

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matters of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
	)	CC Docket No. 99-273
	)	FCC 99-227
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	

**COMMENTS OF  
THE NATIONAL RURAL TELECOM ASSOCIATION  
AND  
THE ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES  
SUPPORTING  
THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION'S  
PETITION FOR RECONSIDERATION**

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January 11, 2000

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**COMMENTS OF  
NRTA and OPASTCO  
SUPPORTING  
NTCA'S PETITION FOR RECONSIDERATION**

1. INTRODUCTION

The National Rural Telecom Association (NRTA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submit these comments in support of the National Telephone Cooperative Association's (NTCA's) Petition for Reconsideration<sup>1</sup> concerning the FCC's "presumptively reasonable" rates for carriers' subscriber list information established in the Third Report and Order in CC Docket No. 96-115.<sup>2</sup> NRTA is

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<sup>1</sup>National Telephone Cooperative Association, Petition for Reconsideration, CC Docket No. 96-115, CC Docket No. 99-273, FCC 99-227 (filed Nov. 4, 1999) (NTCA Petition).

<sup>2</sup>*In the Matters of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98,

an association of incumbent local exchange carriers (ILECs) that obtain financing under Rural Utilities Service and Rural Telephone Bank programs. OPASTCO is a national trade association of over 500 independently owned and operated ILECs serving rural areas of the United States. As is the case with NTCA members, NRTA and OPASTCO members are “rural telephone companies” under the Communications Act.<sup>3</sup> NRTA and OPASTCO strongly support NTCA’s Petition for Reconsideration, which seeks to establish \$.42 per listing as the presumptively reasonable rate for rural telephone companies’ base file and updated subscriber list information.

## II. COMMENTS

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Second Order on Reconsideration of the Second Report and Order, *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, Notice of Proposed Rulemaking, FCC 99-227 (rel. Sept. 9, 1999). (Third Report and Order).

<sup>3</sup>NTCA Petition, n. 1. *See also* 47 U.S.C. §153(37).

The Third Report and Order provides no factual basis, logical foundation or public policy justification for the Commission's presumption that the \$.04 and \$.06 per listing rates that it promulgated for base file and updated subscriber list information, respectively, are reasonable for rural ILECs. The rates the Commission has established as presumptively reasonable for all ILECs were based solely on cost data from five Regional Bell Operating Companies (RBOCs).<sup>4</sup> Despite the existence of more than 1,000 small and rural ILECs<sup>5</sup> with operating and cost characteristics that are drastically different from large carriers, the FCC inexplicably concluded that its RBOC-based rates should allow "most carriers" to recover their incremental costs and provide a reasonable contribution to common costs and overhead.<sup>6</sup> It even went so far as to declare that instances in which those rates do not adequately compensate carriers would be "relatively rare."<sup>7</sup> NTCA, however, convincingly demonstrates in its petition through a survey of its members that the \$.04 and \$.06 rates would not even recover the incremental costs of providing subscriber list information for most rural ILECs.

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<sup>4</sup>Third Report and Order, para. 93.

<sup>5</sup>The FCC's *Carrier Locator* report states that there are 1,410 ILECs. *Carrier Locator: Interstate Service Providers*, Fig. 1 (Jan. 1999). Only five of these companies are RBOCs.

<sup>6</sup>Third Report and Order, paras. 94, 99.

<sup>7</sup>*Id.*, para. 102.

The Commission expressed concern that the rates it established may not adequately compensate some small and high cost carriers and acknowledged that higher rates in these instances would be appropriate.<sup>8</sup> But, in order for a carrier to charge a higher rate, the Commission requires that the carrier provide a detailed cost study justifying the rate in the event that it is challenged by a directory publisher.<sup>9</sup> This burden of proof only serves to place the greatest onus on the companies to which the Commission's rates are most clearly inapplicable.<sup>10</sup> The burden is not hypothetical: Indeed, NTCA points out that directory publishers are demanding retroactive refunds from rural carriers for rates above \$.04 per listing dating back to February 8, 1996.<sup>11</sup>

As NTCA astutely points out, the total cost to a small and rural telephone company for defending its subscriber list rates -- which includes the expense of having a cost study prepared, as well as attorney fees -- would, in most cases, exceed the annual revenues received from providing subscriber list information to directory publishers.<sup>12</sup> A small ILEC which must charge a higher rate in order to recover its costs is therefore faced with a Catch-22 situation: Either it prepares a cost study at an expense that consumes the revenues it is seeking to obtain with the reasonable rates it is forced to defend through the arbitrary presumption; or, it charges the Commission's

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<sup>8</sup>*Id.*, paras. 102, 105.

<sup>9</sup>*Id.*, para. 106.

<sup>10</sup>Even the Association of Directory Publishers, who championed the \$.04 and \$.06 rates, stopped short of suggesting that those rates be applied to rural telephone companies. *Id.*, n. 169.

<sup>11</sup>NTCA Petition, pp. 3, 4.

<sup>12</sup>*Id.*, pp. 5-6.

lower rate at an on-going loss. Thus, it is not at all surprising that directory publishers have already begun sending threatening letters to rural ILECs demanding that they lower their subscriber list rates, as the attachments to NTCA's petition illustrate. Considering that the FCC set presumptively reasonable rates, in part, to reduce the regulatory costs to carriers and directory publishers,<sup>13</sup> this can hardly be the outcome that the Commission desires.

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<sup>13</sup>Third Report and Order, para. 104.

Therefore, in order to remedy this wholly unjustified and presumably unintended situation that rural telephone companies face, the Commission should adopt NTCA's recommendation of \$.42 per listing as the presumptively reasonable rate for both base file and updated subscriber list information for rural telephone companies, as defined in the Communications Act.<sup>14</sup> NTCA's recommendation is entirely reasonable, in that it represents the average market-value based rate of 107 small ILECs, which NTCA concludes would take into account both incremental costs and a reasonable allocation for common costs and overhead.<sup>15</sup> The \$.42 average rate would, therefore, not completely eliminate the need for some rural carriers to submit cost data justifying their rates. However, it would far more accurately account for the higher costs that rural telephone companies typically face than do the rates based solely on RBOC cost data that the Commission adopted. Above all, a \$.42 rate would allow a greater number of rural telephone companies to recover their incremental costs of providing subscriber list information, plus a reasonable allocation of common costs and overheads, without the burden and expense of producing a cost study or litigating about their costs. It would also reduce regulatory costs and help to restore the cooperative environment that used to exist between rural ILECs and virtually all directory publishers.

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<sup>14</sup>47 U.S.C. §153(37).

<sup>15</sup>NTCA Petition, pp. 3-4, 7-8.

### III. CONCLUSION

For the reasons stated above, NRTA and OPASTCO support NTCA's Petition for Reconsideration and urge the Commission promptly to adopt \$.42 per listing as the presumptively reasonable rate for base file and updated subscriber list information for rural telephone companies.

Respectfully submitted,

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January 11, 2000

## **CERTIFICATE OF SERVICE**

I, Tiffani N. Belk, hereby certify that on this, the 11<sup>th</sup> day of January, 2000, a copy of NRTA and OPASTCO's comments was sent by United States mail, first class, postage prepaid, to those listed on the attached sheet.

Tiffani N. Belk

**SERVICE LIST**  
**CC Docket Nos. 96-115 and 99-273**

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