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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
) CC Docket No. 92-77
Billed Party Preference)
for 0+ InterLATA Calls)

AT&T'S REPLY

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September 14, 1994

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SUMMARY

The comments show that BPP is an expensive concept that will not provide consumers with any net benefits. BPP's anticipated costs have continued to rise while any possible need for BPP is dwindling rapidly. The vast majority of commenters, including most LECs, nearly all IXCs, all IPPs and CAPs, and many others, now oppose BPP, including several parties who previously favored its introduction. And even the few remaining proponents are generally more concerned with issues such as cost recovery and limits on the service design than with consumer benefits.

In particular, the comments show that BPP will cost LECs and OSPs over \$2 billion to implement, at least 60% more than projected in the FNPRM. They also show that BPP's benefits would be far smaller than projected, because the FNPRM's analysis is based upon several erroneous assumptions. In addition, the comments show that the existing marketplace is functioning well, and that consumers are already "dialing around" presubscribed carriers at the 50% rate the FNPRM projected for mid-1997. Finally, the comments demonstrate that any remaining benefits of BPP can be achieved more quickly through the use of traditional, and much less costly, regulatory mechanisms. Thus, the record now clearly demonstrates that the FNPRM's BPP proposal would not serve the public interest and should not be adopted.

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AT&T'S REPLY

Pursuant to Section 1.415(a) of the Commission's Rules, AT&T Corp. ("AT&T") submits its reply to the comments on the Commission's June 6, 1994, Further Notice of Proposed Rulemaking ("FNPRM") on the proposed implementation of a system of "billed party preference" ("BPP") for "0" dialed calls.¹

ARGUMENT

I. The Commenters Reject BPP.

The vast majority of commenters support AT&T's conclusion (pp. iii, 2-3) that BPP is an inefficient and unnecessary solution to a problem that is largely solved. A large majority of LECs, including Bell Atlantic, BPP's initial sponsor in this proceeding, now reject the concept

¹ A list of the commenters and the abbreviations used to refer to each is appended as Attachment A.

as overly expensive, wasteful and unnecessary.² The principal concern of the few LECs who support BPP is not to increase consumer benefits, but rather to assure that BPP's huge costs will be recovered. As Pacific (p. 1) succinctly states at the very beginning of its comments, "We must be guaranteed cost recovery."³

Moreover, notwithstanding the FNPRM's assumption (¶ 9) that BPP would increase competition among OSPs, only

² See Bell Atlantic, p. ii ("consumers . . . will get little of value in return" for the high costs of BPP); BellSouth, p. i (the "perceived benefits [of BPP] are very much exaggerated and none will justify the significant . . . costs"); NYNEX, p. 2 (the industry should not be required "to spend over \$2 billion to implement a service for which there appears to be little consumer demand"); Rochester, p. 3 ("It is unnecessary and wasteful to require an elaborate technical 'solution' to a problem that can be solved by customer education"). See also CBT, p. 1 (BPP would force LECs "to provide a new service with bottleneck characteristics at proportionally excessive costs"); SNET, pp. 3, 8 ("BPP is not critical to the growth of consumer-oriented technologies" and "is not a viable investment for the future"); INS, p. 9 (BPP would waste scarce resources of rural telcos); NTCA, p. 6; OPATSCO, p. 2 ("BPP will be prohibitively expensive . . . and could lead to more customer confusion. Additionally, there are certainly alternatives that will cost less"); USIN, p. 4; USTA, p. 2 (BPP may discourage small LECs from upgrading to 1+ equal access).

