

State/location	Community No.	Effective date of eligibility	Current effective map date
Perkasie, borough of, Bucks County	420198	.....do	do.
Plumstead, township of, Bucks County	420199	.....do	do.
Quakertown, borough of, Bucks County	420200	.....do	do.
Richland, township of, Bucks County	421095	.....do	do.
Riegelsville, borough of, Bucks County	420201	.....do	do.
Sellersville, borough of, Bucks County	420203	.....do	do.
Silverdale, borough of, Bucks County	422338	.....do	do.
Solebury, township of, Bucks County	420202	.....do	do.
Springfield, township of, Bucks County	420204	.....do	do.
Tinicum, township of, Bucks County	420205	.....do	do.
Tullytown, borough of, Bucks County	420206	.....do	do.
Upper Makefield, township of, Bucks County	420207	.....do	do.
Upper Southampton, township of, Bucks County.	420989	.....do	do.
Warminster, township of, Bucks County	420990	.....do	do.
Warrington, township of, Bucks County	420208	.....do	do.
Warwick, township of, Bucks County	420209	.....do	do.
West Rockhill, township of, Bucks County	421123	.....do	do.
Wrightstown, township of, Bucks County	421045	.....do	do.
Yardley, borough of, Bucks County	420210	.....do	do.
Region VI			
Arkansas: Clarksville, city of, Johnson County	050112	.....do	do.
Texas: Chambers County, unincorporated area	480119	.....do	do.

¹ The Town of Weddington adopted the Union County (CID# 370234) Flood Insurance Rate Map dated January 17, 1997, panels 60 and 70. Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 97-207; FCC 99-137]

Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: This document finds that service offered with a Calling Party Pays option qualifies as Commercial Mobile Radio Service (CMRS) under the Communications Act, meets the criteria of the definition for a Commercial Mobile Radio Service under the Commission's rules, and thus falls under the regulatory structure set out in the Communications Act. The document is needed to clarify any uncertainty regarding the regulatory status of Calling Party Pays offerings.

DATES: Effective July 7, 1999.

FOR FURTHER INFORMATION CONTACT: David Siehl or Joseph Levin at (202) 418-1310, TTY at (202) 418-7233, Policy Division, Wireless

Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: The following synopsis concerns only the Declaratory Ruling in the Commission's Declaratory Ruling and Notice of Proposed Rulemaking in WT Docket No. 97-207, adopted June 10, 1999, and released July 7, 1999. The synopsis of the document containing the Notice of Proposed Rulemaking is being published separately in the **Federal Register**. The complete text of the entire released item, including the Declaratory Ruling, is available for inspection and copying during normal business hours in the FCC Reference Information Center (Courtyard Level), 445 12th Street, S.W., Washington, D.C. 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857-3800, 445 12th Street, S.W., CY-B400, Washington, D.C. 20054.

Synopsis of Declaratory Ruling

1. In this Declaratory Ruling we clarify that Calling Party Pays (CPP) offerings qualify as Commercial Mobile Radio Service (CMRS) under the Communications Act and thus would fall under the regulatory structure set out in section 332(c)(3) of the Act.¹ Therefore, providers of CPP would be treated as common carriers, and state

regulation of rates and entry for CPP would generally be preempted.

2. The record reveals disagreement regarding how CPP should be classified, and the significance of prior Commission statements regarding CPP. Some commentators in the Notice of Inquiry (NOI) (62 FR 58700 (Oct. 30, 1997)) record argue that states have jurisdiction over CPP as a billing practice, while other commenters support Commission jurisdiction, relying on the rationale that CPP is a CMRS service.

3. The Commission finds that CPP offerings are properly classified as CMRS services pursuant to section 332 of the Act.² In order to determine whether a particular service could constitute CMRS, the Commission looks to section 332(d) of the Act. As provided by the statute,³ the term "commercial mobile service" means any mobile service (as defined in section 3 of the Act) that is "provided for profit, and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission * * * ." Section 3 of the Act and § 20.3 of the Commission's Rules, in turn, define the term "mobile service" in pertinent part as "a radio communication service carried on between mobile stations or receivers and land stations, and by mobile

² 47 U.S.C. 332.

³ 47 U.S.C. 332(d)(1).

¹ 47 U.S.C. 332(c)(3).

stations communicating among themselves.”⁴ The Act further specifies the definition of radio communication as follows: “The term ‘radio communication’ or ‘communication by radio’ means the transmission by radio of writing, signs, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.”⁵

4. The Commission finds, first, that CPP offerings would meet the “mobile service” part of the definition. In CPP, the calling party, whether from a land or mobile station, would be seeking to use radio spectrum and related wireless network facilities to transmit writing, signs, pictures and sounds to a mobile station. CPP would also be provided “for profit,” as required by the statute.⁶ Whether the payment for a call to a mobile subscriber comes from the calling party or from the mobile subscriber under CPP, the payment accrues directly to and compensates the CMRS provider of the mobile “communications service” for providing service to the mobile subscriber. The Commission further finds that CPP would meet the “interconnected service” criterion of the definition for commercial mobile radio service.⁷ Under CPP, a calling party would be sending a message over the “public switched network,” as those terms are defined by the regulation, to reach the mobile phone of the CMRS subscriber. Finally, the Commission finds that CPP would satisfy the statutory requirement of being “available * * * to the public.”⁸ Based on the record, CMRS providers who will offer CPP service would be making it available on nondiscriminatory terms and conditions to all potential subscribers and to calling parties who want to reach the

mobile subscribers who have the CPP service option.⁹ Thus, CPP offerings would satisfy the relevant statutory definition for CMRS.

