

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Calling Party Pays Service Offering)
in the Commercial Mobile Radio Services) WT Docket No. 97-207

JOINT REPLY COMMENTS OF
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October 18, 1999

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I. Proponents of WCPP have misapplied the WCPP experience in other countries to the U.S., and the empirical evidence on the record actually underscores the substantial differences between the CMRS industry in the U.S. and other countries, which limit extrapolation to the U.S. situation.

In our Initial Comments, we reviewed the manner in which CMRS services are provided in Europe and other areas of the world, and described a number of fundamental differences between the telecommunications environments in the U.S. and other countries that bear on the suitability of implementing WCPP in the U.S.² A number of other parties have also responded to the Commission's request for comment on recent international experience bearing on the U.S. prospects for WCPP.³ Several of these parties have pointed to the same structural differences between the U.S. and foreign telecommunications environments that we had emphasized, including:

- The prevalence of metered billing for local wireline and wireless calls in Europe and Latin America, in contrast to the strong tradition in the U.S. of flat-rated local calling;⁴
- The relative lack of development of the wireline network in many countries, which has encouraged the growth of wireless services as a substitute for landline basic telephone service;⁵
- The far greater number of CMRS providers in the U.S. compared to most other countries, which among other things causes billing and interconnection arrangements to be much more complex;⁶
- The widespread practice in other countries of segregating wireless services into distinct access codes, which facilitates caller awareness that WCPP charges will be incurred.⁷

Most of the parties addressing this topic have concluded that these differences limit the degree to which one can extrapolate from other countries' success with WCPP to its potential viability in the U.S. For example, SBC has presented its own empirical investigation of CMRS and WCPP arrangements in other countries,⁸ and concluded that its results "place in question the view that CPP is a necessary market catalyst, and tend to show that the alleged and/or expected benefits of CPP in the United States, as well as in other countries, may be significantly overstated."⁹ Similarly, the new CMRS entrant

² Joint Comments, at 17-28.

³ Declaratory Ruling and NPRM, at para. 24.

⁴ BellSouth Comments, at 25; Leap Comments, at 4-5; PCIA Comments, at 21; NTCA Comments, at 2; SBC Comments, at 5-6; US West Comments, at 9.

⁵ SBC Comments, at 4.

⁶ BellSouth Comments, at 25; CTIA Comments, at 35 (addressing the U.K. CMRS market); Leap Comments, at 5.

⁷ BellSouth Comments, at 25; PCIA Comments, at 14.

⁸ SBC Comments, attached study *Calling Party Pays: Let the Market Decide* (SBC Study), September 1999.

⁹ SBC Comments, at 1-2.

Leap Wireless International finds that "...the market for telephony in the United States is fundamentally different than the market elsewhere," and concludes that "...the applicability of the European and Latin American model is too tenuous to warrant aggressive action by the Commission to promote CPP in the United States."¹⁰ BellSouth has concluded that Commission reliance on the international WCPP model is "misplaced,"¹¹ while US West anticipates that WCPP will result in a customer "backlash" because U.S. consumers, in contrast to telephone users in other countries, are not used to incurring charges to make local calls.¹²

The main exception to this general pattern of skepticism among commenters are the comments of the CMRS industry associations, the Cellular Telecommunications Industry Association (CTIA) and Personal Communications Industry Association (PCIA). The PCIA in particular has supplied a study that includes five case studies of foreign experiences with WCPP (in Argentina, Chile, Germany, Mexico, and the U.K.).¹³ PCIA has also provided a white paper focusing on WCPP implementation issues, that includes some additional information concerning how WCPP has been established in other countries.¹⁴ While PCIA endorses WCPP, and claims that the evidence it supplies "demonstrates that CPP can stimulate demand, give consumers more flexibility in using their wireless phones for incoming calls and increase competition between CMRS services and landline services,"¹⁵ a closer scrutiny of the empirical data in those studies and the study provided by SBC repudiates the view that WCPP alone produced those benefits in other countries, and casts doubt on the thesis that similar benefits would arise if WCPP were established widely in the U.S.

A. WCPP's Impacts on Wireless Demand. The Strategis Group solicited the opinions of CMRS operators in the five countries it studied as to whether WCPP influenced growth in wireless services subscribership and usage. The Latin American operators credited subscribership increases to the implementation of WCPP,¹⁶ but most also recognized that factors other than WCPP played important roles in stimulating subscribership, including the availability of pre-paid calling plans, plans with monthly limits on usage, and new marketing strategies.¹⁷ SBC's report provides further insight into the influence of numerous other market characteristics on subscribership, and reinforces our conclusion that the very different situation in the U.S. – in terms of overall CMRS market evolution as indicated by penetration levels, the relative performance of

¹⁰ Leap Comments, at 4-5.

