

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

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OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") hereby submits its reply comments on the Declaratory Ruling and Notice of Proposed Rulemaking ("Declaratory Ruling" or "NPRM") in the above-captioned docket concerning Calling Party Pays ("CPP") services.^{1/} The initial comments on the NPRM confirm AT&T's view that CPP will play an important role in encouraging the use of wireless technology. They also demonstrate, however, that important implementation issues must be resolved before CPP options are routinely offered to, and utilized by, wireless customers.

I. NATIONAL CPP DISCLOSURE STANDARDS ARE NECESSARY

The commenters in this proceeding provide strong support for the Commission's proposal to adopt national standards to govern the notification procedures for CPP calls.^{2/} As a threshold matter, the plain language of Section 332(c)(3)(A) gives the Commission the power to adopt uniform federal disclosure standards to the exclusion of state notification rules.^{3/} Moreover, the Cellular Telecommunications Industry Association shares AT&T's view that even if CPP were not a CMRS service, state-specific notification requirements would be subject to preemption as

^{1/} 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" or NPRM").

^{2/} See NPRM at ¶¶ 41-49.

^{3/} See Comments of CTIA at 10; Comments of Bell Atlantic at 3-4.

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impermissible attempts to impose rate and entry regulation on CMRS providers.^{4/} Together with the record developed in connection with the Public Utility Commission of Ohio's recent Petition for Reconsideration on the Declaratory Ruling in this proceeding, the comments provide multiple legal bases for the Commission to preempt CPP notification or disclosure requirements adopted by states.^{5/}

The comments also bolster AT&T's contention that uniform national standards are necessary for CPP to become a practical alternative for CMRS licensees and their customers. Bell Atlantic points out that a standardized message requirement would eliminate the need for direct regulation of CPP rates.^{6/} U S West similarly explains that a uniform message would be sufficient to inform callers that they will be responsible for charges associated with CPP calls,^{7/} and several commenters argue that inconsistent or additional requirements would be counterproductive because they would confuse consumers, raise costs, and slow the acceptance of CPP as an attractive alternative to conventional wireless plans.^{8/}

The few commenters that want the Commission to allow each state to adopt its own disclosure requirements offer no persuasive rationale for authorizing separate notification procedures. Most state regulators focus exclusively on the legal arguments justifying an expansive view of their authority over the terms and conditions of CMRS offerings without even attempting to explain how consumers might benefit from the existence of 50 different disclosure

^{4/} See, e.g., Comments of Cellular Telecommunications Industry Association at 11-16 (arguing that notification rules are inextricably linked to rate and entry regulation).

^{5/} See Opposition of AT&T Corp. to Public Utilities Commission of Ohio Petition for Reconsideration and Clarification of In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, Declaratory Ruling and Notice of Proposed Rulemaking (filed Oct. 4, 1999).

^{6/} See Comments of Bell Atlantic at 5.

^{7/} See Comments of US West at 2.

^{8/} See Comments of CTIA at 22-23, Comments of Omnipoint at 4; Comments of United States Cellular Corp. at 6.

statements.^{9/} Some state regulators recognize the need for the FCC to adopt federal disclosure rules, although they generally favor allowing each state to adopt additional notification rules.^{10/} On balance, the comments largely confirm AT&T's contention that while consumers should be informed that they will incur additional charges for a CPP call before they place it, they would be harmed by the inconvenience and higher costs associated with inconsistent or burdensome state rules.^{11/}

II. THE COMMISSION MUST ADOPT REASONABLE BILLING RULES THAT ACCOMMODATE THE NEEDS OF CMRS PROVIDERS AND OTHER CARRIERS

While billing and collection for CPP raises numerous thorny jurisdictional and competitive issues, many of the concerns are premature given the nascent stage of CPP development. The Commission should nevertheless follow a few basic tenets in addressing this matter. First, billing by incumbent LECs should not generally be mandated at this time, although, in light of the strong incentives for anticompetitive behavior by wireline incumbents, the Commission should establish a nondiscrimination requirement. Second, competitive LECs should not be required, under any circumstances, to provide billing and collection services to CMRS providers. Although a number of competitive LECs will likely choose voluntarily to bill for CPP services, there is no justification under the Communications Act or by virtue of market conditions to mandate such an obligation. Third, all LECs should be required to provide billing,

^{9/} See, e.g., Comments of CPUC; Comments of Washington Utilities and Transportation Commission.

^{10/} Comments of CPUC at 3-4. Apparently, the National Association of Regulatory Utility Commissioners has submitted an ex parte letter containing a suggested notification message, demonstrating that a single CPP disclosure statement in all states is not inconsistent with consumer protection. See NARUC ex parte letter submitted in WT Docket No. 97-207 (filed Sept. 17, 1999).

^{11/} See Comments of AT&T at 5-6.

name, and address (“BNA”) information to CMRS providers. Finally, the Commission should refrain from extending either billing or BNA requirements to other carriers, such as IXCs, who have never been subject to these obligations. IXCs do not have systems in place to accommodate billing on behalf of other carriers or even to pass on BNA information, and adoption of such rules simply is not warranted by the record in this proceeding.

