

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

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In the Matter of)

Calling Party Pays Service Offering)
in the Commercial Mobile Radio Services)

WT Docket No. 97-207

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION OF AT&T CORP.

AT&T Corp. ("AT&T") hereby submits its opposition to the Petition for Reconsideration and Clarification ("Petition") filed by the Public Utilities Commission of Ohio ("PUCO") in the above-captioned docket on Calling Party Pays ("CPP") services.^{1/} AT&T supports the Declaratory Ruling's conclusion that CPP is a commercial mobile radio service ("CMRS"), and it believes the Commission has sufficient statutory authority to preempt any state-imposed rule that would interfere with the widespread introduction of CPP services. The Commission should therefore deny the PUCO's Petition.

I. CPP IS A CMRS SERVICE

A. CPP Satisfies the Statutory Criteria Defining CMRS Services

The Declaratory Ruling correctly concludes that CPP is a CMRS service.^{2/} Section 332 provides that a "commercial mobile service" is

any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such

^{1/} See Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137 (rel. July 7, 1999) ("Declaratory Ruling").

^{2/} See Declaratory Ruling at ¶¶ 14-19.

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classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation of the Commission.^{3/}

As the Commission observes, these criteria are satisfied in the case of CPP. First, there is little doubt that CPP is a “mobile service,” which is defined as “a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves.”^{4/} When placing a CPP call, the calling party uses CMRS spectrum and facilities to communicate with a mobile station. Second, CPP obviously is offered by CMRS licensees on a “for-profit” basis. Third, CPP is available to any consumer who chooses to dial a CPP number, which makes it available “to the public.” Finally, CPP, like any other CMRS service, is interconnected with the public switched telephone network (“PSTN”).

The PUCO’s assertion that CPP does not satisfy the “interconnected service” element of the definition of CMRS is baseless.^{5/} CPP gives wireless subscribers the ability to receive communications from all other users of the public network, notwithstanding that the calling party must affirmatively choose to complete -- and becomes a customer of the CMRS provider for purposes of -- each CPP call. Callers who dial a “900” service must first listen to a notification regarding rates and then decide whether or not to complete the call. That fact that “[b]eing connected to receive” those calls “is beyond the control of” the customer who established the 900 number and the 900-service provider is irrelevant to a determination of whether the 900 service is interconnected.^{6/} Similarly, contrary to the PUCO’s assertion, the establishment of a provider/customer relationship between a wireline caller and CMRS provider does not mean that “CPP only connects a CMRS customer to a private network consisting of the customers of that same CMRS provider.”^{7/} Indeed, under this theory, wireline callers would sever their relationship with their presubscribed LEC every time they place long distance calls using a

^{3/} 47 U.S.C. § 332(d)(1).

^{4/} See Declaratory Ruling at ¶ 15; see also 47 U.S.C. § 3(27); 47 C.F.R. § 20.3.

^{5/} See Petition at 9.

^{6/} See id.

^{7/} Id.

separate long distance carrier. Just as a caller remains a customer of both the LEC and the interexchange carrier in that case, CPP allows a caller to create a contractual obligation to pay airtime charges to the CMRS provider while still remaining a customer of the originating LEC.

B. CPP is an Offering Separate from Other CMRS Services

The PUCO is wrong to suggest that CPP is merely a “billing option” rather than a distinct CMRS service.^{8/} Telecommunications carriers often market services separately based on differences in billing arrangements. For example, when a telephone subscriber dials “0” and asks an operator to complete a call to be billed to the subscriber’s number, this service is tariffed separately from operator-assisted collect calls. Similarly, “800” and “900” calls may be identical in terms of facilities and routing, but they are considered separate services based on differences in the party responsible for payment. Because CPP places responsibility for payment on the calling party rather than requiring the wireless carrier’s subscriber to pay all charges for every call, it clearly is a distinct CMRS service.

II. THE COMMISSION HAS DISCRETION TO CLASSIFY CPP AS A CMRS RATE

As AT&T has explained at earlier stages of this proceeding,^{9/} the Commission is free to classify CPP as a CMRS rate rather than a service, putting it squarely within the Commission’s plenary jurisdiction over the “rates . . . for commercial mobile services.”^{10/} This authority is sufficiently broad to include the nature and type of charges imposed for CMRS and the manner in which these charges are collected. The Supreme Court ruled in AT&T v. Central Office Telephone that “[r]ates . . . do not exist in isolation. They have meaning only when one knows the services to which they are attached.”^{11/} CPP is more accurately characterized as a CMRS rate than as a billing option, because CPP plans change the structure of charges for wireless calls.

