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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**

**IMPLEMENTATION OF THE  
PAY TELEPHONE RECLASSIFICATION  
AND COMPENSATION PROVISIONS  
OF THE TELECOMMUNICATIONS  
ACT OF 1996**

**CC Docket No. 96-128**

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**REPLY OF  
THE TELECOMMUNICATIONS RESELLERS ASSOCIATION  
TO PETITIONS FOR RECONSIDERATION**

**TELECOMMUNICATIONS  
RESELLERS ASSOCIATION**

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## SUMMARY

While there are a number of elements of the Report and Order with which it does not agree, the Telecommunications Resellers Association commends the Commission for mitigating for at least a substantial portion of the small interexchange carrier resale community the impact of the per-call payphone compensation scheme adopted therein pursuant to the mandate of Section 276 of the Telecommunications Act of 1996. In particular, TRA applauds the Commission (i) for establishing an interim compensation mechanism pursuant to which only IXCs with annual toll revenues in excess of \$100 million will pay (on a flat-rate basis) compensation to payuphone service providers until late 1997, thereby avoiding not only "rate shock" for small resale IXCs, but also potentially devastating problems for debit card providers with large numbers of issued (or contracted for) cards which do not provide for payphone use fees, and (ii) for requiring underlying facilities-based carriers to pay compensation to PSPs on behalf of their resale carrier customers, thereby relieving small resale IXCs of the massive investment and huge resource drain that an obligation to track payphone-originated toll free and access code calls would entail. TRA urges the Commission to deny petitions seeking reconsideration of these laudable actions.

The Commission's efforts to insulate small resale IXCs from "rate shock," to protect the "fledgling" prepaid calling card industry, as well as consumers of its unique services, to maintain the competitive IXC population by alleviating the impact of potentially disruptive changes on vulnerable competitors, and to minimize regulatorily-created costs and other burdens on small providers all reflect sound policy judgments in furtherance of the public interest. These actions are not only consistent with past Commission policy judgments made in the context of

payphone compensation and elsewhere, but fully satisfy the mandate of Section 276. Moreover, the Commission actions further the strongly-voiced Congressional objective to foster greater participation by entrepreneurs and other small businesses in the telecommunications industry. In light of this clear Congressional directive, TRA submits that it would make little sense to eliminate rules and policies which safeguard the many small providers that currently populate the resale and prepaid calling card industries.

While TRA recognizes that the Commission has limited flexibility in implementing Section 276's mandate that PSPs be "fairly compensated" for use of their facilities and certainly does not begrudge PSPs such fair compensation, it is nonetheless concerned that the compensation afforded PSPs by the Order exceeds fair compensation by a wide margin, producing an unjustified "windfall" for "mini-monopoly" providers. Accordingly, TRA joins with Petitioners in urging the Commission to revisit the payphone compensation levels prescribed in the Order.

The real competition in the payphone market is for access to prime locations. This competition not only encourages PSPs to charge higher, not lower, rates, but effectively demands, as well as enables them, to assess supra-competitive charges. Hence, pegging toll free and access code payphone use fees to market-based local coin rates will all but ensure that such use fees will be inflated, and perhaps grossly inflated. TRA, accordingly, concurs with AT&T that per-call payphone compensation should be predicated upon a cost-based pricing methodology based on forward-looking economic costs. If TSLRIC-based pricing fairly compensates incumbent local exchange carriers for interconnection to, or for use on an unbundled basis of, their networks and appropriately balances the interests of incumbents, competitors and consumers in the monopoly local exchange market, TRA is hard pressed to understand why TSLRIC-based pricing would not

fairly compensate PSPs and appropriately balance competing interests in the mini-monopoly payphone market.

The record clearly shows that use of local coin rates as a pricing surrogate will grossly inflate payphone use fees for toll free and access code calls. Local coin rates are not appropriate surrogates for the Commission per-call compensation mechanism because they are designed to recover call delivery costs not incurred in originating toll free and access code calls, as well as costs uniquely associated with local coin service, such as the substantial labor-intensive costs involved in coin collection and counting and other costs associated with coin rating and coin fraud. In short, local coin rate-based payphone usage fees for originating toll free or access code calls are neither cost-based nor fair; indeed, they would produce a substantial windfall for PSPs.

