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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of	)	
	)	
Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses	)))	GN Docket No. 96-113

Comments of the Yellow Pages Publishers Association

DOCKET FILE COPY ORIGINAL

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July 24, 1996

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Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses	)	GN Docket No. 96-113

To: The Commission

Comments of the Yellow Pages Publishers Association

The Yellow Pages Publishers Association ("YPPA") by its attorneys, hereby submits Comments in response to the Commission's Notice of ("NOI") in the above-captioned proceeding. YPPA is the largest trade association of Yellow Pages publishers in North America, representing nearly 200 directory publishers. Its membership, which represents 90 percent of all Yellow Pages directories published in North America, generates 98 percent of all Yellow Pages advertising revenues. Many of YPPA's members are affiliated with local telephone exchange providers. YPPA is submitting comments in this proceeding on the Commission's implementation of Section 222(e), availability of subscriber list information.

The Commission, in footnote 12 of this proceeding, notes that two Members of Congress indicated that rules for Section 222(e) could be examined in the Section 257 proceeding.[1/] The Commission, however, has already initiated a rulemaking for Section

---

[1/] YPPA notes that Congressman Paxon's statement was included in the Congressional Record -- several days after the Conference Report had passed both houses -- as an Extension of Remarks, the section of the Congressional Record where Members may place any written statement and other extraneous materials into the Record. 142 Cong. Rec. E184 (daily ed. Feb 6, 1996). Congressman Barton's statement regarding the subscriber list information appears in a different typeface than the rest of his statement. 142 Cong. Rec. H1160 (daily ed. Feb. 1, 1996). As indicated at the beginning of every House of

(continued...)

222, including the subscriber list information provision, in Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, GN Docket No. 96-115. Therefore, YPPA believes that such an examination of the subscriber list information provision under Section 257 is unnecessary and redundant, and that GN Docket No. 96-115 is the proper proceeding to examine this provision.

For the record, attached are YPPA's comments and reply comments in GN Docket No. 96-115. Should the Commission determine that this instant proceeding, and not the proceeding initiated under Section 222, is the proper place for an examination of the new subscriber list information provisions, YPPA respectfully requests that its comments and reply comments in GN Docket No. 96-115 be considered as comments filed in this proceeding.

Respectfully submitted,

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July 24, 1996

[1/](...continued)
Representatives Congressional Record section, that typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor. As such, neither statement was spoken on the House Floor, and therefore, neither statement was part of the actual debate and neither statement carries much weight in determining Congressional intent.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

STAMP AND RETURN

In the matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	GN Docket No. 96-115
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	

COMMENTS

Submitted by:

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Its Attorneys

June 11, 1996

Executive Summary of the Comments of the Yellow Pages Publishers Association

The Yellow Pages Publishers Association ("YPPA") is submitting comments in the proceeding on the Commission's implementation of Section 222(e), availability of subscriber list information. YPPA believes that detailed rules implementing Section 222(e) are not necessary. Congress made its intent clear through the statute and the accompanying report language in the Conference Report and the House Commerce Committee Report. However, in the event the Commission determines that rules are necessary, YPPA has addressed the questions raised in the Commission's Notice.

Congress intended that all publishers of directories would have access to subscriber listings from any company that provides telephone exchange service. Thus, the requirement explicitly applies to all providers of telephone exchange services. This includes incumbent local exchange carriers (LECs) and new entrants into the local telephony market.

Congress determined that the categories of information that are required to be available are: name, telephone number, address, and primary advertising classification. Primary advertising classification is the advertising classification, or yellow pages "heading," chosen by the subscriber for placement of its basic Yellow Pages listing, typically provided by local exchange companies to their business customers as part of basic service for no additional charge. YPPA agrees with the Commission's tentative conclusions that the terms "primary advertising classification" and "advertising" are used differently in the statute and that provision of subscriber list information does not fall within the definition of electronic publishing.

The Commission asked about specific terms in the act. As noted above, the Commission does not need to promulgate specific rules and regulations to implement this

provision. However, if the Commission, pursuant to paragraph 45 of the notice, determines there is a need to clarify these terms, the Commission should permit as much flexibility as possible.

The term "timely" should mean within a reasonable time. Making the listings available on an "unbundled basis" means that within reason, independent publishers can obtain the listings they desire without having to purchase unwanted services or listings. The Commission should not, however, require that a carrier re-engineer its data processing system so that it can sub-divide listings into categories that the carrier does not normally maintain.