³ Emphasis added. See also Ameritech, p. 8; GTE, p. iii; SWBT, p. 3; Sprint, p. 42 and the discussion in Part V below. Virtually all LECs seek similar assurances, whether or not they support BPP. For example, SNET (p. 7) stresses that if BPP is adopted "it is critical for the Commission to provide the LECs adequate cost recovery mechanisms" (emphasis in original). See also, Bell Atlantic, pp. 19-20; BellSouth, p. 20.

two such carriers -- MCI and Sprint -- support BPP. All other OSP commenters, from larger companies such as LDDS (p. 2) to the very smallest carriers, unanimously oppose BPP, because it would be prohibitively expensive, unnecessary and injurious to competition.⁴ Competitive access providers ("CAPs") also oppose BPP, stating that the FNPRM has not adequately considered the impacts of BPP on the local telephone services market.⁵

In addition, independent payphone providers ("IPPs") and other aggregators oppose BPP, because it would lead to the removal of many aggregator telephones and/or the reduction of services at aggregator locations, significantly reducing customer convenience. Cherokee (p. 2) graphically describes this problem. Noting that "BPP will not work from thin air," Cherokee states that BPP will not benefit anyone "if there is no payphone at the [local] store."⁶ Similarly,

⁴ E.g., AMNEX, p. ii; CompTel, pp. 1-2; Interlink, pp. 2-4; Oncor, p. 4; Operator Services Company, p. 6; Polar, p. 18.

⁵ MFS, p. 2; Teleport, p. 2.

⁶ Cherokee states (p. 1) that it would be forced to remove most of its payphones from rural locations. Teltrust (p. 10) concurs, estimating that it would remove 40% of its payphones if BPP were adopted. See also Ameritech, n.9 ("a reduction in commission expense could well reduce the number of payphones"); APCC, pp. 6, 12-20 (BPP would result in fewer payphone placements and reduced phone maintenance); FPTA, p. 3 (BPP would make it "difficult, if not impossible, [for IPPs] to introduce new competitive service features"); Gold Coast, p. 1; NJPA, p. 3 (many IPPs would be driven out of business); Pay

APCC (p. 20) recognizes that "most consumers will prefer calling with access codes to not calling at all."

Thus, the Colorado PUC (p. 1) correctly concludes:

"The cost of implementation and maintenance of BPP will far exceed the benefits. Alternatives exist that provide benefits similar to or greater than those expected under BPP at far less cost. [Moreover,] BPP is not consistent with a realistic view of interexchange or local exchange competition."⁷

Accordingly, the comments clearly demonstrate that BPP would not serve the public interest, and it should not be adopted.

II. The Costs of BPP Are Substantially Greater Than Projected in the FNPRM.

Contrary to the FNPRM's projections (§ 27), the comments show that BPP will cost the LECs much more than \$1.1 billion to implement. Similarly, the comments make clear that BPP will cost OSPs a great deal more than the

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Tel, p. 1 (BPP "would financially disable our small business"); Polar, pp. 7-9. Other aggregators explain how BPP could lead to the placement of fewer phones or services at their locations (see ACI-NA, pp. ii, 4, which states that "airports will be forced to consider reducing the number of payphones on the airport premises"). See also ACE/NACUBO, p. 3 (colleges and universities would be forced to cut back on advanced telecommunications services such as voice mail); AAAE, pp. 2-4; APCC, p. 21; CMS, pp. 2-3.

⁷ See also Va. SCC (p.1), which is concerned with BPP's high costs and "not convinced" that the benefits will exceed those costs.

\$120 million assumed in the FNPRM. In total, the comments demonstrate that BPP's implementation costs will exceed \$2 billion.

Attachment B sums the cost projections submitted by the LECs in the current round of comments. As expected by AT&T (p. 18) and many other commenters, these costs have risen dramatically. The LECs' one-time costs of implementing BPP are now projected to be about \$1.7 billion.⁸ Moreover, there is no longer any doubt that all OSS7 costs should be applied to BPP, because GTE (p. 12) and all of the RBOCs supporting BPP concur that there are no other foreseeable uses for this technology.⁹ Nor is there any valid reason for the FNPRM's exclusion (¶ 25) of 50% of the LECs' AABS and operator-related non-recurring costs

⁸ The estimates in Attachment B include all LEC costs for the balloting process described in the FNPRM, but exclude any amounts necessary to implement 14-digit screening. They also assume, contrary to the assertions of Sprint (p. 28) and GTE (p. 8), that it will be necessary for LECs to implement OSS7 in the end office. This assumption is validated by SWBT (p. 14), which supports BPP but notes that end office switches must have OSS7 functionality in order to transmit the customer's number information to the OSP. Such information is essential to avoid the service degradation that would result from increased call setup time and the need for two operators on "the vast majority of calls." See also NYNEX, p. 9.