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**REPLY OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION  
TO PETITIONS FOR RECONSIDERATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby replies to petitions seeking reconsideration of the Report and Order, FCC 96-388, released by the Commission in the captioned docket on September 20, 1996 (the "Order"). Specifically, TRA will discuss herein requests that the Commission reconsider (i) the inclusiveness of its interim flat-rated payphone compensation mechanism, (ii) its decision to require underlying facilities-based interexchange carriers ("IXCs") to compensate payphone service providers ("PSPs") on behalf of their resale carrier customers, and (iii) the compensation to be paid to PSPs for originating toll free and access code calls.<sup>1</sup>

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<sup>1</sup> TRA, accordingly, will address the petitions for reconsideration filed by the following parties: AT&T Corp. ("AT&T"), MCI Telecommunications Corporation ("MCI"), Sprint Corporation ("Sprint"), WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom"), Cable and Wireless, Inc. ("C&W"), and Paging Network, Inc. ("PNI") (collectively "Petitioners").

## I

### **INTRODUCTION**

TRA, an association comprised of nearly 500 telecommunications entities engaged in, or providing products and services in support of, telecommunications resale, was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless (including cellular, PCS and paging), enhanced and internet services and are poised to enter the local exchange market.

TRA's resale carrier members serve generally small to mid-sized commercial, as well as residential, customers, providing such entities and individuals with access to rates otherwise available only to much larger users. TRA's resale carrier members also offer small to mid-sized commercial customers enhanced, value-added products and services, including a variety of sophisticated billing options, as well as personalized customer support functions, that are generally reserved for large-volume corporate users.

Not yet a decade old, TRA's resale carrier members -- the bulk of whom are small to mid-sized, albeit high-growth, companies -- nonetheless collectively serve millions of residential and commercial customers and generate annual revenues in the billions of dollars. The emergence and dramatic growth of the resale industry over the past five to ten years have produced thousands of new jobs and myriad new commercial opportunities. In addition, TRA's

resale carrier members have facilitated the growth and development of second- and third-tier facilities-based interexchange carriers by providing an extended, indirect marketing arm for their services, thereby further promoting economic growth and development. And perhaps most critically, by providing cost-effective, high quality telecommunications services to the small business community, TRA's resale carrier members have helped other small and mid-sized companies expand their businesses and generate new employment opportunities.

TRA's primary interest in this proceeding has been, and continues to be, in minimizing, to the maximum extent possible, the adverse impact of the per-call payphone compensation arrangement mandated by the Congress in Section 276 of the Telecommunications Act of 1996 ("1996 Act").<sup>2</sup> To this end, TRA filed comments and reply comments urging the Commission in structuring the Congressionally mandated per-call payphone compensation mechanism, to be cognizant of the impact of its actions on, and to exercise care to avoid adopting rules and policies that would adversely effect, small resale interexchange carriers ("IXCs") and their primarily small business and residential customers. TRA urged the Commission in particular to be sensitive to the impact of the payphone compensation scheme adopted in this proceeding on the fledgling debit (or prepaid calling) card industry.

While there are a number of elements of the Order with which it does not agree, TRA commends the Commission for mitigating the impact of the per-call payphone compensation scheme adopted therein for at least a substantial portion of the small resale IXC community. In particular, TRA applauds the Commission (i) for establishing an interim compensation mechanism pursuant to which only IXCs with annual toll revenues in excess of \$100 million will pay (on

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<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56, § 276 (1996).

a flat-rate basis) compensation to PSPs until late 1997, thereby avoiding not only "rate shock" for small resale IXCs, but also potentially devastating problems for debit card providers with large numbers of issued (or contracted for) cards which do not provide for payphone use fees,<sup>3</sup> and (ii) for requiring underlying facilities-based carriers to pay compensation to PSPs on behalf of their resale carrier customers, thereby relieving resale carriers of the massive investment and huge resource drain that an obligation to track payphone-originated toll free and access code calls would entail.<sup>4</sup> TRA urges the Commission to deny petitions seeking reconsideration of these laudable actions. TRA does, however, recommend that the Commission revisit the payphone compensation levels prescribed in the Order.

