

be allowed to purchase updated subscriber list information and modify their previously purchased lists based upon the updates, e.g., add the new listings and change of addresses and delete the canceled listings. There is no reason for independent directory publishers to be required to repurchase essentially the same listings every year.

**F. Subscriber List Information Must Be Provided On A Timely Basis And Be Up-To-Date.**

The NPRM seeks comment on what regulations are necessary to fulfill the statutory mandate that subscriber list information be provided on a "timely" basis at "nondiscriminatory rates, terms, and conditions."<sup>55</sup> ADP believes that LECs must be required to respond to publisher's order for subscriber list information within 5 days and fill the order in no more than 20 days. Aside from being timely provided, the subscriber list information must also be up-to-date. As discussed, fresh listings are critical to a directory's success.<sup>56</sup>

**V. LECs MAY REQUIRE A "REASONABLE CERTIFICATION" THAT SUBSCRIBER LIST INFORMATION IS SOUGHT FOR DIRECTORY USE.**

The NPRM seeks comment on "how and to what extent a telecommunications carrier . . . may seek authorization" that "a

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<sup>55</sup> NPRM at ¶ 45.

<sup>56</sup> ADP recognizes that a few small LECs may not update their directory with new connects/disconnects until publication. For such LECs, up-to-date information should include the most recent directory along with a list of new connects and disconnects.

person seeking subscriber list information is doing so for the specified purpose of 'publishing directories in any format.'<sup>57</sup> As set forth below, ADP does not oppose permitting telecommunications carriers to seek reasonable certification concerning the use of subscriber list information provided that certain conditions are imposed.<sup>58</sup>

As an initial matter, ADP believes that certifications should be filed only with requesting telecommunications carriers. There is no need for the certification to be filed with the Commission because the filing of information with the agency does "not provide any added assurance of compliance" and "would place a larger burden on both industry and FCC staff . . . without a significantly increased benefit to the public."<sup>59</sup> More importantly, the Commission must prescribe the exact language of

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<sup>57</sup> NPRM at ¶ 46.

<sup>58</sup> The Commission has required certification in analogous circumstances. For example, prior to the 1996 Act, the Commission required that a telephone company seeking approval to construct and operate a stand-alone cable system provide certifications that (1) it would use its lines as a stand alone system and not for common carrier service, (2) it will comply with various other Commission rules, and (3) it is franchised to provide cable service. See Rule 63.16, 47 C.F.R. § 63.16. See also 47 C.F.R. § 63.09(a) (requiring certifications for telephone companies seeking to provide video programming to rural areas)

<sup>59</sup> See Deregulation of Equipment Authorization Requirements, FCC 96-208 at ¶¶ 19-21, ET Docket No. 95-19, *Report and Order*, (rel. May 14, 1996) ("Equipment Deregulation Order") (allowing computer manufacturers to furnish declaration of conformity with FCC rules with their products instead of the more burdensome method of providing certifications to the Commission)

the certification as standardization will promote efficiencies and preclude individual carriers from mandating the types of anticompetitive requirements historically imposed by LECs when licensing subscriber list information ADP therefore proposes the following language:

[Company] understands that it is being furnished subscriber list information pursuant to the Telecommunications Act of 1996 and that both the Act and the Federal Communications Commission's Rules restrict the use of such information to publishing a directory in any format

As this language is modeled on similar certifications employed by the Commission,<sup>60</sup> it should serve as an effective safeguard for telecommunications carriers.<sup>61</sup> Finally, and most critically, telecommunications carriers must be prohibited from withholding subscriber list information in the event that they believe a certification to be untrue. The use or misuse of subscriber list information is an issue for the Commission to decide in the first instance, not telecommunications carriers. Thus, if a carrier believes that its subscriber list information has been misused,<sup>62</sup>

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<sup>60</sup> See, e.g., Section III of FCC Form 301, Application for Construction Permit for Commercial Broadcast Station (allowing applicant to certify that it has sufficient assets to construct and operate requested facilities).

<sup>61</sup> See Equipment Deregulation Order at ¶ 19 (expressing Commission's belief that a simple document of compliance with FCC rules will not result in "non-compliance" with those rules).

