



## Introduction and Summary

wireline phones, and be detrimental to the interests of consumers and the public generally. In these initial comments, Joint Commenters offer the following specific analysis in support of their position:

- The costs and burdens that WCPP will impose upon consumers — individuals and organizations — substantially exceed the minimal incremental benefits of this form of wireless pricing. Consumers and organizations will be forced to adopt measures to protect themselves from unauthorized and unexpected WCPP charges, or be forced to pay such charges, thereby increasing their costs overall. At the same time, proponents of WCPP have failed to demonstrate any significant consumer or public benefit arising from adoption of this charging regime.
- Competition in wireless services over the past several years has produced dramatic decreases in airtime charges and has fostered the introduction of service packages in which the wireless customer pays little or nothing to receive incoming calls. However, WCPP will work to *diminish* competition in the wireless services market because there will be little if any downward pressure on WCPP prices where the paying party is not the party making the choice of provider. If not constrained by regulation, WCPP rates will almost certainly be greater than airtime charges that are billed to the wireless customer.
- If calls to wireless phones subject to WCPP charging are restricted from payphones, hotels, business and institutional phone systems due to the inability of real-time charging information, calls to WCPP phones will become more difficult than they are today, and callers may not be able to reach wireless phones in case of emergency.
- The existing Section 251(b)(5) confers specific interconnection and reciprocal compensation rights on the CMRS provider; the existence of such rights is inconsistent with the Commission's finding that WCPP is a CMRS offering. The reciprocal compensation/interconnection model, and not the "WCPP is a CMRS offering" conclusion, should provide the basis for compensating CMRS providers for transport and termination of incoming calls.
- WCPP will undermine competitive parity between wireline and wireless services by forcing callers to wireless phones to pay for the wireless customer's access link (the radio air time and use of the mobile carrier's cell site distribution network), whereas for wireline calls the costs of the called party's access link (the local loop) are borne entirely by the called party.
- In every other country in which WCPP charging is in use, WCPP phone numbers are uniquely identifiable as being subject to special charging. In addition, in most/all of those countries, real-time charging information is available for calls placed to wireless phones from payphones and hotel PBXs, such that blocking of these calls is less of an issue than it would be in the US.
- If WCPP is permitted in the US, calls to WCPP phones should be readily identifiable to the calling party via an easily recognizable telephone number as is the case in virtually every other country in which WCPP is offered; without unique, recognizable numbering,

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there is no practical means of providing notification that can be efficiently accommodated by PBXs or other business/government/institutional telephone systems.

- The Commission's Declaratory Ruling that WCPP is a CMRS service cannot be held to preempt or otherwise limit states' authority to apply consumer protection laws to WCPP services.
- If the Commission adopts rules that provide for WCPP, it should (a) require unique and easily recognizable numbering, (b) regulate WCPP rates to assure that they are not unjust or unreasonable, (c) require uniform notification of the WCPP rate and service provider that will continue indefinitely, (d) require an affirmative action by the calling party before charging can commence, and (e) require that a blocking option be offered to all wireline customers.

## THE IMPLEMENTATION OF WIRELESS CALLING PARTY PAYS (WCPP)

### **I. Introduction of wireless calling party pays (WCPP) into the United States will impose substantial costs and burdens on consumers and will decrease competition in the provision of wireless services, results that do not justify the limited and highly speculative benefits that the wireless industry proponents of WCPP portray with respect to this type of serving arrangement.**

In this rulemaking, the FCC is considering adoption of certain regulations that would facilitate the introduction and widespread use of "wireless calling party pays" ("WCPP") pricing for calls placed from wireline telephones to wireless CMRS phones and paging services. Under existing practices, the CMRS *customer* is responsible for payment of "air time" charges both for outgoing and for incoming use of the wireless handset. The calling party pays only for the landline services — local or long distance — that are required to transport the call from the originating customer to the CMRS carrier's central office and to terminate the call on the CMRS carrier's switch (sometimes referred to as a "Mobile Telephone Switching Office" ("MTSO")), and the CMRS provider receives reciprocal compensation and/or interexchange carrier access charge revenues for terminating inward traffic handed off to it by a wireline LEC or an IXC, as the case may be.

Wireless air time charges compensate the CMRS provider for the access link between its MTSO and the mobile telephone set. That access link consists of dedicated cable and/or microwave links between the MTSO and individual "cell sites" scattered throughout the CMRS provider's serving area, and the radio transceiver and antenna equipment located at each cell site that provides the radio link between the terrestrial network and the mobile telephone set. This access link is the wireless counterpart of the wireline "subscriber line" or "loop," that "last mile" connection between a wireline LEC central office and the customer's premises. Under the existing "wireless party pays" charging system, the responsibility for paying for the wireless access link is, like its wireline loop counterpart, conferred upon the end user to whom that link is provided.

In the case of a wireline loop, the facility is, for the most part, *dedicated* to the specific subscriber to whose premises it is connected (although where certain types of loop carrier systems are used, a portion of the loop plant may be shared among a number of individual subscribers). For wireless access links, however, the facilities are common to all users of the system, and are dedicated to an individual user only for the duration of an active call and only for as long as the user remains physically within the range of a particular cell site. Thus, whereas wireline loops are generally considered to be "non-traffic-sensitive" resources because the aggregate loop capacity is a function of the number of customers rather than of the volume of traffic those customers present to the network, wireless access links are, in the context of a wireless network, traffic-sensitive facilities because the aggregate capacity is distinctly a function of traffic volume, not head count.

From its very outset, it became the accepted practice for wireless services to utilize rate structures that were heavily usage-sensitive. There were several reasons why this pricing paradigm was adopted. First, as we have just discussed, the nature of the service itself involves relatively few customer-specific fixed costs (these would, in general, be limited to "account-sensitive" costs, those associated with maintaining the customer's account, preparing and mailing

monthly bills, and processing payments). Second, the wireless industry has historically had relatively high customer acquisition costs, consisting of (among other things) subsidies of mobile phone purchases by customers, commissions to agents, and the more typical marketing and advertising outlays. These high customer acquisition costs could be recovered on a fixed monthly basis or on a usage-sensitive basis; by electing to focus upon usage, the industry was able to maintain relatively low "entry" prices for the basic subscription, making up their customer acquisition costs and the bulk of their profits from usage charges.

The combination of all of these factors helped to push usage prices up to the 50 cents per minute range, sometimes even higher, and certainly well in excess of the actual *traffic-sensitive costs* of the wireless service itself. At these relatively high price points, the level of wireless phone use was considerably less than for wireline phones which, for most residential customers in the US, are priced on a flat-rate or unlimited use basis. One consequence of these high usage charges was that most wireless phone subscribers tended to limit their use to primarily *outgoing* calls, restricting the incoming call capability to family members or a few individuals at work. Indeed, in their advocacy of WCPP charging, CMRS carriers specifically attribute the reluctance of wireless customers to give out their phone numbers specifically to the fact that the wireless user is responsible for paying air time charges on *incoming* calls.<sup>2</sup> The carriers point to the apparently greater level of wireless penetration and usage in many other countries in which WCPP is in use as a demonstration of the effectiveness of this pricing arrangement in stimulating increased usage of wireless services. They argue that calling party pays is the standard charging paradigm for wireline calls, and that the adoption of this method of charging for CMRS services will help to make wireline and wireless services more competitive with each others.<sup>3</sup>

As we demonstrate herein, many of the wireless carriers' contentions are either highly speculative or can readily be shown to be factually incorrect. Moreover, as we also demonstrate, the very foundation of the "calling party pays" theory being advanced by CMRS providers is fundamentally at odds with the longstanding Commission policy requiring that costs be borne by the cost causer.

#### **A. Attributes of wireless calling party pays service**

The specifics of the WCPP serving arrangement that proponents of this method of charging envision can be summarized as follows:

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2. There may, in fact, be any number of other reasons why wireless phones are used primarily in the outward direction. For one, where the handset is installed in a vehicle, the user may not always be in proximity to the phone. For handheld phones, there are any number of situations in which the unit may simply be out of range of a cell site (e.g., inside a large building, in the subway, or simply out of the coverage area). The user may also want to conserve battery power and for that reason not leave the phone turned on except when originating an outgoing call or specifically expecting a particular incoming call. All of these cases help to explain why the bulk of wireless phone use is outward, and none of them have anything in particular to do with the charging scheme that is now in place.

3. For example, see Airtouch Reply Comments to NOI at 12; PCIA Comments to NOI at 10.

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- Prices for wireline calls to WCPP phones will be set by each individual CMRS provider terminating the inward call, not by the originating wireline carrier.
- Because WCPP service has been declared by the FCC to be a CMRS service and thus not subject to state PUC ratemaking authority,<sup>4</sup> the FCC has declined to regulate CMRS rates and does not propose to do so for WCPP services.
- Prices will thus not be subject to state regulation, and would apparently not be regulated or limited by the FCC.
- Billing for WCPP calls would be handled either by the ILEC serving the calling party (the method preferred by CMRS providers) or by some alternative billing/clearinghouse type of arrangement.
- No unique or identifiable numbering of WCPP phones would be required:
  - WCPP phone numbers will be indistinguishable from POTS numbers except (possibly) for their NXX code, which will vary from NPA to NPA, and in any event even this distinction will eventually disappear if, as and when wireless local number portability is in operation.
  - Once wireless local number portability is in place, there will be no means for associating a given telephone number with POTS, called party pays wireless, or WCPP, and individual numbers could be "ported" from one service and pricing arrangement to another at any time.
- Notification that the call will involve WCPP charges to the calling party would be in the form of a recorded message or, after 18-24 months, an audible tone sent by the terminating carrier to the calling party following the dialing of the mobile number and before the call is connected; CTIA proposes that the requirement for the message-type notification would terminate after 18-24 months.<sup>5</sup> It is not clear exactly what specific information will be conveyed in the announcement message, i.e., whether the CMRS provider will be specifically identified or what specific details of the pricing scheme will be disclosed.
- There is no proposal from WCPP proponents under which wireline customers would be offered an option whereby they could automatically block all calls placed to WCPP phones.

Like the introduction of 900/976 "pay-per-call" "information services" a decade or more ago, the introduction of WCPP will create a new source of potential charges that could appear on a residential or nonresidential customer's wireline telephone bill. However, if allowed in the manner being sought by CMRS providers, this would be the first time that calls carrying special

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4. Declaratory Ruling and NPRM, at para. 15.

5. See CTIA Comments to NOI at 7.

additional charges would not be readily identifiable on the basis of the called telephone number itself. In the case of "pay-per-call" services, the applicability of additional charges is readily apparent to the consumer through the use of the '900' Service Access Code (SAC) or specific and recognizable NXX codes (such as '976'). Other calls subject to per-call charges, such as domestic and international toll calls, can also be readily identified on the basis of the number that is to be called and/or the dialing sequence involved (e.g., 011+ for international calls). Here, however, WCPP numbers would look like ordinary wireline "Plain Old Telephone Service" ("POTS") numbers, and there would be no means for a customer to ascertain, in advance of actually dialing the number itself and hearing the recorded message following completion of dialing, that additional charges will apply. Indeed, for business, government and institutional customers of wireline services that employ a PBX or other on-premises telephone systems, there may be no feasible means at all for identifying WCPP calls either for charge-back purposes or for blocking such calls placed from telephones "behind" these systems.

**B. Customers of wireline services would bear the costs of accommodating this pricing arrangement; such costs would not be internalized by CMRS WCPP providers.**

Thus, a major consequence of a WCPP pricing paradigm engrafted onto the existing numbering and charging system for PSTN calls is that callers will need to recognize and deal with the potential costs that this new source of charging will entail. From the limited experience with WCPP in the United States, along with information on prices extant in other nations, it would appear that WCPP charges would likely fall in the range of 30 to 45 cents per minute,<sup>6</sup> although the rate could be a good deal higher, since no regulatory constraints or controls on the level of such charges is contemplated. Prices in the 30 to 45 cent range would be as much as four to five or more times the per-minute charge applicable under many residential toll calling plans,<sup>7</sup> and 25 to 40 times the per-minute charge for local wireline calls, where these are subject to measured pricing. For customers subject to flat-rate local usage pricing (which includes the majority of residential subscribers as well as business subscribers in many parts of the country), these seemingly-local WCPP calls would involve charges where ordinary local calls do not.