## II

### **ARGUMENT**

#### **A. The Commission Should Resist Efforts to Expand Its Interim Payphone Compensation Mechanism or to Require Resale Carriers to Track Payphone-Originated Calls or to Compensate PSPs Directly**

In its Order, the Commission concluded that "in the interests of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers."<sup>5</sup> The Commission reasoned that "[b]ecause they do not have their own networks, it would be significantly more burdensome for resellers to track calls from payphones . . . [and because] telecommunications services are often sold in advance, particularly in the debit card context, and resold more than once before a caller ultimately uses

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<sup>3</sup> Order, FCC 96-388 at ¶¶ 119 - 126.

<sup>4</sup> Id. at ¶¶ 86, 87, 100.

<sup>5</sup> Id. at ¶ 86.

the service . . . it would be difficult to identify the party that is liable for the per-call compensation."<sup>6</sup> While the Commission authorized "facilities-based carriers . . . [to] recover the expense of payphone per-call compensation from their reseller customers as they deem appropriate," it nonetheless attempted to soften this blow by establishing an interim payphone compensation arrangement pursuant to which only IXCs with annual toll revenues in excess of \$100 million would be required to compensate PSPs for payphone-originated toll free and access code calls on a flat-rated basis during the coming year.<sup>7</sup>

Several of the large IXCs object to the exemption of small resale IXCs from the interim compensation mechanism<sup>8</sup> and/or the obligation to track and directly compensate PSPs for payphone-originated toll free and access code calls.<sup>9</sup> Generally, these petitioners argue that the Commission's well-reasoned policy judgments to these ends are inconsistent with the 1996 Act's directive that the Commission ensure that PSPs are compensated for each and every completed payphone-originated call and/or unreasonably discriminate against larger and/or facilities-based carriers. Simply put, the petitioners are wrong on both counts.

As TRA emphasized in earlier filings, actions taken by the Commission to mitigate the impact of the Congressionally-mandated per-call payphone compensation scheme are not only consistent with actions taken by the Commission in comparable circumstances in the past, but further other strongly-voiced Congressional goals. The rationale for granting an exemption from

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶ 119.

<sup>8</sup> Comments of AT&T (at 15-18), MCI (at 22-23), Sprint (at 8-10), WorldCom (at 4-8) and C&W (at 10-13).

<sup>9</sup> Comments of MCI (at 16-18) and Sprint (at 15-17).

per-call payphone compensation requirements to smaller IXCs, particularly small resale IXCs and providers of prepaid calling card services, is remarkably similar to that which led the Commission to adopt and retain an exemption for the "fledgling" enhanced service industry from payment of interstate switched access charges<sup>10</sup> and to impose on only the largest IXCs the obligation to contribute to the private payphone operators ("PPOs") compensation mechanism.<sup>11</sup> Moreover, granting small resale IXCs such an exemption certainly furthers the clear Congressional intent to increase the opportunities for and the participation of entrepreneurs and other small businesses in the telecommunications industry.<sup>12</sup>

As TRA has pointed out, small resale IXCs occupy the final rung in the long distance service distribution chain. They, accordingly, are the least able, yet more often than not, the most likely, to ultimately bear the burden of additional regulatory-driven costs and hence, the most vulnerable to cost-generating regulatory actions. Additional costs incurred by a resale carrier's underlying network provider are invariably passed through to the resale carrier. Because

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<sup>10</sup> MTS and WATS Market Structure, 97 F.C.C.2d 682, ¶¶ 83-85 (1983), *modified on recon.* 97 F.C.C.2d 834 (1984), *aff'd in principal part and remanded in part sub nom. National Association of Regulatory Utilities Commissioners v. FCC*, 737 F.2d 1085 (D.C.Cir. 1984), *cert. denied* 469 U.S. 1227 (1985), *modified on further recon.* 99 F.C.C.2d 708 (1984), *aff'd sub nom. American Tel. & Tel. Co. v. FCC*, 832 f.2d 1285 (D.C. Cir. 1987), *modified on recon.* 101 F.C.C.2d 1222 (1985), *aff'd on further recon.* 102 F.C.C.2d 849 (1985); Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd. 2631, ¶ 2 (1988); Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd. 4524, ¶¶ 54-65 (1991), *modified on recon.* 7 FCC Rcd. 5235 (1992), *further recon. denied* 10 FCC Rcd. 1570 (1994).

<sup>11</sup> Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation, 7 FCC Rcd. 3251, ¶ 51 (1992); 43 C.F.R. § 43.1301.