<sup>62</sup> It would be extremely difficult to demonstrate that a certification was false prior to the purchaser using the listings in an unlawful manner. For that reason, ADP believes misuse is best demonstrated after the fact.

it should be required to file a complaint with the Commission which, assuming it agrees with the carrier, has the authority to subject the offending party to the full panoply of sanctions including the loss of the right to purchase subscriber list information.

**VI. CONCLUSION**

For the foregoing reasons, the Association of Directory Publishers urges the Commission to specify rules concerning the provision of subscriber list information.

Respectfully submitted,

THE ASSOCIATION OF  
DIRECTORY PUBLISHERS

By:

  
Theodore Case Whitehouse  
Michael F. Finn

WILLKIE FARR & GALLAGHER  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20036-3384

Its Attorneys

11 June 1996

EXHIBIT LIST

- Exhibit 1 Affidavit of A.C. Parsons, then-President and CEO of Southwestern Bell Yellow Pages (Dec. 18, 1987)
- Exhibit 2 Affidavit of T.H. Avery, then-Vice President and General Manager of Southwestern Bell Media, Inc. (June 16, 1986)
- Exhibit 3 Motion of US West For Permission To File Brief Amicus Curiae in BellSouth Advertising & Pub. v. Donnelley Information Pub. (March 2, 1987)
- Exhibit 4 Letter from Paul Grauer, President of Wilson Telephone Co. & Ridenour and Knobbe (March 5, 1986)
- Exhibit 5 Southwestern Bell White Pages Plans
- Exhibit 6 Floor Statement of Representative Bill Paxon (Feb. 6, 1996)
- Exhibit 7 Letter from David C. Henny, President and General Manager, Whidbey Telephone Co., to Mac MacGregor, Publisher, MacGregor Publishing Co. (April 3, 1996)
- Exhibit 8 Letter from R.L. Roberts, Manager, GTE National Directory Center, to Dolores E. Wagner, White Directory Publishers, Inc. (March 29, 1996)
- Exhibit 9 Letter from Elizabeth A. Denning, Esq., Sprint Mid Atlantic Telecom, to Rex D. Peters, President, Beach Book (March 22, 1996)
- Exhibit 10 Floor Statement of Representative Joe Barton (Feb. 1, 1996)



DEPOSITION EXHIBIT #1 9-6-89, 82 Parsons

AFFIDAVIT

STATE OF MISSOURI )
COUNTY OF ST. LOUIS )

BEFORE ME, the undersigned authority, on this day personally appeared A. C. Parsons, who being by me first duly sworn, states on his oath as follows:

- 1. I am currently the President and CEO of Southwestern Bell Yellow Pages, Inc., which is the sales agent for and provides sales, graphics and pagination services to Southwestern Bell Media, Inc., both of said companies being a subsidiary of Southwestern Bell Publications, Inc., for which I have served in various official capacities.
2. I have been involved in the business of publishing yellow page directories since 1976 when I was appointed Assistant Vice President-Directory of Southwestern Bell Telephone Company ("SWBT"). In that position I was responsible for all aspects of SWBT's directory operation from sales to publishing and delivery of its 564 directories.
3. In April of 1982, I was elected Vice President-Directory Southwestern Region of SWBT. This position was for one of the anticipated seven regions to be formed at divestiture. My responsibility encompassed all directory operations of SWBT.
4. As a result of the divestiture of the Bell Operating Companies from AT&T, I was elected to the Board and as President and CEO of Southwestern Bell Publications with responsibility for all of its directory operations. Those operations include the publication of over 600 directories in the five-state region (encompassing Texas, Oklahoma, Arkansas, Kansas and Missouri) where SWBT provides local exchange service, competitive (overlay) classified directories in Chicago, Baltimore, Washington, D.C., New York City, and Pinellas County, Florida, and Silver Pages directories in over 90 markets across the United States. In addition, Southwestern Bell Publications owns Mast Advertising & Publishing which is the sales agent for independent telephone companies in over 40 states, and Blake Publishing which sells and publishes specialty directories in over 20 states..
5. I am the immediate past president of the National Yellow Pages Service Association (NYPSA) and a current member of its Board of Directors. NYPSA is an association to which nearly every yellow page publisher in the United States is a member. Its membership is currently at 203 out of an estimated total of some 210 to 215 publishers. I am also presently a member of the Board and Treasurer of the American Association of Yellow Pages

Small stamp or signature area at the bottom right corner.

