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

In the Matter of	)	
	)	
Calling Party Pays Service Offering in	)	CC Docket No. 97-207
the Commercial Mobile Radio Services	)	
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Comment of the
FEDERAL TRADE COMMISSION

September 17, 1999*

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I. The FTC's Interest in this Proceeding

The Federal Trade Commission (FTC or Commission) welcomes this opportunity to present its views on important consumer protection issues raised in the above-captioned proceeding. In this proceeding, the Federal Communications Commission (FCC) has issued a Notice of Proposed Rulemaking (NPRM) with the purpose of removing "regulatory obstacles to the offering to consumers of Calling Party Pays (CPP) services by Commercial Mobile Radio Services (CMRS) providers."[1]

The FTC is an independent administrative agency charged with promoting the efficient functioning of the marketplace by taking law enforcement action against commercial practices

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[1]NPRM at 1.

[2]15 U.S.C. § 41 *et seq*. The Commission also has responsibilities under 40 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which establishes important privacy protections for consumers' sensitive financial information. The Commission also enforces over 30 rules governing specific industries and practices, *e.g.*, the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

[3]15 U.S.C. § 45(a).

[4]15 U.S.C. § 5701 *et seq.* and 47 U.S.C. 228.

A. Section 5 of the FTC Act

Section 5 of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce" and applies to a wide range of business practices, including advertising, marketing, and billing and collection. Deception occurs under Section 5 "if, first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material."[5] Section 5 also prohibits "unfair" acts or practices. A practice is "unfair" if it causes substantial injury to consumers, if the harm is not outweighed by any countervailing benefits, and if the harm is not reasonably avoidable.[6] The Commission pursues both deceptive and unfair practices under Section 5 either through administrative law enforcement actions or through federal district court actions seeking temporary and permanent injunctive relief and, ultimately, restitution to injured consumers.

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[5] *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 165, *appeal dismissed sub nom.*, *Koven v. FTC*, No. 84-5337 (11th Cir. 1984) (hereinafter *Cliffdale*). It is deceptive to omit "material information, the disclosure of which is necessary to prevent [a] claim, practice, or sale from being misleading." *Id.* at 177. Express claims, or deliberately-made implied claims used to induce the purchase of or payment for a particular product or service, are presumed to be material. *Thompson Medical Co., Inc.*, 104 F.T.C. 648, 816 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987). Information concerning the cost of a product or service also has been found to be material. *Cliffdale* at 174.

[6] 15 U.S.C. § 45(n). *See also Orkin Exterminating Company, Inc. v. FTC*, 849 F.2d 1354, 1363-68, *reh'g denied*, 859 F.2d 928 (11th Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989); and *American Financial Services v. FTC*, 767 F.2d 957, 972-78 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1011 (1986).

B. The Pay-Per-Call Rule and the Telephone Disclosure and Dispute Resolution Act of 1992

Pay-per-call transactions became widely available in the late 1980s in the form of 900 numbers. By the early 1990s, advertisements for 900-number services were widely disseminated in print publications, on billboards, and on television and radio. Deception and fraud were rampant in these advertisements, in the operation of pay-per-call services, and in the billing and collection of charges for these services.[7]

Against this backdrop, Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992[8] (TDDRA). TDDRA creates the statutory framework for FCC and FTC regulation of pay-per-call services and other telephone-billed purchases. TDDRA is divided into three discrete parts. Title I directs the FCC to issue rules governing telephone common carriers' provision of service to pay-per-call providers. Title II directs the FTC to issue rules governing the advertising and operation of pay-per-call services, including requirements regarding the free "preamble" disclosure message to be played at the start of most pay-per-call programs. To address the problems encountered by consumers who received charges from pay-per-call and other telephone service vendors, Title III of TDDRA directs the FTC to issue rules for billing and

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[7]Advertisements often induced consumers to call 900 telephone numbers to claim fabulous prizes, to access "free" services, or to talk with celebrities (*e.g.,* "Kids: call this number to talk live to Santa Claus"). These ads typically contained no cost disclosures at all. The few cost disclosures that were made in advertisements lacked clarity and were buried in mouseprint. When consumers called the 900 numbers, they were put on hold or otherwise kept on the telephone for extended periods, all the while running up significant but unknown charges. When consumers received charges on their telephone bills, often for calls placed by their children, their LECs told them that they had to pay or their phone service would be disconnected.