<sup>12</sup> 47 U.S.C. § 257; *see also* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess., p. 136 (1996) ("Joint Explanatory Statement"); *see also* Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), GN Docket No. 96-113 (1996).

resale carriers' customer relationships tend to be more price sensitive than those of their far larger, more established network providers, resale carriers tend to have far less flexibility to simply pass through to their customers the costs passed through to them by their network providers.<sup>13</sup> Moreover, because resale carriers' operations are smaller, the impact of the large dollar outlays associated with complying with new regulatory requirements is generally more dramatic for resale carriers; simply put, resale carriers have less volume over which to distribute the additional costs.

In other words, the higher the amount of per-call compensation for payphone-originated toll free and access code calls and the more costly the administrative burdens associated with compliance with such compensation requirements, the more the margins of small resale IXC's will be squeezed. The small business and residential customers of small resale IXC's will share the pain either directly to the extent that small resale IXC's are able to pass through some portion of the additional cost burden and/or indirectly to the extent that the additional cost burdens undermine the carriers' operational capability or viability.

The adverse impact of per-call payphone compensation for toll free and access code calls is magnified, and hence is significantly more injurious, in the emerging prepaid calling

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<sup>13</sup> The Commission acknowledged this phenomenon in computing regulatory fees for IXC's in Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd. 13512, ¶¶ 118-137 (1995). There, the Commission, recognizing that resale carriers' underlying network providers would pass through regulatory fees assessed on them to their resale carrier customers and that the resale carrier customers were less able to pass through these charges to their customers, permitted resale carriers and other IXC's to "subtract from their gross interstate revenues . . . any payments made to underlying common carriers for telecommunications facilities or services, including payments for interstate access service, that are resold in the form of interstate service." The Commission took this action specifically to "avoid imposing a double payment burden on resellers." See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-333, ¶ 343 (released August 8, 1996), *pet. for rev. pending sub nom. Bell Atlantic Tel. Co. v. FCC*, Case No. 96-1333 (D.C. Cir. Sept. 16, 1996).

card industry. The prepaid calling card industry is in its infancy, debit cards having only been made commercially available on any significant scale in the United States within the last five years. Moreover, as with any new market segment, most of the industry participants are relatively small and are still growing and developing. And, to make matters worse, the tiered manner in which business relationships are structured in the prepaid calling card industry amplify the impact of any significant regulatory-driven cost increase.<sup>14</sup>

In other like contexts, the Commission has recognized and sought to mitigate the disruptive impact on a new industry of substantial cost increases occasioned by regulatory fiat. Thus, when the Commission adopted its access charge regime in the early 1980s, it granted temporary exemptions from payment of interstate switched access charges to certain classes of exchange access users, including, among others, enhanced service providers ("ESPs").<sup>15</sup> Recognizing that the "severe rate impacts" attendant to immediate imposition of interstate switched access charges would have a disruptive impact on the fledgling enhanced services

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<sup>14</sup> For example, a typical debit card distribution chain involves an underlying carrier, a "platform provider," at least one distributor and a retailer. Thus, a \$10.00 debit card which provides for nearly 30 minutes of calling time at a per-minute rate of \$0.35 will likely reflect at least a \$0.10 to \$0.15 per-minute charge payable to the underlying carrier and be sold by the platform provider, who will bear these network, as well as associated processing and administrative, costs, to the distributor for \$7.00; the distributor may sell the card to the retailer for \$8.00, while the retailer will sell it to the public for \$10.00. Hence, the platform provider's margin is substantially thinner than a \$10.00/\$0.35 a minute debit card might otherwise suggest. Given that the average debit card call is roughly five minutes in duration and that a significant percentage of debit card calls are made from payphones, the platform provider's margin would be reduced to a bare minimum by a per-call payphone compensation scheme if it were unable to pass through the charge to consumers directly or by increasing the per-minute rate of usage. The ability of a platform provider to pass through such substantial new regulatory-driven costs, however, is limited by the nature of the customer universe for prepaid calling cards. The core consumer population for debit cards are individuals occupying the lowest socio/economic strata -- people who either do not have phones or lack the credit to obtain traditional calling cards. Thus among the overall universe of consumers of telecommunications service, the principal consumers of debit cards are likely the least capable of absorbing substantial price increases.