⁹ Ameritech, p. 9 ; SWBT, p. 7; Pacific, n.1. Therefore, earlier statements of Ameritech and Pacific concerning other potential uses of OSS7 have been fully refuted and cannot be relied upon (see FNPRM, ¶ 22). See also, Bell Atlantic, p. 12; BellSouth, p. 12; CBT, n.3; and NYNEX, p. 8.

because of assumed OSP cost savings. As NYNEX (p. 12) recognizes, "since the OSPs have already paid for the AABS and operator equipment, there will be no cost reduction for the OSPs."¹⁰

Accordingly, using the 29% amortization rate assumed in the FNPRM (n.23), BPP's non-recurring costs would generate about \$487 million in LEC charges each year. Assuming the FNPRM correctly estimated that the LECs' recurring costs for BPP (net of anticipated OSP cost savings) would be \$60 million, the total LEC costs for BPP would be at least \$547 million.¹¹

¹⁰ Emphasis added. See also APCC, Attachment A, n.15 (idle OSP plant resulting from a LEC takeover of operator functions "will be largely wasted").

¹¹ In fact, the total LEC recurring costs for BPP will exceed \$250 million annually (see Attachment B) and the total LEC costs will equal \$740 million each year. However, in calculating the "LEC" costs for BPP the FNPRM (§ 25) assumes that the LECs' recurring costs should be reduced by 75%, because of "offset[ting]" OSP cost reductions. The FNPRM provides no analysis to support this assumption, which could be substantially overstated. For example, OSPs would obtain no savings relating to LEC operator training costs for BPP; LEC operator salaries and benefits tend to be significantly higher than OSP operator salaries, especially for non-AT&T operators (see Bell Atlantic, n.26); operator work times associated with BPP call handling may be greater than those associated with current OSP-handled calls; and reduced OSP operator work forces will likely lead to reduced efficiencies (and fewer savings) with respect to the OSPs' remaining operator functions. Therefore, the 75% offset assumption, which reduces the annual costs of BPP by over \$180 million, may well be incorrect (see USLD, p. 5). The actual amount of this error cannot be determined without significant additional information, including a detailed technical and service description for BPP.

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And even this estimate is low, because it does not take account of the increased costs that would result from implementation of 14-digit screening.¹² It also appears to exclude any costs associated with incorporating commercial credit cards in BPP's service design,¹³ as well as LEC overhead costs, which could have a significant impact upon the ultimate cost of BPP services.¹⁴ In addition, this estimate omits all costs for entities other than LECs and IXC's that may be required to participate in BPP,¹⁵ and it does not take into account the general tendency for costs to

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Given such difficulties and the already negative cost/benefit ratio of BPP, AT&T assumes here that the FNPRM's offset assumption is correct. If the Commission decides to proceed with BPP, however, these matters will need to be investigated further in connection with a final cost/benefit analysis.

¹² See, e.g., Ameritech, pp. 17-18, Attachment A (opposes 14-digit screening but provides no cost estimates for implementing this capability); Bell Atlantic, p. 21 (14-digit screening would cost an additional \$3.8 million); BellSouth (no costs provided); GTE, p. 20 (\$5 million additional); NYNEX, p. 10 (\$3.8 million additional); Pacific, p. 5 (no costs provided); SWBT, pp. 9-10 (\$8-16 million in additional implementation costs).

¹³ See, e.g., GTE, p. 23.; NYNEX, p. 17.

¹⁴ See, e.g., AT&T, p. 20; CompTel, p. 6; NYNEX, p. 12.

