

## **NEW PAYPHONE REGULATORY REGIME IS NIGHTMARE FOR 800 RESELLERS**

New York, NY February 13 2004 (ICB TOLL FREE NEWS) by *Mitchell Knisbacher, President, 1-800 AFTA*  
Late last year, the FCC released an order relating to Payphone Compensation, which totally changes the obligations of Switched-Based Resellers ("SBRs"). Today, SBRs are permitted to pay surcharges through their interexchange carriers, and virtually all take that route to avoid having to deal with thousands of individual Payphone Service Providers ("PSPs") directly. The new order, however, requires SBRs, no matter how small, or how little traffic they carry from any given PSP, to either pay the PSPs directly on a quarterly basis, or negotiate agreements with each of them if they wish to continue paying through their IXCs. Because of the large number of PSPs (according to the FCC, 758 have registered with it; the Payphone industry association says there are more than 2,000; and, AT&T, which probably has the most accurate information, cites the number as 5,500), the costs of compliance with the order would be astronomical.

The Order also imposes on resellers (each and every one of us) extremely burdensome administrative requirements, including annual independent third party (CPA) audits, and onerous penalties for non-compliance. The "base penalty" for failure to file the required forms or information" is \$3,000, but the FCC noted that it can impose penalties up to \$120,000 for a single non-payment, and \$1.2 million for continuing violations. To put the penalties in perspective, every SBR is required to file reports with every PSP from which it receives as little as one call, and issue payments quarterly, no matter how small the amount due. Since many of the thousands of PSPs own only a small number of payphones, a smaller reseller could easily be required to file thousands of reports and issues thousands of payments each years for amounts under \$10, and more likely under \$1. Haven't heard enough yet? Each of these thousands of reports requires a sworn statement from your CFO. Unfortunately, pinching yourself will not work. This is soon to become the law of the land; it's not just a nightmare.

The new regime is expected to take effect on either April 1 or July 1 of this year, depending on the date on which OMB issues its expected approval.

Fortunately for the resale industry, the Commission imposed similarly onerous new requirements on the interexchange carriers that resellers use to carry their traffic (AT&T, MCI, Sprint, and others), which has motivated AT&T and the RBOCs, to request reconsideration. The relief they have requested would enormously reduce the burden imposed on SBR's. A few quotes from the joint RBOC coalition illustrate the severity of the problem facing our industry: "The Reseller Order is a textbook example of how not to regulate;" "the Commission's heavy-handed regulatory regime will inflict substantial dead-weight" losses on the industry," "the Commission's approach ... abandons market mechanisms in favor of heavy-handed, top down, regulation," and "Compliance costs for SBRs ... will run into millions of dollars." One of Washington's leading telecom attorneys commented that "in over twenty-five years of practice before the FCC, I have never seen the Commission issue an Order which is so absurd and the consequences of which so severe for the industry."

It is vitally important that the voice of the resale industry be heard in support of the RBOC and AT&T petitions, lest the Commission interpret the SBRs' silence as support for its Order. 1-800 American Free Trade Association ("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. 1-800-AFTA is preparing comments in support of the petitions for reconsideration, to be filed at the FCC on Friday, February 20, 2004.

We urge you to add the name of your company to our effort to prevent what is truly an impending nightmare scenario. There is no cost to joining this effort, only a few minutes of time are required. Links to the order, the AT&T and RBOC petitions, and more information on the filing which is being prepared can be found on the 1-800 AFTA web site, <http://www.1800afta.org>. We implore you to take a few minutes to help us join with the rest of the industry to protect our collective interest in stopping the new regime from taking effect.