<sup>15</sup> MTS and WATS Market Structure, 97 F.C.C.2d 682 at ¶¶ 83-85.

industry, producing market displacement and resulting in adverse customer impacts, the Commission concluded that "special treatment" was appropriate and necessary to avoid the detrimental effects of "rate shock."<sup>16</sup> As later described by the Commission:

Despite our resolve to distribute the costs of exchange access among all users of access service, we recognized that the immediate imposition of interstate access charges on all users of exchange access would have some undesirable consequences. For example, we said that because WATS resellers and enhanced service providers were currently paying local business rates for their interstate access, the immediate imposition of interstate access charges would have a substantial impact on their costs, which could undermine their ability to continue to provide service while they were adjusting their operations in response to the new access charge rules.<sup>17</sup>

And while the Commission initially adopted the "ESP exemption" to permit the enhanced services industry to "avoid service-disrupting 'rateshock,'" it has since "refrained from applying full access charges to ESPs out of a concern that the industry has continued to be affected by a number of significant, potentially disruptive, and rapidly changing circumstances."<sup>18</sup> Like ESPs in the 1980s, small resale IXC's in the mid-1990s are currently confronting "a number of significant, potentially disruptive, and rapidly changing circumstances," primarily resulting

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<sup>16</sup> Id.; Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd. 2631 at ¶ 2; *see also* Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd. 4524 at ¶¶ 54-65. Indeed, the United States Court of Appeals upheld the exemption as required "to avoid unnecessary customer impact or market displacement." National Association of Regulatory Utilities Commissioners v. FCC, 737 F.2d 1085 (D.C.Cir. 1984), *cert. denied* 469 U.S. 1227 (1985).

<sup>17</sup> Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers (Notice of Proposed Rulemaking), 2 FCC Rcd. 4305, ¶ 3 (1987).

<sup>18</sup> Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd. 4524 at ¶ 54.

from the passage of the 1996 Act and the entry of the Regional Bell Operating Companies ("RBOCs") into the long distance industry.<sup>19</sup>

Similarly, when the Commission limited responsibility under its current competitive payphone compensation scheme to those IXCs with annual toll revenues in excess of \$100 million, it did so in order to "substantially ease the administrative burdens of billing and collection" associated with the compensation mechanism.<sup>20</sup> Critically, the Commission noted in so doing that limiting responsibility for competitive payphone compensation to only the larger IXCs would have little adverse impact on the larger IXCs and avoid substantial damage to smaller IXCs.<sup>21</sup> As the Commission explained:

We note that there are approximately 455 IXCs currently purchasing switched access, a great many of which provide operator services. To extend compensation obligations to all of these carriers would have significantly increased the administrative costs of a compensation mechanism. By contrast, limiting compensation obligations to IXCs providing operator services who earn \$100 million or more in annual toll revenues (there are currently fourteen such carriers) will substantially ease the administrative burden of billing and collection. Moreover, IXCs earning less than \$100 million in toll revenues per year collectively account for less than five percent of long-distance carrier toll revenues. Individually, they account for a much smaller

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<sup>19</sup> Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd. 4524 at ¶ 54; *see also* Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd. 2631, at 17 ("We believe that given the combined effects of the impending ONA implementation and the entry of the BOCs into certain aspects of information services, the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired.").

<sup>20</sup> Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation, 7 FCC Rcd. 3251 at ¶ 51.

<sup>21</sup> Id. (footnotes omitted).

percentage. Therefore, the payment obligations of these carriers, had they been included, would have been quite low in any case.<sup>22</sup>

Other regulatory authorities have followed a similar course. Thus, when the California Public Utilities Commission ("CPUC") instituted a "pay station service charge" ("PSSC") which requires a per-call payment of a \$0.25 (less a processing charge) to PPOs for origination of non-coin intraLATA calls on their equipment, it initially required only AT&T and local exchange carriers ("LECs") to make such payments; MCI and Sprint were required to implement the PSSC within a reasonable time.<sup>23</sup> Critically, the CPUC exempted all IXCs that carried three percent or less of the intraLATA traffic within the State of California. In exempting smaller IXCs, the CPUC cited the hardship the assessment of the PSSC would work on these carriers, emphasizing the limited availability of call tracking technology and the burden associated with billing and collection.<sup>24</sup>

The Commission's efforts to insulate small IXCs from "rate shock," to protect the "fledgling" prepaid calling card industry, as well as consumers of its unique services, to maintain

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<sup>22</sup> *Id.* (footnotes omitted).