¹⁵ For example, several proponents of BPP contend that BPP should be provided by CAPs and alternate exchange carriers (see Ameritech, p. 2; GTE, pp. 10-11; SWBT, p. 13; Sprint, p. 36).

rise as services move from a conceptual stage to a formal service design.¹⁶

The comments also show that the OSPs' implementation costs are substantially understated. These carriers would not only face the "ordinary" costs related to new equipment and re-trunking contemplated in the FNPRM, but they also face substantial lost sunk costs that would result from the stranding of their existing OSP assets. AT&T (p. 21) alone estimates that its costs will be approximately \$80-100 million. Others estimate smaller losses based upon their own operations.¹⁷ Moreover, the FNPRM's analysis fails to include the one-time OSP costs that would be necessary for the 0+ equal access marketing campaign contemplated by the FNPRM (¶¶ 65-67).¹⁸ This could cost

¹⁶ AT&T, p. 19. See also SNET, p. 6 ("Because there is no common, well-accepted definition of BPP . . . the first costs and operating costs of BPP could cover a wide range, depending upon engineering assumptions and operating architectures"); BellSouth, n.19; CNS, p. 25; Colorado PUC, p. 11 (LEC cost estimates "have very wide confidence intervals"); NTCA, p. 3; NTI, pp. 3-4; Rochester, p. 2; USTA, n.2.

¹⁷ E.g., Operator Service Company, p. 3. Aggregators who invested in the technology required by the Commission's rules under TOCSIA would also face stranded investment costs (see, e.g., Cleartel, p. 3; CompTel, p. 9; INS, p. 9). In addition, BPP would preclude service enhancements such as voice messaging and voice recognition from being used on 0+ calls (see CompTel, p. 29-30).

¹⁸ Some OSPs may also need to reissue millions of calling cards (see Oncor, p. 11).

OSPs \$250 million or more as they jockey for position prior to customer balloting.¹⁹ Thus, a reasonable estimate of the total OSP non-recurring costs for BPP is at least \$400 million, more than three times the estimate in the FNPRM. At the 29% amortization rate, this translates into an annualized expense of \$116 million. Added to OSPs' anticipated \$150 million in recurring marketing expenses,²⁰ this makes OSPs' annual BPP expenses at least \$266 million, and makes BPP's minimum total cost at least \$813 million per year.²¹

III. BPP's Benefits Are Overstated.

Many commenters demonstrated that the anticipated benefits of BPP are significantly overstated, because of errors and incorrect assumptions in the FNPRM's cost/benefit analysis. When these mistakes are corrected, it is clear that there would be no "savings" left for consumers, even if BPP's costs did not exceed the very low \$420 million estimate in the FNPRM.

¹⁹ AT&T, p. 17. See, e.g., APCC, p. 11 and Attachment A, p. 14; Intellicall, pp. 18-21; Interlink, p. 4; NYNEX, p. 6; Oncor, p. 11.

²⁰ AT&T, p. 17.

²¹ This excludes consumer costs, such as the time involved in responding to balloting requests (see APCC, pp. 11-12), as well as increased consumer and OSP costs resulting from the increased call processing time that may be required on some calls (see CompTel, p. 27).

NYNEX (p. 4) and many other commenters demonstrate that the FNPRM significantly overstates the amount of 0+ traffic that would remain at the time BPP could be implemented. As shown in Part IV below, the current dial-around rate is already at or above the 50% level assumed by the FNPRM for mid-1997. Given the rapid increase in consumer use of access codes, a reasonable dial-around rate for purposes of the cost/benefit analysis would be about 75%.²² Even on the FNPRM's (otherwise erroneous) terms, this would halve the amount of OSP commissions assumed to be paid in 1997 and reduce the maximum OSP cost reduction from \$340 million to \$150 million, before subtracting any of the aggregator compensation costs or OSP marketing expenses that would exist under BPP.²³

Furthermore, AT&T (pp. 5-6) showed that the industry growth since 1991 is only 0.63%, not the 4.3% estimated in the FNPRM. Even this figure is conservative, however, because the industry growth rates for 1993 and 1994 are negative. Indeed, AT&T's estimate is generous compared to NYNEX's view of the industry (pp. 7-8), which assumes that traffic from payphones will decline by 50% over the

²² NYNEX (p. 5) suggests that the appropriate rate for this analysis should be 80%; APCC (p. 22) states that the rate would be "70% or more;" Oncor (p. 21) projects a dial around rate of 75-80% or greater.

