29. In addition, implementing billed party preference would be fundamentally inconsistent with important Commission policies. For example, implementation of BPP would be counter to the Commission's decision to join in the Administration's regulatory moratorium [67] and to fight against "unnecessary constraints on emerging technologies and markets." [68] In its April 28, 1992 Report to the President detailing its regulatory reform efforts during the first moratorium period, the FCC summarized its work over the past several years as "aimed at economic expansion through providing the practical opportunity for American entrepreneurs to innovate and to bring the benefits of that innovation to the American public." [69] BPP would be clearly contrary to the FCC's goal as it would instead deprive the public of the benefits of American innovation.

30. The importance of the FCC not erecting unnecessary barriers for American entrepreneurs is highlighted by the fact that "[s]ince the Fortune 500 companies stopped growing more than

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[66] (...continued)
(1971). See also David Ortiz Radio Corp. v. FCC, 941 F.2d 1253, 1260 (D.C. Cir. 1991).

[67] See Report of the Federal Communications Commission Regarding the President's Regulatory Reform Program ("FCC Reform Report") at i (released April 28, 1992).

[68] President's Memorandum on Reducing the Burden of Government Regulation, 28 Weekly Comp. Pres. Doc. 232 (Feb. 17, 1992). In announcing his regulatory moratorium, President Bush sought to avoid just the types of "unnecessary constraints" that billed party preference would impose on the most innovative sectors of the operator services and pay telephone industries. See also CNS at 16-17.

[69] FCC Reform Report at i.

a decade ago, small business has become the primary engine for creating jobs. During the 1980's, the Fortune 500 companies cut 3.5 million jobs while small businesses created more than 20 million jobs." [70] The smaller OSPs, such as CNS, are "small businesses" founded by innovative entrepreneurs that have been creating jobs for Americans at a time when large telephone companies have been eliminating jobs. Although it is always important for government regulators to be sensitive not to establish unnecessary, artificial barriers for small companies to compete and to create jobs, such sensitivity is especially important during these difficult economic times. Because, as demonstrated above, the costs of BPP would greatly outweigh any possible public benefits and because BPP would create unsurmountable barriers for small OSPs to compete successfully with the "Big Three," it is important that the Commission promptly reject all proposals to implement billed party preference.

31. Furthermore, the Commission has announced that it is formalizing its "cost-benefit" analysis and that such an analysis is to be conducted before the Commission imposes new regulatory requirements. [71] As discussed above, the costs of BPP will be enormous while the benefits -- if any -- would be slight.

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[70] Hale, For New Jobs, Help Small Businesses, Wall Street Journal, August 10, 1992, at A10.

[71] FCC Working Group to Study Systemic Use of Cost/Benefit Analysis in Decision Making, Telecommunications Reports, August 10, 1992, at 24-25.

Therefore, a decision to implement BPP would be inconsistent with the Commission's own commitment to perform adequately a cost-benefit analysis and to implement only those proposals for which the public benefits outweigh the costs.

32. Furthermore, unless aggregators and private payphone owners ("PPOs") are compensated for completed "0+" calls, BPP could be an unconstitutional "taking" in violation of the Fifth Amendment. [72/] Billed party preference would render the investment by many aggregators and PPOs in their equipment virtually worthless because it would functionally eliminate the likelihood of their receiving compensation from the carriers handling the interexchange traffic. BPP would be particularly devastating to manufacturers and owners of smart payphones since it would eliminate the provision of operator and other enhanced services by set-based providers and mandate their replacement by LEC and IXC operators. [73/] Such regulatory action would render this costly customer premises equipment worthless -- both for its current use and for its resale value -- and could require compensation to be paid to its owners for it to be constitutional. Similarly, requiring implementation of BPP would be incompatible with the spirit of Executive Order 12,630 ("Government Actions and Interference with Constitutionally

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72/ See CNS at 12-15.

73/ See Intellicall at 6-9; American Public Communications Council at 6-8.

Protected Property Rights") that prohibits the Executive Branch from imposing unnecessary takings. [74]

33. Given its legal infirmities and its basic incompatibility with procompetitive regulatory reform policies, the FCC should not mandate the implementation of billed party preference. Instead, it should rely on existing access methods and on "0+" public domain to ensure that callers can reach their preferred OSP.

VI. CONCLUSION

34. In summary, the record in this proceeding establishes beyond doubt that billed party preference would be enormously expensive, would drastically reduce competition in the "0+" market, would be unlawful, and would be contrary to the public interest. As a result, the Commission should reject proposals to mandate the implementation of a billed party preference system.

Respectfully submitted,

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[74] Exec. Order No. 12,630, 3 C.F.R. 554, 555 (1988), reprinted in 5 U.S.C. 601 (1988).