<sup>23</sup> Public Utilities Commission of California, Resolution T-15782, Concerning Request of Pacific Bell (U-1001-C) to Clarify the Types of Calls to Which the \$0.25 Pay Station Service Charge Applies, p. 8 (released March 13, 1996), *motions for stay and application for rehearing pending*.

<sup>24</sup> *See also* Florida Public Service Commission, Dial-Around (10XXX, 950, 800) Compensation from Interexchange Telephone Companies to Pay Telephone Providers, Docket No. 920399-TP, Order No. PSC-93-0070-FOF-TP (released January 14, 1993). As the Florida Public Service Commission ("FPSC") explained when it exempted all but the four largest carriers when it levied per-phone payphone compensation obligations on IXCs:

These four companies comprise approximately 90% of all the interLATA toll revenues in this state, according to the same regulatory assessment fee records. This method would be consistent with the FCC's method, simple to administer, and provide compensation to NPATS providers without unduly burdening small IXCs with relatively insignificant traffic.

the competitive IXC population by alleviating the impact of potentially disruptive changes on vulnerable competitors, and to minimize regulatorily-created costs and other burdens on small providers all reflect sound policy judgments in furtherance of the public interest. Obviously, consumers are not well served by driving competitors from the marketplace through regulatory action. And this is particularly true with respect to entities that the Commission has recently acknowledged "are able to serve narrower niche markets that may not be easily or profitably served by larger corporations."<sup>25</sup>

As TRA has demonstrated, the Commission's actions are fully consistent with past Commission policy judgments in the context of payphone compensation and elsewhere. The Commission's approach is also fully consistent with the mandate of Section 276. Both under the interim compensation mechanism and the ultimate per-call compensation scheme, PSPs will be fairly compensated (indeed, excessively compensated) for all usage of their equipment. While the interim mechanism does not provide directly for per-call compensation, the amount PSPs will receive was calculated as a reasonable (indeed, inflated) surrogate for per-call compensation. Moreover, the Commission has fulfilled its obligation simply by creating a per-call compensation plan; Section 276 does not preclude a transition period.

Finally, the Commission has acted in furtherance of a strongly-voiced Congressional objective. Congress has made clear its desire to foster greater participation by entrepreneurs and other small businesses in the telecommunications industry. Certainly, Congress demonstrated its antipathy towards "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information

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<sup>25</sup> Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), GN Docket No. 96-113 at ¶ 6.

services," directing the Commission to periodically conduct proceedings for the purpose of identifying and eliminating such barriers.<sup>26</sup> In furtherance of this directive, the Commission, while acknowledging the "significant role in the U.S. economy" played by small business," has recently bemoaned the fact the "[d]espite the role of small businesses in the economy, and the growth of the telecommunications market, small businesses currently constitute only a small portion of telecommunications companies."<sup>27</sup> In light of the clear Congressional directive to facilitate greater participation by small business in telecommunications, TRA submits that it would make little sense to eliminate rules and policies which safeguard the many small providers that currently populate the resale and prepaid calling card industries.

**B. The Commission Should Revisit the Payphone Compensation Levels Prescribed in the Order**

It is beyond dispute that Section 276 of the 1996 Act requires that PSPs be "fairly compensated" for use of their facilities to complete toll free and access code, as well as all other interstate and intrastate, calls. While TRA recognizes that the Commission has limited flexibility in implementing this statutory mandate and certainly does not begrudge PSPs fair compensation for use of their facilities, it is nonetheless concerned that the compensation afforded PSPs by the Order exceeds fair compensation by a wide margin, producing an unjustified "windfall" for "mini-monopoly" providers. Accordingly, TRA joins with Petitioners in urging the Commission to revisit the payphone compensation levels prescribed in the Order.

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<sup>26</sup> 47 U.S.C. § 257; *see also* Joint Explanatory Statement at 136.

<sup>27</sup> Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), GN Docket No. 96-113 at ¶ 6 (footnote omitted).

