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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket Number 96-128
Reclassification and Compensation Provisions)	
of the Telecommunications Act of 1996)	NSD File No. L-99-34

REPLY COMMENTS

The 1-800 American Free Trade Association (“1-800-AFTA”) hereby submits these reply comments in support of certain proposals raised by AT&T and others with regard to the Commission’s *Report and Order*.¹ 1-800-AFTA agrees with AT&T and other petitioners that many of the Commission’s new payphone compensation requirements as set forth in the *Report and Order* are unworkable, and urges the Commission to grant AT&T’s petition for reconsideration. 1-800-AFTA also has additional concerns that are particular to small switch-based resellers (“SBRs”), and believes that the *Report and Order*, if not revised, will have significant economic impact on a substantial number of small businesses.

1-800-AFTA is a grouping of toll free service providers formed in 2002 to promote competition in toll free services, and represent the interests of toll free service providers before the FCC and in telecom industry standards forums. As defined in the *Report and Order*, many members of 1-800-AFTA are small SBRs, which will bear the brunt of the problems associated with the Commission’s new requirements. As the rules

¹ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-128, FCC 03-235 (rel. Oct. 3, 2003).

are currently written, small SBRs will face an untenable choice among three bad options: (1) comply as best as they can with the rules as written and face huge costs that cannot be passed along to their customers; (2) ignore the rules (as many commenters in this docket predict will happen) and face the possibility of huge penalties; or (3) block calls originating from payphones. In order to provide a workable alternative, 1-800-AFTA asks the Commission to take the corrective measures proposed by AT&T as well as those described below. These measures will fulfill the policy objectives of the new rules and ensure that PSPs are compensated in full, while relieving SBRs of significant and unnecessary hardships.

DISCUSSION

1. **IXCs and SBRs Should be Permitted to Enter into Arrangements to Compensate PSPs Without Seeking the Approval of Each and Every PSP in the Nation.**

The primary failing of the *Report and Order* is that it requires SBRs, large and small alike, to deal directly with thousands of PSPs on a regular basis. The financial cost to process thousands of reports and affidavits will be astronomical, to say nothing of the administrative burden that will be placed on small SBRs that are ill equipped for this task. The simplest solution for many SBRs to overcome this administrative nightmare will be to contract with IXCs or with a clearinghouse to process the payments to the PSPs. However, as AT&T points out in its Petition for Reconsideration, even this seemingly simple task of an SBR negotiating a contract with one or two IXCs or clearinghouses borders on impossibility because the rules require that the PSP agree to

the contractual arrangements, even when such arrangements result in the PSP being paid more than required under the FCC's rules.²

SBRs should have the option, without the consent of PSPs, to enter into agreements with IXCs, whereby the IXC will pay the PSPs for all calls (whether completed or not completed) thereby reducing accounting requirements. This results in PSPs being paid at least as much, if not more, than what they would otherwise be entitled to under the rules. Accordingly, there is no reason that PSPs should be given the right to prevent SBRs from entering into such payment arrangements with IXCs.

Not a single commenter opposed AT&T's proposal. In fact, commenters agreed that arrangements between IXCs and SBRs should not require PSP consent and should be "considered presumptively lawful and efficient."³ If AT&T's approach is not accepted, many law-abiding small SBRs will have little choice but to block payphone calls rather than deal with the burdensome and costly payment and auditing requirements set forth in the rules. If this happens, all parties will lose – the PSPs, the SBRs and, most importantly, members of the general public who need to use pay phones to call numbers served by SBRs.

² AT&T Petition for Clarification or, in the Alternative, Reconsideration at 4-5, CC Docket No. 96-128, filed December 8, 2003 (AT&T Petition).

³ RBOC Payphone Coalition's Comments on Petitions for Reconsideration and Clarification, CC Docket No. 96-128, at 3 (February 10, 2004); *see also* Comments of Sprint Corporation on Petitions for Clarification or Reconsideration, CC Docket NO. 96-128, at 22-24 (February 10, 2004).