[8]15 U.S.C. 5701 *et seq.* and 47 U.S.C. 228.

collection of charges for "telephone-billed purchases"[9] – rules that were to be modeled after the dispute resolution system for credit card charges.[10]

The TDDRA regulations have largely been successful in reducing the abuses that plagued the 900-number industry during the early 1990's.[11] However, following the implementation of these regulations, new frauds have appeared, which were carefully structured to evade the TDDRA regulatory regime. The first of these was the use of sham contracts that resulted in consumers being charged for the purchase of telephone information and entertainment (audiotext) services as a result of calling 800 or other toll-free numbers. The second, and more pervasive fraud involved the use of alternative dialing patterns (dialing patterns other than 900), such as international telephone numbers,[12] to sell audiotext services without providing the cost disclosures, free preamble, and dispute resolution protections that were required by TDDRA.[13]

[9]The dispute resolution provisions of the Rule apply to all "telephone-billed purchases," a term that includes all pay-per-call services, but is significantly broader than that term. The term telephone-billed purchase currently includes the purchase of any good or service (other than the purchase of long-distance or local telephone services) that is completed as the result of placing a telephone call, subsequent dialing, or comparable action of the caller. 16 C.F.R. 308.7(a)(6); 15 U.S.C. 5724(1). The FTC has proposed an expansion of the definition of telephone-billed purchase. FTC Proposed Pay-Per-Call Rule, 63 *Fed. Reg.* 58524, 58541 (hereinafter "Proposed Pay-Per-Call Rule").

[10]The dispute resolution system for credit card charges is set forth in the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et seq.*

[11]Proposed Pay-Per-Call Rule at 58526.

[12]The audiotext providers profit from these international audiotext schemes by sharing in the "settlement payments" made to the terminating long distance carrier.

[13]Currently, TDDRA regulations only apply to audiotext services offered over 900 numbers. The FTC has proposed an expansion of the Pay-Per-Call Rule provisions to cover all audiotext services, regardless of dialing pattern. Proposed Pay-Per-Call Rule at 58533-35.

Finally, in 1997 we witnessed the widespread emergence of "cramming" – the appearance on consumers' telephone bills of unauthorized charges for a variety of telephone-billed purchases. Utilizing the rulemaking authority set forth in TDDRA as well as additional authority provided by Section 701(b) of the Telecommunications Act of 1996,[14] the FTC has proposed amending its Pay-Per-Call Rule to address all of these abuses.[15]

II. Summary of the FTC's Consumer Protection Concerns in this Proceeding

Under most circumstances in the United States today, a consumer who has subscribed to wireless telephone service is responsible for paying for airtime and other charges associated with both incoming and outgoing calls. Under a CPP calling plan, the person *calling* a wireless customer who had signed up for a CPP plan would incur at least some of the airtime charges associated with the call that he or she placed.

We note four important consumer protection concerns that arise from the offering of CPP plans to consumers and businesses, based on our experience in enforcing Section 5 of the FTC Act and in promulgating, enforcing, and revising the Pay-Per-Call Rule under TDDRA. First, we comment on the proposed consumer notification system to be used to inform a "calling party" that an attempted call is to a CPP-subscribed telephone number. Disclosure of accurate and meaningful cost information is very important. In addition to our comments here, the FCC may

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[14]Pub. L. 104, 701, 110 Stat. 56 (1996) [codified at 47 U.S.C. 228 and at 15 U.S.C. 5714(1)].

