish to pay for unwanted or low priority calls. Thus, the wireless networks are not used to their fullest potential.

Motorola supports the Commission's goal in this rulemaking of advancing the potential for CPP becoming available to consumers, both wireline and wireless, and removing unnecessary regulatory or legal obstacles to such offerings. As the Commission pointed out in its Notice, there are number of difficult issues that must be resolved before CPP can be offered as a viable service. Motorola urges the Commission to consider these issues with an appreciation of the fact that CMRS has achieved its market success by operating in an environment in which regulatory oversight and control has been applied with a light hand. The present rulemaking should attempt to follow this model and not adopt any regulations beyond those minimally needed to achieve a successful nationwide CPP opportunity. We would particularly caution the Commission from using this rulemaking as an opportunity to extend rate regulation to the CMRS industry.

2. Potential Benefits of CPP

Motorola agrees with the Commission's conclusion that CPP may enhance the opportunity for wireless services becoming a more competitive alternative to the local exchange services offered by the incumbent local exchange carriers ("ILECs").² We also share the Commission's belief that CPP may increase wireless phone usage, bringing benefits to the public, because consumers would have a new and, potentially less expensive, wireless option.³

As noted above, the current billing structure has resulted in CMRS subscribers using their wireless phones much differently than they use their wireline phones, be they business or residential. For example, CMRS subscribers are often reluctant to give out their wireless phone numbers and, thus, a directory of CMRS subscribers comparable to the traditional telephone directory of wireline subscribers does not exist. Also, they are less willing to leave their wireless phones turned on in order to receive calls at any time. Part of this reluctance has been to conserve battery life, but this is becoming less of a concern as battery technology improves. For these reasons, among others, wireless phones are generally not considered to be true substitutes for wireline phones and wireless networks are not yet widely viewed as viable competitors to the wireline local exchange networks. The benefits of competition, that will inevitably come when wireless services are true competitors to the wireline local exchange service, have been thereby delayed.

The beneficiaries of CPP service will also be those CMRS subscribers who, through necessity or choice, intend to keep the costs of their CMRS usage as low as possible. These individuals are especially likely to take the steps above limiting access to their phones in order to

² *Id.* at ¶ 21.

³ *Id.* at ¶¶ 23-24.

avoid unexpectedly large bills. While their behavior is perfectly rational and justified from a personal economic standpoint, it is not the best option that might be available to them. If CPP were available, it is expected that they would use their wireless phones in a manner more typical of wireline phones and the increased access which would result, in an aggregate sense to all phone users, would be an important societal benefit. We also agree with the Commission that CPP offered together with prepaid phone cards could make wireless phone use much more attractive for individuals who wish to keep their charges carefully controlled.⁴

That CPP would bring such benefits has not been a greatly debated point. Rather, It has been the implementation of CPP that has drawn contention and that has consumed the majority of the Commission's attention in this proceeding.

3. Obstacles to Implementation

The Commission has identified two major obstacles to the implementation of CPP. These are (1) the notification to callers that the CMRS subscriber they are calling has selected the CPP billing option and that they will be billed for the call and (2) the development of a billing mechanism which will enable the CMRS provider to collect the call charges from the call originator.⁵

Notification - The Commission has indicated that the record developed in its Notice of Inquiry supports the proposal that a uniform, nationwide notification system is necessary for a viable CPP service to exist.⁶ The purpose of the notification would be to provide advance

⁴ *Id.* at ¶ 22.

⁵ *Id.* at ¶ 29.

⁶ *Id.* at ¶ 33.

information to the calling parties that they will be billed for the charges associated with the call. It is recognized that today, given the numbering system used for CMRS phone numbers, the calling parties would not necessarily know when to expect to be billed for CMRS calls because they would not necessarily recognize at the time of the call that it was a call to a wireless phone. Motorola acknowledges the necessity to address this issue. We also recognize that the CMRS calling areas may overlap state borders or intra-state long distance boundaries. Therefore, we support the adoption of a federal notification policy by the FCC. This is consistent with the Commission's primary role of regulating interstate and foreign commerce "so as to make available to all people of United States a rapid, efficient Nation-wide, and world-wide wire and radio communications service."⁷

The dilemma facing the Commission is how to devise a notification process that will not be so unwieldy or disruptive that it substantially reduces the desirability of CPP and its chances for success in the marketplace. The Commission points out that proposals have been made for passive notification methods such as a Numbering Area Plan Code which would alert calling parties that the call is being made to a wireless phone. Other suggestions have included a specific Service Area Code that likewise would identify that the call is being made to a CPP wireless phone. A special tone to notify the callers has also been proposed. In the Notice, however, the Commission stated its intention to mandate a uniform recorded notification announcement to the calling party.⁸ The Commission stated that it believes the announcement should consist of a statement notifying the caller that the call is being made to a wireless phone subscriber who has chosen the CPP billing option and the caller will be responsible for payment of the charges. The

⁷ 47 U.S.C. § 151.

⁸ *Id.* at ¶ 42.

Commission said that the announcement should also identify the CMRS provider, the per minute rate, and other charges that the calling party will be billed for in connection with the call.

