**Attorney General**
**Betty D. Montgomery**

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September 16, 1999

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Office of the Secretary
Federal Communications Commission
445 12th St., S.W.
Portals II Building
Washington, D.C. 20554

Re: *In the Matter of Calling Party Pay Service Option in the Commercial Mobile Radio Services*, WT Docket No. 97-207.

Dear Secretary:

Please find enclosed the original and ten copies of comments submitted on behalf of the **Public Utilities Commission of Ohio** in the above referenced docket. Please return one stamped copy in the enclosed self-addressed, stamped return envelope.

Thank you for your consideration in this matter.

Respectfully submitted,

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**Before the**
**Federal Communications Commission**
**Washington, D.C.**

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| In the Matter of<br>Calling Party Pays Service Offering in<br>the Commercial Mobile Radio Services | )<br>)<br>) | WT Docket No. 97-207 |

**COMMENTS OF**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

## I. BACKGROUND

On October 23, 1997, the Federal Comminations Commission (FCC) issued a *Notice of Inquiry* (NOI) seeking information on Calling Party Pays (CPP) service. The FCC describes CPP as a service offering whereby the party placing the call to a wireless customer pays the wireless airtime charges. In its NOI, the FCC, among other things, requested recommendations on how the calling party should be informed of the charges that will be incurred, and the technical and contractual requirements that are needed for implementation of the service option.

On March 9, 1998, the FCC released a Public Notice (Notice) (DA 98-468) in WT Docket No. 97-207 (WT 97-207) responding to the Cellular Telecommunications Industry Association's (CTIA's) *Petition for Expedited Consideration* requesting the FCC to issue a Notice of Proposed Rulemaking (NPRM) to adopt uniform nationwide rules for CPP service. In addition to inviting comments on the procedural and substantive aspects of the CTIA Petition, parties commenting were also invited to respond to related issues set forth for comment in the FCC's Calling Party Pays NOI.

The FCC's Notice also asked whether there are reasons to initiate actions to facilitate the availability of CPP as a means to foster competition in the local exchange market, *i.e.*, whether wider availability would enable CMRS providers to compete more

readily with LEC wireline services, and as an option to increase consumer choices for local phone service. Finally, the FCC's Notice invited public input on certain specific jurisdiction issues associated with the regulation of CPP. On May 8, 1998, the Public Utilities Commission of Ohio (Ohio Commission) filed comments responding to the FCC's CPP jurisdictional and customer safeguard inquiries.

On July 7, 1999, the FCC released a *Declaratory Ruling* (Ruling) *and Notice of Proposed Rulemaking* (NPRM) regarding CMRS CPP service. The FCC's Ruling determined that CPP is a CMRS offering subject to Section 332 of the Communications Act. The FCC notes that the intent of its NPRM, with the cooperation of the States, is to facilitate the offering of CPP as an optional service in the United States. In particular, the FCC indicates that its intent in this proceeding is to remove regulatory obstacles to the offering to customers of CPP services by CMRS providers. The FCC further indicates that its intent is to ensure that the success of the CPP service is based on commercial judgement of the service providers and the informed choices of customers rather than unnecessary regulatory or legal obstacles.

The Ohio Commission hereby submits its comments in response to the FCC's July 7, 1999, NPRM in the above-captioned proceeding. Initial comments regarding CPP are due at the FCC on or before September 17, 1999.[1]

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[1] The Ohio Commission also filed a Petition for Reconsideration and Clarification in this docket on July 16, 1999 regarding the Ruling portion of the *CPP Order*. That petition seeks clarification and reconsideration of the jurisdictional and procedural issues presented by the *CPP Order* and was filed in order to preserve Ohio's ability to pursue those jurisdictional issues, if necessary. These comments are submitted in order to address the substantive regulatory issues raised in the *CPP Order* with the goal of convincing the FCC to adopt the Ohio Commission's substantive recommendations.