[15]Proposed Pay-Per-Call Rule at 58527-29.

its Pay-Per-Call Rule, the FCC may wish to consider taking certain actions in this proceeding to prevent CPP from becoming a platform for pay-per-call services.

Finally, the FCC may want to consider providing a means for the “billed party” in a CPP transaction to control his or her costs. Although it may be convenient to think in terms of the interests of the “calling party” and the “called party,” this is not quite accurate. It is not the “calling party” who will be required to pay the bill for the call to the CPP-subscribed number. Rather, the person who will be required to pay this charge – the “billed party” -- is actually the telephone subscriber whose telephone is used to call the CPP-subscribed service. In non-interconnection CPP, this raises special concerns because of the potential lack of privity between the billed party and the CMRS carrier. Regardless of whether the FCC adopts an interconnection or a non-interconnection approach to CPP, the FCC may wish to consider the interests of the “billed parties” by providing them with the tools to avoid unauthorized charges for calls to CPP services.

III. Analysis

A. The FCC May Wish to Consider Implementing a Notification System that Accurately Discloses the Cost of a Particular Call to a CPP service.

The NPRM proposes that a system of uniform notification be developed, and seeks comment on what elements that notification system should contain.[19] The NPRM proposes that the notification include the following elements:

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[19]NPRM at 13-14.

(1) Notice that the calling party is making a call to a wireless subscriber that has chosen the CPP option, and that the calling party therefore will be responsible for payment of the 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.[20]

The FTC's Pay-Per-Call Rule requires a similar cost-free notification or "preamble"[21] for all calls to pay-per-call services. This approach has ensured that callers to pay-per-call services receive important information about the service they are attempting to access, and provides them the opportunity to avoid uncertainty about the charges that will result. As with the FCC's proposal here, the preamble requirement in the Pay-Per-Call Rule requires the disclosure of the name of the provider, the cost of the service, and the notice of the opportunity to hang up before charges accrue.[22] Based on our positive experience with the preamble in the context of the Pay-Per-Call Rule, we support the proposal to create a uniform notification announcement, and we generally agree with the elements that the FCC has proposed be a part of such notification system. We also support the proposal to develop specific language for the announcement "in cooperation with the states, consumers, and industry representatives."[23] Such a balanced approach to

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[20]NPRM at 20-21.

[21]16 C.F.R. § 308.5(a).

[22]The Pay-Per-Call Rule also requires additional preamble disclosures, such as a disclosure regarding parental consent for callers under 18. 16 C.F.R. § 305(a)(4).

[23]NPRM at 20.

developing the announcement would help ensure that callers received the most important information in a useful form, without extraneous and confusing additional disclosures.

The notification proposal, however, does raise two potential concerns. First, the proposed disclosure of "the per minute rate, and other charges, that the calling party will be charged by the CMRS provider" may be construed by some CMRS providers to permit disclosure of highly *general* information about costs, such as a range of possible rates depending on the time of day, the day of the week, whether the CPP subscriber was "roaming," problem, we suggest that more precise wording be used in the notification that does not imply that the entire call would be free if the caller hangs up before the end of the notification message.

The NPRM also seeks comment on the desirability of moving to a simpler, more streamlined notification system – one that would not include rate information – after consumers have become accustomed to CPP and are aware of the additional charges involved.[24] We believe it is important that consumers be able to determine the cost of a service prior to purchasing that service. At this early stage in the development of CPP, it may be premature to consider implementing a notification system that does not include the disclosure of rate information. It may be easier to weigh the costs and benefits of such a proposal after consumers have started to become familiar with CPP. Thus, the FCC may wish to defer a decision on this issue at this time.

Finally, we wish to highlight a potential violation of the FTC's Pay-Per-Call Rule. One of the suggestions in the NPRM for an alternative notification option indicates that one company

> uses a nationwide single, toll-free number to access its Paging Party Pays (PPP) offering, because it eliminates the complication of multiple routing and pricing structures in using regional LECs for billing and collection. The caller is then provided a notification that informs them that they are paging a PPP subscriber, and that a specified charge will appear on their bill if they proceed with the call.[25]

This alternative notification system might be in violation of the FTC's Pay-Per-Call Rule because it charges a telephone subscriber on the basis of the fact that a call to a toll-free number was

[24]NPRM at 21.