"Reasonable rates" means that telephone companies are fairly compensated for the value of the information, including the cost of gathering and maintaining the data, while still ensuring that independent directory publishers have access to the information. "Nondiscriminatory" means that like publishers (whether or not the publisher is affiliated with a telephone company) with like requests will be sold listings on the same or similar rates, terms, and conditions. Contrary to the assertion of the Association of Directory Publishers (ADP) (in their letter to A. Richard Metzger, cited as footnote 71 of the Notice), "reasonable and nondiscriminatory rates, terms and conditions" does <u>not</u> mean incremental costs. Congress, in spite of substantial efforts by ADP, rejected the notion of incremental costs. Instead, Congress recognized that there are essentially three elements to the compensation for subscriber list information -- the pro rata cost of gathering and maintaining the information, the cost of providing the information to an independent publisher, and the value of the listings themselves. All three of these elements, not, as ADP claims, only the

incremental costs of providing the information to independent publishers, must be part of any analysis of whether the compensation is reasonable

Because freshness of the information is important to directory publishers, updates to the subscriber list information should be made available on a periodic basis. The listings should also be available by hard copy, or in electronic format, if the carrier has such a format available. A carrier may, if it so chooses, reject requests for subscriber list information if it reasonably believes the information is to be used for any purpose other than directory publishing. Finally, YPPA's view is that all requests subject to Section 222(e) should be made in writing, and followed by a written agreement between the parties.

Despite ADP's contention to the contrary there is minimal evidence of significant current problems obtaining subscriber list information. In its letter to Richard Metzger, ADP relies on out-of-date or irrelevant information, and ignores recent judicial developments.

Today, listing information is available to directory publishers on reasonable terms and conditions. The statutory language is intended to address those rare cases where a carrier charges unreasonable rates. The plain language of the statute requires "nondiscriminatory and reasonable" rates, terms and conditions. The proposal that incremental costs be the only basis for listing prices has been universally rejected - by Congress, the courts, and state commissions. The Commission should not adopt an incremental cost model, should allow carriers flexibility in negotiating rates, terms and conditions for the sale of subscriber list information, and should not try and dictate a "one-size-fits-all" solution.

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Before the
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In the matter of	)	
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To: The Commission

Comments of the Yellow Pages Publishers Association

The Yellow Pages Publishers Association ("YPPA") by its attorneys, hereby submits Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. YPPA is the largest trade association of Yellow Pages publishers in North America, representing nearly 200 directory publishers. Its membership, which represents 90 percent of all Yellow Pages directories published in North America, generates 98 percent of all Yellow Pages advertising revenues. Many of YPPA's members are affiliated with local telephone exchange providers.[1] YPPA is submitting comments in

[1] In conjunction with that affiliation, our comments embrace the accepted philosophy of many of these carriers that regulation is a poor surrogate for competition, and that unless compelling reasons exist, the dynamics of competition are best left to the marketplace. In many of the questions raised by the Commission, those compelling reasons cannot be found.

the proceeding on the Commission's implementation of Section 222(e), availability of subscriber list information.[2]

I. RULES IMPLEMENTING SECTION 222(E) ARE NOT NECESSARY

Detailed rules implementing Section 222(e) are not necessary. Congress made its intent clear through the statute and the accompanying report language in the Conference Report and the House Commerce Committee Report. Congress set guidelines necessary to ensure that independent directory publishers[3] have access to subscriber list information. The statute provides that:

> a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

Congress chose not to define many of the terms in the statute, in order to allow carriers flexibility in complying with the requirements of the statute.[4] In the event the

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[2] The Commission, in footnote 12 of its proceeding to implement Section 257 of the Communications Act (In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113), notes that two Members of Congress indicated that rules for Section 222(e) could be examined in the Section 257 proceeding. Because the Commission has chosen in the instant proceeding to initiate a rulemaking for Section 222, including the subscriber list information provision, such an examination under Section 257 is unnecessary and redundant.

[3] Independent directory publisher means a directory publisher not affiliated with that subscriber's local telephone exchange service provider.

[4] Congress did not require that the Commission initiate a rulemaking implementing this section. Indeed, the Commission's initiation of this rulemaking was, in part, a response to questions concerning compliance with subsections (a) through (d) of Section 222.

Commission determines that rules are necessary. YPPA has addressed the questions raised in the Commission's Notice.