In addition to paying for calls placed to wireless phones with the full understanding that WCPP charges will apply, the introduction of WCPP will impose a number of *additional* costs upon wireline customers over and above those associated with the WCPP service itself:

- *Costs associated with unwanted/unexpected/unauthorized WCPP charges.* To the extent that the wireline customer is unable as a practical matter to fully control the

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6. When AT&T Wireless introduced CPP in Minnesota in 1998, the charge to the calling party was 39¢ per minute. US West's WCPP service offering in Washington State, Utah, Idaho was priced at 45¢ per minute. US West's CPP offering in Arizona and Nebraska was priced at 35¢ per peak minute and 24¢ per off-peak minute as of December 1997, and subscribers were billed either \$2.95 or \$3.95 a month (depending on location) for the option.

7. Many carriers have introduced discounted residential interstate flat-rate services. As recently as August 30<sup>th</sup>, 1999, AT&T announced its AT&T One Rate 7 cent Plan, that provides direct-dialed state-to-state long distance calls at a rate of \$.07 a minute anytime of day. MCI & Sprint have similar one rate plans.

origination of WCPP calls from wireline services for which the customer is responsible for payment, the customer could (assuming that privity of contract can be established) be held responsible for those unwanted and unexpected charges.

- *Costs required to block or otherwise identify WCPP calls.* In order to protect themselves against unauthorized or inadvertent WCPP charges, wireline customers will be required to assume responsibility for blocking or otherwise identifying calls that would be subject to WCPP charges. If ILECs offer blocking services<sup>8</sup> (and there is nothing in the proposed rules that would require them to do so, although there also appears to be nothing that would prohibit them from doing so), customers may be required to pay nonrecurring and/or recurring charges to obtain this feature. PBX customers will be required to incur potentially substantial costs in order to modify, upgrade, or possibly even be forced to replace existing PBX systems and other CPE in order to block WCPP calls and/or to recognize such calls for charge-back purposes. To the extent that WCPP rates are not regulated nor subject to any specific ceiling price level, consumers could be confronted with potentially large unexpected charges and/or would be forced to incur costs and expend administrative resources to limit their exposure.

Such costs are *external* to the CMRS providers, but are quite real and *internal* to consumers and other wireline service users. To the extent that wireless carriers impose these costs upon consumers rather than on themselves, their internal cost/benefit evaluation of WCPP is distorted because the cost side of the analysis is understated. At the very least, the Commission needs to evaluate the potential merit of WCPP in terms of total societal costs, not just those that the CMRS providers themselves incur. And if WCPP passes this more rigorous societal cost test, then the Commission needs to consider and adopt mechanisms that will assure that all such costs are borne by the CMRS providers, and are not imposed upon consumers who are in no sense *causers* of such costs.

### **1. Wireless usage prices are likely to *increase* if WCPP charging is permitted.**

In evaluating the potential benefits of WCPP, the Commission needs also to address the extent to which WCPP price levels will be subject to competitive marketplace forces. Under the duopoly market structure that the Commission had adopted for each CGSA when it first licensed the 800 MHz cellular carriers, there was little if any serious price competition for these services, a condition that the Commission itself recognized.<sup>9</sup> However, once the additional 2 GHz PCS licenses were issued and PCS services went online, price competition began to develop, and in the 6 years since the first PCS services went on the air the per-minute CMRS airtime price level

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8. ILECs generally offer blocking for 900/976 "pay-per-call" services, for various categories of toll services, and for per-use charge vertical features, such as Directory Assistance Call Completion (DACC) and Call Return. In some cases, nonrecurring and recurring charges apply for such calls.

9. See generally, Cellular Report and Order, CC Docket No. 79-318, 86 FCC 2<sup>nd</sup> 469 (May 4, 1981).

has dropped from the 50 cent to the 10 cent range. However, as we discuss in more detail below, WCPP charges imposed upon the calling party may in many cases exceed the airtime charges currently being imposed upon CMRS customers for incoming calls *because there will likely be far less competitive price pressure for inward calling than that which presently exists for wireless services generally.*

The reason for this is that, unlike the present wireless-customer-pays method of charging for all wireless calls, with WCPP the individual who selects the carrier (i.e., the wireless customer) is distinctly *not* the individual who will be responsible for paying for this usage. Thus, to the extent that competitive forces do not work to place downward pressure upon WCPP prices to the same extent as they have with respect to wireless customer airtime charges, the average wireless airtime price is likely to increase relative to the airtime price levels that prevail now.

**C. Benefits being claimed by CMRS industry proponents of WCPP are highly speculative at best, and will in any event be enjoyed primarily by the CMRS providers themselves rather than by telecommunications consumers.**

In recounting the various benefits proffered by WCPP proponents, the Commission observed:

One major benefit envisioned is the possibility that CPP could ultimately lead to wireless services becoming a true competitive alternative to the local exchange services offered by ILECs, particularly for residential customers. Another potential benefit is that CPP could spur competition within the CMRS market by offering consumers a different and less expensive wireless service option.<sup>10</sup>

In fact, WCPP will provide *neither* of these alleged "benefits."

**1. WCPP will create a distinctly *unlevel* playing field as between wireline and wireless services.**

Wireless industry proponents of WCPP argue that a "calling party pays" charging paradigm applies for wireline services, and that adoption of a corresponding approach for wireless services is necessary for true competitive neutrality between these two (potentially competing) technologies. While it is both possible and likely that, in the future (if not at the present time) there will be competition between *fixed* wireless and *fixed* wireline services, it is far less apparent that *fixed* services (of any technology) will be viewed by consumers as competitive substitutes for services that are fundamentally *mobile* in nature. While one can engage in these kinds of metaphysical debates, the actual extent (if any) of competition between fixed wireline and mobile wireless services cannot alter the fact that the analogy that CMRS providers seek to draw as between "calling party pays" pricing of wireline services and the specific WCPP plan they advocate rests on nothing more than superficial and entirely facial similarities.

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10. Declaratory Ruling and NPRM, at para. 20.

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Indeed, the similarities being portrayed as between wireline pricing practices and the WCPP proposals at issue here may have been more accurate in decades past than they are today and in the future. Prior to the adoption of the present "access charge" regime in CC Docket 78-72,<sup>11</sup> the price of a long distance (wireline) call that was charged to the calling party included, in addition to the switching and transport functions, a "contribution" toward the cost of both the calling and called party's subscriber access lines. Under the access charge regime established by the Commission, the subscriber line costs were, over a multi-year transition, gradually shifted out of the usage-based charges imposed upon the calling party and onto the fixed monthly "Subscriber Line Charge" ("SLC") imposed upon all residential and business end users and, more recently, the fixed monthly "Presubscribed Interchange Carrier Charge" ("PICC") imposed upon interexchange carriers for each presubscribed end user access line. Today, only the barest remnants of the "Carrier Common Line Charge" ("CCLC") loop cost recovery usage-based charge element remain, and some ILECs have eliminated the CCLC altogether.

In fact, it is the *current* pricing regime applicable to wireless services that is actually quite similar and fully analogous to the *post-transition* wireline access charge pricing system. The wireline calling party today pays for the switching and transport to carry the call from the wireline point of origin (the end office serving the calling party) to the CMRS carrier's MTSO. If the MTSO is within the calling party's local calling area, the applicable local call charge (which might be on a flat-rate basis) applies. In that event, the originating LEC pays the CMRS provider a reciprocal compensation call termination charge pursuant to the applicable interconnection agreement. If the MTSO is outside the calling party's local calling area but within the same LATA, an intraLATA toll charge applies, paid by the calling party to the LEC or to an IXC selected by the calling party as his or her intraLATA PIC. In such a case, the LEC (or the intraLATA PIC) pays terminating switched access charges to the CMRS provider. Finally, if the MTSO is located in a different LATA from the calling party, the calling party pays the selected IXC for the interLATA call, and the IXC in turn pays an access charge to the originating LEC and to the CMRS provider for terminating the toll call. Significantly, and exactly as is the case for wireline-to-wireline calls, the *called* party pays his carrier (the CMRS provider in this case) for the access link between the subscriber's phone and the serving central office (the MTSO). However, in the case of wireless services, that access link consists of "air time" and associated use of the cell site-to-MTSO transport network, which the CMRS provider typically (but not always) charges for on a usage-sensitive basis. The following table summarizes and compares the current wireline and wireless charging regimes.

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11. See generally MTS and WATS Market Structure, CC Docket 78-72, Notice of Inquiry and Proposed Rulemaking, 67 FCC 2<sup>nd</sup> 757 (1978); Supplemental Order (Phase I), 94 FCC 2<sup>nd</sup> 852 (1983); Phase I Order Modified on Reconsideration, 97 FCC 2<sup>nd</sup> 682 (1983); Phase I Order on Further Modification, 97 FCC 2<sup>nd</sup> 834 (1984); Phase I Orders, affirmed in part, remanded in part sub. nom., National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985); Report and Order (Phase III), 100 FCC 2<sup>nd</sup> 860 (1985); Phase I Order Modified on Second Further Reconsideration, 101 FCC 2<sup>nd</sup> 1222 (1985), aff'd sub nom., American Telephone & Telegraph Co. v. FCC, 832 F.2d 1285 (D.C. Cir. 1987).

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Rate element/service component	Wireline		Wireless	
	Paid by Calling Party	Paid by Called Party	Paid by Calling Party	Paid by Called Party
Calling party access line	X		X	
Public network switching, transport	X		X	
Called party access line		X		X

If WCPP is permitted, however, this wireline/wireless parity will no longer exist:

Rate element/service component	Wireline		Wireless	
	Paid by Calling Party	Paid by Called Party	Paid by Calling Party	Paid by Called Party
Calling party access line	X		X	
Public network switching, transport	X		X	
Called party access line		X	X	

Thus, rather than foster wireline vs. wireless competition, the WCPP regime will actually *distort* the competitive relationship between these two alternative technologies by requiring that, in the case of a wireline-to-wireless call, the calling party pay for the called party's access link, whereas for a wireline-to-wireline call, the *called* party will bear that responsibility.

**2. The calling party is not the "cost causer" with respect to air time costs applicable to completing an inward call to a wireless customer.**

Significantly, WCPP shifts the burden of paying for a particular choice of service from the individual making that choice to one who did not participate in the decisionmaking process. Here, the *called* party is the one who elects — for whatever reason - to utilize wireless service to receive calls. That choice may be based upon convenience, cost, or any number of other considerations. Under the present pricing/charging regime, the *calling* party is essentially insulated from the called party's choice, since the price of a wireline-to-wireline call is exactly

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the same as the price of a wireline-to-wireless call (provided that the rate center for the two called numbers is the same).

In fact, adoption of WCPP as a charging regime is directly at odds with several long-standing FCC policies:

- The costs of the subscriber line or access link are paid by the subscriber, not by other users of the network.<sup>12</sup>
- Responsibility for payment of costs should be borne by the cost-causer.
- Prices should reflect the forward-looking long-run economic costs of the service

The "cost causer" here is clearly the wireless customer, not the wireline user who initiates a call to that customer. The wireless customer is the one in control of the decision to utilize a wireless service and, by providing his or her wireless telephone number, to receive incoming calls while not at a fixed wireline service location. The decision of the wireless customer to have inward calls delivered to him or her while "on the move" is clearly for that customer's convenience, and is entirely analogous to several other situations in which the called party is unambiguously the cost causer and is unambiguously the individual responsible for payment:

- A wireline user in Washington is visiting relatives in Denver and before leaving home invokes Call Forwarding on his home phone to the number where he can be reached in Denver. A caller to that customer's Washington number will be charged only for that call, while the charge for the forwarding call (from Washington to Denver) will be imposed upon the called party who made the decision to invoke Call Forwarding. Even though the incoming call precipitates the forwarded call, there is no question but that the *cost causer* in this instance is the called party.
- A wireline user living some distance from the center of town is required to pay special construction charges to his wireline LEC to extend the subscriber line beyond the base rate area and out to his residence. The fact that calls to this customer are delivered via a long and costly loop in no way affects the charge that would be imposed upon an incoming call to this customer vis-a-vis an incoming call to any other customer located in the same rate center.

Pricing parity as between calls placed to wireline vs. wireless phones presently exists. However, rather than foster parity and contrary to the claims of wireless carriers, adoption of WCPP would serve only to introduce *disparity* between these two (arguably competing) types of services. Hence, to the extent that the Commission believes it needs to adopt policies aimed at facilitating wireline/wireless competition, the *existing* pricing paradigm, *and not wireless calling party pays*, best accomplishes that end.