[25]NPRM at 23.

B. The FCC May Wish To Consider Implementing Consumer Protections for Non-Interconnection CPP that are Comparable to the Protections Available in Pay-Per-Call.

The NPRM discusses two different potential systems for structuring CPP, an interconnection approach, and a non-interconnection approach. The non-interconnection shares some similarities with the billing system used for pay-per-call services. Thus, if the FCC chooses to adopt a non-interconnection approach to CPP, it may wish to consider taking steps to reduce the susceptibility of CPP to the types of abuses that were seen in the pay-per-call industry prior to promulgation of TDDRA.

1. Interconnection Approach to CPP.

Under the interconnection approach, which is the system used in Europe and elsewhere,[30] the LEC would bear the sole responsibility for charging the customer whose telephone was used to place the call to the wireless telephone. Under this system, the customer whose telephone was used to place the call has no contact with the wireless carrier terminating the call. Instead, the charges for a call to a CPP service would be handled through expansion of existing interconnection agreements between wireline (*i.e.*, LECs) and wireless (CMRS) carriers.[31] Thus, when a wireline subscriber places a call to a CPP-subscribed wireless telephone, the called party's wireless carrier imposes a wireless termination access charge on the LEC of the person whose telephone was used to place the call.[32] The LEC could then recoup the charge from the consumer

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[30]NPRM at 35.

[31]*Id*.

[32]We avoid the use of the term "caller" here, as elsewhere in this comment, because it is not necessarily the *"caller"* or the *"calling party"* who is billed for a CPP call. Importantly, the bill would be sent to the subscriber whose telephone was used to place the call to the CPP-

"if it so chose."[33] Under the interconnection approach to CPP, a consumer in a competitive environment would be able to shop around for a LEC that charged the lowest prices for calls to CPP wireless telephones.[34]

2. Non-Interconnection Approach to CPP.

Under a non-interconnection model, rather than having the carriers handle the CPP charges, the telephone subscriber whose telephone is used to place a call to a CPP service would be charged directly by the CMRS carrier terminating the call. This system is comparable to pay-per-call, where the person whose telephone is used to place a call receives a bill from the vendor who operates the pay-per-call number[35] – a vendor with whom the consumer may have no prior existing relationship. In non-interconnection CPP, as in pay-per-call, the *recipient of the call* has maximum control over the rates that will be paid by the person whose telephone was used to place the incoming call to the wireless telephone. In non-interconnection CPP, a person desiring to call a particular CPP number would have no ability to shop around for lower costs for a

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subscribed number.

[33]NPRM at 36.

[34]The interconnection model is roughly comparable to the system currently used in the United States for wireline long distance traffic. Although there may be many different carriers involved in any given long distance call (an originating LEC, a long distance carrier, a terminating LEC), the consumer receives only one bill for the call. The multiple carriers that may be involved in carrying a long distance call charge *each other* for the use of their services. The fees charged by the various different carriers involved in the transmission become a part of the fee charged by the consumer's chosen carrier.

[35]Or from the LEC on behalf of such vendor.

particular call. Instead, one would have a simple choice: either pay the rates set by the carrier chosen by the recipient of the call, or hang up the telephone.[36]

3. Pay-Per-Call and Non-Interconnection CPP Share Important Similarities.

As a result of the structural similarity of the non-interconnection approach to CPP to pay-per-call, non-interconnection CPP may also share some of the attendant problems that have been experienced in the pay-per-call industry. For instance, in both pay-per-call and non-interconnection CPP, the call recipient has complete control over the cost of the call, but may have no incentive to disclose that cost accurately to the caller. Indeed, there may actually be an incentive to avoid accurate disclosure of the cost. The Pay-Per-Call Rule's free preamble and mandatory advertising disclosures help solve this problem in the context of pay-per-call. Similarly, the free notification message[37] discussed above would go a long way towards addressing this potential problem in the context of CPP.