¹¹ BellSouth Comments, at 25.

¹² US West Comments, at 9.

¹³ *Calling Party Pays Case Study Analysis*, Strategis Group ("Strategis Study"), attached to PCIA Comments.

¹⁴ *Impact of Calling Party Pays CPP on Systems Infrastructure: A White Paper Developed for PCIA*, Detecon ("Detecon White Paper"), attached to PCIA Comments.

¹⁵ PCIA Comments, at i.

¹⁶ Because the European countries established CMRS with WCPP arrangements from the outset, their experience cannot indicate whether WCPP can have an incremental impact on subscribership. Strategis Study, at 7.

¹⁷ *Id.*, at 8, 21, and *infra*.

the landline networks and consequent pent-up demand, and the degree of CMRS price competition – limits the prospects for achieving substantial growth in CMRS demand in the U.S. as a result of adopting WCPP.¹⁸

B. WCPP’s Influence on Wireless Subscriber Flexibility and Incoming Call Levels. PCIA and CTIA contend that WCPP gives wireless subscribers greater flexibility and control over their service, and especially over incoming calls.¹⁹ PCIA specifically claims that WCPP reduces CMRS subscriber costs, encourages subscribers to leave their wireless phone turned on, and improves the inbound/outbound traffic balances for CMRS.²⁰ In each case, however, PCIA takes an excessively narrow view that ignores equally important considerations or overstates the presumed “benefit.”

First, it must be remembered that WCPP does nothing to reduce the underlying costs for CMRS service (and in fact is likely to *increase* those costs given the cost and complexity of required WCPP notification, billing, and blocking options), but merely shifts a portion of those costs to other telephone users, including friends and family members of each WCPP user. This fact alone will likely discourage calling to wireless phones by certain customer groups, such as low-income wireline customers.²¹ Second, wireless subscribers typically turn off their phones to conserve limited battery life, which will continue to constrain subscribers’ use of their phones even after WCPP is implemented.²² Third, as a result of increasing competitive rivalry, CMRS providers in the U.S. are already introducing innovations that will increase the volume of inbound calls to wireless phones, such as pricing plans featuring “first minute free for incoming calls,” pre-paid pricing options, and free screening of inbound calls.²³

From a broader standpoint, WCPP is just one of many possible pricing and billing arrangements for CMRS, and U.S. providers already are actively pursuing more promising alternatives. Many commenters have supplied evidence to corroborate our view that the domestic CMRS market is already experiencing strong growth, increasing price competition, and a broadening of the subscribership base to lower-volume and less-affluent consumers.²⁴ At this promising stage in the evolution of the U.S. market – which contrasts greatly to the nascent stage of development in many other countries noted above – we agree with those commenters who has concluded that “CPP is a concept whose time has come and gone.”²⁵

¹⁸ SBC Study, at 20-28.

¹⁹ CTIA Comments, at 5-6; PCIA Comments, at 13-14.

²⁰ *Id.*, at 13-14.

²¹ BellSouth Comments, at 23.

²² *Id.*, at 24.

²³ SBC Report, at 5-6.

²⁴ *Id.* at 26-32; BellSouth Comments, at 10-13; Leap Wireless International Comments, at 3; FPSC Comments, at 2.

²⁵ Leap Wireless International Comments, at 3; see also BellSouth Comments, at 13, and US West Comments, Attachment (article “CPP Has Lost Appeal,” *Wireless Review*, August 1, 1999).

C. WCPP’s Impacts on Wireless/Wireline Competition. PCIA asserts that WCPP “will align customer call payment expectations to mirror those of landline calling,”²⁶ but this is obviously untrue: as already explained above, U.S. consumers generally do *not* expect to pay call-specific charges when placing a local call, and in those instances where local message unit or per-minute charges are incurred, they are typically much less than the airtime charges that would be recovered through WCPP. Furthermore, neither PCIA nor any other commenting party has supplied evidence contrary to our explanation that WCPP’s dispersal of charges among multiple customers, none of whom have a direct choice as to CMRS provider to use to complete WCPP calls, will diminish rather than increase the competitiveness of wireless services.²⁷