A. Nondiscrimination Requirements Should Apply to Incumbent LEC Billing and Collection

A number of commenters representing CMRS licensees argue that all LECs should be required to bill on behalf of CPP providers. Other commenters, including regulators from California and Ohio, offer more limited proposals that would compel LECs that bill for one wireless carrier – presumably its affiliate – to bill for all other CPP providers. At this early stage in CPP development, AT&T does not believe a case has been made generally to require incumbent LECs to bill on behalf of CMRS providers. The Commission may wish, however, after observing CPP market conditions and the effect of the implementation of the rules from this proceeding to reconsider this issue.

AT&T would, however, support a nondiscrimination rule with regard to incumbent LEC billing and collection services. Requiring incumbent LECs to provide such services for non-affiliates at similar rates, terms, and conditions to the extent they choose to bill and collect for their own CMRS affiliates will ensure a level playing field. By virtue of the Commission’s original cellular licensing scheme, many incumbent LECs today have large stakes in the CMRS marketplace.^{12/} As a consequence, they have a strong incentive to undermine efforts by non-

^{12/} Under the Commission’s licensing regime, the B Block cellular license in every market was reserved for the incumbent wireline carrier.

affiliated wireless carriers to establish CPP services for their customers. Moreover, the incumbent LECs are the only entities with comprehensive billing systems already in place that could be used for anticompetitive purposes. Unless the Commission applies a billing and collection nondiscrimination requirement to incumbent LEC billing and collection activities, it is likely that non-affiliated CMRS providers would soon find themselves at a distinct disadvantage in the CPP market.

A non-discrimination requirement is also justified under the Communications Act and Commission precedent. Specifically, Section 272(c)(1) precludes Bell Operating Companies (“BOCs”) from discriminating between its affiliates created under that section and “any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.”^{13/} In implementing Section 272(c)(1), the Commission held that BOC billing and collection services are subject to the nondiscrimination requirement.^{14/} Although CMRS affiliates were not mandated under Section 272, the rationale for prohibiting discrimination is the same.

B. All Local Exchange Carriers Should Be Required To Provide BNA for CPP

Many incumbent LECs are resistant to the suggestion that they should be required to provide BNA information to CMRS carriers offering CPP services.^{15/} A few incumbents acknowledge that CMRS providers may need guaranteed access to BNA in the possession of

^{13/} 47 U.S.C. § 272(c)(1).

^{14/} See NPRM at ¶ 60.

^{15/} See, e.g., Comments of Ameritech at 5-6; Comments of BellSouth at 3-19; Comments of Cincinnati Bell at 5-10.

LECs,^{16/} but most say the necessary billing information is available from incumbents or competitive providers at negotiated or tariffed rates, so there is no need for the Commission to adopt any requirements in this area.^{17/}

As AT&T explained in its initial comments on the NPRM, however, incumbent LECs have obvious incentives to avoid offering BNA to wireless competitors, especially when an incumbent LEC has a wireless affiliate or seeks to impede the development of wireless service as a substitute for landline offerings. Even if incumbent LECs do not view CMRS providers as direct competitors, they enjoy market power over the availability of BNA information, which would allow them to charge supra-competitive prices.^{18/}

The Commission has the authority to require LECs to provide BNA to other carriers, and it has exercised this authority in the past with respect to the provision of BNA information to operator service providers. The 1996 Act specifically imposes a duty on incumbent LECs to provide subscriber numbers and other information necessary for competing carriers – including CMRS providers – to bill for telecommunications services,^{19/} and although the Commission may be justifiably reluctant to require unbundling of the full range of billing and collection services as urged by some parties,^{20/} at a bare minimum CMRS licensees must have access to BNA.

^{16/} See Comments of GTE at 31-38; Comments of SBC Communications at 7-9.

^{17/} See Comments of Cincinnati Bell at 9-10; Comments of United States Telephone Association at 6-11.

^{18/} See Comments of Competition Policy Institute at 9.

^{19/} 47 U.S.C. § 251(c)(3) (requiring incumbent LECs to provide unbundled network elements); § 153(29) (defining “network element”).

^{20/} See Comments of Coalition to Ensure Responsible Billing at 10-11.

C. BNA Obligations Should Not Be Extended to Additional Classes of Carriers

While basic billing information is vital to the ability of CMRS licensees to offer CPP service options, the obligation to provide such information should not be extended to new categories of carriers not previously required to provide BNA data to other carriers. Specifically, the Commission should reject the Personal Communications Industry Association’s proposal to extend either a billing obligation or BNA requirement to interexchange carriers (“IXCs”).^{21/}

As a legal matter, Section 251(c)(3) of the 1996 Act requires incumbent LECs to provide requesting telecommunications carriers – including CMRS providers – with unbundled access to information necessary to bill and collect for services, but does not cover other groups of carriers.^{22/} PCIA has provided no principled basis for its proposal, and the Commission previously rejected a similar idea when it was advanced by “900” number service providers.^{23/}

As a policy matter, LECs are not only in the best position to obtain BNA information, they have well-developed systems for providing it to other carriers, because LECs are currently obligated to provide BNA support in circumstances wholly unrelated to CPP. IXCs generally do not provide BNA information or billing services to other carriers for other purposes, so requiring them to acquire BNA collection and distribution capabilities solely to facilitate CPP offerings would be highly inefficient and create an unjustified regulatory burden.