II. ALL PROVIDERS OF EXCHANGE TELEPHONE SERVICE ARE SUBJECT TO SECTION 222(E)

Congress intended that all publishers of directories would have access to subscriber listings from any company that provides telephone exchange service. Thus, the requirement explicitly applies to all providers of telephone exchange services. This includes incumbent local exchange carriers (LECs) and new entrants into the local telephony market, whether that new entrant be a cable operator, interexchange carrier, or competitive access provider. A carrier that is a local service provider has obtained subscriber list information from each customer that it serves. It is that subscriber list data that is the subject of this provision.

III. PRIMARY ADVERTISING CLASSIFICATION

The Commission, in paragraph 44, requests comment on what types and/or categories of information must be available. In particular, the Commission asks about the definition of primary advertising classification.

Section 222(f)(3)(A) defines subscriber list information as:

> listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications.

The definition identifies the categories of information that are required to be available: name, telephone number, address, and primary advertising classification. Primary advertising classification is the advertising classification or yellow pages "heading," chosen by the subscriber for placement of its basic Yellow Pages listing, typically provided by local exchange companies to their business customers as part of basic service for no additional charge. The language makes clear that the requirement applies only to information that is gathered by the telephone company at the time of the establishment of telephone service - generally by business office employees.[5] The requirement does not apply to yellow pages heading information gathered by a yellow pages sales representative subsequent to the establishment of service, nor do they apply to additional headings that a business may request. Similarly, the requirements only apply to information gathered for publication; to protect subscriber's privacy, they do not apply to non-published and non-listed numbers that are not accepted for publication.

The Commission also asks whether the term "primary advertising classification" is used differently from the term "advertising" in Section 274(h)(2)(i). YPPA agrees with the Commission's tentative conclusions that these terms are used differently and that provision of subscriber list information does not fall within the definition of electronic publishing.[6]

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[5] The requirement only applies to the extent such information is gathered by the local exchange company subsequent to the enactment of the Act. Local exchange providers that choose not to gather advertising classification information at the time of the establishment of services are under no affirmative obligation to do so.

[6] Section 274(h)(2)(I) also specifically excludes "the provision of directory assistance that provides names, addresses, and telephone numbers and does not include advertising" from the definition of electronic publishing.

IV. TERMS OF PROVISION OF SUBSCRIBER LIST INFORMATION

As noted above, the Commission does not need to promulgate specific rules and regulations to implement this provision. However, if the Commission, pursuant to paragraph 45 of the notice, determines there is a need to clarify these terms, the Commission should permit as much flexibility as possible.

A. Timely Basis

The term "timely" should mean within a reasonable time. The value of subscriber list information depends, in part, upon how current that information is. Subscriber list information that is a year old is less valuable than information that is one day old. Thus, if a publisher requests an extract of the subscribers of a company providing local exchange service at a particular period of time, (usually immediately prior to publication), the information provided must be as current as reasonably possible. A "stale" extract of the database as it appeared some time previously would not be in compliance with the Act if a more timely one is economically and technically feasible to provide. Similarly, if a publisher requests updated information, that information must be made available on the same terms -- and at the same frequency -- as that information is made available to the carrier's own publishing operations.

The key requirement in the legislation is that access be made available on a nondiscriminatory basis. Since carriers typically provide service order type information on a

daily or weekly basis to their own directory organizations, they must make comparable access available to others.

B. Unbundled Basis

Making the listings available on an "unbundled basis" means that within reason, independent publishers can obtain the listings they desire without having to purchase unwanted services or listings. They will not be required to purchase other services in order to purchase listing information. Nor would they be required to purchase listings for unreasonably large geographic areas, or to agree to purchase listings for an extended period of time. Again, the Commission should apply a reasonable and nondiscriminatory standard.

The Commission should not, however, require that a carrier re-engineer its data processing system so that it can sub-divide listings into categories that the carrier does not normally maintain. For example, if a carrier's records do not permit listings to be broken down by zip code, then it should not be required to expend the resources to redesign or reprogram its database system to provide listings in groupings that it does not maintain.

Not all carriers have the same level of detail in their subscriber list information technology. Accordingly, the rules of reason and nondiscrimination should apply here.

C. Nondiscriminatory and Reasonable Rates, Terms and Conditions

As stated in the House Report, this section was designed to balance the needs of the independent publishers for access to subscriber data on reasonable terms and conditions, while at the same time ensuring that the telephone companies that gather and maintain such data are fairly compensated for the value of the listings.[7] "Reasonable rates" means that telephone companies are fairly compensated for the value of the information, including the cost of gathering and maintaining the data, while still ensuring that independent directory publishers have access to the information. "Nondiscriminatory" means that like publishers (whether or not the publisher is affiliated with a telephone company) with like requests will be sold listings on the same or similar rates, terms and conditions.