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12. Our recognition of this policy should not be construed as an endorsement by CONSUMER COALITION of the FCC's imposition of Subscriber Line Charges on end user customers. However, given that the FCC has adopted this policy, CONSUMER COALITION believes that it should apply it consistently across all technologies.

**3. WCPP would be one of the few — if not the only — telecom services in which the choice of service provider would not be made by the individual upon whom the charges will be imposed.**

In order for WCPP to have the effect of increasing competition and customer choice, it is essential that the individual responsible for *paying* for the service also be the individual who voluntarily selects which service to purchase. This will not be the case under a WCPP regime, and indeed, this would be one of the few — if not the only — telecom service in which the choice of service provider would not be made by the individual upon whom the charges will be imposed.

For example, FCC rules require that, for sent-paid toll services, calling parties be given the opportunity to select a Presubscribed Interexchange Carrier (PIC) for all access lines for which they are the customer,<sup>13</sup> and that they be afforded the ability to "dial around" via 101XXXX to a carrier of their choice when they do not directly control the access line (e.g., payphones, hotel lines).<sup>14</sup> ("Collect calls" might arguably be an example of a case in which the person responsible for payment does not directly select the carrier, but even in this case a choice of carrier by the person placing the collect call is possible, and such choices are being aggressively promoted by IXCs as "saving money" for the person being called. Moreover, there is typically some family or social relationship between the calling and called parties in the case of collect calls, such that the calling party does have an incentive to minimize the cost to the party who is being asked to accept the collect call.)

For WCPP, the calling party will be forced to use and pay the charges set by the CMRS provider furnishing service to the mobile customer, and will have no means, *a priori*, to identify that carrier before placing the call or to select a different carrier if, for example, the price being imposed is viewed as excessive.<sup>15</sup> While the wireless customer will have some incentive to select a carrier that imposes *reasonable* charges upon callers, at bottom the individual wireless customer will (usually) not be directly responsible for payment of those charges, and may well, for example, elect a service provider that offers low monthly and outward rates for the wireless customer with high inward rates imposed upon wireline calling parties. It is far from obvious as to how, or if, the "competitive market" will be able to sort out this bifurcation of decisionmaking and payment responsibility. To the extent that it cannot, prices will not be subject to competitive challenge to anywhere near the same extent as they are under today's pricing system, and prices for wireline-to-wireless calls can be expected to increase overall.

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13. See 47 C.F.R. § 51.209.

14. See 47 C.F.R. § 64.704.

15. One may argue that the calling party retains the option of refusing to complete the call if the WCPP charges he or she confronts are unacceptably high. Of course, that outcome would imply that WCPP has discouraged, rather than stimulated, CMRS usage, and would do nothing to promote the competitiveness of CMRS.

**4. Proponents of WCPP have failed to demonstrate that US wireless customers want WCPP pricing, or that the willingness of landline customers to pay (potentially higher prices) for calls to wireless phones is greater than the willingness of wireline customer to pay (what are likely to be substantially lower prices) to receive incoming calls from landline phones.**

The CMRS carriers argue that *their* wireless customers are reluctant to pay for incoming calls and that the volume of incoming calls to wireless phones would increase if the charge were shifted to the calling party. Implicit in this argument is the *theory* that the price elasticity exhibited by *wireless* customers with respect to incoming calls is *greater* than the price elasticity confronting *wireline* users with respect to calls that would be placed to wireless phones and be subject to calling party pays charges. Except for the anecdotal evidence offered from other countries, however, the wireless carriers advance no factual basis or support for this theory.

Indeed, viewed in the context of the wireless carriers' persistent opposition to assigning readily identifiable numbers to WCPP phones, together with proposals that would eliminate the recorded message requirement after a relatively short time, one is compelled to conclude that the only reason why the volume of calls would be expected to rise is because wireline customers will be *misled* into unintentionally placing calls and incurring calling party pays charges.

In fact, if the price elasticities are the same, one would not expect a significant change in the aggregate volume of incoming calls to wireless phones; if — as is more likely the case — the price elasticity confronting wireline customers is actually *lower*, and coupled with the other impediments to WCPP call origination, the volume of inward calls placed to wireless phones will actually fall under a WCPP regime.

While attributing the (apparently) slower pace of wireless service development and penetration in the US vis-a-vis countries with WCPP pricing to the absence of WCPP pricing in the US market, proponents of WCPP have failed to demonstrate that this result is due to the absence of WCPP rather than to other characteristics of the US wireless market and telecom markets generally. As we demonstrate in the next section of these Comments, there are a large number of reasons why wireless development and use in the US is less than elsewhere, reasons that having nothing whatever to do with the requirement that wireless customers pay for inward air time.

**5. Other than possibly increasing CMRS carrier revenues and profits, proponents of WCPP have failed to demonstrate that any valid public purpose will be served by adoption of WCPP in the US.**

In fact, the CMRS providers supporting WCPP have failed to advance any valid *and factually supportable* reason why adoption of WCPP would be in the public interest. Customers are not clamoring for this charging arrangement, and there is no demonstration that users of *wireline* phones would be willing to pay for calls to wireless numbers to a greater degree than wireless customers are willing to pay to receiving incoming calls.

Moreover, claims that availability of WCPP would encourage use of wireless services by low-income consumers are speculative and unproven, and ignore entirely the price elasticity

confronting the (possibly low-income) wireline user who would be placing a WCPP call to a wireless phone. In fact, to the extent that low-income customers may have *less* access to wireline phones (and may tend to make relatively greater use of payphones, for example, for personal calls made from their workplace), it would actually become more difficult *and more expensive* to reach a WCPP wireless number, for reasons that we will discuss later in these Comments.

As we have noted above, usage stimulation, if it occurs at all under a WCPP arrangement, may be due largely to inadvertent purchase decisions by consumers based upon less-than-complete pricing and service information and choices, rather than to affirmative market-driven demand from consumers fully informed as to prices and choices.

For businesses and individuals who use their wireless phone as their primary telephone service or who regularly give out their wireless number to customers and others with whom they do business (e.g., small contractors, real estate brokers, performers, etc.), WCPP would have the effect of discouraging such calls. Hence, unless "migrated" to WCPP by CMRS providers, such users are unlikely to voluntarily select WCPP pricing. For the same reason that many businesses use 800/888/877 toll-free numbers and/or local calling area presence to attract customers, people who regularly conduct business via their wireless phones are likely to demand conventional wireless pricing for their service. While the Commission has suggested that the demand condition could be sorted out in the marketplace,<sup>16</sup> as a general matter in countries in which WCPP is currently in use *there is no called party pays option available to wireless customers*. If the wireless industry tacitly agrees to adopt WCPP as the only means by which service will be offered (as is the case in the countries in which WCPP is currently in use), the marketplace will not be given this opportunity, and many customers will be seriously disadvantaged as a result.

Finally, to the extent that wireless phones are used by individuals to communicate with family members<sup>17</sup> such that the individual responsible for paying the charges for both the wireline and wireless services is one and the same, introduction of WCPP would likely increase costs overall. First, under existing pricing practices, all wireless use (outward and inward combined) are offered under a pricing "package" that offers lower per-minute charges to high-volume users and, in some cases, unlimited air time during off-peak periods. However, charges for calls placed from wireline phones would not be included in such "packages" and the customer would not benefit from a relatively low per-minute price based upon a particular usage commitment. Additionally, it is likely that WCPP calls placed from payphones or from business PBX systems may be blocked, requiring the calling party to use a credit card or other billing device, and be subject to often substantial surcharges for the special billing service. Contrary to the idea that WCPP will work to make wireless phones more accessible under a WCPP regime,

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16. Declaratory Ruling and NPRM, at para. 58.

17. The market importance of wireless calling among family members is demonstrated by the recent introduction by AT&T Wireless Services of a pricing option that provides for unlimited local calling among up to five wireless phones and the family's home phone for members of the same family. This offer would not, of course, address the issue of family members calling wireless phones from other than their home wireline phone or from outside of the local calling area.

*The Implementation of Wireless Calling Party Pays*

the actual outcome may work to make calling wireless phones far *less* accessible than under the existing pricing arrangement.

None of these results are consistent with the public interest or with public policy goals that the Commission has been pursuing over an extended period of time, and on that basis alone the Commission should not allow WCPP to be introduced.

## THE INTERNATIONAL EXPERIENCE WITH WCPP

### **II. There are significant differences in the telecommunications service environment in general and in the approach to WCPP in particular as between the US and other countries in which WCPP is currently in use.**

In seeking comment on “international developments that may be relevant to the formulation of a WCPP service offering in the US,”<sup>18</sup> the Commission recognizes that more information is needed before one can extrapolate from the apparent success of WCPP in other countries to the likely results of adopting WCPP in this country. CMRS providers seek to attribute the high level of wireless market development in many countries in Europe and elsewhere specifically to their adoption of the WCPP paradigm.<sup>19</sup> As we discuss below, there are several reasons why wireless services have had greater success in some respects outside of the US than here, and proponents of WCPP offer no evidence that specifically isolates the availability of WCPP as the “cause” of the high level of wireless development in such countries, or evidence that expressly links the lack of WCPP in the US to lower CMRS penetration or usage levels here. The following are some of the specific institutional and structural differences between the telecommunications service environment in the US and other countries with WCPP that must be considered when evaluating the applicability of WCPP arrangements to wireless service in the US.

#### **A. In the other countries in which WCPP is in place, wireless phones are assigned in area/service access codes that uniquely identify them and that inform callers that additional charges will apply.**

In the United States, CMRS and paging telephone numbers are intermixed with and are indistinguishable from ordinary “Plain Old Telephone Service” (“POTS”) numbers. These numbers are assigned in the same geographic area codes as POTS numbers, and no specific or readily identifiable NXX codes are used within the geographic area codes.<sup>20</sup> Not only are wireless NXX codes not easily distinguishable from NXX codes assigned to POTS services,<sup>21</sup> when, as and if CMRS providers implement Local Number Portability (LNP) as they have been directed to do by mid-2002,<sup>22</sup> individual POTS and WCPP numbers would then be intermixed

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18. Declaratory Ruling and NPRM, at para. 25.

19. See e.g., CTIA, *The Who, What and Why of “Calling Party Pays”*, July 4, 1997, at 9-10.

20. Examples of service-specific uniform NXX codes are '950' for Feature Group B switched access, '976' for pay-per-call “information” services, and '555' for directory assistance.

21. In theory, it would be possible for a caller to check the status of a particular NXX code *in the caller's local area* by referring to the local white pages directory. This would generally not be possible for *non-local* numbers, i.e., for NXX codes not shown in the telephone directories customarily available to most callers.

22. Memorandum Opinion and Order, *In the Matter of the Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability*, WT Docket No. 98-229 and CC Docket No. 95-116, FCC 99-19 (released February 9, 1999).

*within the same NXX code*, making it virtually impossible for a caller to determine, in advance of actually dialing the call, whether WCPP charges will apply.

Based upon the existing record from previous CPP proceedings, the Commission has concluded that “the lack of a nationwide notification has hindered successful CPP offerings in this country.”<sup>23</sup> In its discussion of the obstacles to implementation of WCPP, the Declaratory Ruling and NPRM recognizes the need for “effective nationwide calling party notification.”<sup>24</sup> The Declaratory Ruling and NPRM, moreover, identifies as a threshold issue “whether there should be a uniform nationwide standard” specifying to a calling party that the call is being placed to a CMRS phone or pager and that additional charges will therefore be applied.<sup>25</sup>

In countries that utilize WCPP, the notification typically is accomplished through the overall numbering scheme. Wireless services (and often, other specialized services for which discrete charges apply) are identified by unique access codes, which are separate and distinct from “ordinary” geographic area codes. In fact, in all other countries of which we are aware that currently operate under a WCPP scheme, the wireless phone numbers are distinct from ordinary POTS numbers and are readily identifiable as involving additional charges.