2. Small Switched Based Resellers Cannot Implement the New Rules as Currently Written

In addition to the concerns identified by AT&T in its Petition, other provisions in the *Report and Order* will be extremely difficult, if not impossible, for small SBRs to implement absent modest changes or clarifications to the rules:

- a. It is impossible for small SBRs to provide PSPs with System Audit Reports because they are not able to identify every PSP.*

Section 64.1320(b) of the final rules as stated in the *Report and Order* requires that by the effective date of the rules, each SBR that completes payphone calls must file a "Systems Audit Report" with the FCC, with each IXC from which it received payphone calls, and with each PSP for which it completes calls. While it will be fairly simple for small SBRs to file the System Audit Report with the FCC and with the IXCs, it will be virtually impossible to comply with the requirement of providing PSPs with the Systems Audit Report because SBRs will have no way of knowing the PSPs from which it will complete calls for the quarter beginning on the effective date of the rules. Following the effective date of the rules, on an annual basis, it will be impossible to identify each PSP from which a call is completed since not every PSP identifies itself to SBRs.⁴ Accordingly, the only way that an SBR will be able to comply with this rule will be to file the System Audit Report with each and every PSP in the nation.

SBRs, however, have no ability to identify all of the PSPs. Indeed, the number of PSPs seems to be a moving target. For example, the Commission in the *Report and*

⁴ The only method by which a SBR identifies a PSP is by the PSP sending quarterly ANI lists to the SBR. If a PSP fails to do this, the SBR has no way of identifying a PSP. It is conceivable, and likely, that some calls may be completed from a PSP phone and that PSP may never identify itself to the SBR.

Order estimates that there are about 758 PSPs,⁵ the American Public Communications Council (“APCC”) states that there are 2,000 PSPs,⁶ and AT&T estimates that there are well over 5,500 PSPs.⁷

Given that the number of PSPs, much less their identities, is unknown, SBRs cannot possibly be expected to comply with this rule. At the very least, it would be a huge burden on small SBRs to attempt to search out all of the PSPs along with their necessary contact information. More likely, SBRs would fail to fully comply with the rule.

In order to overcome this practical deficiency in the rule, the Commission should require all PSPs who desire to be compensated under these rules to register with the Commission or through some other easily identifiable and readily accessible clearinghouse. The registration should include all of the PSPs’ necessary contact information as well as an electronic listing of all of the PSPs’ phone numbers. This information should be updated on a regular basis, and in any event, SBRs should not be found in violation if they rely on the PSP registry. In this way, SBRs will know, without any ambiguity, exactly which PSPs they must file the System Audit Reports with, and who they are expected to pay for each payphone call.

In the alternative, the Commission should clarify that on the effective date of the rules, SBRs must make the Systems Audit Report available to any PSP upon request. The Commission could list the carriers that submitted such reports on the effective date to facilitate PSP requests.

⁵ *Report and Order* at ¶ 71.

⁶ See Petition of the American Public Communications Council for Clarification or Partial Reconsideration at 8, filed December 8, 2003.

b. Small SBRs will be overly burdened and financially harmed if they are required to provide quarterly payments and CFO affidavits of compliance to PSPs that are owed only nominal amounts.

Given that there are, according to some accounts, well over 5,500 PSPs operating throughout the country, many SBRs will likely find themselves completing calls from thousands of different PSPs in any given quarter. And many SBRs will find themselves completing only a small handful of calls from many of these thousands of PSPs. Under the current rules, the IXCs aggregated the calls on behalf of many SBRs along with their own traffic and paid each of the PSPs one lump sum. Under the new rules, small SBRs will be required to issue nominal payments, along with affidavits to thousands of PSPs.

The FCC should establish a minimum quarterly amount due from an SBR to a PSP whereby the SBR is only required to comply with the accounting and affidavit requirements with respect to the particular PSP if the quarterly payment exceeds that minimum. An SBR's obligation to compensate the PSP would accrue until the minimum amount is reached, at which time payment would be due. This would benefit both SBRs and PSPs because the expense to both to process nominal payments is simply not cost effective.

c. SBRs that use Clearinghouses will still be faced with impossible tasks in order to comply with the rules.

As the *Report and Order* indicates, there are clearinghouses and/or service bureaus that can help SBRs comply with the audit and payment requirements. On the surface, this seems like an easy alternative for SBRs seeking to minimize their

⁷ See AT&T Petition at 5.

administrative duties. However, both practical considerations and limitations imposed by the rules, if left unchecked, will act as a bar to using clearinghouses.