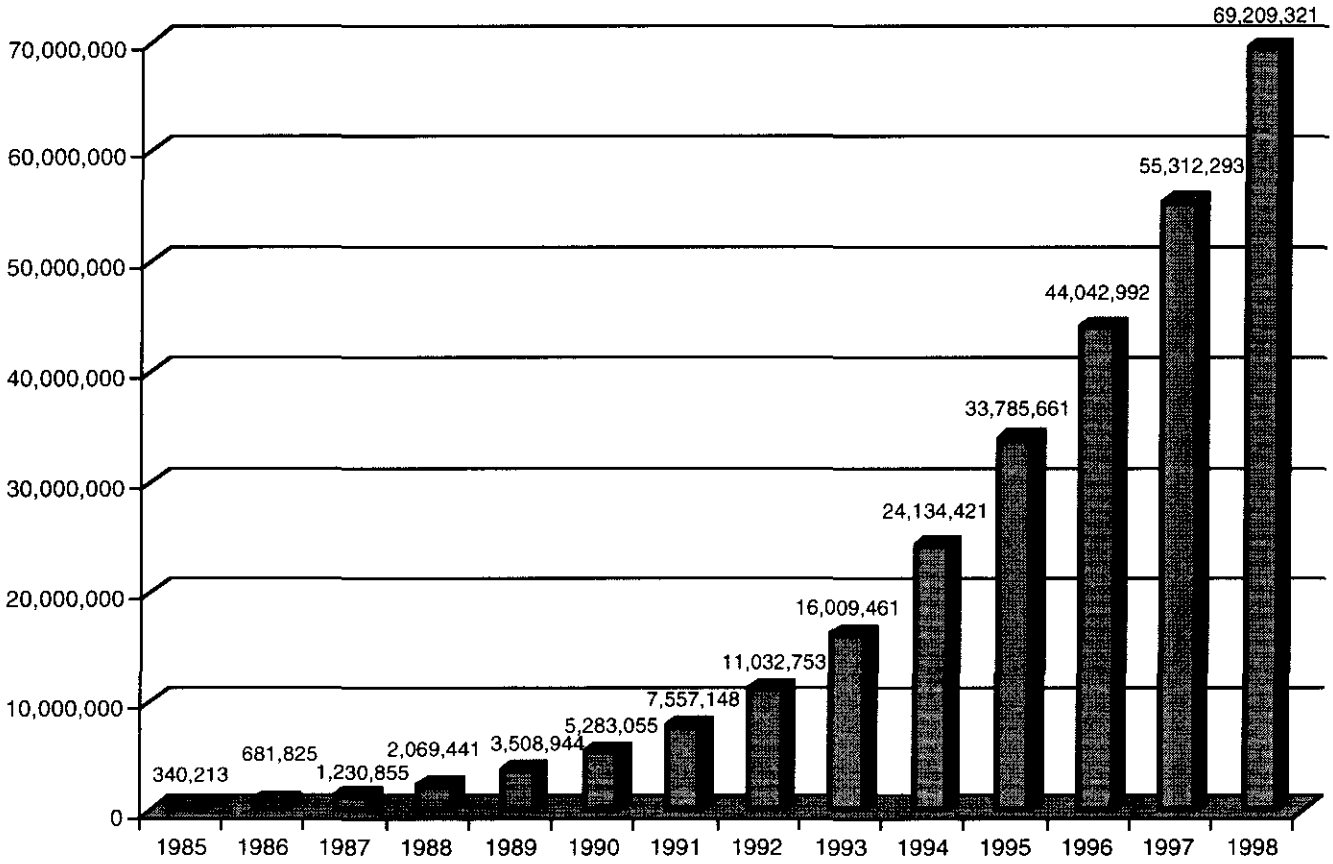
## II. DISCUSSION

### A. General Comments

The FCC notes that much of the rapid increase in penetration levels of overseas cellular service is attributable to CPP service. The FCC further maintains that the potential exists in the United States for the wider availability of CPP offerings to benefit the development of local competition and to provide an important new alternative to consumers who have not previously used CMRS extensively. Finally, the FCC submits that CPP holds the potential for making mobile wireless services more attractive to large numbers of customers who do not subscribe today, and spurring the acceptance and development of services offered by mobile wireless telecommunications providers as competitive alternatives to the services of local exchange carriers (LECs).