Table 2.1 summarizes the dialing codes applicable for WCPP calls in a number of countries. While the degree to which wireless numbers differ from other premium charge services varies, in all of these cases there is a clear and readily apparent distinction between ordinary POTS numbers and wireless numbers to which WCPP charges apply. In Ireland, Iceland, Japan, New Zealand, Spain, and Switzerland, no more than three distinct prefix codes are used to specifically identify wireless telephone numbers (see Table 2.1). In France, there are four wireless carriers (Bouygues Telecom, FT-Itineris, FTM Mobiles, and SFR), which are accessed via prefix codes grouped into six number ranges (see Table 2.1). And in the United Kingdom, wireless services (together with a number of other services incurring premium charges) are accessed via prefix codes '02' through '09', while all POTS numbers are accessed via a '01' code.<sup>26</sup> *In none of these cases are wireless phones assigned “POTS-like” numbers*, and in all of these cases the special charge status of the wireless number is readily recognizable to the calling party.

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23. Declaratory Ruling and NPRM, at para. 27.

24. Declaratory Ruling and NPRM, at para. 30.

25. Declaratory Ruling and NPRM, at para. 30.

26. Toll-free (“freephone”) numbers in the UK use the 0800 (BT) and 0500 (Mercury) SACs that, like other special charge numbers (no charge in this case), are readily distinguishable from POTS numbers.

Table 2.1	
Many Countries Distinguish Wireless Calls by Use of Distinct Dialing Codes	
Country	Number Ranges
Argentina	prefix 15
Australia	14-15, 17-19, 407-419,
Belgium	0476-0478, 0485, 0495-0496, 075, 095-096
Cyprus	091, 095-096
Denmark	2, 30, 40, 50
Estonia	50-53, 55-56
France	0603, 0607-0618, 0660-0663, 0668, 0670, 0680-0689
Germany	0161, 0170-0179, 0700
Iceland	68-69, 89
Ireland	086-088
Israel	50-55
Italy	0320, 0328-0330, 0335-0339, 0347-0349, 0360, 0368
Japan	70, 90
Netherlands	0620-0629, 0650-0655
New Zealand	21, 25, 29
Norway	90-99
Portugal	676, 931, 933, 936, 91990, 9676
Spain	6
Sweden	7017-7018, 702-709, 730, 736, 738-739
Switzerland	076-079
United Kingdom	02-09
Source: "International Dialling Codes." British Telecom Online. Access Date: 10 Sept. 1999. < <a href="http://www1.btwebworld.com/interconnect/">http://www1.btwebworld.com/interconnect/</a> >	

Ironically, wireless carriers in the US — the very parties who seek authority to offer WCPP services here — have steadfastly resisted efforts to apply service-specific numbering arrangements, such as service-specific area code overlays, to CMRS and paging services. These carriers sought and successfully obtained a Declaratory Ruling from the Commission in 1995 foreclosing the use of service-specific overlays,<sup>27</sup> and as recently as July 30 of this year, in comments filed in CC Docket 99-200, these same parties reiterated their ongoing opposition to any service-specific numbering treatment.<sup>28</sup>

In those countries where WCPP is currently in place, the use of distinct and recognizable numbering assures participation by an informed consumer base; customers are not being deceived or misled into initiating calls to wireless phones and pagers that will result in unexpected additional charges.

27. Declaratory Ruling and Order, In the Matter of the Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596 (1995).

28. See, e.g., CC Docket 99-200, Initial Comments of Cellular Telecommunications Industry Association at 35, and Initial Comments of US West Communications, at 8.

- B. In most other countries, the number of wireless carriers is limited to a handful, rarely more than five, nationwide, making it possible to provide customers with a complete array of WCPP charges in local telephone directories. In contrast, there are hundreds of individual CMRS carriers in the US, making it impractical to provide accurate and complete pricing information to consumers.**

The United States was unique in the manner in which wireless licenses were issued. In virtually every other country, carriers were awarded *national* franchises; as a result, in most countries there are between two and four wireless service providers each one of which provides service nationwide. In the US, the country was balkanized into approximately 714 "cellular geographic service areas" ("CGSAs") for the original 800 MHz cellular licenses that were issued beginning in 1982. Consolidations among carriers began almost immediately after those first licenses were issued, but even today there are still around 100 or more different CMRS providers and numerous paging service providers.<sup>29</sup> Thus, while in most WCPP countries a customer can, through the use of distinctive numbering, readily identify the wireless carrier that will be completing the call and (in some cases) that will be setting the price for the call termination, it would be almost impossible for this capability to be replicated in the US *even if distinctive WCPP numbering were adopted*. Consequently, it will be far more difficult, if not impossible as a practical matter, for a wireline caller to determine, *in advance of actually dialing the call and waiting for an audio message identifying the CMRS provider and quoting the charges that will apply for the call*, who will be carrying the call and what the charges will be.

- C. In other countries, WCPP prices may be set by the wireline carrier originating the call or by the wireless carrier, but in any event are published in local telephone directories and are fully disclosed to the consumer so that an informed purchase decision can be made.**

In countries where WCPP is in place, customers are not only informed as to the applicability of additional charges (via the distinct numbering arrangement), but are also informed *in advance of dialing the call* as to the precise charges that will be applied. In addition, in many countries the WCPP pricing is essentially integrated into the local and domestic long distance pricing system.

Pricing of telephone calls for countries in Western Europe and in many other regions of the world is often based upon a "message unit" system in which a uniform charge per unit applies for all calls, with the length of time associated with each unit varying by the type of call.<sup>30</sup> For

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29. The FCC's latest wireless industry survey provides data on the top fifty mobile telephone service providers, fourteen paging companies, and five narrowband PCS networks. Fourth Report, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 and Annual Report and Analysis of Competitive Market Conditions*, FCC 99-136 ("*Fourth CMRS Market Report*"), released June 24, 1999.

30. Message unit pricing is applied by Swisscom (Switzerland), Telecom Eireann (Ireland), Telecom Italia (Italy), and Telefonica de Argentina, for example. Telecom Eireann white pages for greater Dublin (1999), at 20-21, and websites for Swisscom ([http://www.swisscom.ch/gd/services/voice\\_com/call\\_charges\\_detail1-en.html](http://www.swisscom.ch/gd/services/voice_com/call_charges_detail1-en.html)), Telecom Italia

example, a "local" call might be priced at one unit for three minutes, a domestic long distance "trunk" call might be priced at one unit every 40 seconds, and a wireline-to-wireless call might be priced at one unit every 25 seconds. Thus, a short call to a wireless phone would cost no more than a somewhat longer call to another wireline phone. Moreover, for the most part there is no "flat-rate" local service in these countries, so callers are accustomed to paying for every call they make.

In addition, in other countries there is no uncertainty as to the price of a WCPP call. Pricing information is generally provided in local white pages telephone directories, and in some cases does not even vary by the wireless carrier on whose system the call terminates (e.g., Ireland). In other countries (e.g., the UK, Israel), the charge will vary by terminating carrier, but the identification of the carrier is fully conveyed in the wireless phone number, and the relatively small number of different carriers still permits full disclosure of all pricing information in the local telephone directory.

**D. Generally, in other countries all calls to any wireless phone in the country carry the same charge to the calling party irrespective of the location from which the WCPP call has been placed.**

Because of the combination of national licensing and distinctive (non-geographic) numbering, charges for domestic WCPP calls do not contain any distance-sensitive element. Thus, for example, the charge applied by British Telecom to a wireline caller in London is the same to reach a wireless phone *anywhere in the UK*. The rates charged by British Telecom for calls from its fixed lines to a mobile phone, which are distance-insensitive, are shown in Table 2.2. This stands in contrast to the serving arrangement that is used in the US, where the calling party is responsible for wireline local and long distance charges to the rate center to which the called CMRS phone is assigned. If WCPP phones were to retain their existing geographic numbering, that condition would continue to prevail, and the caller would be responsible for both the landline local or toll component as well as for the airtime for delivery of the call to the wireless handset. In other words, the caller in the existing WCPP countries generally gets *both* the call transport/termination *and* the wireless air time for the same WCPP payment, thus attenuating the price difference between a WCPP and an ordinary wireline-to-wireline call. The only case where distance-sensitive wireline transport and termination charges apply is typically limited to international calls, i.e., in the case of a call from a wireline phone in one country to a wireless phone in a different country, the calling party would pay the international DDD rate for the landline portion of the call, and (possibly) also pay a WCPP charge to complete the call to the foreign wireless phone.

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(<http://www.telecomitalia.it/quantocosta/nuovetariffe.uk.shtml>), and Telefonica de Argentina (<http://www.telefonica.com.ar/ingles/tarif/nacion.htm>), downloaded September 9, 1999.

Table 2.2			
British Telecom Rates to Mobile Phones Are Distance Insensitive			
<b>Calls from fixed lines to:</b>	<b>daytime</b> (Mon to Fri, 8am-6pm)	<b>evening &amp; night-time</b> (Mon to Fri, before 8am & after 6pm)	<b>weekend</b> (Midnight Fri to midnight Sun)
Cellnet Number Ranges (fm1 rate)	19.8p	19.2p	2.0p
Vodafone Number Ranges (fm5 rate)	20.6p	15.0p	7.4p
One2one Number Ranges (fm3 rate)	25.3p	17.9p	8.0p
Orange Number Ranges (fm4 rate)	24.8p	17.8p	7.9p
All calls are subject to a minimum fee of 5p including VAT. Prices are in pence per minute including VAT, rounded to 1 decimal place.			
Source: British Telecom website. Access date: 3 August 1999 <a href="http://www.shop-at-home.bt.com/home/pricing/uk.htm">http://www.shop-at-home.bt.com/home/pricing/uk.htm</a>			

**E. In other countries, the "message unit" billing structure means that WCPP charges are available in "real time" for WCPP calls originated from payphones and in other situations in which immediate determination of the call charges is required.**

As explained earlier in these Comments, other countries typically base the charges for local, trunk (domestic toll), and international calls upon "message units," each of which carries a uniform price but (depending upon the nature of the call) provides different amounts of time, ranging from several minutes or more for local calls to a few seconds for international calls. Payphones are able to accommodate the different charges for the various types of calls by receiving "pulses" from the central office for each message unit, permitting WCPP and other non-local calls to be accommodated in essentially the same manner as local calls, except for the rate at which units accumulate.

In the US, unless distinctive numbering or signaling messages are adopted to convey call rating information to an intelligent payphone or hotel PBX, real-time WCPP call charge information would not be available for calls to a wireless number. As a result, the owners of payphones and hotel PBXs are likely to be forced to block such calls altogether upon determining that additional WCPP charges are applicable.<sup>31</sup> In that event, the only means by which a caller would be able to complete a WCPP call from a payphone or hotel PBX would be to charge the call to a non-prepaid calling card, which does not require real-time call charge information. However, such calls are frequently subject to operator-assisted or other premium service surcharges, making them prohibitively expensive as compared with ordinary local calls.

31. One means for accomplishing such blocking, which would not require "smart" payphones or PBXs, is for the CMRS provider and/or the Service Control Point associated with the call routing function to identify the calling line's class of service (payphone, hotel PBX) and on that basis block the call attempt, returning an intercept message to that effect.

*The International Experience with WCPP*

Whereas the proponents of WCPP argue that this method of pricing would make wireless phones *more* accessible by encouraging users to disclose their phone numbers and leave their handsets turned on, in fact the difficulties that would be introduced in dialing WCPP phones using payphones, hotel PBXs, prepaid calling cards, or other situations in which immediate, real-time call charge detail is needed would have precisely the opposite effect. For example:

- Children needing to reach a parent's CMRS phone from a payphone at school would generally be unable to do so.
- Callers away from their own home or business phones might be reluctant to call a WCPP number from, for example, a neighbor's home because of the added charges that this would put on the neighbor's bill, and might also be reluctant to place the call on a calling card basis because of the high surcharges that would typically apply.

The "penalty" for having to place a call via a calling card vs. on a dialed sent-paid basis is substantial: Table 2.3 compares interstate toll call charges placed from payphones or via calling card with charges for sent-paid DDD calls placed from a subscriber's home phone. If the present practice with respect to toll charges is any indication, the prices for WCPP calls from payphones and other locations where ordinary sent-paid payment arrangements are not possible will severely suppress the demand for such usage.