Publishers. As a result of my work experience and work in these associations, I am thoroughly familiar with all facets of the business of publishing alphabetical (white page) and classified (yellow page) directories.

6. Southwestern Bell Media, a wholly owned subsidiary of Southwestern Bell Publications, publishes directories in portions of various states, including Texas and Oklahoma.

7. Based on my experience and knowledge from research in the area, it is my opinion that the value of a classified advertising directory to advertisers depends upon consumer usage. Usage, in turn, depends upon the accuracy, completeness and timeliness of the information contained in all sections of the directory. Because of the production time needed between the sales close and delivery, no directory can be 100% current when delivered to the user but the extent to which this can be approximated is important.

8. For a directory to be most useful, advertisers must be satisfied the directory contains the most current available alphabetical and classified listings, including all businesses and shopping areas in the community served by the directory. This includes businesses not purchasing advertising. They must also know that the directory will be delivered to all users, including newly connected customers. A complete and up-to-date alphabetical or white page section of a directory is a valuable supporting part of the complete book for the users. For the publisher the updated information provides sales leads and an opportunity for new businesses to get their names before the public.

9. Local telephone companies in the regular course of business generate a uniquely complete and current body of listing information, including name, address and telephone number of every business and residence telephone customer. This information can be obtained from no other practical source in a timely manner to the best of my knowledge.

10. Due to the constant turnover in businesses in any community, the information in any directory becomes increasingly inaccurate with the passage of time. This is why directories are typically published on an annual basis. Thus, a directory alphabetical listing data base derived from keying a previously published telephone directory cannot be nearly as accurate or complete as one that is continually updated from telephone company service order information. General Telephone of the Southwest is already taking advantage of this fact in its advertising, asserting that other directory publishers have incomplete products, a result which has been caused by their change in licensing policy.

11. Based upon my business experience and other information, I know that local telephone companies make the

listing information referred to in Paragraph 9 above available to the directory publisher contracting with or affiliated with the telephone company. This listing information may be made available by hard copy, computer printout or in machine readable form.

12. Southwestern Bell Publications and its affiliates publish directories in 46 of the 50 United States. In most cases, we are able to purchase the listing information, including local updates, from the local telephone company. It is my information and belief that our own affiliate, Southwestern Bell Telephone Company, sells its listing information to Southwestern Bell Media and to competing directory companies, including General Telephone, on equal or identical terms.

13. In my opinion, it is not possible for a directory publisher to truly compete with a telephone company affiliated directory publisher without access on basically equal terms to customer listing information. The listing information is an essential facility needed by competing directory publishers in order to produce a current and accurate directory and to develop sales leads for advertisements in its directory. In addition, the listing information is needed to be able to deliver directories to newly connected users on a timely basis (and within the same time frame as delivery by the telephone company affiliated publisher). Without sharing this updated information with competing directory publishers the telephone companies are able to leverage their monopoly position in the telephone service area into the competitive directory market.

14. It is common knowledge in our business that a directory publisher, intending to compose, print and distribute a classified directory in a market area dominated by a telephone company or its licensed publisher, will refer to that dominant telephone company as the primary source of name, address and telephone number information.

15. Prior to January 1, 1984 SWBT, and since that time Southwestern Bell Media, has been able to purchase from GTS updated listing information necessary to produce complete and accurate directories which are competitive products. Recently, GTS has notified Southwestern Bell Media that upon expiration of existing License Agreements, it will refuse to continue providing updated information. GTS claims the current License Agreements (Exhibit "A" to the Complaint) will terminate in December, 1987, for some major markets and in early 1988 for others. The License Agreements with which GTS proposes to replace the existing contracts offer to sell only the "book on the street" most recently published by GTS without updates. In addition, GTS seeks to impose on Southwestern Bell Media an obligation to print on the cover of each Southwestern Bell Media book utilizing GTS' listings the following disclaimer: "This directory and its publishers are not associated with GTE or General Telephone Company of the Southwest."

15. The disclaimer mentioned above has not been, is not and will not be required on Southwestern Bell Media directories for customers to be able to properly identify who published the directory. Media is proud of its products and has no need or intent to palm off its products as those of GTE. In point of fact, it relies upon its name and its product distinctions as its competitive strategy. For example, the proposed GTS license agreement would require Media to include the disclaimer on the cover of its Fort Worth directory merely because a handful of GTS listings such as the Azle, Texas community appear in this directory. It would surely not be in Media's interest to try and confuse the citizens of Fort Worth as to Media's status as publisher of this directory and no attempt has been, or will be, made to do so. To include this disclaimer on the cover of Media's directory would only create confusion where none otherwise exists.