The Ohio Commission understands the FCC's attempts to remove barriers for optional, non-essential service offerings, like CPP. The Ohio Commission also welcomes cellular growth and CMRS competition in general. But it is not clear why the FCC feels compelled at this point to undertake the affirmative task of aggressively promoting cellular growth, particularly when it comes at the expense of wireline customers (this is literally the case with CPP). The following graph vividly demonstrates the rapidity of CMRS market penetration and the seemingly unchecked trend of growth in recent years:

**Wireless Subscribership: December 1985 - December 1998**




*Source: CTIA Survey website (http://www.wirelessweek.com/industry/ctiacht1.htm).* It is also currently projected (without taking into account any CPP affects) that CMRS growth will continue for years to come at a dramatic pace, reaching an approximately 70% penetration level for the entire U.S. population by 2008. (*Source: The Global Wireless Communications Industry Report, Summer 1999 – Donaldson, Lufkin & Jenrette*). The point is that the CMRS industry is doing astonishingly well without CPP and there is no reason for the FCC to bend the rules in order to promote this billing option.

The Ohio Commission also calls into question the FCC's anecdotal analysis of the overseas cellular marketplace and whether its success can be truly attributed to CPP

service. The Ohio Commission maintains that the success of wireless service overseas may be attributed to simple economics: the fact that cellular services are often less costly to deploy than wireline service, in certain markets. The Ohio Commission questions whether developing countries have simply elected to replace deteriorating wireline facilities with less costly wireless facilities.

That is, the Ohio Commission maintains that some overseas countries' decisions to promote cellular service is most likely based on their attempts to provide ubiquitous service without having to duplicate or replace the wireline network. Consequently, wireless service in these countries is being deployed as an alternative to replacing outmoded or deteriorated wireline networks. In this regard, the Ohio Commission suspects that, in some European countries, the governments in power have provided explicit subsidies to develop cellular networks —investments that are otherwise uneconomic on a free-market basis. In the United States cellular service is considered an ancillary service to wireline service, and in some of these developing counties wireless service may be the principal means of communications. Therefore, comparisons between the CMRS penetration levels in the United Sates and overseas are not valid.

Expressed another way, the Ohio Commission maintains that the FCC's attempt to make comparisons between the United States and some European and South American markets, is not an "apples-to-apples" comparison. The reality of those markets seems to be that basic local telephone penetration has not been as great or effective as in the United States due to issues such as unstable governments, economic constraints and the lack of reliable landline network facilities. In some of these countries the alternative to expanding the existing network versus introducing a faster

means of communication at potentially lower costs to the industry, has dictated the introduction and acceptance of the wireless services and CPP.

The Ohio Commission agrees with the FCC that such services should be made available to consumers under the best terms and conditions possible. Moreover, on the issue of least cost alternatives, the Ohio Commission maintains that lower prices will better position wireless services as viable alternatives or replacements to wireline service. To this end, we question whether CMRS CPP service will result in lower rates to consumers to stimulate competition. That is, with CPP service, the wireline customer has not had the opportunity to review, negotiate and enter into a least-cost agreement/contract with the CMRS provider, which could result in significantly higher charges. Additionally, we question how this service can be provided at lower rates if the CMRS CPP provider is required to enter into a billing and collection agreement with the wireline provider (or another CMRS provider) where the call originates. At a minimum, in order to provide a bill for CMRS CPP service, the provider would need to purchase billing name and address (BNA) service for the LEC to locate the caller. This factor, in and of itself, would suggest that consumers will pay more for CPP than traditional cellular service, thus potentially becoming *less competitive* based on rates.

Additionally, on the issue of ensuring that the provision of CMRS CPP service be made to consumers under the best terms and conditions possible, the Ohio Commission later in these comments proposes certain minimum standards/safeguards for the provision of this service to landline customers. The Ohio Commission maintains that the FCC should also affirm the individual State's concurrent jurisdictional authority to impose additional intrastate requirements consistent with the mandates of the 1993

Omnibus Budget Reconciliation Act (as was also discussed in the Ohio Commission's Petition for Reconsideration and Clarification).