In addition to the lack of empirical foundation for PCIA’s support for WCPP, its recommendation to the Commission concerning how WCPP should be implemented in the U.S. is internally inconsistent at a fundamental level. On the one hand, PCIA emphasizes that the Commission proposal for WCPP presented in the Declaratory Ruling and NPRM deviates significantly from the WCPP arrangements adopted in other countries, and urges the Commission to modify its proposal to be closer to the international model.²⁸ On the other hand, PCIA declares that “the Commission must be mindful of the structural, regulatory and other differences between the U.S. and foreign telecommunications markets that may impact the success of a CPP service option in the United States.”²⁹

The problem is that the international model for WCPP will not work in the U.S. environment, precisely because several of those structural differences impair or entirely preclude its adoption in this country. Most importantly, the minimal caller notification that PCIA supports, based on the comparative absence of explicit per-call notification mechanisms in other countries (which typically rely on specialized dialing codes, customer education, and other means), is entirely inadequate in this country because – in contrast to other countries – U.S. callers are resistant to paying explicit charges for local calls, CMRS rates are not regulated, there are many more CMRS carriers, and the CMRS carrier and call-originating ILECs would not be participating in revenue sharing for WCPP (which would create greater incentives for the ILECs to limit possible abuses than a third-party billing relationship).³⁰

PCIA’s recommendation that the Commission require cost-based billing and collection by ILECs³¹ is similarly misguided: the ILEC/CMRS revenue sharing arrangements used in other countries are quite different, and the ILECs have vigorously opposed such a requirement as being generally unnecessary, without a legal basis,

²⁶ PCIA Comments, at 11.

²⁷ Joint Comments, at 29-31.

²⁸ PCIA Comments, at 3.

²⁹ *Id.*, at 12.

³⁰ *Id.*, at 21-23; see also page 2 above.

³¹ PCIA Comments, at 3.

extremely costly to ILECs, and particularly burdensome to smaller/rural ILECs.³² For all of the reasons identified above, the Commission should reject PCIA's proposed implementation of WCPP.

II. Other parties' initial comments support the view that privity of contract will be established for CPP only when the caller has been able to make an informed choice to proceed with a CPP call, or the entity responsible for the payment of CPP charges is able to block the call.

Our initial comments emphasized that four conditions must exist in order for privity of contract to be established with respect to a CPP call. These are (1) notification that the call will be subject to WCPP surcharges, (2) information as to the price and price structure for the WCPP call, (3) identity of the CMRS provider that is imposing the charge, and (4) a practical opportunity to decline to complete the call.³³ While these conditions are similar to those proposed by the FCC in the NPRM, we emphasized that the pricing information must be complete, and under certain circumstances, supplied on a real-time basis for the particular call, and also that the opportunity to decline a CPP call's completion must be made available to the entity that will be billed for the call, in those circumstances in which the financially-liable entity differs from the caller (e.g., in the case of hotel or business PBX systems used by guests or employees, respectively).³⁴ While some commenting parties oppose the FCC's proposed four-part notification process as administratively cumbersome or recommend streamlining notification after an introductory period, they fail to explain how privity of contract could be established in the absence of each of the notification/choice provisions that we have identified.

For example, Airtouch has commented that "the customer's informed choice to complete the call is sufficient to establish a binding obligation."³⁵ Given that an informed choice can only occur if the four notification/choice conditions have been satisfied, Airtouch appears to agree with us in principle on this issue; however, a key prerequisite to making an "informed choice" is to understand the charges one will be liable for. Airtouch has not explained how such informed choice would be possible if the FCC adopted Airtouch's recommendation to discontinue the supply of rate information in CPP notification messages after 18-24 months, especially given Airtouch's opposition to any tariffing requirement for CPP rates,³⁶ in an environment in which CPP rates would be unregulated and subject to change at any time.

Bell Atlantic takes the position that the FCC's four-part notification scheme would be sufficient to establish privity of contract for CPP. However, Bell Atlantic limits its analysis to the situation in which the caller is the same entity as the billed party,

³² See, e.g., BellSouth Comments, at 2, 19-20, and generally; GTE Comments, at 32-35; NTCA Comments, at 6-9; SBC Comments, at 7-11; US West Comments at 19-22.

³³ Joint Comments, at 32-34.

³⁴ *Id.* at 33 and 34, respectively.

³⁵ Airtouch Comments, at 50.