²³ See Attachment C.

next decade, because of the introduction of PCS services.²⁴ Correcting the error in the growth rate to the AT&T-suggested level substantially reduces the future operator services revenues which underlie the FNPRM's analysis. If a 75% dial-around rate were applied together with the actual growth rate, the FNPRM's forecast of BPP benefits from reduced commissions would be reduced to a maximum of \$117 million.²⁵

Correction of several other errors and omissions in the FNPRM's analysis provides virtual certainty that BPP's benefits could not exceed its costs. First, the FNPRM incorrectly assumes that, under BPP, aggregators would not be able to extract significant compensation for use of the facilities, equipment and services they provide in support of public telephone services. The comments show that this is simply not true.²⁶ Even if BPP caused a 50% drop in

²⁴ See also Bell Atlantic, p. 10 ("there might even be fewer 0+ calls in the future than there are today"); ACTA, p. 3 (BPP "may have to be radically altered or abandoned if wireless technology further erodes the already limited basis for a BPP policy").

²⁵ See Attachment C. Moreover, even if, consistent with the analysis in Attachment B to AT&T's comments, there were no reduction for intraLATA traffic and the commission rate were increased to 14%, the total commission reduction would only equal \$222 million, before deducting any amounts for continued aggregator compensation and OSP marketing expenses (id.).

²⁶ E.g., APCC, p. 26; Bell Atlantic, p. 6; Claremont, p. 1; Colorado PUC, p. 9 (BPP would not eliminate "site

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total aggregator compensation for all operator services traffic there would still be hundreds of millions of dollars in annual costs for OSPs and consumers.²⁷

Moreover, if BPP were adopted, LECs would likely seek compensation from OSPs for use of their 1.6+ million public telephones. Ameritech, which supports BPP, specifically requests (p. 5) that the Commission "adopt a usage-based compensation mechanism to replace [commissions], and require that such compensation be paid to all payphone providers, including LECs." Pacific (p. 2) also urges that "compensation should extend to LEC payphones as well."²⁸ If such compensation were directed by the Commission, or

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commissions"); McCarran Airport, pp. 1-2; NYNEX, p. 6; Teleport, p. 14.

²⁷ See AT&T, pp. 12-15; AHA Teleplan, p. 2 ("costs will not be eliminated, but simply shifted to other collection mechanisms"). The FNPRM (¶ 33) also assumes incorrectly that a reduction in compensation to aggregators would have no impact upon consumer convenience and the ability to access aggregator telephones and services (see Part I above).

²⁸ See also Bell Atlantic, pp. 16-17.

imposed by LEC tariffs,²⁹ OSPs' costs under BPP could rise by hundreds of millions of dollars annually.³⁰

Remarkably, the FNPRM also ignores the economic impact of its express assumption that BPP would force OSPs to focus more directly on consumers. The comments show that OSPs would in fact follow this direction and transfer a substantial portion of any commission "savings" to marketing programs focused toward consumers.³¹ In addition, AT&T's comments (Attachment B) demonstrate that conceptual and mathematical errors in the FNPRM's analysis of consumer avoidance of "high priced" OSPs overstates the possible benefits of BPP by additional tens of millions of dollars.³²

²⁹ Pacific has already filed a tariff which imposes a compensation obligation on OSPs for all intraLATA dial-around calls from Pacific payphones (see U.S. Osiris, Exhibit 1). See also Colorado PUC (n.18), which describes US West's proposals for intrastate calls in Colorado.

³⁰ For example, if LEC payphones received the same \$12 per month in compensation assumed for IPP payphones (see FNPRM n.25), OSP costs would increase by over \$230 million: (\$12/month x 1.6 million phones x 12 months = \$230.4 million).

³¹ E.g., AT&T, pp. 16-17; APCC, Attachment A, p. 14; Bell Atlantic, p. 5; CAPA, p. 4; CompTel, n.21; Intellicall, p. 21; NYNEX, p. 6.

³² Nor would BPP substantially reduce regulatory costs. Rather, as Bell Atlantic (p. 7) recognizes, BPP "would simply change the type of complaint, not reduce their number." See also APCC, pp. 27-28.