**B. Declaratory Ruling/Jurisdiction (¶¶ 8 through 19).**

The Ohio Commission filed a Petition for Reconsideration and Clarification in this docket on July 16, 1999. Consistent with the Ohio Commission's comments in response to the NOI, Ohio's Petition for Reconsideration and Clarification addresses the jurisdictional issues that were addressed in the Ruling portion of the *CPP Order*. The Ohio petition will be briefly summarized here in order to provide the proper context for the Ohio Commission's substantive comments regarding the NPRM portion of the *CPP Order*.

The Ohio Commission maintains that CPP is not really a CMRS service, but that it is merely a billing service option that will affect landline customers making local calls. CMRS providers already have interconnection agreements with LECs, whereby each carrier is already obligated to terminate traffic based on the compensation provided for in those agreements. Nothing about the CMRS service changes with CPP, except for the billing —which uniquely affects landline customers. Likewise, contrary to Paragraph 16 of the Ruling, CPP does not meet the "interconnected service" criteria for being a CMRS service, because CPP does not "give subscribers the capability to communicate to *or receive communications from all other users on the public switched network,*" as required by 47 C.F.R. 20.3. In fact, CPP customers cannot receive *any* call from *any* person on the public switched network, unless the caller affirmatively establishes a contractual relationship with the CPP customer's CMRS provider (this is true even though the caller's landline carrier has an interconnection agreement for terminating traffic to the

CMRS provider). Thus, CPP is not really a new CMRS service, but is merely a billing option.

In any case, the FCC's determination that CPP is a CMRS service does not end the pertinent inquiry. Under Section 332, Congress ensured that State commissions have concurrent jurisdiction over the non-rate consumer issues relating to CPP that are addressed in the FCC's NPRM. In this regard, the Ruling contained virtually no discussion of the key mandatory prerequisite to any FCC preemption regarding CMRS service: a conclusion that these consumer regulations would somehow constitute "rate regulation" under Section 332. Of course, none of the issues regarding CPP that were raised in the NPRM are rate issues and there is no basis (in this record or otherwise) to broadly conclude that the contemplated CPP regulations amount to "rate regulation."

As a result, the FCC should acknowledge that State commissions have concurrent jurisdiction over non-rate consumer issues involving CPP, and should refrain from attempting to implement any preemptive Federal regulations in this regard.

### C. Calling Party Pays Notification (NPRM at ¶¶ 30 through 49).

The FCC maintains, based on the comments filed thus far in this proceeding, that it is clear that some effective form of calling party notification is critically important to avoid consumer confusion with any wide scale CMRS provider introduction of CPP offerings. NPRM at ¶ 30. The FCC indicated its agreement with commenters that a uniform nationwide notification system applicable to all calls is necessary to facilitate the implementation of CPP. NPRM at ¶ 33. As a result, the FCC indicated its intent to develop a uniform notification announcement in cooperation with the States, consumers, and industry representatives.

As reflected in Ohio's Petition for Reconsideration and Clarification, the Ohio Commission objects to a uniform national approach to CPP, to the extent that such an approach would alter Congress' design in enacting Section 332 by excluding each State commission from exercising concurrent jurisdiction over non-rate consumer issues such as those presented in this NPRM. In context of this NPRM, however, the Ohio Commission will provide additional substantive comments regarding customer notification.

Since CPP will represent a significant change to consumers calling a wireless telephone or pager, the FCC proposes that initially the following elements be adopted:

(1) Notice that the calling party is making a call to a wireless phone subscriber that has chosen the CPP option, and that the calling party therefore will be responsible for payment of airtime charges.

(2) Identification of the CMRS provider.

(3) The per minute rate, and other charges, that the calling party will be charged by the CMRS provider.

(4) Notice that the calling party will have an opportunity to terminate the call prior to incurring any charges.

Consistent with the Ohio Commission's comments responding to the FCC's 1998 Notice in this proceeding, the Ohio Commission agrees with the FCC's tentative conclusion that customer information rules for CPP service should ensure that landline customers are aware of the additional charges associated with a CPP call.