Table 2.3						
Calling Card Rates Significantly Higher Than Direct Dialed						
	Direct Dialed Rates			Calling Card Rates		
	AT&T	Sprint	MCI	AT&T	Sprint	MCI
	One Rate	7 Cents Anytime	One Net Saving Long Distance	One Rate Calling Card Plan	Sense Foncard	One Phone Card
<b>Cost per minute</b>	.07 *	.07 *	.05-.09 * depending on day	0.25 *	0.59	0.25
<b>Service charge per call</b>	0	0	0	0	0.99	0.89
*Indicates an additional monthly recurring charge for this plan						
Sources: AT&T homepage. Access Date :10 September 1999 < <a href="http://www.att.com/usc/offers/onerate.html">http://www.att.com/usc/offers/onerate.html</a> > MCI homepage. Access Date: 10 September 1999. < <a href="http://www.mci.com/aboutus/products/mcione/textyou.shtml">http://www.mci.com/aboutus/products/mcione/textyou.shtml</a> >, < <a href="http://www.mci.com/netsvings/">http://www.mci.com/netsvings/</a> > SprintTariff F.C.C. No. 1, Section 5.2.HH. Original page 186.467. Effective: September 4, 1999						

**F. Premium charge calls are typically blocked by the telephone systems of business, government, and institutional users.**

At para. 23 of the Declaratory Ruling and NPRM, the Commission opines that “[a]s a result of the increased accessibility of CPP subscribers, these analysts believe, it is likely that more calling parties will place calls to wireless subscribers and take advantage of the opportunity to

reach someone who is not tied to one location. This provides the added benefits to the calling party who will have an increased likelihood of being able to complete a call to a CPP subscriber, as compared to calling a wireless subscriber with *called party pays* service, who may turn his or her wireless phone off in order to help control spending.” This hypothesis requires, of course, that would-be callers will in all cases be permitted to initiate calls to WCPP telephones from any wireline telephone.

In the US, it is common practice for businesses, educational institutions, and government agencies to arrange their PBXs or other phone systems to block calls placed to '900', '976' or other premium charge numbers. To the extent that this practice is extended to include WCPP numbers, wireless telephones would be *unreachable* from business phone systems. Users needing to call a WCPP phone would be forced to place a costly credit card call or make other arrangements to complete these calls. Extensive use of WCPP call blocking could substantially offset the potential for wireline-to-wireless call stimulation posited by the CMRS providers.

Thus, if calls to WCPP subscribers are routinely blocked by PBXs and payphones, WCPP customers will actually be *less accessible* than they are under existing called party pays pricing. Since the potential for such blocking is greater in the US than in many other countries where charge pulses are available to the originating PBX or payphone, there is strong reason to expect that the demand experienced in those other countries will not be replicated here. Indeed, wireless customers may actually be *dissuaded* from accepting WCPP service *precisely because it will make their phones inaccessible*.

**G. The US has experienced a far greater development and use of toll-free calling services, in which the called party pays for the call, than virtually any other country.**

Another factor that differentiates the US from the various foreign countries in which WCPP has (apparently) been successful is the long-standing tradition in the US of "toll-free" calling services, arrangements in which the called party pays for the call. Basic 800-number services have been in use since the 1960s, but the advent of 800-number portability on May 1, 1993 greatly encouraged the competitiveness and growth of the toll-free services market.<sup>32</sup> Within eighteen months of the introduction of 800 number portability, most of the seven million toll-free numbers available through the 800 access code were in use, so that two additional codes have been established subsequently.<sup>33</sup> Today, more than eight million toll-free numbers are in use in the U.S.,<sup>34</sup> and the three toll-free SACs (800, 888, 877) have a total potential capacity of some 30-million numbers. In many other countries, toll-free numbers are limited to five or six digits, implying a maximum of one hundred thousand or one million such numbers, respectively. In the U.S., toll-free service providers have developed new, innovative toll-free dialing services, such

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32. Second Report and Order, 8 FCC Rcd 907 (1993) and Order, 7 FCC Rcd 8616 (1992) (extending the implementation date for 800 number portability from March 4, 1993 to May 1, 1993).

33. See <http://www.fcc.gov/ccb/888/888facts.html> (accessed September 14, 1999).

34. See <http://www.fcc.gov/ccb/888> ("Toll Free Home Page"), accessed September 14, 1999.

as offering "personal" toll-free numbers to residential consumers to enable children who are away at school to call home, etc.

As the popularity of toll-free services in the US demonstrates, there will, in fact, be many situations in the US in which a wireless customer may *want* to pay for incoming calls. Parents who want to be accessible to family members, contractors who want to be accessible to their customers, real estate brokers who want to be accessible to their clients and potential buyers, all provide examples of situations in which the CMRS customer would not want to use a WCPP service *nor would the volume of incoming calls to that customer's wireless phone likely be stimulated by the availability of WCPP arrangements.*

**H. The US has substantially higher residential penetration rates and higher wireline service quality than in many foreign countries in which WCPP is in use.**

The US enjoys one of the highest rates of residential wireline telephone penetration in the world. Overall, the percentage of US households with at least one telephone has been in the 93-94% range for more than a decade.<sup>35</sup> Moreover, orders for residential service in the US are typically completed within 3-5 days of receipt, and in some cases can be completed immediately where "warm dial tone" is in use. In many other countries, residential penetration rates are substantially lower and consumers often have to wait months or years to have a wireline phone installed. (See Table 2.4, which compares US wireline residential penetration rates with those for selected nations in which WCPP charging is in use.) As a consequence, wireless services are far more likely to be used *as a substitute for* wireline services in such countries than in the US, regardless of whether the calling or called party pays for incoming wireless calls. To the extent that demand for wireless service in these countries is driven by the lack of availability of quality wireline services, it would be an error to conclude that the adoption of WCPP in the US would stimulate demand for wireless to the levels observed elsewhere.

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35. Federal-State Joint Board Monitoring Report, CC Docket No. 98-202, December 1998, at Table 6.1 (Household Telephone Subscribership in the U.S.).

Table 2.4	
United States Ranks Among the Highest in Wireline Penetration Rates	
Country	Percentage of People with Access to Telephone Mainline
Argentina	19.1%
Australia	50.5%
Belgium	46.8%
Denmark	63.3%
Finland	55.6%
France	57.5%
Germany	55.0%
Ireland	41.1%
Israel	45.0%
Italy	44.7%
Mexico	9.6%
Sweden	67.9%
Switzerland	66.1%
United Kingdom	54.0%
United States	64.4%

Source: World Bank Development Indicators 1999, Table 5.10

**I. In other countries, wireless-to-wireless calls are often priced below landline-to-wireless WCPP charges.**

In many cases, the air time charges applicable to calls placed from wireless phones to other wireless phones are less than those applicable for landline-to-wireless WCPP calls; thus, some of the apparently higher incoming use observed in WCPP countries may be from other wireless phones rather than from landline phones, particularly where wireless penetration rates are high to begin with. Some US CMRS carriers already offer special pricing for “on-net” wireless-to-wireless calls (e.g., Nextel). One consequence of WCPP would be to shift demand away from wireline services (where calls to wireless phones are subject to an additional charge) and onto wireless services (where such calls are either priced the same as wireless-to-wireline calls or are actually discounted or “free”). While such a result may have the effect of stimulating demand for wireless services, it will have done so by raising the “price ceiling” under which CMRS carriers are able to price, rather than by encouraging them to reduce their prices. Such “competition” does not produce lower prices overall, and may well lead to an overall increase in the cost of wireless services.

**J. The faster rates of development of wireless services in other countries relative to the US are likely attributable to historical factors other than the adoption of WCPP.**

While proponents of WCPP claim that it is responsible for stimulating demand and penetration for wireless services in other countries, there are several other historical factors distinguishing the US wireless market which slowed its development relative to the wireless services growth observed in other countries. These factors include the initial market

fragmentation caused by the US spectrum licensing process, the US approach to standards-setting, and pricing differences.

*Market fragmentation.* The US was alone among most nations in balkanizing the country into microscopic franchise areas (CGSAs) when issuing cellular and PCS licenses. In most other countries, wireless licenses were issued on a national basis, and wireless carriers have been offering nationwide roaming on both outward and inward calling for some time, perhaps since the inception of the wireless service. In the US, historically most carriers and service plans involved substantial additional charges for roaming beyond the "home" carrier's serving area. Roaming charges have been reduced or eliminated by many of the "digital-one-rate" plans introduced by AT&T and other wireless providers since 1998,<sup>36</sup> which henceforth may mitigate this impediment to the development of the US market. However, even if WCPP were to be introduced in the US, some wireless customers would still be subject to incoming call charges when roaming beyond their geographically limited home carrier's serving area.

*Standards-setting.* The FCC has not required CMRS carriers in the US to adopt uniform standards or protocols or to be interoperable, preferring to leave this area to market forces. Consequently, and roaming charges aside, roaming in areas not served by a technology compatible with the CMRS subscriber's home service may not be possible at all, unless the subscriber has a multi-network phone *and* his home carrier has a roaming agreement with the out-of-region carrier. In many of the countries in which WCPP is in place, standards were imposed on a centralized basis at an early point in the development of wireless markets, so that wireless services adhere to national and international standards and tend to offer their users relatively more extensive geographical coverage than is common in the US.

*Pricing.* The Declaratory Ruling and NPRM observes that some industry observers have contended that, historically, US wireless service subscribers have been reluctant to give out their wireless phone number to others, because the subscriber has had to pay for expensive air-time charges on incoming calls. Removing this disincentive by adopting WCPP, they argue, would lead subscribers to make their numbers more widely available and thus stimulate inbound usage.

However, the US situation in this respect is once again not strictly comparable to that seen in most other countries. The initial duopoly model adopted in the US caused wireless service prices to be much higher relative to wireless service than was typically the case in other countries.<sup>37</sup> As explained in more detail below, serious price competition appears to have finally taken root in the US wireless market over the past few years, so that subscribers' historical disincentive to avoid inbound calling is already eroding.

Other recent pricing developments in the US wireless industry should also be reducing the reluctance of wireless subscribers to give out their phone number and receive incoming calls. The new "digital-one-rate" plans are typically designed specifically to encourage customers to subscribe for a larger block than they are likely to use (in order to avoid high excess minute

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36. Fourth CMRS Market Report, at 11 and 23.

37. While basic airtime charges in many other countries have been higher than those applicable in the US, so too have been their basic local and toll charges, so that the relative expense of wireless service has been less.

charges); to the extent that customers may not utilize their entire monthly call allowance, they will not incur incremental airtime charges for incoming calls. In addition, many pricing plans waive charges for the initial minute on incoming calls, thereby permitting the wireless customer to determine who is calling and whether he/she is willing to pay to talk to the caller. Some plans also offer limited amounts of “free” airtime (in both directions) for off-peak (evening/night/weekend) calling. Finally, most PCS and some 800 MHz digital services include caller ID as a standard feature, enabling the wireless customer to see who is calling before electing to accept and pay for the call.<sup>38</sup> In light of these pricing developments, US wireless customers today have much greater control than in the past over the costs they incur due to inbound calls. Consequently, the factors that formerly discouraged wireless customers from accepting incoming calls have been addressed and resolved — without the establishment of WCPP.

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38. In fact, many wireless handsets will display the calling party's name if the calling number is included in the "phone directory" or "speed dial" list programmed into the handset by the user.

## **THE IMPACT OF WCPP ON U.S. WIRELESS COMPETITION**

### **III. WCPP is likely to diminish, rather than increase, price competition for wireless services.**

Although the lack of competition for cellular services in the US had been a serious concern in the past, there is today substantial and growing price competition in the US wireless market. In the three or so years since the subject of WCPP first surfaced at the FCC, airtime prices have dropped by as much as 80% depending upon the calling plan selected by the customer. From 1997 to 1998, the per-minute price level for wireless service has fallen some 18-20%, especially for higher-usage customers.<sup>39</sup> One major influence on pricing has been the entry of new digital PCS-based competitors. In 1993, the US Congress enacted legislation that authorized the issuance of 2 GHz PCS licenses through an auction process.<sup>40</sup> Subsequently, auctions were conducted in and by mid-1997 many PCS networks were operational. Today, there may be as many as five or six wireless service providers in most major markets, and the new PCS entrants have been aggressively reducing prices to attract customers. As a result, airtime charges for both 800 MHz and 2 GHz services have dropped from the 50 cent range to less than 10 cents. Outward calling scopes have in some rate plans been expanded to embrace the entire US. Without additional toll charges, and several carriers offer service plans without roaming charges.

In addition, many carriers now offer unlimited or extremely low-priced off-peak (evening/night/weekend) pricing plans applicable to both outward and inward calling.<sup>41</sup> Pricing packages are being offered that allow a customer to combine wireless service with wireline long distance services, and potentially with other services as well (e.g., local landline service, internet access), thus allowing the customer to benefit from aggregate volume across a range of telecom services.

