

must have a provision in the relevant contract requiring aggregator compliance with TOCSIA and the Commission's related rules. If a CMRS OSP lacks a contractual relationship with an aggregator or has no knowledge of the aggregator, the statutory text does not require such oversight by the CMRS OSP. Accordingly, PCIA's and AT&T Wireless' concerns that it would be impossible for a CMRS provider serving a mobile public phone roamer to enforce compliance by the owner aggregator of the mobile public phone because the CMRS provider will have no contractual or tariff relationship with the aggregator, are moot.

C. OSP Identification and Rate Disclosure

9. *Background.* TOCSIA and Commission regulations also impose a number of requirements upon CMRS OSPs. OSPs must identify themselves, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call, a practice referred to as "call branding." OSPs must also permit the consumer to terminate a telephone call at no charge before the call is connected. They must also disclose immediately to the consumer, upon request and at no charge to the consumer, a quotation of their rates or charges for the call, the methods by which such rates or charges will be collected, and the method by which complaints concerning such rates, charges, or collection practices will be resolved. Finally, the Commission recently added a requirement that OSPs must audibly disclose to consumers how to obtain the price of a call before it is connected.

10. *Discussion.* The Commission declines to forbear from applying these TOCSIA provisions against CMRS aggregators and OSPs. In the *Notice*, the Commission asked questions designed to elicit specific information relevant to determining whether and in what respects the Commission could forbear from applying these provisions to CMRS providers. The Commission finds that the record does not justify deviating from the Commission's ruling in the *PCIA Forbearance Order* that these TOCSIA provisions should apply to the actions of CMRS providers.

11. The Commission also finds that the record does not support the contention that requiring CMRS carriers to brand calls would cause customer confusion or impose unacceptably high costs on carriers. PCIA contends that branding can cause customer confusion because CMRS providers cannot always distinguish between calls from mobile

phones designed for public use and other calls. GTE similarly contends that, absent an ability to identify a call as originating from an aggregator, CMRS carriers would have to brand every wireless call in order to comply with TOCSIA requirements. The Commission is not persuaded by these arguments. First, while the OSP branding requirement of TOCSIA applies to calls initiated from aggregator locations that involve automatic or live assistance to the consumer to arrange for billing or call completion, it does not apply to calls that are automatically completed with billing to the telephone from which the call originated, or to calls that are completed through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer. Accordingly, TOCSIA's branding requirement does not apply to the vast majority of wireless calls that consumers make within their home calling areas, which are typically automatically completed and billed to the caller's telephone.

12. Second, the Commission is not persuaded by PCIA's argument that the branding requirement will cause confusion or be unduly burdensome in the roaming context. In most cases, roaming is accomplished through automatic roaming arrangements that provide for automated completion and direct billing of calls. Thus, as in the case of automatically placed and billed calls within the caller's home area, automatic roaming calls are not subject to TOCSIA. On the other hand, the branding requirement does potentially apply to manual roaming calls made from aggregator phones, because such calls are not automatically billed to the originating number but are typically paid for by credit card. PCIA asserts that, in order to comply with this requirement, CMRS OSPs would have to brand all roaming calls that are not billed to the originating number, without knowing whether the caller is using an aggregator phone. The Commission does not believe this to be a significant burden for several reasons. First, because manual roaming calls make up a small percentage of all wireless calls, the number of calls that will actually require branding is quite small. Further, the commenters fail to explain how branding all manual roaming calls would result in significant costs to carriers or customer confusion. Because manual roaming calls require preliminary communication between the OSP and the caller to arrange for credit card billing, CMRS OSPs are likely to identify themselves and explain their billing requirements to

end-user customers in any event, and the Commission believes that such identifications and disclosures can, with minimal modifications, be made to comply with TOCSIA. In any case, the Commission believes that the benefits associated with requiring compliance with TOCSIA when manual roaming calls are made from aggregator phones outweigh the potential costs that commenters have suggested would be associated with ensuring such compliance. Moreover, if carriers seek to avoid unnecessary branding of manual roaming calls from non-aggregator phones, they are free to devise and implement methods to distinguish aggregator from non-aggregator calls.

13. Finally, GTE argues that the rate disclosure requirement is of little use because the rates charged for wireless public phones are typically set by aggregators and that the OSP rates disclosed by the OSP would be only a portion of the overall rate for the call. GTE is mistaken about the rate disclosure requirement. The OSP's obligation is merely to inform the consumer of the rates it bills for and how to obtain the total cost of the call, including any aggregator surcharge. The OSP is not obliged to guess the aggregator's rate if not billed for by the OSP. With this important rate information from the aggregator and the OSP, the consumer can make an informed decision as to whether to place the call.

D. Call Splashing

14. *Background.* TOCSIA and the implementing regulations prohibit OSPs from engaging in "call splashing" or billing for a call that does not reflect the originating location of the call without the consumer's informed consent. In the *Notice*, the Commission sought detailed information on the costs to CMRS OSPs of complying with the call splashing prohibition for calls made through aggregators and, to the extent that CMRS providers cannot distinguish between customers of aggregators and other users, the costs of complying with this prohibition on other calls as well.

15. *Discussion.* The Commission declines to forbear from applying the call splashing provisions of TOCSIA against OSPs. The Commission finds that the record does not justify deviating from the Commission's ruling in the *PCIA Forbearance Order* that these TOCSIA provisions apply to the actions of CMRS providers. In response to the Commission's request for comment, PCIA and AT&T Wireless submitted no cost estimates, and simply argued that because of flat toll pricing, call splashing, even if it occurred, would not