In sum, the key assumptions underlying the FNPRM's benefit analysis are factually incorrect, illogical, and cannot withstand even the most cursory scrutiny. Thus, the record does not support the FNPRM's tentative conclusion -- and the Commission's requirement³³ -- that BPP's benefits exceed its costs.³⁴

IV. Dial Around Is Working To Effect Consumer Choice.

The FNPRM (¶ 2) expressly states that the Commission will not adopt BPP if there are less costly alternatives to achieve BPP's objectives. The comments

³³ FNPRM, ¶ 2 ("we will mandate BPP only if we conclude that . . . its benefits outweigh its costs and that these benefits cannot be achieved through less costly measures").

³⁴ Contrary to the assertions of some commenters (e.g., CNS, p. 36; BellSouth, p. 10; Pacific, p. 9), rejection of BPP does not support a revival of the "0+ public domain" concept previously dismissed by the Commission. First, AT&T no longer promotes 0+ dialing in connection with its operator services and has spent millions of dollars to educate customers about, and to encourage them to use, its access codes. Second, the use of access codes has grown dramatically (see Part IV below), giving all carriers an opportunity to compete effectively for calls from all phones (see Teleport, p. 7, which shows that "non-AT&T carriers have an opportunity to compete effectively even where AT&T is the presubscribed carrier"). Moreover, research from BPP supporters such as Ameritech (pp. 7-8) demonstrates that the economic benefits of 0+ dialing are slight and consumers' choice of dialing methods is highly price sensitive (see Part V below). Consequently, there is no reason to penalize AT&T or its cardholders by prohibiting the use of AT&T CIID cards with 0+ access at those locations where it is available.

demonstrate that the marketplace has already achieved most of those objectives, and that traditional regulatory mechanisms can accomplish BPP's other objectives more quickly and inexpensively. Thus, there is no reason to re-invent the OSP industry by requiring carriers to spend over \$2 billion to implement BPP.³⁵

Carriers' efforts to encourage consumers to dial access codes have been much more successful than anticipated by the FNPRM. Analysis of calls made from NYNEX payphones during April and May, 1994 showed that 66% of the 75,000 calls tracked were made by using an access code.³⁶ Moreover, NYNEX (p. 5) reports that dial-around calling is growing by nearly 20% per year.³⁷ APCC (p. 22) states that data for the June 1993 - June 1994 period indicates that more than 60% of interstate operator-assisted calls from IPP phones were dialed with access codes, while fewer than 30%

³⁵ See BellSouth, p. 7 (access codes "may provide a more potent competitive stimulus than BPP"). See also Oncor, p. 6 (OSPs, facing increased dial around, must lower rates to retain traffic at their preselected telephones).

³⁶ NYNEX, p. 4. NYNEX (*id.*) notes that one-third of the access code calls were intraLATA. This reinforces the view of AT&T (pp. 25-27) and other commenters that, in order to be effective, BPP would have to apply to all calls, not just interLATA calls (see Part VI below and U.S. Osiris (p. 5), which recognizes that 10XXX dialing "has become even more critical to all carriers with the advent of 10XXX intraLATA competition in many states").

³⁷ Oncor (p. 14) also reports a 15-25% annual increase in access code calling at its presubscribed phones.

were dialed as 0+ calls. U.S. Osiris (p. 8) reports that "the true dial-around percentage . . . is 60-70%." Many other commenters provide similar data.³⁸ These facts completely refute the assertions by some BPP proponents³⁹ that access codes are too inconvenient to use or that consumers are unwilling or unable to protect themselves from high prices by dialing such codes to reach the carrier of their choice.⁴⁰

Thus, the record demonstrates that the marketplace has already acted effectively to control the abuses inflicted on consumers by some OSPs, and that by 1998 BPP would only affect a small and declining minority of all operator services traffic.⁴¹ Accordingly, BPP "is not a

³⁸ E.g., SNET, p. 4; NJPA, p. 5; Oncor, p. 6; Operator Service Company, p. 2; Polar, p. 3; Teleport, pp. 4-6.

³⁹ E.g., GTE, p. 4; Sprint, p. 9.