Another similarity between pay-per-call and non-interconnection CPP is that, in both contexts, the subscriber whose telephone is used to place the call to the service has little control over the cost of that service. In both contexts, the cost of the service is determined entirely by the recipient of the call. In some cases, these fees will be quite reasonable. In other cases, the fees may be very high. While cost disclosure provides significant protection against potential harm to consumers, it is important to recognize that, in many instances, the consumer who receives the bill for the service will not be the same person who placed the call and received the cost disclosures.

[36]This assumes that the caller would be made aware of the cost of the call before the call was connected.

[37]NPRM at 14.

In the pay-per-call context, consumers can avoid the risk of incurring these unpredictable charges by selecting 900-number blocking at no charge.[38] As discussed in more detail below, the FCC may wish to consider implementing a similar form of blocking for CPP calls.

Non-interconnection CPP is similar to pay-per-call in another important respect. In pay-per-call, telephone subscribers may receive charges from vendors with whom they have no preexisting relationship. Similarly, in non-interconnection CPP, telephone subscribers may receive charges from CMRS carriers with whom they have no preexisting relationship. Some of these vendors or CMRS carriers will be trustworthy, honest, and resp det248or2206existing rrnephsctiose

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[38] 47 C.F.R. 64.1508.

[39] 16 C.F.R. 308.7. The FTC has proposed several substantive amendments to this dispute resolution procedure. *63 Fed. Reg.* at 58550-55. In addition to looking at the current Pay-Per-Call Rule, the FCC may wish to look to these proposed amendments in addressing the potential problem of billing disputes relating to non-interconnection CPP charges.

"preamble" message may be highly effective in preventing these types of practices. However, this may not always be the case. The FTC's enforcement experience encompasses many highly innovative scams designed to generate a high call volume to numbers where the call recipient receives some material benefit based on the volume or duration of calls received.[41] Four illustrative hypothetical examples amplify the wide range of possible (and not altogether unlikely) schemes that might exist if CPP plans could be structured so that CMRS subscribers were able to materially benefit from the volume or duration of incoming calls to the services.

Example A

[41]For example, in one case, an Internet web site promised consumers the opportunity to view "free" adult-oriented images by downloading a particular "viewer" software program. Upon downloading and installing this software, the consumer's computer turned off the modem speaker, surreptitiously disconnected from the Internet, and dialed an international telephone number. Once connected to the international number, the computer was reconnected to the Internet via a server located outside the United States, and was able to "surf" the web as usual. The consumer's computer thus remained connected to the Internet through that international call as long as the computer was left on – costing some consumers thousands of dollars in international toll charges. The defendants who operated this deceptive web site shared in the revenue generated by the international calls through an arrangement with the international carrier. The more calls and the longer they lasted, the more revenue the defendants received. Over a million minutes were generated to the number before the FTC obtained a court order shutting it down. This case is but one example that demonstrates the seriousness of these concerns about the fraud and abuse potential of non-interconnection CPP. *FTC. v. Audiotex Connection, Inc.*, No. 97-0726 (E.D.N.Y., filed Feb. 13, 1997).

technical assistants, the software company directs its subsidiary CMRS carrier to create a CPP plan where both incoming and outgoing minutes are billed at $3.00 per minute. In its brochures and advertisements, the software company instructs consumers with questions to call telephone numbers subscribed to this CPP plan. The technical assistants answer all customer inquiries from telephones subscribed to that plan. To further offset costs, the software company encourages its assistants to take several calls at once, keeping several consumers on hold and paying the $3.00 per minute. Although these CPP services are virtually indistinguishable from the typical 900 number service, consumers who call these services will receive few or none of the legal protections for those services guaranteed by Congress under the TDDRA. Notably, consumers may not be able to block access to these calls via TDDRA-blocking, and they will not be able to avail themselves of the dispute resolution provisions specified by Congress for all telephone-billed purchases.