17. Southwestern Bell Media has contacted GTS to obtain information to be included in an expanded ("rescoped") version of Southwestern Bell Media's Richardson, Texas Yellow Pages and the white page portion of its Muskogee, Oklahoma directory. In each instance Media sought to obtain the existing GTS data base plus a continuous update of that data base through updated listing information. However, despite repeated requests, GTS has refused to provide the updated information for the Muskogee and Richardson directories. In each case, GTS has attempted to require Southwestern Bell Media to execute a License Agreement identical to Exhibit "C" to the Complaint.

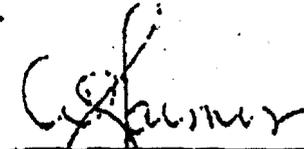
18. Refusal to provide updated information, refusal to continue providing updated information and requiring a front cover disclaimer each constitutes a major change in marketing practices for no purpose other than to give GTE-affiliated yellow page publishers an unfair competitive advantage.

19. Unless a publisher has immediate access to the updated information described above, that publisher cannot compete in the market with a publisher which does have immediate access. In order to have a competitive market, the updated information must be available to each publisher on the same terms and conditions. To require a competing publisher to print a disclaimer (Exhibit "C" to the Complaint) and to refuse a publisher access to updated information prevents that publisher from fairly competing with a publisher not under those restrictions.

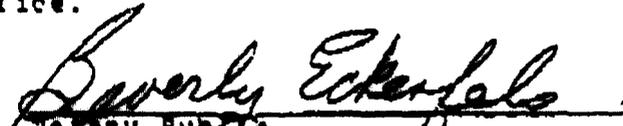
20. With regard to the Boynton, Checota, Haskell, Porter and Wagoner, Oklahoma and Plano and Garland, Texas markets referred to in Paragraph 102 of the Complaint, Southwestern Bell Media is soliciting sales in the Texas markets at the present time and is preparing the directory for the Oklahoma markets, and fully intends to compete in those markets. Southwestern Bell has the resources necessary to enter and remain in those markets if it can do so on a competitive basis.

21. I have read the above and foregoing complaint and that the factual allegations contained in paragraphs 5, 6, 7, 22-37 inclusive, the first two sentences of paragraph 55, paragraphs 55-63, 65, 67-68, 71-74, 76, 79, 89, the second sentence of paragraph 97, 101-109 inclusive, the first sentence of paragraph 110, paragraph 113, the second sentence of paragraph 115, 116-118 are of my own personal knowledge true and correct. I further aver that the factual allegations contained in the remaining paragraphs are, to the best of my knowledge and belief and based on my knowledge and experience in the directory publishing business, true and correct.

Further Affiant sayeth not.

  
A. C. Parsons

SUBSCRIBED AND SWORN TO BEFORE ME by the said A. C. Parsons on this the 18<sup>th</sup> day of December, 1987, to certify which witness my hand and seal of office.

  
Beverly Eckersels  
Notary Public

My commission expires:

August 13, 1990



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

BELLSOUTH ADVERTISING &  
PUBLISHING CORPORATION,

Plaintiff-Counterdefendant,

v.

DONNELLEY INFORMATION  
PUBLISHING, INC.,

Defendant-Counterclaimant,

v.

BELLSOUTH CORPORATION and  
SOUTHERN BELL TELEPHONE AND  
TELEGRAPH COMPANY,

Additional Counterdefendants.

85-3233-CIV-SCOTT

AFFIDAVIT OF  
T. H. AVERY

FILED BY  
JUN 17 PM 5:01  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI

STATE OF MISSOURI )  
                          ) SS  
COUNTY OF ST. LOUIS )

Affidavit

T. H. Avery, being duly sworn, states upon his oath as follows:

1. I am Vice President and General Manager of Southwestern Bell Media, Inc. (Media), 12800 Publications Road, P.O. Box 31907, St. Louis, Missouri. I have held that position since August, 1985.

2. I am now, and have been since 1970, employed in the classified advertising business, primarily the Yellow Pages, beginning as a sales representative for Southwestern Bell Telephone Company. I held various other positions in the directory business, including sales, promotions and marketing.