⁴⁰ Indeed, several commenters (e.g., Bell Atlantic, p. 9) note that MCI has proclaimed that its 1-800-COLLECT service is "its fastest-growing product ever." Moreover, LDDS (p. 9) points out that consumers are increasingly using access codes for other purposes (e.g., to access voice mail) and that this will lead to increased use of access codes for operator services calls.

⁴¹ The comments make clear that BPP could not be implemented by mid-1997, as anticipated in the FNPRM (¶ 8). Rather, implementation will take at least 3 years from the date of a Commission order requiring BPP (see Ameritech, p. 18 (3 years, longer if 14-digit screening is required); GTE, p. 25 (3 to 4 years); SWBT, p. 13).

viable investment in the future,"⁴² and it would be a wasteful solution⁴³ to a problem which carriers and consumers have already effectively solved. Many commenters thus agree with AT&T (pp. 8-11) that continuation of existing marketplace activity, combined with vigorous enforcement of the existing unblocking rules will assure the availability of consumer choice and enable consumers to avoid any high OSP prices that may linger.⁴⁴ Moreover, to the extent that any of those rates are unjust or unreasonable, the Commission has complete authority to require them to be reduced. This process is already contemplated by TOCSIA, would create few incremental costs, and would provide relief to consumers long before the time when BPP could be implemented.⁴⁵

⁴² SNET, p. 8. See also id., p. 2 (BPP would divert scarce LEC resources "from providing more economically efficient services that would meet wider market needs").

⁴³ INS, p. 9.

⁴⁴ E.g., LDDS, p. 9; Park Inn, p. 1; SNET, p. 3; ACI-NA, p. 13; ACE/NACUBO, p. 2; CompTel, p. 16; NTCA, p. 7.

⁴⁵ Several commenters (e.g., MICPA, p. 2; Polar, pp. 14-15) also point out that the Commission's 1992 Final Report on TOCSIA found that the objectives of the statute were being met and that "market forces are securing just and reasonable rates." There is no indication that "high priced" OSPs' rates have increased significantly since 1992. See also AMNEX, p. 9.

V. BPP's Proponents Do Not Add New Data or Arguments That Warrant the Adoption of BPP.

With the exception of Sprint, all of the commenters favoring BPP merely restate old arguments and "support" the flawed cost/benefit analysis in the FNPRM. None of these commenters provides any substantial basis for adopting BPP, and none offers an independent showing that would meet the Commission's basic requirement that BPP's benefits must exceed its costs. Moreover, many of these commenters place significant conditions upon their support. Sprint is the only BPP proponent that even purports to add significant new information or to offer an independent cost/benefit analysis. Sprint's arguments are misinformed, and they fail to show that BPP's benefits would exceed its costs.

The LEC support for BPP is particularly weak. Pacific, for example, does not even discuss the FNPRM's cost/benefit analysis. Rather, Pacific (p. 1) merely "agree[s] with the Commission that BPP will be beneficial," and then conditions its support of BPP upon a "guarantee" of full cost recovery. Pacific (p. 2) further suggests that the Commission should adopt "a cost recovery mechanism akin to the Equal Access Recovery Charge," which would impose the multi-billion dollar cost of BPP on all consumers, whether they use BPP or not. Given the expected high usage of

access codes by 1998,⁴⁶ such a cost recovery system would place a huge and unnecessary burden on the vast majority of consumers, in order to benefit the relatively few customers who might use BPP. As APCC (p. 6) states, "[c]onsumer sovereignty will not be enhanced . . . by ordering deployment of a system that can only be paid for by depriving consumers of the ability to choose whether or not they want to purchase BPP."⁴⁷

Similarly, GTE supports BPP but demands (p. iii) the adoption of a "broad-based" cost recovery system. GTE (pp. 14-15), however, suggests the adoption of a system based upon OSP market share, irrespective of whether an OSP or its customers actually use BPP. Even though GTE acknowledges that such an approach "does have its shortcomings," GTE "believes [this system] may represent the best rate structure to guarantee a reasonable level of cost recovery for the LECs." Adoption of such a system, however, would require "the public at large . . . to subsidize a service they rarely, if ever, use."⁴⁸

⁴⁶ See Part IV above.