³⁶ *Id.*, at 48 and 50.

asserting that “the CMRS provider offers the service, the caller accepts that offer and, consistent with normal contract law, must pay for it.”³⁷ In so doing, Bell Atlantic overlooks the fact that privity of contract would not have been established between the CMRS provider and the billed party in those instances in which the billed party is distinguished from the caller. The Federal Trade Commission has recognized this problem, explaining that: “the contract problem may be more problematic in that the *calling party* is not necessarily the person who will receive the bill for the call, and will frequently not be the person from whom carriers will attempt to collect the CPP-related charges.”³⁸ Accordingly, the FTC has concluded that the FCC needs to “consider the interests of the ‘billed parties’ by providing them with the tools to avoid unauthorized charges for calls to CPP services.”³⁹ Similarly, the American Hotel and Motel Association (AH&MA) has explained that hotels, motels, and other lodging and commercial establishments which make available telephones for third-party use would face financial losses unless the CPP call charges are quantified on a real-time basis so that those charges can be assessed on the caller, or effective, low-cost means to block such calls are made available.⁴⁰ These analyses support our view that in such cases, privity of contract must be established between the CMRS provider and the billed party, by granting the billed party a practical opportunity to decline the call, and the billed party affirmatively electing not to do so.⁴¹

III. Some WCPP advocates grossly underestimate the need for consumer protection measures

Several of the parties that support Commission action to facilitate widespread availability of WCPP resist the establishment of basic consumer protection measures, such as per-call notification and blocking options, in a WCPP environment. For example, Bell Atlantic glibly offers the opinion that PBX owners would not face a significant economic threat from WCPP, because “[e]ven if, for example, employees make CPP calls through the employer’s PBX, the monthly bill will not be large.”⁴² Omnipoint opposes the Commission’s proposed four-part per-call notification message, and argues that consumers already place calls without prior notification of the charges they will incur, such as when making intraLATA toll calls.⁴³ CTIA observes that alternative operator services providers and 900-number pay-per-call operators “were notorious for charging excessive amounts for their services without prior notification of such charges,”⁴⁴ but goes on to opine that “[t]here should be no expectation that the abuses that occurred in these other industries will materialize in the CMRS environment.”⁴⁵

³⁷ Bell Atlantic Comments, at 4.

³⁸ FTC Comments, at 30-31.

³⁹ *Id.*, at 11.

⁴⁰ AH&MA Comments, at 2.

⁴¹ Joint Comments, at 35-36.

⁴² Bell Atlantic Comments, at 4.

⁴³ Omnipoint Comments, at 3-4.

⁴⁴ CTIA Comments, at 27 (footnote omitted).

⁴⁵ *Id.*, at 28.

These parties have grossly underestimated the need for consumer safeguards were WCPP to become a widespread payment mechanism. Commenters who adopt a “wait and see” attitude toward potential consumer abuses occasioned by WCPP are ignoring the fact that the structure of the WCPP relationship – in which the calling party has no direct relationship to the service provider, the party making the choice of service provider has no direct incentive to limit those charges, and the charges are unregulated – is parallel to other situations that were rife with consumer abuses. The Competition Policy Institute goes to the heart of the problem in its observation that, in the case of operator services providers, “the lethal mix of consumer trust in a familiar institution, inadequate disclosure requirements, plus outright fraud, combined to create a shameful chapter in deregulatory history.”⁴⁶ This structural propensity toward consumer price-gouging and fraud is inherently different from those situations in which the caller has a direct and continuing relationship to a service provider, as for example exists between a caller and his/her intraLATA toll carrier. The Federal Trade Commission, among others, has described several means by which WCPP could be used to bilk consumers,⁴⁷ and we support its recommendations to limit these types of abuses, such as prohibitions against revenue-sharing agreements between CMRS carriers and content providers.⁴⁸

IV. Conclusion

The Joint Commenters urge the Commission to take a hard look at the full range of costs and benefits associated with a widespread adoption of WCPP arrangements, including its likely impacts on consumers as well as CMRS providers and other industry participants. After consideration of the current record in this proceeding, we continue to recommend that the Commission abandon the concept of regulatory intervention to facilitate establishment of WCPP in the domestic CMRS market. At a minimum, if the Commission decides to support the introduction of WCPP through regulatory means, we urge the Commission to also adopt each of the consumer protection mechanisms described in our Initial Comments, to give the best possible chances for WCPP to succeed without undue disruption or harm to U.S. consumers.

⁴⁶ CPI Comments, at 8.

⁴⁷ FTC Comments, at 22-26.

⁴⁸ *Id.*, at 26-28.

Dated: October 18, 1999

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