First, clearinghouses may not serve all PSPs for the same reasons described herein – clearinghouses, just as carriers, are reliant on the PSPs to identify themselves – there is no practical, cost effective way for a carrier or clearinghouse to locate all PSPs. Given the apparently large number of PSPs, SBRs will never know if the clearinghouse whose services they have retained does in fact serve all PSPs. Under the rules, however, it is the SBRs, not the clearinghouses, who are ultimately responsible to ensure that proper forms are being filed, and proper payments are being made. The Commission should relieve from liability SBRs who rely in good faith upon the services of clearinghouses. As discussed above, the Commission should also require PSPs to register in a central location in order to facilitate compliance with the rules.

Second, the rules require the chief financial officer (CFO) of an SBR to tender sworn statements to each PSP that the SBR's quarterly payments are accurate. The rules do not, apparently, relieve the CFO of this responsibility when the SBR uses the services of a clearinghouse, even with regard to those PSPs who are only being paid a nominal amount. SBRs who use a clearinghouse to make the payments to PSPs should be allowed to file a single affidavit with the Commission (rather than with each PSP) that they have paid through a specified clearinghouse. In addition, if deemed necessary by the Commission, SBRs could also be required to file affidavits with any PSP for which there was an obligation in excess of some set amount, such as \$250 per quarter, or \$1000 in the previous calendar.

Moreover, short of conducting a complete audit of the payments made by the clearinghouse (which defeats the whole purpose of a small SBR using a clearinghouse in the first place), CFOs will have to rely on the honesty of the clearinghouse in submitting the sworn statement to the PSPs. SBRs should not be held liable if the CFO signs the required statement that proper payments have been made to the PSPs, but it later turns out that the clearinghouse made an error. The Commission should clarify that SBR affidavits may be based “upon information and belief,” and not first hand knowledge, when using clearinghouses.

Finally, some clearinghouses charge small SBRs more in administrative fees to process and pay for the payphone calls than the PSPs charge for the call itself. The Commission ensure that small SBRs have an alternate, more efficient payment arrangement, such as that proposed by AT&T (see discussion above).

3. The *Report and Order* Failed to Give Proper Consideration to Small SBRs.

As noted by the Commission, the Regulatory Flexibility Act of 1980 (RFA) requires that an agency must certify that “the rules will not, if promulgated, have a significant economic impact on a substantial number of small businesses.” *See Report and Order* at ¶ 59. While the *Report and Order* considered the impact of the rules on facilities-based long distance carriers and on PSPs, it failed to give due consideration of the impact of these rules on small SBRs.

For example, the *Report and Order* does not acknowledge that small SBRs will have to file System Audit Reports with potentially 5,000 or more PSPs. This requirement places a tremendous economic and administrative burden on small SBRs,

particularly because there is currently no mechanism for SBRs to identify all of these different PSPs.

The *Report and Order* also failed to consider the impact of the requirement on small SBRs that they file quarterly reports and affidavits from their CFOs with potentially thousands of PSP that are each owed only a nominal amount.

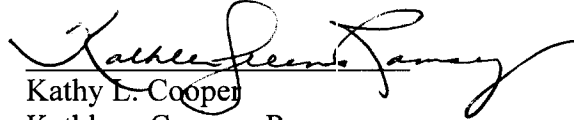
Finally, even those SBRs that desire to enter into a contract with an IXC or a clearinghouse face the substantial economic and administrative burden of seeking the individual approval of each of 5,000 or more different PSPs. Again, this is a significant impact on small SBRs that was not even mentioned or considered in the *Report and Order*.

There are fairly simple steps, as discussed in the sections above, that can be taken to minimize the impact of these burdens on small SBRs. The substantial economic and administrative impacts on small SBRs created by the rules must be properly considered and appropriately dealt with before the rules go into effect. Given that there are alternative arrangements which meet all of the policy goals without imposing an undue burden, the proposed rules should be modified as described above.

Conclusion

For the foregoing reasons, the Commission should grant AT&T's petition for reconsideration, and take further steps to clarify its *Report and Order* as described herein.

Respectfully submitted,



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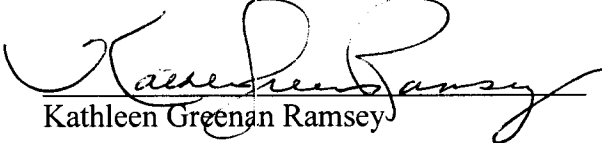
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February 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2004, except as otherwise noted on the attached service list, I caused true and correct copies of the forgoing Reply Comments of the 1-800 American Free Trade Association to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.


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