As noted earlier in these Comments, the use of "digital-one-rate" pricing plans has become common throughout the US industry. Under these plans, customers pay a flat monthly rate for a block of airtime minutes, which might range from 100 to as much as 1400 or more. The plans penalize customers for exceeding their plan limit, and thereby encourage customers to select even higher usage-block plans. Thus, in the three years since the NOI was issued and in the four to five years since the CMRS industry began lobbying for WCPP, the price (to the wireless customer) for receiving incoming calls has decreased sharply, from the 50 cent per minute range to 10 cents per minute or less and, in the case of customers with either block-of-time plans or with unlimited off-peak calling plans, the effective price of incoming calls may well be at or near zero.

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39. Fourth CMRS Market Report, at 20-22.

40. The Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, 6002 (b).

41. For example, Omnipoint offers a one cent per minute weekend rate plan for monthly customers. Omnipoint Home Page.

<[http://www.omnipoint.com/common/promo/penny/penny\\_conn.html](http://www.omnipoint.com/common/promo/penny/penny_conn.html)

Unlike the situation today, under WCPP the person responsible for payment of the charge is not the person selecting the service provider. Hence, whereas there is intense competition for air time prices under the current pricing regime, there is no reason to expect any significant price competition to develop for wireline-to-wireless WCPP prices, and there is every reason to expect such competition to be distinctly less than that which exists under the present pricing arrangement.

The Commission has already expressed a similar view with respect to the conceptually parallel situation for terminating switched access. When considering the regulatory treatment of terminating switched access rates, the Commission observed that "...unlike originating switched access, the choice of an access provider for terminating access is made by the recipient of the call. The call recipient generally does not pay for the call and, therefore, is not likely to be concerned about the rates charged for terminating access. We suggested that neither the originating caller nor its long-distance provider can exert substantial influence over the called party's choice of terminating access provider. Thus, even if competitive pressures develop at the originating end as new entrants offer alternatives, the terminating end of a long-distance call may remain a bottleneck, controlled by the LEC providing access for a particular customer."<sup>42</sup> Just as in the case of terminating access, under WCPP arrangements the wireless customer will be indifferent to the level of WCPP charges because they are paid by the call originator, and thus WCPP charges will elude the intensifying competitive pressures that face call recipient-billed airtime charges today.

Consider, for example, the case of large business, government, or institutional wireless customers. Today, these users benefit from the growing competition that currently prevails in the wireless market by regularly negotiating volume contract service arrangements with CMRS providers. However, because wireline-originated WCPP calls placed by such users or to their wireless phones will be completed by any of a large number of CMRS providers, there would be little opportunity for the calling party to negotiate or obtain volume pricing with respect to WCPP calls. Thus, where a high-volume or package-priced wireless customer is able to obtain a pricing plan providing for low (e.g., 10 cents per minute or less) or free per-minute airtime rates, it is extremely unlikely that this price will be extended to wireline users placing calls to such high-volume CMRS customers.

Indeed, the inability of or difficulty for individual wireline customers to obtain pricing information with respect to WCPP calls will further diminish the potential for price competition among CMRS providers. The Commission has extensive experience with telecom markets operating under this condition. In general, pricing practices of resellers, payphone providers, and alternative operator service (AOS) providers are not fully disclosed to users, and as a result these providers have been known to impose excessive and in some cases egregious prices for services where the caller is not readily confronted with adequate (or any) pricing information. The Commission has received and has responded to numerous complaints with respect to such carriers and their pricing practices.<sup>43</sup> Based upon this history, it is reasonable to expect that the

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42. In the Matter of Access Charge Reform, et al, First Report and Order, CC Docket Nos. 96-262, 94-1, et al (released May 16, 1997), at para. 349.

43. NPRM, 5 FCC Rcd at 4630, Docket CC 90-313; Policies and Rules Concerning Operator

failure on the part of the FCC to regulate and place limits upon WCPP prices is likely to lead to abuses by individual carriers.

WCPP proponents have offered no factual or empirical basis upon which the Commission can find that the introduction of WCPP pricing will *increase* competition and in so doing *reduce prices* for wireless services. Worse, there is no basis upon which the Commission can conclude that the introduction of WCPP will have even a neutral impact. For the various reasons discussed here, it is far more likely that competition will be diminished and prices will be increased.

Given that outcome, it is difficult to imagine a condition under which overall wireless usage would be stimulated under a WCPP regime. Inasmuch as airtime charges currently being imposed upon CMRS customers for incoming calls are likely to be less — and in some cases free — than the likely per-minute WCPP charges that wireline customers will be required to pay, there is no basis for the *assumption* that inward calling will be greater under WCPP than under the present pricing practice *even if one assumes that the price elasticities confronting wireless and wireline customers are the same* which, as we have suggested, is not likely to be the case.

WCPP will result in diminished competition, increased prices, and commensurately *less* usage of wireless services. It will make wireless services *less*, not more, accessible, and subject callers to unexpected and possible egregious charges, far greater than those currently being imposed for the same calls upon wireless subscribers. For all of these reasons, the Commission should conclude that no competitively beneficial purpose will be served by adoption of WCPP.

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Service Providers, CC Docket 90-313, Report and Order, Adopted: April 9, 1991.

**PRIVITY OF CONTRACT UNDER WCPP**

**IV. Under the WCPP structure being proposed by the CMRS industry, there would be no privity of contract between the calling party and the providing CMRS carrier.**

The Commission seeks comment "on whether [their] proposed notification method ought to be sufficient to establish an "implied-in-fact contractual arrangement between the CMRS provider and the calling party, and if not, what else may be necessary."<sup>44</sup> In the NPRM's short discussion of the "privity of contract" issue, the Commission notes the potential applicability of principles established by the Commission in a 1997 decision regarding "casual calling."<sup>45</sup> In that decision, the Commission found that:

[c]arriers have reasonable options other than tariffs to establish contractual relationships with casual callers that would legally obligate such callers to pay for their services, and that providing the caller the rates, terms, and conditions prior to completion of a call would establish an enforceable contract between the caller and the carrier.<sup>46</sup>

The Joint Commenters agree with the Commission that the principles enunciated by the Commission in the context of the "casual calling" decision have applicability to the privity of contract issue raised in connection with WCPP. At the same time, however, there are important differences between interexchange "casual calling" services and WCPP that must be recognized, and these differences require a more stringent set of principles be developed, or the more stringent application of the principles set forth in the "casual calling" decision, in establishing whether privity of contract can exist for WCPP.

In the "casual caller" situation, the "casual caller" has a readily available option that would permit completion of the desired call without having to transact with a carrier with which he/she otherwise has no current or preexisting contractual relationship. As recognized by the Commission in the cited 1997 "casual calling" decision, "casual callers always have the option of obtaining and using an interexchange carrier's calling card, thereby avoiding any increased cost or delay."<sup>47</sup> Significantly, this option provides the "casual caller" - as the calling party - the opportunity, prior to actually placing the call, to select the carrier over whose network the call will be carried and the charges that will ensue. *No such opportunity exists in the case of WCPP.*

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44. Declaratory Ruling and NPRM at para. 52.

45. "Casual calling" refers to those services "that do not require the calling party to establish an account with an interexchange carrier or otherwise presubscribe to a service. Casual Calling Reconsideration, 12 FCC Rcd at 15026 (para. 18). These would include, for example, collect calling, the use of a third-party credit card, or dial-around through the use of an access code. *Id.* at fn. 74.

46. Declaratory Ruling and NPRM at para. 51 (citing *Casual Calling Reconsideration*, 12 FCC Rcd at 15031-32 (para. 28)).

47. *Id.* at para. 29.

## *Privity of Contract Under WCPP*

Under WCPP, the *only* option available to the calling party is to have the call carried over the network of the *called* party's carrier and to face the charges associated with the *called* party's wireless calling plan. Under these circumstances, the precise manner in which the principles enunciated in the Commission's "casual caller" decision are implemented is of paramount importance in determining whether privity of contract exists in the case of WCPP.

The following represent the conditions that must be fully satisfied if privity of contract is to exist in the case of WCPP as defined in the Commission's Notice. Specifically, the calling party must be:

- aware that the call will be subject to WCPP surcharges;
- fully informed as to the price and price structure (e.g., will the charge be imposed in integral minutes or to the nearest second);
- advised as to the identity of the CMRS provider; and
- afforded a *practical* opportunity to decline to complete the call, i.e., to reject the "offer" of service at the stated price.

It is not at all readily apparent that these conditions are adequately reflected in the Commission's "casual caller" principles.

The cited "casual caller" principles, taken at face value, appear to require only that the caller be provided with "the rates, terms, and conditions prior to completion of a call." The "casual caller" principles do not specifically require that the "true identity" of the carrier be provided to the caller, presumably because the caller is making an affirmative selection of that carrier when dialing the call. This is, of course, not the case with WCPP. Here, the selection of the carrier had been made by the party being called, and is unknown and unknowable to the caller unless affirmatively advised as part of the same mechanism that provides "the rates, terms, and conditions prior to completion of a call." That the calling party be provided with the true identity of the CMRS provider and also be afforded a *practical* opportunity to decline to complete the call are vitally important and necessary conditions for privity of contract to exist in the case of WCPP where, unlike the "casual calling" situation, no other practical opportunity for completion of the call exists for the caller. As discussed further below, in the case of WCPP, there are numerous factors that complicate the provision of a practical opportunity to decline to complete the call.

*Notification that the call will be subject to WCPP surcharges.* With regard to the first requirement for privity of contract listed above, i.e., making the calling party aware of the WCPP nature of the call, there are two basic options by which this can be achieved: (1) the establishment of unique and readily recognizable numbering; or (2) the establishment an appropriate audio message or other signal *that will be recognizable to the entity who is actually responsible for payment of the WCPP charge.* Significantly, the proposed rules do not contemplate either of these conditions.

For calls placed through a PBX or other telephone system operated by a business,

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government agency, or institution, the signal must be in a form that is readily recognizable to the PBX or other equipment so that the call can be blocked or captured for appropriate charge-back to the caller. Unique numbering will satisfy this requirement; it is not obvious, however, how this requirement could be satisfied without unique numbering and without imposing substantial costs upon the PBX user to recognize and respond to some sort of signal from the CMRS provider. Few if any PBXs currently in use in the US are capable of responding to any "real-time" WCPP signal or message, or have the capacity to keep track of which NPA-NXXs or individual numbers will be subject to WCPP charges. Modifications required to achieve this capability, if they can be made at all, would require expensive upgrades, the costs of which will ultimately be borne by consumers. Moreover, even if the upgrades or outright replacements of equipment were undertaken, the owner of the PBX would be required to continuously update the data base of WCPP NPA-NXXs or individual numbers in order to fully protect against unauthorized or unanticipated charges. For individual telecommunications users, *there is simply no practical means by which this could be accomplished.* The only low-cost and reliable means for permitting the identification of WCPP calls is through the use of one or more WCPP Service Access Codes (SACs) in place of geographic area codes for all WCPP numbers. As noted in Section II of these comments, in every other country surveyed where WCPP is in use, WCPP phones have unique and identifiable numbers that would be analogous to SACs.

*Information as to the price and price structure for the WCPP call.* With regard to the second requirement for privity of contract listed above, i.e., informing the calling party of the price and price structure for the call, complete and accurate pricing information must be provided to the calling party without imposing undue burden or cost on the part of the calling party to obtain and act upon this information.

For calls placed from residential or single-line business wireline phones, a recorded message containing the pricing information would probably be sufficient. However, PBXs, payphones and systems that process calling card calls will require real-time pricing information for call accounting and charge-back purposes, and will require this information in a mechanized form understandable to computer-based call routing and processing systems.

Hotels will need to know how to charge guests for WCPP calls placed from guest rooms and will require this information prior to the guest's departure. Unless this information is available in real-time, the hotel will likely have no alternative but to block completion of WCPP calls or to charge high surcharges for their completion. For similar reasons, payphones and calling card service providers will also require real-time pricing information in order to permit completion of WCPP calls.

Business PBXs will require pricing information for charge-back purposes. While real-time pricing information may be less essential than for the other cases identified above, as a practical matter it may still be necessary in order to permit efficient processing of call detail information without requiring the business customer to cross-reference the PBX-generated Station Message Detail Recording (SMDR) and billing tapes received periodically from the local and interexchange carriers.