Example C:

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[42]Prior to the promulgation of the Pay-Per-Call Rule, the FTC brought a number of cases to halt this type of practice. *Audio Communications, Inc.*, 114 F.T.C. 414 (July 24, 1991) (unfair practice to induce children to dial a 900 number without providing adequate means to ensure parental authorization); *Phone Programs, Inc.*, 115 F.T.C. 977 (Dec. 10, 1992) (unfair practice to induce children to dial 900 number without providing any reasonable means for persons responsible for payment to exercise control over the transaction).

[43]16 C.F.R. § 308.3(e), 308.5(h).

To achieve this goal, we suggest that FCC consider implementing three policies:

(1) A prohibition against CMRS carriers offering CPP plans where the CMRS subscriber will receive any material benefit tied to the number or duration of calls placed to the CMRS telephone number;

This provision would prevent unscrupulous CMRS subscribers from abusing CPP plans to defraud consumers, as in examples A and D, above.

(2) A prohibition against CMRS carriers offering CPP plans that share any revenue with any person or entity providing (or purporting to provide) any information or entertainment that callers would purportedly obtain by calling a CPP-subscribed line.

This provision would prevent "information providers"[44] from abusing CPP services to use them as a vehicle to provide pay-per-call services, as in examples B and C, above. Without such a restriction, an information provider could simply find a CPP service where the rates for incoming calls were set high enough to cover not only the actual transmission costs to the service, but also to cover the cost of providing that information or entertainment program. The information provider could simply negotiate an arrangement to share in the revenue (either directly or indirectly) generated by calls to the CPP service.

(3) A requirement that a CMRS carrier maintain a strictly "content neutral" position with respect to any CPP service, prohibiting a CMRS carrier from exercising any control, influence, or interest over the content of a CPP call.

This provision would prevent information providers from disguising themselves as common carriers. In some circumstances, the FTC has seen fraudulent information providers masquerading as "common carriers" and charging exorbitant "long-distance rates" to consumers

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[44]"Information providers" are vendors who provide or purport to provide audio information or audio entertainment over the telephone, and recover their costs for providing that information or entertainment by collecting a portion of the charge billed to the person whose telephone is used to make the call.

[45]To the extent that a common carrier in engaged in the provision of basic common carrier transmission services, the FTC lacks jurisdiction to prohibit that entity from engaging in unfair or

would be supportive of recent amendments that the FTC has proposed to the Pay-Per-Call Rule, which are designed to stop evasions of the Rule by vendors of audio information and entertainment services.

Finally, we note that an interconnection approach may be less susceptible to becoming a haven for evasion of TDDRA than would an non-interconnection approach to CPP. This is because, in a competitive environment, LECs would be responsible for paying these charges and would bargain with CMRS carriers to bring the costs down to the point where there would be less room for "kickbacks" to information providers or to CPP subscribers. Conversely, since CMRS providers using non-interconnection CPP plans would be largely free to set the rates for incoming calls as they see fit – this could lead to some CMRS carriers *deliberately* setting rates at a level sufficient to provide a commission or kickback to a CPP subscriber or to an "information provider." Regardless of the method chosen for CPP, the FCC may wish to consider implementing policies to prevent CPP from becoming a means to evade the protections provided to consumers by TDDRA.

D. The FCC May Wish To Consider Measures to Protect the Interests of the "Billed Party" in Addition to the "Calling Party" ("Privity of Contract") in a CPP Transaction.

The challenge faced in attempting to structure a non-interconnection type of CPP is that there is no tariff, contract or other legal basis for holding any person other than the CMRS *subscriber* liable for charges resulting from that agreement. As a result, these charges could be interpreted as a case of unauthorized billing. In non-interconnection CPP, there would be no "privity of contract"[47] between the CMRS carrier providing the service and the person who is

[47]NPRM at 25.

billed for that service. The NPRM discusses this problem by noting that there is a need to "create a contractual obligation for *calling parties*, who are not subscribers of the CMRS carriers, to pay for CPP calls."[48]

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[48] *Id.* (emphasis added).