*[Handwritten signature]*  
195

as well as strategic planning assignments. On January 1, 1984, Media was incorporated to act as publisher for all Southwestern Bell classified directories. Since January 1, 1984 and prior to beginning my present position, I was Assistant Vice-President for Strategic Planning for Southwestern Bell Publications.

3. Media publishes directories in various states within the telephone service areas of Southern Bell and South Central Bell, including Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

4. Based on my experience and knowledge from research in the area, it is my opinion that the value of a classified advertising directory to advertisers depends upon consumer usage. Usage, in turn, depends upon the accuracy, completeness and timeliness of the information contained in the directory. Because of the production time needed between sales close and distribution, no directory can be 100% current when delivered to the user, but the extent to which this can be approximated is important.

5. For a directory to be most useful, advertisers must be satisfied the directory contains the most current available listings of all businesses in the community served by the directory, including businesses not purchasing advertising, and that the directory will be delivered to all users, including newly connected customers. Local telephone companies in the regular course of business generate a uniquely complete and current body of listing information, including the name,

address and telephone number of every business and residence telephone customer. This information can be obtained from no other practical source in a timely manner to the best of my knowledge.

6. Due to the constant turnover in businesses in any community, the information in any directory becomes increasingly inaccurate with the passage of time. That is why directories are typically published on an annual basis. Thus, a directory alphabetical listing data base derived from keying a previously published telephone directory cannot be nearly as accurate or complete as one that is continually updated from telephone company service order information. Consequently, in the absence of access to the service order information equal to that available to the telephone company's publisher, an independent directory will inevitably be less accurate and complete than the telephone company directory, assuming they are published on the same date. This point is illustrated in the Bell South advertisement attached as Exhibit 1.

7. Based upon my experience, and from sources I believe to be reliable, the local telephone companies make the listing information referred to in Paragraph 5 available to the directory publisher contracting with or affiliated with the telephone company. This listing information may be made available by hard copy, computer printout or in machine readable form.

8. Media and its affiliates publish directories in 46 of the 50 United States. In most cases, we are able to purchase

the listing information, including local updates, from the local telephone company. It is my information and belief that our own affiliate, Southwestern Bell Telephone Company, sells its listing information to Media and to competing directory companies on equal or identical terms. Our last information from BellSouth - in April, 1985, - was that its telephone subsidiaries would not sell current updates to Media.

9. In my opinion, it is not possible for a directory publisher to truly compete with a telephone company affiliated directory publisher without access on basically equal terms to customer listing information. The listing information is an essential facility needed by competing directory publishers in order to produce a current and accurate directory. In addition, the listing information is needed to be able to deliver directories to newly connected users on a timely basis (and within the same time frame as delivery by the telephone company affiliated publisher).

10. While many telephone companies sell alphabetical listing information to competing directory publishers, it is not their general practice to sell or otherwise license Yellow Pages classified heading information or listings to others.

11. It is common knowledge in our business that a directory publisher, intending to compose, print, and distribute a classified directory in a market area dominated by a telephone company or its licensed publisher, will refer to that dominant directory as the primary source of name, address, and telephone number information. Commonly, the non-licensed

publisher will, for the purpose of generating so-called sales lead sheets for its own sales force, key from the dominant directory selected name, address, and number information, together with other information disclosing the classified headings and items of paid advertising of the business customers to be canvassed in that market.

12. This kind of keying operation, as I understand it, is not conducted for purposes of composing a classified directory; it is rather for the sole purpose of sales preparation - the development of promising sales leads. The keying of data to develop selected sales information is simply an extraction of certain information from a classified directory in the same manner, but in different form, that a salesman might do when he opens a Yellow Pages directory to a particular heading and makes a handwritten list of tomorrow's sales prospects. A directory is compiled, as I understand that term, when the directory publisher employs its own selection, sales, and editing processes by independent verification of only the listings it intends to publish, although the original source of the listing and heading information may have been the telephone directory - such as by calling the business listed to find out whether there is still working service for the called number, whether there has been a change of ownership, a change of address, a change of business name, or indeed, whether the business still exists.

AND FURTHER AFFIANT SAYETH NOT.

*[Handwritten signature]*  
\_\_\_\_\_

STATE OF MISSOURI     )  
                                  ) SS  
COUNTY OF ST. LOUIS    )

Subscribed and sworn to before me this 16<sup>th</sup> day of  
June, 1986.