As noted in Section II of these comments, in other countries, charges for WCPP calls are often handled on a "message unit" basis (just like all other local, domestic trunk, and international calls) that allows PBXs, payphones and systems that process calling card calls to

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get call charge information in real time. In the US, however, PBXs, payphones and systems that process calling card calls do not at present possess the capability to receive and process real-time pricing information transmitted by the WCPP service provider, and this key difference between the US and European WCPP model presents a major obstacle in establishing privity of contract in the US for these important types of applications.

*Identity of the CMRS provider that is imposing the charge.* With regard to the third requirement for privity of contract listed above, i.e., informing the calling party of the identity of the CMRS provider, this is essential both for consumer protection as well as to provide even a minimal opportunity for competitive choices to be made.

Inasmuch as the FCC has ruled that WCPP is a CMRS service furnished by the CMRS provider rather than a service involving a CMRS termination that is furnished to the calling party by the wireline ILEC or IXC, it must be presumed that both the pricing and billing of WCPP calls will be subject to the control of the CMRS provider, with the originating ILEC or IXC possibly furnishing billing & collection services to that CMRS provider (or, alternatively, providing call detail/billing name & address to the CMRS provider for alternative billing arrangements). The consumer who will be held responsible for these charges has a right to know with whom he is dealing and from whom he should expect a bill.

As with the notification itself, the identity of the CMRS provider will need to be communicated in real time and in a manner that is usable by the customer, i.e., a voice type message in the case of residential/single-line business originating lines, and a machine-processable signal in the case of PBXs or equivalent. However, as mentioned above, PBXs in use in the US today do not currently possess the capability to receive and process the carrier identification, even if this information is transmitted (as for example, via Signaling System Seven (SS7) or Advanced Intelligent Network (AIN) signaling), and this presents a major obstacle to establishing privity of contract for WCPP calls.

*Practical opportunity to decline to complete the call.* Clearly, a basic tenet of establishing privity of contract is that the entity *who is responsible for payment of the WCPP charges* be afforded a practical means for electing not to allow or not to complete the call upon determining or being notified that specific WCPP charges will apply.

In the case of residential/single-line business users, the caller should be required to affirmatively elect to pay the stated charges by entering a touch tone signal or by a spoken acceptance (e.g., as is done for collect calls). Privity of contract should not be created under a negative option type of arrangement, e.g., failing to hang up the phone in time. Moreover, the industry proposal to discontinue notification/acceptance scheme after 18-24 months cannot be permitted, because notification/acceptance is required in order for privity of contract to arise *and* because if anything the situation is likely to become even more confusing after 18-24 months when/as/if wireless local number portability (LNP) is implemented.

Where the financially responsible entity is not the caller (e.g., the caller's employer, a university, a hotel, etc.), the applicability of WCPP charges for a given call must be communicated in a manner that is capable of being processed by mechanized systems, e.g., PBXs. The financially responsible entity should not, however, be required to incur significant costs in order to receive and process such signals. As mentioned above in the context of

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identification of the call as a WCPP call, the only economically feasible means by which this can be achieved, given existing systems capabilities, is through unique numbering of WCPP phones, such as through the use of one or more WCPP Service Access Codes (SACs).

As discussed above, the creation of SACs is the *only practical solution available* to the WCPP privity of contract issue. One significant ramification of this solution, however, is that it would necessarily preclude the use of LNP as between wireless and wireline services. Obviously, the porting of a wireless number assigned in a WCPP SAC to a wireline POTS carrier would nullify the specific consumer safeguards that use of the SAC approach would be intended to achieve, and would thus fail to satisfy the requirements for privity of contract, since it would remove the ability to identify the called number as a number for which WCPP charges apply.

As proposed in the Declaratory Ruling and NPRM and without the use of one or more WCPP-specific SACs, there would be no privity of contract between the calling party and the CMRS provider, and there would thus be no basis upon which the calling party could be held legally liable for WCPP charges. Moreover, the "casual calling" model is inapposite in this situation because, unlike the case where a consumer makes an affirmative decision to utilize a service that involves casual billing (e.g., a "dial-around" 101XXXX service or a 900 service) and deals directly with a known service provider, in the case of WCPP the carrier selection is made not by the caller but by the call recipient, and there is no direct customer/provider relationship in the WCPP case. Moreover, the privity of contract issue is compounded by the Commission's Declaratory Ruling that wireless calling party pays service is a CMRS service rather than a service offered by the originating to *its* wireline customer. While it is not entirely clear that adoption of special WCPP numbering will address and resolve all potential privity of contract concerns, it is absolutely clear that special WCPP numbering is *essential* for any privity of contract to exist at all.

## THE RECIPROCAL COMPENSATION ALTERNATIVE TO WCPP

### **V. The eligibility of CMRS providers to receive reciprocal compensation payments from the originating local carrier or access charges from an interexchange carrier terminating the call to the CMRS provider establishes a far superior basis for WCPP than the model being considered in this rulemaking.**

"Reciprocal compensation" is the mechanism whereby interconnecting local exchange carriers (LECs) compensate each other for completing inter-carrier calls. If a call is originated by a customer of Carrier A to a customer of Carrier B, Carrier A hands off the call to Carrier B at a mutually agreed-upon Point of Interconnection (POI) and pays Carrier B (typically on a per-minute basis) for completing the call to its customer. If the traffic between the two carriers is exactly "in balance," i.e., the number of minutes handed off by A to B exactly equals the number of minutes handed off by B to A, then the reciprocal compensation payments (assuming that they are based upon the same rate per minute) are equal and no net exchange of monies takes place. While there is some variation with respect to the precise reciprocal compensation arrangement from jurisdiction to jurisdiction and even from interconnection agreement to interconnection agreement, the basic principle is essentially the same in all cases.

The theory of reciprocal compensation is fairly straightforward: The calling party pays the originating LEC the normal rate for a local call (which might be on a flat-rate basis or on a measured-use basis). If the call requires hand-off to another LEC, the originating LEC pays the other LEC to complete the call, in effect sharing the originating end user payment with the terminating LEC. This arrangement differs from, yet is analogous to, the payment arrangement applicable to long distance calls. There, the calling party pays the interexchange carrier that will handle the call, even though the call itself is originated on the LEC serving the calling party. The IXC, in turn, makes an access charge payment to both the originating and terminating LECs, similarly sharing the end user revenue with the participating (local) carriers. Note that in each of these two situations, the carrier with which the calling party has the direct contractual relationship, and to which the calling party remits payment for the call, makes payments (in the form of local reciprocal compensation or interexchange carrier access service payments, as the case may be) to the participating carrier(s).

Section 251(b)(5) of the *Telecommunications Act of 1996* entitle wireline local exchange carriers to enter into reciprocal compensation arrangements for transport and termination with telecommunications services providers with whom they interconnect.<sup>48</sup> In its *Local Competition Order* in CC Docket 96-98, the Commission specifically concluded that reciprocal compensation arrangements must be extended to CMRS providers, because they provide telecommunications.<sup>49</sup> Previously CMRS carriers would pay tariff rates for the calls they sent to the LEC, and would receive no compensation for the calls handed off to them by the LEC. However, now CMRS carriers make reciprocal compensation payments to wireline LECs to which they hand off local traffic, and are entitled to receive such payments from wireline LECs for local traffic handed off to them. As we have previously observed, if a long distance call is involved (either originating

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48. 47 U.S.C. § 251(b)(5).

49. First Report and Order, 11 FCC Rcd 15499, 15997, (paras. 1007-1008) (1996) (*Local Competition Order*).

or terminating), the interexchange carrier carrying the call will be required to make an access charge payment to the wireline or wireless carriers at both ends of the call.

Although CMRS carriers typically generate substantially more traffic to wireline LECs than from them, they do receive reciprocal compensation payments for the LEC-to-CMRS traffic that they terminate.

**A. The FCC's determination that WCPP is a CMRS service is inconsistent with the reciprocal compensation requirement.**

Ironically, the FCC's determination that WCPP is a CMRS service is actually inconsistent with the reciprocal compensation model, and it is entirely unclear how these inconsistencies can be resolved. The Commission itself appears to recognize this problem in the Declaratory Ruling and NPRM:

First, it is not at all clear that our analysis above [referring to the Declaratory Ruling] regarding the CMRS character of the call and of the rates charged the calling party would be correct. Under this approach, 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. Second, it is not clear how interconnection agreements would need to be changed, and what rule changes would be needed.<sup>50</sup>

As long as CMRS carriers are entitled to reciprocal compensation from the originating LEC, "the calling party is legally the customer of the originating carrier, such as the LEC" whether or not *additional* WCPP charges are also imposed by the CMRS provider. Thus, if the service is a CMRS service as the Commission has apparently concluded, then the calling party is legally the customer of the CMRS provider and is obligated for payment to the CMRS provider. In that event, the CMRS provider should be paying the originating LEC or IXC to receive the call, and should recover those costs from the calling party through the WCPP charge. This is essentially the IXC/access charge model: The calling party is legally the customer of the IXC, and the IXC purchases and pays for access services furnished by the originating and terminating LECs, and recovers those costs through long distance charges paid by its customer.

By contrast, under the reciprocal compensation model, the originating LEC would charge its customer for the call and pay the CMRS provider to terminate it; but in that case the call would not be a CMRS service, it would be a LEC service, and the calling party would be legally a customer of the originating LEC. But that arrangement has been rejected by the Commission in the Declaratory Ruling, which finds that wireless calling party pays is a CMRS service. If the calling party is a customer of the CMRS provider and not a customer of the LEC for purposes of the WCPP call, then there is no basis upon which the LEC can impose any charge for the call origination upon the calling party.

This is precisely analogous to the case of a long distance call where the calling party is the customer of the IXC: The LEC charges the IXC for access, and imposes no charge directly upon

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50. Declaratory Ruling and NPRM, at para. 73.

the calling party.<sup>51</sup> So if the calling party is not a customer of the originating LEC, then the originating LEC must look to the CMRS provider for compensation, which implies that, rather than *receiving compensation from the LEC* for terminating the wireline-to-wireless call, the CMRS provider will be required to *pay the originating LEC* for originating the call and handing it off to the CMRS provider. *Clearly, the CMRS provider cannot collect revenues from the calling party and also collect reciprocal compensation payments from the LEC when the LEC itself cannot charge the calling party for the service.* At the very least, if the Commission maintains its position that the service is a CMRS service and that the calling party is legally a customer of the CMRS provider, then the revenue sharing relationship between the LEC and the CMRS carrier must be subject to a 180 degree turn.

**B. The FCC should adapt the existing reciprocal compensation model, rather than the model being proposed by the wireless industry, for WCPP.**

Another approach to compensating the CMRS providers for completing wireline-originated calls is through the existing reciprocal compensation mechanism. In fact, as we have already noted, *CMRS providers are already being compensated in precisely this manner*, and indeed this is also the approach to WCPP that is in effect in the European and other WCPP countries. The Commission notes that:

Sprint Spectrum indicates that implementation of CPP through interconnection agreements is done in Europe and elsewhere. Under these agreements, the caller is billed by the LEC based on published LEC rates for fixed-to-mobile calls. The LEC is solely entitled to the caller's account and has sole responsibility for bad debt. The LEC pays the wireless carrier an interconnection charge to terminate traffic on the wireless network. The interconnection charges are determined either by regulators or negotiated bilaterally by the carriers involved. Under the European model, the wireless carrier for the called party imposes a wireless termination access charge on the LEC, or the wireless carrier originating the call. The LEC or the wireless carrier serving the originating caller may, in turn, bill its customer, the calling party, to recoup the charge (if it so chose).<sup>52</sup>

However, the Commission concludes that:

[s]uch implementation of a CPP service would amount to “asymmetrical compensation,” such that the symmetrical rates between wireline and wireless carriers for transport and termination under a reciprocal compensation arrangement would not

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51. This is also the case with respect to payphone compensation. Even though the calling party makes use of a payphone owned by a particular payphone operator to place an 800 or calling card call, the contractual relationship with respect to that call is between the customer and the IXC, and distinctly *not* between the customer and the payphone provider. Where an 800 or calling card call is originated from a payphone, the payphone compensation charge is imposed upon the IXC, which in turn can collect it (e.g., as a surcharge) from its customer (i.e., the calling party in the case of a calling card call or the 800 Service customer in the case of a toll-free call).