TABLE OF COSTS TO IMPLEMENT AND MAINTAIN BILLED PARTY PREFERENCE

Name of Party	Comments Regarding Costs and Items Omitted from Calculations	Costs for BPP for all "0+" and "0-" InterLATA Calls		
		Capital	Implementation	Recurring
Aggregators				
MIT	"an arbitrary figure of $1 billion" may be a reasonable estimate for BPP implementation, $300 million operating costs for software maintenance and LIDB administration (2-3)			
PPOs				
APCC	"there is reason to believe that the rates charged by LECs for billed party preference will be in the range of fifty cents to one dollar per call or even more" (27)			
LECs				
Ameritech	$0.16 unit cost = expense amortized over 5 years plus annual costs (16) Costs do <u>not</u> include cost for consumer balloting (17), cautions that software not yet developed or priced so estimates are soft and hard to predict % of live operator time or call demand (18) Costs from page 16		$52,470,000	$29,281,000
Bell Atlantic	Costs include "only preliminary quotes" or no price quotes at all from software suppliers (Attachment A at 1) Costs from Attachment A, page 1	$39,500,000	86,000,000	8,600,000

Name of Party	Comments Regarding Costs and Items Omitted from Calculations	Costs for BPP for all "0+" and "0-" InterLATA Calls		
		Capital	Implementation	Recurring
BellSouth	$0.11 cost per call in 1996 from Exhibit 2, if cost recovery from all access users $0.43 cost per call if had 10XXX bypass (13 n. 18) Majority of costs are "not sensitive to the number of originating lines" . . . "or to the call type" (9) Costs are minimum necessary and best estimates only and include balloting of cardholders (10-11) Costs from page 12 and Exhibit 1	$24,936,000	$120,681,000	$6,850,000
Consolidated Communi- cations	The implementation costs will be "in excess of $2 billion dollars", using US West's estimate of $11-12 line (4), ICTC (independent LEC) will pay $878,000 for hardware and software for SS7 trunk signalling alone (5)		878,000	
GTE	Costs do not include balloting Costs from page 11		84,000,000	23,000,000
Nynex	$0.16 per call for interLATA "0" traffic (13) Costs include balloting of all accounts, but do not include deployment costs of OSS7 to the end office (5 n.5) Costs from Attachment A		82,630,041	13,710,167
OPASTCO	"the list planning price for the upgrade necessary to offer BPP at some end offices is $600,000" (4 n.2)			
Pacific Bell	Costs do not include balloting and 0SS7 costs "very sketchy" (20) "estimating costs for deployment of a system not yet developed is speculative" (19) Costs from page 22		116,000,000	26,000,000

Name of Party	Comments Regarding Costs and Items Omitted from Calculations	Costs for BPP for all "0+" and "0-" InterLATA Calls		
		Capital	Implementation	Recurring
Southern New England Telephone	Costs do <u>not</u> include additional costs for operator salaries, overhead or for billing OSPs for BPP (2) or costs to deploy SS7 capabilities (4) Costs from page 3		33,000,000	
Southwestern Bell	BPP vendor price estimates have jumped 68% in last two weeks from $75 to $127 million and called "soft" planning prices (10) SWBT cannot provide estimates due to "significantly revised and apparently conflicting" information from its vendors and other parties affected by BPP (6)		127,000,000	
USTA	Costs will be "significant" for all exchange carriers (3)			
US West	Can "only guess" as the cost of deploying AABS in seven states where AT&T switches are used (9) "Many factors could vary the cost" of implementing BPP (9) Costs from Appendix at page 2		149,005,000	
LEC Totals		**$64,436,000.00**	**$851,664,041.00**	**$107,441,167.00**
IXCs				
AT&T	Costs include $30 million to modify switching equipment to handle SS7 (12-13) and five year old estimate of $400 million in annual switched access costs (1987 estimate) (12 n. *) Costs from 12-14		$68,000,000	400,000,000

Name of Party	Comments Regarding Costs and Items Omitted from Calculations	Costs for BPP for all "0+" and "0-" InterLATA Calls		
		Capital	Implementation	Recurring
Cleartel, Com Systems, International Pacific and Teltrust	Estimates total recurring costs of $1.008 billion per year (9)			
CompTel	BPP costs range between $0.42 - $0.96 for every "0+" call; if costs borne only by callers who benefit from BPP, then cost rises to $0.95 - $2.18 per call (22)			
MCI	Does not mention costs			
PhoneTel	BPP costs "will be enormous -- in the hundreds of millions of dollars, at least." (5)			
Sprint	Its cost estimate is "not definitive" and does not include LIDB software modifications, equipment modifications, labor costs, or overhead allocations (20 n.13) Costs from Exhibit B		53,134,000	
Value-Added Communi-cations	Costs estimates "range as high as $2 billion, but the cost to the overall economy is far higher." (3-4)			
IXC Totals			**$121,134,000.00**	**$400,000,000.00**
Grand Totals		**$64,436,000.00**	**$972,798,041.00**	**$507,441,167.00**
Grand Total Capital and Implementation Costs		**$1,037,234,041.00**		
Grand Total Costs for First Year		**$1,544,675,208.00**		

CERTIFICATE OF SERVICE

I, Joan T. Prouty, hereby certify that a copy of the foregoing Comments of Capital Network System, Inc. has been served by first-class mail, postage prepaid this 27th day of August 1992 to the following:

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