*Pamela F. Smith*  
\_\_\_\_\_  
Notary Public

My Commission expires:

**PAMELA F SMITH**  
NOTARY PUBLIC STATE OF MISSOURI  
ST. LOUIS CITY  
MY COMMISSION EXPIRES SEPT 1 1986



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

\_\_\_\_\_)  
 BELLSOUTH ADVERTISING & )  
 PUBLISHING CORPORATION, )  
 )  
 Plaintiff- )  
 Counterdefendant, )  
 )  
 v. )  
 )  
 DONNELLEY INFORMATION )  
 PUBLISHING, INC., )  
 )  
 Defendant- )  
 Counterclaimant, )  
 )  
 v. )  
 )  
 BELLSOUTH CORPORATION and )  
 SOUTHERN BELL TELEPHONE AND )  
 TELEGRAPH COMPANY, INC., )  
 )  
 Additional )  
 Counterdefendants. )  
 \_\_\_\_\_)

CASE NO.  
85-3233-CIV-SCOTT

FILED  
 MAR 21 1987  
 U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF FLORIDA  
 MIAMI, FLORIDA

MOTION OF U S WEST, INC. AND LANDMARK  
PUBLISHING COMPANY FOR PERMISSION TO  
FILE BRIEF AMICUS CURIAE, AND  
MEMORANDUM IN SUPPORT OF SUCH MOTION

U S WEST, Inc. and LANDMARK Publishing Company hereby respectfully move this Court for permission to file the attached brief amicus curiae in support of the opposition by Donnelley Information Publishing, Inc. to the motion of Southern Bell Telephone & Telegraph Co. for summary judgment on Donnelley's antitrust counterclaims.

**OFFICE RECORD**

Received 3/2/87  
 Served \_\_\_\_\_  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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BELLSOUTH ADVERTISING &  
PUBLISHING CORPORATION,

Plaintiff-  
Counterdefendant,

v.

DONNELLEY INFORMATION  
PUBLISHING, INC.,

Defendant-  
Counterclaimant,

v.

BELLSOUTH CORPORATION and  
SOUTHERN BELL TELEPHONE AND  
TELEGRAPH COMPANY, INC.,

Additional  
Counterdefendants.

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CASE NO.  
85-3233-CIV-SCOTT

MEMORANDUM OF U S WEST, INC. AND LANDMARK  
PUBLISHING COMPANY AS AMICUS CURIAE

U S WEST, Inc. and LANDMARK Publishing Company, as friends of the Court, hereby submit this Memorandum for the Court's consideration in this action.

## INTRODUCTION

One of the issues in the above-captioned case raised in the counterclaims of defendant-counterclaimant Donnelley Information Publishing, Inc. ("Donnelley") is whether or not it is a violation of the antitrust laws for a telephone operating company (Southern Bell Telephone and Telegraph Company) and/or its parent company (BellSouth Corporation) to refuse to make available by license or otherwise listings of its subscribers to an independently owned directory publishing company ("Donnelley") operating in competition with a directory publishing subsidiary of that parent.

U S WEST, Inc., as a parent holding company (like BellSouth Corporation) owning a number of telephone companies, and LANDMARK Publishing Company, as U S WEST's publishing subsidiary (like BellSouth Advertising & Publishing Corporation ("BAPCO")), submit this Memorandum in support of Donnelley's position that such a refusal to license listings may violate the antitrust laws, because it may constitute an improper attempt to leverage the state-granted monopoly in local telephone service into the competitive directory publishing market. This Memorandum seeks, first, to place this issue into the context of the divestiture of the Bell System, which implemented a general principle that monopoly and competitive businesses should be structurally separated from one another precisely so that improper leveraging anti-competitive discrimination might be avoided; and second, to show how U S WEST (and LANDMARK), companies in all relevant ways analogous to BellSouth and BAPCO, have acted upon their strongly-held belief that the type

of leveraging addressed by the divestiture is also unacceptable in the directory publishing arena.