52. Declaratory Ruling and NPRM, at para. 71 (footnotes omitted).

be operative. With the asymmetrical, or non-symmetrical, compensation approach, CMRS carriers would not need to recover their costs with a distinct “airtime” charge for use of the CMRS carriers' network if all of the costs related to completing a call to a wireless phone are included in the “asymmetrical” rate.<sup>53</sup>

But the kind of "asymmetric" compensation suggested by the Commission would have the effect of redefining the purpose of the reciprocal compensation payments and would result in a major competitive disparity as between wireline-to-wireline and wireline-to-wireless calls. Reciprocal compensation payments reimburse the terminating LEC (the CMRS provider in this case) for transport and termination only, and do not include any compensation for airtime. And, as we have previously explained, *that is precisely how it should be*. Wireless airtime is the wireless counterpart of the wireline subscriber loop. Calling parties do not compensate the terminating LEC for the costs of its subscribers' loops. Similarly, given the FCC's existing policies relative to this issue, it is inappropriate and inconsistent for CMRS providers to receive compensation for the equivalent element in the wireless service world. Moreover, there is no obvious reason to expect there to be any material difference in cost for transport and termination as between wireline LECs and CMRS providers. Both utilize similar switching and interoffice trunking; the only place where their costs differ is with respect to the link between the end office switch (the Class 5 central office in the case of wireline LECs or the MTSO in the case of CMRS providers) and the end user (a wire loop in the case of the wireline LEC or a radio signal and terrestrial MTSO-to-cell distribution facilities, in the case of the CMRS provider). Hence, the existing reciprocal compensation mechanism provides fair, fully adequate, and entirely consistent compensation to the CMRS provider for completing wireline-originated calls, and need not be supplanted nor supplemented by explicit calling party pays charges.

In fact, if the level of the reciprocal compensation payment to the wireless carrier is not consequentially different from that for wireless call termination, there would be no basis to subject the calling party to a charge that differs as between wireline and wireless call terminations. And this is precisely the arrangement — indeed, the *only* arrangement — that would assure "seamless" competition between wireline and wireless services. As the Commission observes (at Para. 21): "One major benefit envisioned is the possibility that CPP could ultimately lead to wireless services becoming a true competitive alternative to the local exchange services offered by ILECs, particularly for residential customers." The only way in which that vision would be satisfied is where the calling party is entirely *indifferent* as to the technology selected by the called party to receive calls. That is the situation that exists today, but that would cease to exist under a WCPP paradigm.

If the existing reciprocal compensation system continues to be applied and no explicit WCPP charges are imposed, then no special numbering, notification, pricing, billing or other mechanisms would be needed, since from the perspective of the calling party there would be no difference between the charge applicable for a wireline or wireless call termination. By their insistence upon the right to charge wireline customers to complete calls to wireless phones, the CMRS providers serve only to frustrate, certainly not support, the competitive vision expressed by the Commission.

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53. Declaratory Ruling and NPRM, at para. 71 (footnotes omitted).

**C. Section 47 CFR § 51.711(b) of the Commission's rules permits a CMRS provider to set its reciprocal compensation rate either at the same rate that is used by the ILEC or at its cost if greater than the ILEC's reciprocal compensation rate.**

Although most, perhaps even all, existing reciprocal compensation arrangements are symmetric in that each carrier applies the same per-minute rate for calls handed off to it by the other, the Commission's rules do not require such symmetry. In fact, the FCC's rules for reciprocal compensation specifically allow for the establishment of asymmetrical reciprocal compensation rates under certain circumstances. The rule contained in 47 CFR § 51.711(b) provides that:

A state commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in Secs. 51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

Significantly, while claiming that the reciprocal compensation payments do not cover its costs, to the best of our knowledge, no CMRS provider has even offered a TELRIC or other cost study to prove this contention or to negotiate or seek arbitration with the ILEC for a higher reciprocal compensation rate. In fact, and as we have noted, it is unlikely that the TELRIC for wireless terminating transport and termination is materially different than the TELRIC for ILEC transport and termination. Hence, other than with respect to air time charges (which should not be imposed upon the calling party in any event), the CMRS providers have not offered any evidence that would support a level of compensation greater than that customarily applicable to wireline LECs.

## CONSUMER PROTECTION AND ECONOMIC EFFICIENCY FOR WCPP

### **VI. The Commission should clarify that its Declaratory Ruling that WCPP is a CMRS service does not preempt or otherwise limit states' authority to apply consumer protection laws to WCPP services.**

Apart from the other WCPP implementation issues addressed elsewhere in these Comments, the Commission's finding that WCPP is a CMRS service should be clarified with respect to the applicability of state consumer protection laws. The Declaratory Ruling establishes that WCPP is a CMRS service pursuant to Section 332 of the Act.<sup>54</sup> However, Section 332 distinguishes between the regulation of "the entry of" and "rates charged" by CMRS providers, which is conferred upon the Commission, and regulation of "other terms and conditions," which is retained by the states.<sup>55</sup> Accordingly, nothing in the Declaratory Ruling should be construed as preempting or otherwise infringing upon the states' authority to regulate those "other terms and conditions," including the ability to apply state consumer protection laws to WCPP services.

The Commission has previously recognized this limitation on its preemption of CMRS regulation, and a number of prior court rulings have upheld the states' authority to regulate those aspects of CMRS other than ratesetting and market entry. In *Cellular Telecom v. FCC*, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's finding that Section 332(c)(3)(A) does not preclude states from imposing universal service funding requirements on CMRS providers, because that is outside of the federally-preempted areas of CMRS entry and rate regulation.<sup>56</sup> In a similar vein, in *Tenore v. AT&T*, the Washington State Supreme Court reversed a trial court's dismissal of claims against the CMRS providers AT&T Wireless and McCaw Cellular Communications of deceptive and fraudulent conduct brought under state law. The trial court had accepted the defendant's argument that the state law claims were preempted by Section 332(c)(3)(A), but the Supreme Court found that Section 332, as well as the "savings" clause, Section 414,<sup>57</sup> preserved state law claims which did not attack the market entry or rates of CMRS providers.<sup>58</sup> Consistent with these rulings, state consumer protection laws must be seen to remain applicable to CMRS, including CMRS provided under WCPP arrangements, and the Commission should clarify its Declaratory Ruling to eliminate any ambiguity in this regard.

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54. Declaratory Ruling and NPRM, at para. 14.

55. 47 U.S.C. § 332(c)(3)(A).

56. *Cellular Telecom v. FCC*, 168 F3d 1332 (D.C. Cir., 1999).

57. "Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies." 47 U.S.C. § 414.

58. *Tenore v. AT&T Wireless Svcs.*, 962 P.2d 104 (1998), cert. denied, 119 S. Ct. 1096 (1999).

**VII. If the Commission determines that WCPP should be permitted, it should adopt and implement several specific policies that will serve to protect consumers and promote efficient service delivery.**

In view of the evidence and conclusions presented above, Joint Commenters take issue with the Commission's tentative conclusion that Calling Party Pays arrangements for CMRS should be facilitated. As demonstrated throughout these Comments, widespread use of WCPP pricing in the US CMRS environment is likely to discourage competition for wireless services, produce higher prices, reduce the accessibility of wireless telephones from wireline service users, and be adverse to the interests of consumers and the public generally. Joint Commenters recognize that the Commission nevertheless may choose to endorse WCPP as a service option. If the Commission determines that WCPP should be permitted, it should adopt and implement the following measures to help protect consumers and encourage economic efficiency in the provision of WCPP.

*Efficient numbering policies for WCPP.* Wireless phones subject to WCPP charging should be assigned telephone numbers that are readily identifiable and unique to services subject to this type of charging. Specifically, all WCPP phone numbers should be assigned within Service Access Codes (SACs) specifically designated for this purpose, rather than in geographic area codes. In addition, any existing CMRS phone that is to be converted to WCPP must be required to change its phone number to the WCPP SAC. No number portability as between WCPP phones and conventional wireless phones or landline phones should be permitted. However, limited number portability among WCPP carriers could be permitted provided that charges are held to the same range.

The Commission should also recognize that the use of SACs for WCPP will not accelerate the depletion of NANP resources, and may even provide some perhaps limited benefit to the extent that wireless numbers in geographic NPAs are returned for reassignment to other customers or services. A SAC used for WCPP can be shared by multiple CMRS providers and across a wider geographic area than for conventional area codes. However, the Commission may want to assign unique NXX codes within the WCPP SAC(s) to specific providers, in which case it should consider eliminating LNP requirements for WCPP numbers so as to preserve the linkage between the CMRS phone number and the applicable WCPP charge.

*Establishment of a free blocking option for WCPP calls.* An important consumer protection is that the introduction of WCPP in a particular serving area should be preceded by the offering of a blocking option to all potentially affected wireline residential and business customers at no additional charge. Similar to the free blocking already made available in connection with the establishment of 900/976-number type "pay-per-call" services, the WCPP blocking option would afford those consumers adverse to making WCPP calls protection from unintentionally incurring WCPP charges. The Commission notes that some proponents of WCPP, such as US West, oppose blocking: "U S West asserts that if a state were to require that a blocking capability be provided to the calling party, the notification process would be sufficiently expensive for some CMRS carriers to preclude regional or nationwide implementation of CPP service."<sup>59</sup> However, the availability of WCPP blocking is crucial to protect consumer interests, and the costs

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59. Declaratory Ruling and NPRM, at para. 32 (footnote omitted).

associated with blocking's implementation should be borne by the ultimate cost causers, i.e. the CMRS providers who make the business decision to establish WCPP arrangements.

*Recovery of other WCPP implementation costs.* As a policy matter, the Commission should conclude that, to the extent that the introduction of WCPP imposes costs on telecommunications consumers (large and small) and other industry members that are not directly internalized by CMRS providers, the wireless industry should be held responsible for reimbursing those users. For example, it is likely that larger businesses, government agencies, educational institutions, and similar types of telecommunications users may need to modify their PBXs or other multi-user telephone systems to accommodate WCPP. In that case, all related costs, including the costs of any major system upgrades, software updates, or replacements necessary to conform to WCPP, should in principle be recoverable from the CMRS providers who benefit from establishment of WCPP.

The costs of such system modifications are likely to be substantially lower if the Commission adopts the numbering recommendations set forth above, which would maximize the segregation of WCPP numbers from other numbers not subject to WCPP charges. If and only if those numbering conventions are adopted, including the assignment of WCPP numbers to specific SACs, should the FCC presume that the systems modification/upgrade costs incurred by end users to accommodate WCPP will be minimal.

*Further consumer protection rules for WCPP.* The Commission should put CMRS providers on notice that charges for WCPP calls must conform to the "just and reasonable" standard as required by Section 201(b) of the Communications Act. Joint Commenters recommend that such charges should be limited to no more than the average per-minute wireless airtime charge being offered by the carrier, and should be required to be published in sources that are readily available to the calling party (e.g., local telephone directories, web sites, etc.). The filing by the CMRS provider of tariffs, price list or other forms of pricing information with the Commission should not by itself be deemed sufficient to satisfy this requirement.

The Commission should view any overt or concerted effort on the part of the CMRS industry overall to "migrate" its customer base to WCPP through coercive pricing or other means as evidence that competition in the CMRS market is not effective and that Commission regulation of CMRS rates is required. In order to avoid this prospect, the Commission should require carriers to continue to offer conventional wireless pricing and to establish the relationship between conventional and WCPP pricing so as to encourage efficient consumer choices rather than forced migration. For example, affirmative regulation of each CMRS carrier's WCPP rates at no greater than the average airtime charge imposed by that carrier would help to minimize the potential for forced migration to WCPP.

## CONCLUSION

In these Initial Comments, Joint Commenters have shown that adoption of Commission rules to further the use of Wireless Calling Party Pays (WCPP) pricing arrangements in the US would fail to stimulate greater development of the CMRS industry and would have significant adverse consequences for consumers. Contrary to the Commission's goals for the industry, widespread application of WCPP would diminish competition for wireless services, raise the prices faced by consumers, make wireless telephones less accessible from wireline phones, and be detrimental to the interests of consumers and the public generally. For these reasons, Joint Commenters urge the Commission to cease further consideration of the WCPP paradigm and to allow the CMRS industry to continue the accelerating growth that is occurring under the existing pricing framework. If the Commission nevertheless determines that WCPP should be implemented as a matter of federal policy, then Joint Commenters urge the Commission to adopt each of the specific consumer protection and economic efficiency measures articulated above.

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