⁴⁷ INS (p. 26) also notes that such a system could "undermine efforts to achieve universal service and delay the introduction of valuable new services in small towns and rural areas."

⁴⁸ FPTA, p. 2.

Ameritech supports BPP, but its comments also just repeat the tentative conclusions of the FNPRM without providing any new support for BPP. As with Pacific and GTE, Ameritech's principal concern is with assurances of cost recovery. Ameritech (p. 9) believes that it would be "premature" to adopt a specific cost recovery mechanism, but firmly states (p. 8) that "unless cost recovery for BPP-handled 0+ calls is available to all providers at a rate no greater than that for other operator traffic (on a per-call basis), BPP should not be implemented (emphasis added)." Ameritech's position is based upon its customer research, which shows (p. 7) that consumers' choice of dialing method "is significantly influenced by price," and (p. 8) that over 50% of customers would dial an access code to receive only a 5% discount.⁴⁹ In addition, Ameritech (n.12) finds that access code usage has increased significantly in the last year. As a result, Ameritech (p. 8) recognizes that the benefits of BPP are very fragile, and that consumers "are not typically interested in paying a premium to dial fewer digits." Therefore, Ameritech seeks to assure its own cost recovery by having the Commission impose a heavy cost on the majority of consumers who would not need or use BPP. Failing the adoption of a broad cost

⁴⁹ See also APCC, n.17 (the growth in access code calling "demonstrates the extreme price sensitivity of access code calling").

recovery mechanism --which would be directly contrary to the Commission's general cost recovery principles⁵⁰ -- Ameritech (id.) states that it "makes no sense" to spend the huge amount of capital necessary to implement BPP.

SWBT also merely summarizes the FNPRM's discussion of BPP benefits without adding anything of substance.⁵¹ However, SWBT's support for BPP is even more "contingent" than that of some other LECs. SWBT (p. 2) expressly states that "[i]f there are any significant deviations from [its positions regarding BPP service design, cost recovery and implementation], SWBT opposes the implementation of BPP (emphasis added)." All of the above comments demonstrate the LEC proponents' complete loss of focus on consumers and their total concern with protecting their own economic welfare. Moreover, these comments show no confidence that BPP's worth could be proven in the marketplace.⁵²

⁵⁰ See AT&T, pp. 27-29. See also INS, p. 25 ("As the telecommunications industry becomes increasingly competitive, it becomes more imperative that the cost causer pays the costs that are created by their [sic] request for service").

⁵¹ For example, SWBT (p. 5) states that it "does not disagree" with the FNPRM's estimates of BPP's costs, and it cites no recent information on consumer use of access codes.

⁵² See APCC, n.3 ("the proponents of BPP acknowledge that it would not survive a marketplace test" (emphasis in original)).

MCI's comments are also devoid of any new reasons or facts that would support BPP. MCI (p. 1) simply "supports the Commission's determinations" and urges the prompt implementation of BPP. MCI makes no independent effort to examine the FNPRM's cost/benefit analysis. Moreover, MCI (p. 4) is wrong in asserting -- without proof -- that the costs of BPP are "exaggerated." Rather, as shown in Part II above, the comments irrefutably demonstrate that BPP costs have been substantially underestimated.

Recognizing that the costs of BPP would not likely be recovered if users had to pay for the capability, MCI (id.) also supports a "broad-based" cost recovery mechanism for BPP implementation costs that would be imposed upon "all carriers using switched access." Contrary to MCI's assertion, however, such a charge would not "be absorbed without imposition of an undue burden on any party." Rather, the costs of BPP would fall disproportionately on consumers who do not choose to use this capability.

The three "public" commenters who favor BPP also provide no new support for its adoption.⁵³ NASUCA (p. 1)

⁵³ On the other hand, the Colorado PUC and the Virginia SCC recognize that BPP would not be beneficial (see Part I above), and the SDN Users Association (p. 1) flatly opposes BPP. NARUC (p. 3) "reserves judgment" on BPP pending "a more concrete determination of the costs and on the specifics of implementation," and (pp. 6-7) the resolution of numerous other "administrative details."