1. **Market-Driven Pricing is Inappropriate in a Mini-Monopoly Environment**

In its Order, the Commission acknowledged that "there are certain locations where, because of the size of the location or the caller's lack of time to identify potential substitute payphones, no 'off-premises' payphone serves as an adequate substitute for an 'on-premises' payphone."<sup>28</sup> For transient callers, this is unfortunately more often the rule than the exception. Contrary to the Commission's stated belief, most payphones will not "face a sufficient level of competition from payphones at nearby locations to ensure that prices are at a competitive level."<sup>29</sup> And even where alternatives are reasonably proximate, how realistic is it to assume that a consumer, having located a payphone in an airport, or in a parking garage, or in a restaurant or on the street, will elect not to use that phone and seek out another because the first phone requires a deposit of 35¢, or 50¢ or even a \$1.00.

The real competition in the payphone market is for access to prime locations. As the Commission has recognized, location providers can often "contract exclusively with one PSP to establish that PSP as the monopoly provider of payphone service."<sup>30</sup> This competition drives upward commissions payable to location providers, not downward rates charged to payphone users. Indeed, this competition not only encourages PSPs to charge higher, not lower, rates, but effectively demands, as well as enables them, to assess supra-competitive charges. And the irony is that the long-run beneficiary of this price inflation will not be the PSP, but the location provider.

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<sup>28</sup> Order, FCC 96-388 at ¶ 15.

<sup>29</sup> Id.

<sup>30</sup> Id.

Hence, pegging toll free and access code payphone use fees to market-based local coin rates will all but ensure that such use fees will be inflated, and perhaps grossly inflated.<sup>31</sup> Any amounts lost to consumer antipathy to making excessive coin deposits can be recovered through toll free and access code calls which many consumers will pay in the form of higher overall rates and of which most consumers will be wholly unaware.

TRA, accordingly, concurs with AT&T that per-call payphone compensation should be predicated upon a cost-based pricing methodology based on forward-looking economic costs -- *i.e.*, compensation should be based on total service long-run incremental cost ("TSLRIC").<sup>32</sup> As the Commission recognized in pricing interconnection to local exchange networks and unbundled local exchange network elements, "economists generally agree that prices based on forward-looking long-run incremental costs (LRIC) give appropriate signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure."<sup>33</sup> Certainly, it is not inappropriate to include, as the Commission did in its Local Competition Order, in such TSLRIC-based pricing a "reasonable return on investment (*i.e.*, profit), plus a reasonable share of the forward-looking joint and common costs."<sup>34</sup> It is, however, no more appropriate with respect to payphones than it was with regard to unbundled network elements to predicate prices on embedded, or worse yet opportunity, costs. As to the former, the

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<sup>31</sup> See generally Petitions of AT&T (at 11 - 12), of MCI (at 2 - 4, 11 - 12), of Sprint (at 2 - 3), and of WorldCom (at 9 - 10).

<sup>32</sup> Petition of AT&T (at 5 - 8); see also Petition of PNI (at 6- 8).

<sup>33</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 630 (released August 8, 1996), *pet. for rev. pending sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. Sept. 5, 1996) ("Local Competition Order").

<sup>34</sup> *Id.* at ¶ 673.

Commission acknowledged that "an 'embedded-cost'-based pricing methodology would be pro-competitor . . . rather than pro-competition" and as to the latter, the Commission correctly concluded that opportunity cost-based pricing would never "drive prices toward competitive levels."<sup>35</sup>

If TSLRIC-based pricing fairly compensates incumbent local exchange carriers ("ILECs") for interconnection to, or for use on an unbundled basis of, their networks and appropriately balances the interests of incumbents, competitors and consumers in the monopoly local exchange market, TRA is hard pressed to understand why TSLRIC-based pricing would not fairly compensate PSPs and appropriately balance competing interests in the mini-monopoly payphone market.

**2. Local Coin Rates are Not an Appropriate Surrogate for Per-Call Payphone Compensation**

In its Order, the Commission concludes that "[i]f a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because the costs of originating the various types of payphone calls are similar."<sup>36</sup> TRA submits that the record in this proceeding demonstrates otherwise. Indeed, the record clearly shows that use of local coin rates as a pricing surrogate will grossly inflate payphone use fees for toll free and access code calls.

First, as Sprint points out, revenues currently generated by local coin calls and "0+" commissions already produce between two to three times the annual costs of providing a

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<sup>35</sup> Id. at ¶¶ 704 - 11.