^{21/} See Comments of PCIA at 33-53.

^{22/} See 47 U.S.C. § 251(c)(3) (requiring incumbent LECs to unbundle “network elements” for competitors); 47 U.S.C. § 153(29) (defining term “network element” to include “information sufficient for billing and collection”); see also Comments of CTIA at 38 (noting that CMRS must have access to BNA to provide CPP option).

^{23/} See Audio Communications, Inc., Petition for a Declaratory Ruling That the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, Memorandum Opinion and Order, 8 FCC Rcd 8697 (1993).

III. CPP RAISES COMPLEX COST AND TECHNICAL ISSUES THAT MUST BE ADDRESSED

Commenters from all parts of the communications industry agree that CPP may impose substantial new costs on telecommunications carriers, and it undoubtedly will create complicated cost recovery and allocation issues.^{24/} AT&T noted in its previous comments that any CPP disclosure statement will add holding time to uncompleted calls, and a number of commenters argue that billing and collection of charges for short calls by a customer with no preexisting relationship to the relevant CMRS provider is likely to be costly.^{25/} Without a mechanism for wireless carriers to pay the other carriers involved in handling CPP traffic for the added expenses of these calls, the economic incentives to offer CPP options will be distorted, because some carriers and their customers will be forced to bear costs they did not create.^{26/}

Other commenters raise a number of technical issues that must be resolved prior to CPP implementation. Nortel, for instance, echoes AT&T's concerns that the network facilities currently employed by many carriers may will treat the transmission of the CPP disclosure statement as a completed call and bill the calling party accordingly.^{27/} As a consequence, both LECs and IXC's will have to redesign components of their networks to handle rejected calls appropriately, adding to CPP implementation costs. In addition, long distance carriers that

^{24/} See, e.g., Comments of SBC at 12-13 (describing double recovery problem).

^{25/} See Comments of BellSouth at 7 (noting that costs of billing and collection will be high and arguing that LEC ratepayers cannot be compelled to assume any portion of these costs).

^{26/} See Comments of Ameritech at 2-3 (describing distorting effects of attempts to encourage CPP offerings).

^{27/} See Comments of Nortel at 5.

handle rejected CPP calls may be obligated to pay interstate access charges to the originating caller's local carrier without any way to obtain compensation.

Several commenters also note that many large consumers of telecommunications services will want to retain the ability to block CPP calls to avoid incurring long distance, roaming, and airtime charges. The Ad Hoc Telecommunications Users Committee ("AHTUC") provides an especially detailed description of the problem, and it estimates the cost of accepting CPP calls at \$7 billion. AHTUC explains that any entity with multiple lines accessible to multiple users -- including hotels, universities, government agencies, and large corporations -- is likely to incur unauthorized CPP charges. These comments support AT&T's contention that any CPP regime ultimately adopted must incorporate a mechanism that allows the blocking of wireless CPP calls, a function not currently provided by PBXs, Centrex systems, or LECs. To develop a blocking mechanism, PBX manufacturers need a means of recognizing that a calling party has dialed a CPP number.^{28/}

AT&T also shares the American Public Communications Council's concern that CPP should not be introduced until some method is developed to ensure that callers cannot use pay phones as a mechanism to facilitate CPP toll fraud.^{29/}

Unless and until these difficult problems are addressed, CPP is unlikely to develop as envisioned by the Commission, because the implementation costs incurred by LECs, IXCs, and CMRS providers needed to make the network changes that would be required for widespread

^{28/} A separate NPA or NXX code could be used to identify CPP calls, but only if the entire NPA or NXX were dedicated to CPP subscribers. As discussed in AT&T's initial comments, however, this option has the very real potential to exacerbate the already severe problem of number exhaust in many parts of the country.

^{29/} See Comments of APCC at 3-6.

adoption of CPP are likely to be significant.^{30/} For these reasons, AT&T urges the Commission to take a measured approach to CPP implementation, giving manufacturers and carriers time to resolve satisfactorily the myriad billing, cost, and blocking issues raised by CPP.

CONCLUSION

AT&T believes that CPP is a potentially useful service option for carriers and consumers alike. If CPP is to become a viable offering throughout the country, however, the Commission must address the complex economic and technical issues highlighted by many commenters in this proceeding.

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^{30/} AT&T estimates that the recurring network expense to its wireline operations alone could reach \$70 million.

CERTIFICATE OF SERVICE

I, Jette Ward, hereby certify that on this 18th day of October, 1999, I caused copies of the foregoing "REPLY COMMENTS OF AT&T CORP.," to be served by U.S. first-class mail, postage prepaid, or by hand delivery (*) on the following:

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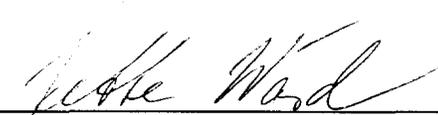
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