#### A. THE BELL SYSTEM DIVESTITURE

On January 1, 1984, the "Bell System", as it formerly had been known, ceased to exist. As a result of a judicially entered consent decree<sup>1</sup> -- the culmination of a vigorously fought antitrust suit between the U. S. Department of Justice and the American Telephone & Telegraph Company ("AT&T") -- the former Bell System "spun off" or divested itself of its Bell Telephone operating companies ("BOCs"). A new configuration of companies emerged: AT&T, which would no longer operate any monopoly exchange telephone services but would instead be entitled to participate in the competitive markets of its choosing with few exceptions; and the BOCs, who would be grouped under the ownership of seven separate regional holding companies ("RHCs") and who would be restricted to the provision of monopoly local exchange telephone service, with few exceptions. United States v. American Telephone & Telegraph, 582 F. Supp. 131 (D.D.C. 1982) ("MFJ"). One of these "RHCs" is BellSouth Corporation ("BellSouth"); another is U S WEST, Inc. ("U S WEST").

One of the central rationales behind the decision to separate structurally the competitive enterprises of the new AT&T from the monopoly enterprises of the new RHCs was that when competitive and monopoly lines of

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<sup>1</sup> This consent decree was originally agreed to by the Justice Department and AT&T in January of 1982. The federal district court in Washington D.C., after hearings and modifying the decree in some respects, entered the decree in August of 1982. This decree, as entered by the court, is commonly known as the "Modification of Final Judgment" or "MFJ."

business had previously been combined in the old Bell System, the Bell System was alleged to have taken advantage of or "leveraged" its monopoly position in certain of its lines of business to cross-subsidize its competitive ventures and to discriminate against its competitors. AT&T had monopoly control over an "essential facility" or "bottleneck" in the form of its control over the telephone network, without access to which certain competitors could not even gain the price of admission to their markets. See United States v. American Telephone & Telegraph, 524 F. Supp. 1334 (D.D.C. 1981).<sup>2</sup> The intention behind the Bell System divestiture was structurally to separate monopoly regulated businesses from competitive businesses so that the above-described leverage would not be prone to happen. Competitive businesses were to go to AT&T; monopoly businesses to the RHCs. See MFJ, supra. In the initial settlement between the Justice Department and AT&T, the two parties agreed that the publishing of yellow pages was a competitive business, and should, therefore, go to AT&T. See MFJ, supra, 552 F. Supp. at 193. Prior to approving the consent decree and entering it as a final judgment, however, the antitrust court modified it to permit the BCCs/RHCs to engage in this competitive business instead of AT&T. Id. at 193-94, 231.

As a result, both BellSouth and U S WEST, through subsidiaries, are currently engaged in the business of publishing telephone alphabetical directories ("White Pages") and classified advertising directories ("Yellow Pages") in competition with other publishers.

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<sup>2</sup> For example, the Bell System engaged in the monopoly business of providing local telephone service through the local telephone network and the competitive business of manufacturing customer premises equipment; the Justice Department claimed that AT&T, by not permitting competing equipment to interconnect with the network, had improperly leveraged its monopoly position to preclude competitors from entering the equipment market.

B. CURRENT STRUCTURE OF U S WEST AND LANDMARK:

THE COMMITMENT NOT TO LEVERAGE

U S WEST is the holding company for three BOCs, known as Mountain Bell, Pacific Northwest Bell, and Northwestern Bell. All three provide monopoly local exchange telephone service pursuant to the terms of the MFJ and state regulation. As a by-product of that local utility function, these BOCs compile and continuously update listings of their service subscribers' names, addresses and telephone numbers (hereinafter "basic listings" or "basic listing information"). This up-to-date basic listing information is easily and relatively inexpensively gathered by BOC personnel as part of their telephone service order process, and the BOCs are currently in a unique position to be able to compile such information because of their delivery of monopoly local telephone service.<sup>3</sup>

Prior to January 1, 1984, each of these three BOCs used the listings it compiled to publish its own White and Yellow Pages directories. To accomplish the publication of a directory, two separate and distinct activities must occur. First, a current list of the appropriate telephone subscribers (and their addresses and telephone numbers) must be compiled. As stated above, as a result of their provision of basic telephone service to customers in exchanges within their territories, the BOCs were and currently are in a unique position to be able to perform this basic listing function.

Affidavit

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<sup>3</sup> See Affidavit of Roy French, ¶6 (previously submitted in this action in support of the opposition of Donnelley Information Publishing, Inc. to the motion for summary judgment by Southern Bell Telephone and Telegraph Company). A copy of this Affidavit is attached hereto as Exhibit A for the Court's convenience.