^{8/} See id. at 6-7.

^{9/} See Comments of AT&T at 3.

^{10/} See 47 U.S.C. § 332(c)(3)(A).

^{11/} See AT&T v. Central Office Telephone, Inc., 118 S.Ct. 1956, 1963 (1998).

Of course, Section 332 gives the states the power to adopt general consumer protection rules,^{12/} but the Commission has the authority to ensure that CPP is not regulated in a way that frustrates the national uniform treatment of wireless services.^{13/} Central Office Telephone establishes that even without section 332, the states may not engage in backdoor interstate ratemaking under the guise of consumer protection.^{14/} The teaching of Central Office Telephone is that under Section 332(c)(3)(A), a “rate” includes not only the schedule of prices in a tariff or contract, but all aspects of CMRS service that give meaning to these numbers.^{15/} A schedule of charges has meaning only in the context of a description of services associated with each charge, so a CMRS rate necessarily includes both the amount to be charged and any associated service.^{16/}

^{12/} See 47 U.S.C. § 332(c)(3); H.R. Rep. No. 103-111 at 261 (explaining that the “terms and conditions” of commercial mobile service that states may regulate include billing disputes and “other consumer protection matters”).

^{13/} See H.R. Rep. No. 103-111 at 260 (discussing preemption of state rate and entry regulation of CMRS); see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶¶ 861, 1025 (1996) (“Local Competition Order”) (finding state commissions discriminated against CMRS providers and prohibiting state regulations that impose non-cost based discriminatory rules on CMRS services), affirmed in part and reversed in part sub nom. AT&T v. Iowa Utilities Board, 119 S.Ct. 721, ___ U.S. ___ (1999) (“AT&T v. Iowa Utilities Board”).

^{14/} Id. at ¶ 1963.

^{15/} See id.

^{16/} Alternatively, state-imposed notification requirements amount to an indirect form of entry regulation. If the states are permitted to require wireless carriers to reconfigure their networks to deliver additional notification statements, they could – whether inadvertently or by design – prevent carriers from offering CPP plans. See Comments of CTIA at 15. The courts have recognized that wireless carriers cannot be compelled to meet performance or disclosure standards imposed by judicial or regulatory authorities at the state level as a condition of entry. Cf. Bastien v. AT&T Wireless Services, Inc., 1999 U.S. Dist. LEXIS 6187 (N.D. Ill. April 20, 1999) (appeal pending) (dismissing network capacity disclosure claim on grounds that complaint implicitly challenged defendant’s right to enter local wireless market before upgrading network).

This definition is consistent with the language of Section 332, which denies the states any authority over CMRS rates,^{17/} and it would encourage the development of wireless services by avoiding multiple and conflicting state regimes governing CMRS rates. By its very nature, state-by-state regulation is incompatible with the introduction and acceptance of CPP offerings, because state-imposed rules would prevent carriers from implementing national CPP service options.^{18/} In light of the importance of CPP options to the growth of CMRS services, the Commission would be justified in finding that state regulation of CPP options in the name of consumer protection would frustrate the development of CMRS offerings and are preempted.^{19/}

^{17/} The California Public Utilities Commission has recognized as much. See California Wireless Resellers Ass'n v. L.A. Cellular Tel.Co., Case 98006-055 (CPUC Nov. 5, 1998) (concluding CPUC lacks jurisdiction to order defendant to serve reseller on wholesale basis because CPUC cannot require wholesale terms without reference to wholesale rates, which it cannot establish).

^{18/} In fact, Congress preempted state CMRS rate and entry regulation because it recognized that “mobile services . . . by their nature . . . operate without regard to state lines as an integral part of the national telecommunications infrastructure.” H.R. Rep. No. 103-111 at 260 (1993).

^{19/} See 47 U.S.C. § 332(c)(1)(B).

CONCLUSION

The Declaratory Ruling's determination that CPP is a CMRS service is crucial to making CPP a widely-offered option for wireless consumers. The PUCO's Petition provides no basis for overturning this conclusion and should be rejected.

Respectfully submitted,

AT& T CORP.

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CERTIFICATE OF SERVICE

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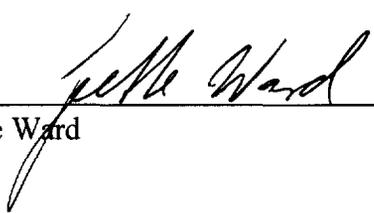
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