Motorola recognizes that developing a notification method acceptable to both consumers and CMRS providers is essential before CPP can be implemented successfully. The CMRS industry would not want to implement CPP if it were to alienate existing and potential future customers. Additionally, the notification may be an important element in establishing a contractual relationship between the calling party and the CMRS provider. Such a contractual relationship would be a precondition to the CMRS provider being able to charge the calling party for the call with the assurance that the party is legally liable to pay. A successful notification system, however, must present only the most minimal interruption between the caller and the prompt completion of his or her call. A Commission regulation demanding detailed rate information as part of the notification will likely prove unwieldy and unacceptable if, indeed, it is even possible. We note, for example, that rates may vary depending upon time of day, geographic location, rate plan of the CMRS subscriber, and other factors. A detailed notification including such information might be too long and too complicated to be acceptable to callers.

We do not believe, however, that the Commission necessarily should assume the obligation of devising the ultimate notification method. We believe that the Commission primarily should mandate that the notification procedure be uniform nationally. This would be in the interest of both consumers and CMRS providers, particularly providers with national footprints. The uniform national notification method would also facilitate national advertising to educate consumers about CPP and what they should expect to encounter when placing a CPP call. Thus,

the Commission should assure that the individual states are not permitted to impose different notification provisions of their own.

We recommend that if this rulemaking reveals an acceptable notification method with substantial CMRS industry support, the Commission should adopt it. If such a solution does not become apparent, however, the Commission should consider requesting the CMRS industry to develop a consensus proposal for notification and to bring a plan back to the Commission when it is agreed to by a substantial segment of the industry.⁹ The CMRS providers have every interest in making CPP work and keeping customers satisfied. They also have an interest in creating a commercial contractual relationship with CPP calling parties that will be legally recognized. Moreover, they have the creativity and technical expertise to develop notification processes that are not only effective, but also acceptable to consumers. They may also need to adapt the notification to changing future market and technical scenarios. If there is one thing that the CMRS business has demonstrated over the past decade, it is that change is comes at a tremendous pace and those who cannot change quickly will suffer the consequences. Detailed notification requirements written into formal agency rules certainly cannot be changed quickly.

Billing and Collection - The Commission stated in its Notice that it has traditionally declined to regulate or require the provision of ILEC billing and collection services. However, it sought comment on whether CPP calling plans required billing by ILECs as a practical necessity or whether alternative methods of CPP billing and collection might be satisfactory. Motorola

⁹ The CMRS industry could consult with other interested parties, such as consumer groups, as part of the consensus process or wait until the Commission puts the consensus product out for public comment. The former approach might be more expeditious, but that should be for the industry to decide.

recognizes that ILEC billing services might be very advantageous as a cost-effective means of collecting the charges for completed CPP calls. The ILEC billing process is efficient and is a method recognized by consumers for telecommunications charges to be aggregated. For example, long distance charges have been included in local phone bills for decades.

On the other hand, we recognize as well that ILECs may have legitimate reasons for resisting being compelled by government to make their billing processes available to additional outside parties. There certainly are costs involved and determining what the appropriate charges should be for the billing service could prove to be difficult. This alone has the potential for pulling the CMRS industry into a more regulatory environment and that would be undesirable. Other issues, such as the technical logistics of the process could be difficult as well. The Commission should carefully review the comments of all the parties on this issue and consider the full range of options available before mandating an ILEC billing obligation. Motorola will provide any further suggestions we might have on this issue after we have reviewed the comments of the parties filing in this proceeding.

4. Rate Regulation

The Commission's Notice also questioned whether the FCC should regulate the rates for CPP calls.¹⁰ To do so, in Motorola's view, would be a significant step backward from the national policy of deregulation and competition, and contrary to the spirit of the congressional decision that CMRS rate regulation is generally unnecessary to prevent harm to consumers.¹¹ Congress has prohibited state governments from regulating the entry of CMRS providers or the rates

¹⁰ Notice at 53-54.

¹¹ 47 U.S.C. § 332(c)(3)(A).

charged for CMRS services unless, following a petition from a state, the Commission authorizes such regulation in the state. The Commission has denied such state petitions in the past and, furthermore, has concluded that it should forbear as well from CMRS rate regulation.¹²

The Commission's past deregulatory approach has been validated by the tremendous growth of CMRS services and continuing decline in service prices. Indeed, the competition in the deregulated CMRS industry has resulted in constant innovation with regard to service plans and geographic service areas to the benefit of consumers. As competition has flourished, customer satisfaction has continually increased. It would be unwise and contrary to the public interest for the Commission to introduce rate regulation to the CMRS industry in the face of this record of success. We see nothing in the record developed by the Commission so far with regard to CPP that would even remotely justify such a radical step and we urge the Commission to explicitly and firmly reject this option at the earliest possible date.

5. Conclusion

In conclusion, Motorola supports Calling Party Pays and welcomes Commission actions that would facilitate its implementation. We urge the Commission to review the comments in this proceeding in search of industry consensus on some of the more difficult implementation issues. Motorola is very much aware that some of the options before the Commission would represent a significant realignment of industry procedures. Such dramatic changes may be warranted, but we wish to review the positions of the CMRS providers and the ILECs before coming to final conclusions. In general, however, we urge the Commission to seek solutions that will enable it to

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, 1463-93 (1994),

pursue a route of minimal regulatory intrusion in connection with CPP and to keep the CMRS industry as a model of successful deregulation.

Respectfully Submitted,

Motorola, Inc.

 /S/
Richard C. Barth
Vice President and Director
Telecommunications Strategy
And Regulation
Motorola, Inc.
1350 I Street, N.W.
Washington, D.C. 20005
(202) 371-6900

 /S/
John F. Lyons
Assistant Director
Telecommunications Regulation
Motorola, Inc.
1350 I Street, N.W.
Washington, D.C. 20005
(202) 371-6900

September 14, 1999