<sup>36</sup> Id. at ¶ 70.

payphone.<sup>37</sup> Second, as numerous Petitioners demonstrate, local coin rates are not appropriate surrogates for the Commission per-call compensation mechanism because they are designed to recover costs simply not incurred in originating toll free and access code calls.<sup>38</sup> Thus, the local coin rate must compensate the PSP not only for use of its telephone equipment, but for transporting the call through the local calling area to the end office terminating the call. In sharp contrast, it is the IXC that bears the cost of transporting a payphone-originated toll free or access code call from the payphone location to its ultimate destination, including the costs of local transport and long distance transmission. In other words, in paying a toll free or access code payphone usage fee, an IXC is paying only for use of the telephone, not for call completion. Third, again as demonstrated by multiple Petitioners, the costs associated with providing coin service differ markedly from the costs associated with providing coinless service.<sup>39</sup> Thus, the local coin rate must recover the substantial labor-intensive costs associated with coin collection and counting, as well as other unique costs associated with coin rating and coin fraud. In short, local coin rate-based payphone usage fees for originating toll free or access code calls are neither cost-based nor fair; indeed, they would produce a substantial windfall for PSPs. Even the American Public Communications Council ("APCC") concedes that "the local coin rate should be higher than the rate for a non-sent paid call because of the usage and coin collection costs typically associated with local coin calling."<sup>40</sup>

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<sup>37</sup> Petition of Sprint (at 2).

<sup>38</sup> Petitions of AT&T (at 9 - 10), of MCI (at 12 - 13), of Sprint (at 3 - 4), of WorldCom (at 8 - 9), of C&W (at 5 - 6) and of PNI (at 10 -12).

<sup>39</sup> Petition of AT&T (at 9 - 10), of MCI (at 12 - 13), of Sprint (at 3 - 4), of WorldCom (at 8 - 9), of C&W (at 5 - 6) and of PNI (at 12 - 13).

<sup>40</sup> Comments of APCC filed July 1, 1996 at p. 16, n. 15.

As an arguably local coin-based rate, the interim 35¢ default payphone usage fee suffers from the deficiencies identified above and more. The 35¢ default payphone use fee reflects "the local coin rate in four of the five states that have deregulated their local calling rates."<sup>41</sup> Not only is this a strikingly small sample, but again as emphasized by a number of Petitioners,<sup>42</sup> the states involved -- *i.e.*, Iowa, Nebraska, North Dakota and Wyoming -- are hardly representative of the demographics of the country as a whole. Indeed, it is quite likely that payphone concentration in these rural states is lower than the national average and that as a result local coin rates are inflated. Even the RBOC Payphone Coalition ("RBOCs") concedes that the 35¢ default payphone use fee overstates the cost of providing payphone service, noting that the cost of originating payphone calls ranges between 25¢ and 32¢ per call.<sup>43</sup>

In short, the 35¢ default payphone use fee is inflated and this inflation will likely grow as toll free and access code payphone use fees float with market-driven local coin rates.<sup>44</sup> TRA, accordingly, urges the Commission to prescribe a fixed fee which reflects the costs associated with providing non-sent paid, rather than local coin, calls. Absent such a cost-based fixed fee, IXCs will be denied the opportunity to make informed judgments regarding acceptance

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<sup>41</sup> Order, FCC 96-388 at ¶ 72.

<sup>42</sup> Petition of AT&T (at 10 - 11), of MCI (at 15), and of WorldCom (at 10).

<sup>43</sup> Comments of RBOCs filed July 1, 1996 at p. 15, n. 15.

<sup>44</sup> The alternative to market-driven local coin rate-based fees or the default 35¢ charge recognized by the Order -- *i.e.*, payphone usage fees negotiated between an IXC and the PSPs -- is not a viable alternative for most of TRA's resale carrier members. Simply put, these entities are not large enough to allocate the resources to such individual negotiations. *See generally* C&W Petition at 9 -10.

of calls from individual payphones because they will have no way of knowing what fees they will be incurring in so doing.<sup>45</sup>

### III.

### CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to reconsider its Report and Order in this proceeding to the extent, but only to the extent, recommended in these comments.

Respectfully submitted,

**TELECOMMUNICATIONS  
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<sup>45</sup> See generally Petitions of Sprint (at 10 - 13), and of C&W (at 8 - 9).

**CERTIFICATE OF SERVICE**

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