In particular, the Ohio Commission notes that landline customers, upon placing a CPP call should be made aware, through a call intercept, that per-minute charges over and above normal local usage charges may apply. Prior to the call being completed, the landline customer must also be afforded the option to terminate the call without charge. Moreover, consistent with the FCC's tentative conclusion, the Ohio Commission agrees

that the landline customer placing a CPP call must be provided the applicable CMRS per-minute and non-recurring service charges for the call. Additionally, in the event specific rates cannot be provided, the CMRS CPP should be required to make the landline customer placing the call aware of the highest per-minute and nonrecurring charges that could be rendered for the call.

On the issue of providing the calling party with the opportunity to terminate the call prior to incurring any charges, the Ohio Commission notes that some CMRS providers charge their presubscribed customers from the beginning of the call (or dialing into the network) up until the call is terminated by that customer regardless of whether the call is answered. These companies submit that, since the network is engaged, corresponding costs should be recovered. The FCC (and the individual States) must persist to ensure that wireline customers do not encounter charges on the local telephone bill associated with engaging a wireless network if that customer chooses not to complete the call. The Ohio Commission suggests that callers be prompted to affirmatively cause the call to be completed after the rate notification is given (*e.g.*, press " # " to complete the call). In the alternative, the caller should be permitted to terminate the call within a reasonable timeframe from the announcement that additional charges for the call will be rendered if the caller remains on the line (*i.e.*, at least six seconds).

The FCC seeks comment on the desirability of moving to a simpler, more streamlined notification system that would not include rate information, after consumers have become accustomed to CPP and are aware of the additional charges involved. The FCC also seeks comment on whether its proposed method of notification will be accessible to people with disabilities. NPRM at ¶ 44.

On the issue of continuing call notice requirements, the Ohio Commission submits that, on an ongoing basis, some form of (albeit truncated) call notice may be required since there may always be those landline customers who will infrequently complete calls to CMRS CPP subscribers. In any event, the Ohio Commission maintains that it is premature to address the issue of discontinuing customer notice requirements. That matter can only be addressed after customer awareness surveys to landline customers on CPP have been completed and the proper analysis performed to ensure that the LEC's customers are fully aware of CPP charges.

On the issue of CPP and the communicatively impaired community, Ohio recommends that CMRS providers be required to ensure that persons with communications impairments (*e.g.*, TTY users or relay users) are afforded an ample opportunity to disconnect a CPP call prior to charges being rendered. The Ohio Commission notes that calls placed by the communicatively impaired often take longer to complete as a result of the mechanics involved with formulating and transmitting the information that is communicated. Consequently, to ensure that the functional equivalency requirements of the Americans with Disabilities Act are met, the industry may need to develop a system whereby communicatively impaired callers are afforded additional time either to terminate a CPP call without charge or to complete a CPP call.

Regarding whether certain CMRS customers should be able to opt out of CMRS CPP service, two individual NXXs are often necessary under this scenario: one NXX for the group of customers electing CPP service and another NXX for those customers not choosing the option. The Ohio Commission observes that this situation further exacerbates the number exhaust problem. Consequently, the CMRS industry should be instructed to take every action necessary to overcome this technological limitation.

### D. Billing and Collection (NPRM at ¶¶ 55 through 68).

The FCC seeks comment on whether it should require incumbent LECs to provide the billing information sufficient for a CMRS provider to perform billing and collection, and on whether, even if LEC billing and collection for CPP is not mandated, billing and collection should be provided on a reasonable and nondiscriminatory basis. Assuming that, as a policy matter, the FCC further questions whether to impose any requirement related to CPP billing and collection, and seeks comment on various possible jurisdictional bases. NPRM at ¶¶ 56, 68.