[49] *Id.* (emphasis added).

[50] Moreover, even if the calling party is the subscriber who will incur the charge for the non-interconnection CPP service, the calling party may not speak the language in which the cost disclosure is given. In the pay-per-call context, the Pay-Per-Call Rule requires that the cost disclosures in the preamble message be "in the same language as that principally used in the pay-per-call message." 16 C.F.R. 303.5(a). This solution would unworkable in the context of CPP, where the CMRS carrier would have insufficient means to determine the primary language that would be used by the callers.

subscriber’s wireless telephone.

[54] *See, e.g.*, *FTC v. J.K. Publications, Inc.*, *et al.*, Docket No. CV-990004 ABC (AJWx) (C.D. Cal., filed Jan 5. 1999) (unauthorized billing of charges to consumers’ credit card accounts alleged as unfair); *U.S. v. Bally's Health & Tennis Corp.*, No. 94-0821 (D.D.C. 1994) (consent order) (unauthorized billing of charges to consumers’ credit card accounts alleged as unfair); *FTC v. Windward Marketing*, No. 1:96-CV-615-FMH (N.D. Ga. May 22, 1996) (unfair debiting of consumers’ checking accounts without authorization); *Choice Diet Products, Inc. et al.*, C-3587 (F.T.C. 1995) (consent order) (unauthorized debiting of consumers’ bank accounts and unauthorized billing of charges to consumers’ credit card accounts alleged as unfair).

[55]*See, FTC v. Hold Billing Services, Ltd.*, No. SA98CA0629 FB (W.D. Texas, filed July 19, 1998) (unfair practice to bill line subscribers for sweepstakes entry forms filled out by someone other than line subscriber where line subscriber did not consent to the charges); *International Telemedia Associates, Inc.*, No. 1-98-CV-1925 (N.D. Ga., filed July 10, 1998) (unfair practice to bill line subscriber for services that line subscriber did not purchase or receive, based on the use, or purported use, of a line subscriber’s telephone to call to a toll-free number); *FTC v. Interactive Audiotext Services, Inc.*, No. 98-3049 CBM (C.D. Calif., filed April 22, 1998) (unfair practice to bill consumers whose telephones were used by someone else to access and purchase defendants’ entertainment services by dialing non-blockable toll-free numbers); *Audio*
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Communications, Inc., 114 F.T.C. 414 (July 24, 1991) (unfair practice to induce children to dial a 900 number without providing adequate means to ensure parental authorization); *Phone Programs, Inc.*

number without providing any reasonable means for persons responsible for payment to exercise control over the transaction).

[58] This was illustrated in two of the Commission's recent cases. *FTC v. Interactive*

IV. Conclusion

The FCC may wish to look to TDDRA and the Pay-Per-Call Rule in fashioning protections for consumers in the context of CPP, because some forms of CPP may be similar to the pay-per-call billing platform. TDDRA provides consumers with methods of dispute resolution, blocking of pay-per-call services, and free "preamble" disclosures before most pay-per-call programs. Similar protections could provide important benefits to consumers in a CPP marketplace, and may help ensure that CPP becomes a viable, healthy system for billing for wireless calls. Moreover, while CPP will present consumers with a wider variety of choices in the telecommunications marketplace, it may also become a vehicle for unscrupulous subscribers and CMRS carriers to engage in deceptive, unfair, or abusive practices of the kind prohibited by TDDRA. The FCC may want to consider actions to prevent CPP from succumbing to these harmful practices, and to prevent CPP from becoming a haven for evasion of TDDRA. Finally, if the FCC implements a non-interconnection approach, the FCC may wish to protect interests of the "billed party," whether or not the person billed happens to also be the "calling party."