5. Moreover, the Commission finds that there is no reference in the statutory language definition to who pays for the call, and no suggestion that CPP, which would satisfy all requirements of the definition, should be excluded because the calling party pays the airtime charges.¹⁰ Whether the payment obligation to the CMRS provider for using that airtime falls on the party initiating the call (CPP) or on the party receiving the call, the underlying transmission and wireless network facilities remain the same as those currently used to provide CMRS and, as described, would be subject to section 332 of the Act.¹⁰ In agreeing to pay for the call to the CMRS subscriber, the calling party becomes, for the purpose of completing the call, a customer of the CMRS provider. Placement of a CPP call by the calling party thus operates similarly to casual calling services whereby the call to a mobile user does not require the calling party to establish an account, or presubscribe, with the CMRS provider. Thus, a CPP offering, while transferring some payment aspects of the call to a customer other than the owner of the mobile phone, does not in any fashion alter the regulatory classification of the call.

6. The Commission also rejects the view that classifying CPP as CMRS is inconsistent with the *Arizona Decision*.¹¹ In that decision, the Commission gave only limited attention to the regulatory classification of CPP, but instead focused on addressing Arizona Corporation Commission’s case for continued rate regulation of CMRS generally. That decision did not address explicitly the statutory criteria of section 332(d) as to whether CPP is CMRS, or describe CPP in any detail. Even so, the Commission agrees with BAM that the underlying premise of that order is that the Commission considered CPP as CMRS, as evidenced by the fact

that the *Arizona Decision* addressed the issues there in the context of section 332. Indeed, the discussion of CPP-related billing practices in the *Arizona Decision* simply concerned whether such practices fall within the scope of “‘other terms and conditions’ of CMRS offerings.” Thus, the *Arizona Decision* implicitly characterized CPP as a CMRS offering.

7. The Commission also regards the discussion of CPP in the *Arizona Decision* as dicta. In the *Arizona Decision*, the Commission rejected ACC’s argument that it needed continued rate regulation authority on the basis of two examples, including CPP. In discussing this decision, the Commission found that it could not conclude that “these isolated incidents constitute a pattern of anticompetitive practice that might warrant continued state rate regulation.” The conclusion regarding “*these isolated incidents*” holds true whether or not Arizona’s intervention into a CPP matter involved a CMRS service or a billing practice. Accordingly, we find that the possible characterization of CPP as a “billing practice” was not essential to the decision and therefore dicta. Finally, to the extent that the *Arizona Decision* is found as holding that CPP does not constitute a CMRS service, the Commission hereby overturns any such holding.

Ordering Clauses

Accordingly, *it is ordered* That the action reflected in the Declaratory Ruling is taken pursuant to sections 1, 4(i), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 403, and 47 CFR 1.2.

It is further ordered that the Declaratory Ruling is effective immediately upon release of this Declaratory Ruling and Notice of Proposed Rulemaking.

It is further ordered that parties have until August 16, 1999 to seek review of the Declaratory Ruling.

List of Subjects in 47 CFR Part 20

Communications common carrier; Commercial mobile radio services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-18231 Filed 7-15-99; 8:45 am]

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⁴ 47 U.S.C. 3(27); 47 CFR 20.3.

⁵ 47 U.S.C. 3(33).

⁶ Section 20.3(a)(1) adds to the phrase, “provided for profit,” the following language: “*i.e.*, with the intent of receiving compensation or monetary gain.” Section 20.3(a)(1) of the Commission’s Rules, 47 CFR 20.3(a)(1).

⁷ 47 U.S.C. 332(d); 47 CFR 20.3. The Commission is authorized to define “public switched network,” pursuant to section 332(d) (defining the term “interconnected service” as “service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) * * *.” 47 U.S.C. 332(d)(2).

⁸ 47 U.S.C. 332(d)(1).

⁹ See 47 CFR 20.3(b).

¹⁰ 47 U.S.C. 332.

¹¹ Petition of Arizona Corporation Commission to Extend State Authority over Rate and Entry Regulation of All Commercial Mobile Radio Services and Implementation of Sections 3(n) and 332 of the Communications Act, PR Docket No. 94-104 and GN Docket No. 93-252, Report and Order and Order on Reconsideration, 10 FCC Rcd 7824, 7837 (1995).