In its attempts to facilitate the implementation CMRS CPP service, the Ohio Commission maintains that the FCC must be careful to not exceed its jurisdictional authority. The Ohio Commission submits that the individual States have exclusive jurisdiction over LEC-provided intrastate billing and collection services. That is, the relationship between local carriers and their respective end user customers is strictly an intrastate concern. To this end, we note that the Ohio Commission possesses the requisite authority to preclude LECs from including in their bills for local exchange service charges for CMRS CPP service.[2] States also have individual needs and struggle

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[2] The Ohio Commission strongly disagrees with the position of CTIA and others, discussed in Paragraph 68, that a State commission precluding LECs from providing billing and collection for CPP amounts to a barrier to entry in violation of 47 U.S.C. § 253(a). First, the exclusion of CPP charges from the local bill is not the same as prohibiting the LEC from providing CPP billing and collection altogether. As discussed above, there can be no question that the State commissions can regulate the local bill and require, for example, that a separate bill be sent for local services only. By implication, this means that State commissions could exclude CPP and/or other non-local services from the local bill, if that should become necessary. Second, it is inherently untenable to suggest that a restriction on a third-party from performing support services for a CMRS carrier regarding a discretionary service option amounts to a market entry barrier for the CMRS carrier (the CMRS provider can always perform billing and collection itself or outsource with a non-LEC to perform those functions). Finally, it is very unlikely that a

with varying demographic and regulatory conditions. Therefore, States are best positioned to determine the appropriate consumer safeguards related to the vast growth in LEC-provided wholesale billing and collection services to other service providers; consequently, we note that it is important that the Ohio Commission (in addition to other States) maintain jurisdiction over the billing format of the entire intrastate LEC-provided bill.

On the issue of LEC-provided collection services for CPP, the Ohio Commission notes that a means of collection utilized for nonpayment of CPP may be for the LEC to block a customer's access to CPP service until outstanding debts are paid. The Ohio Commission maintains that, to the extent such blocking occurs at the LEC's facilities, these services are subject to the jurisdiction of the individual States as are all intrastate end office blocking services. Consequently, charges and conditions associated with the provisioning of such blocking services must be determined by the individual States and not the FCC.

The Ohio Commission submits that the FCC should not attempt to require LECs to provide billing and collection service for CMRS CPP. In the alternative, a workable solution to this issue would be for the FCC to establish CMRS CPP wholesale billing parameters and customer safeguards that could be used by the individual States as default rules or guidelines. These guidelines could serve as a voluntary model that could be used by States adopting rules that govern LEC-provided CMRS billing. Each

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State would simply prohibit a LEC from providing CPP billing and collection, but instead would promulgate reasonable regulations and restrictions on the subject. In this context, Section 253(b) directly affirms a State's right to promulgate consumer regulations like those being addressed in this docket by expressly preserving the State's ability to "protect the public safety and welfare . . .and safeguard the rights of consumers."

State would control the formatting for bills issued to customers within the State. This method would preserve, rather than undermine, the progress made by States in addressing consumer issues associated with LEC-provided billing services to other service providers. The idea of having a uniform national policy on local telephone bills for CMRS CPP service on the surface appears appealing for the sake of simplicity; however, it is flawed because it is *too* simplistic.

Finally, concerning the FCC's invitation for comment on requiring billing and collection services to be provided on a non-discriminatory basis, the Ohio Commission (while believing this to be a matter of local concern) maintains that to the extent a LEC provides billing services to its own CMRS affiliate, such services should be made available to competing CMRS providers under the same terms and conditions. If at any time the Ohio Commission were to find concerns of discriminatory treatment by the LECs regarding these types of arrangements, it could open an investigation regarding such matters to resolve those issues.

## III. CONCLUSION

The Ohio Commission agrees with the FCC that consumers should have options, and that CPP is an option that might allow certain customers to own a wireless telephone if they do not feel the burden of having to pay for the minutes of use associated with receiving calls. Nonetheless, the Ohio Commission firmly believes that consumers must be afforded the opportunity to make informed decisions, regarding the costs associated with completion of CPP calls. The best tool to educate the consuming public is the provision of an accurate notice, which should include real-time rate information at the initiation of the call and the opportunity to terminate the call without incurring a CPP charge. Finally, as reflected in the Ohio Commission's Petition for

Reconsideration and Clarification, the FCC should recognize that State commissions have concurrent jurisdiction to address these same consumer issues to supplement FCC guidelines.

In closing, the Ohio Commission wishes to thank the FCC for the opportunity to file comments in this docket.

Respectfully submitted,

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