"Reasonable and nondiscriminatory rates, terms and conditions" does <u>not</u> mean incremental costs. Contrary to the suggestion of the Association of Directory Publishers (ADP) that Congress intended reasonable rates to mean incremental costs,[8] a simple reading of the legislative history shows that Congress, in spite of ADP's efforts, rejected the notion of incremental costs.

The subscriber list information provision was added to H.R. 1555 at the House Telecommunications and Finance Subcommittee markup. The provision was initially

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[7] H.R. Rep. No. 104-204, Part I, 104th Cong. 1st Sess. at p. 89 (1995).

[8] Letter to A. Richard Metzger, Deputy Bureau Chief, Common Carrier Bureau from the Association of Directory Publishers' lawyers, Philip L. Verveer, <u>et al.</u>, Wilkee Farr & Gallagher. This letter is cited in footnote 71 of the Notice.

included in Chairman Fields' amendment in the nature of a substitute. Later in the subcommittee consideration, Chairman Fields amended the provision to be substantively the same as the provision stands today. The House Commerce Committee report is instructive in determining Congressional intent. It reads, in part:

> This section meets the needs of independent publishers for access to subscriber data on reasonable terms and conditions, while at the same time ensuring that the telephone companies that gather and maintain such data are fairly compensated for the value of the listings.

H.R. Rep. No. 104-204, Part I, 104th Cong., 1st Sess. at p. 89 (1995) (emphasis added). There are essentially three elements to the compensation for subscriber list information, as recognized in the House report language -- the pro rata cost of gathering and maintaining the information, the cost of providing the information to an independent publisher, and the value of the listings themselves. All three of these elements, not, as ADP claims, only the incremental costs of providing the information to independent publishers, must be part of any analysis of whether the compensation is reasonable. This is the balance struck by Congress in order to permit independent publishers to have access to the listing information, while allowing the telephone company to recover the value of the listings.

The Senate bill, S. 652 contained a subscriber list information provision when the bill passed the Senate Commerce Committee. The bill was amended on the Senate floor by Chairman Pressler (amendment no. 1258) to be substantively the same as the House bill. The Senate Commerce Committee report simply states that:

> Subsection 301(c) defines the term "subscriber list information" and requires local exchange carriers to provide subscriber list information on a timely and unbundled basis and at nondiscriminatory and reasonable rates, terms and conditions to anyone upon request.

S. Rep. No. 104-23, 104th Cong., 1st Sess. at p. 49 (1995).

The Conference Committee made minor, non-substantive modifications to the provision, and included the subscriber list information provision as Section 222(e). The Conference Report states:

> New subsection 222(e) stipulates that subscriber list information shall be made available by telecommunications carriers that provide telephone exchange service on a timely and unbundled basis to any person upon request for the purpose of publishing directories in any format. The subscriber list information provision guarantees independent publishers access to subscriber list information at reasonable and nondiscriminatory rates, terms and conditions from any provider of local telephone service

H.R. Rep. 104-458, 104th Cong., 2nd Sess. at p. 205 (1996).

ADP made substantial efforts to include language in the various reports that reasonable rates meant incremental costs. In each report, Congress rejected that notion. ADP tried to have a colloquy on the Senate floor, and this effort also failed. While ADP did convince two of the thirty-four House Members of the Conference Committee (and none of the nine Senate Members of the Conference Committee) to insert written statements into the Congressional Record regarding this issue[9/], that can hardly constitute Congressional intent,

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[9/] Congressman Paxon's statement was included in the Congressional Record -- several days after the Conference Report had passed both houses -- as an Extension of Remarks, the section of the Congressional Record where Members may place any written statement and other extraneous materials into the Record. 142 Cong. Rec. E184 (daily ed. Feb 6, 1996). Congressman Barton's statement regarding the subscriber list information appears in a different typeface than the rest of his statement 142 Cong. Rec. H1160 (daily ed. Feb. 1

(continued...)

when efforts to include such language in the House Commerce Committee, Senate Commerce Committee and Conference Committee reports clearly failed. ADP is attempting to get something at the Commission that Congress refused to provide.[10]

Recently, the California Public Utility Commission (CPUC) rejected a similar effort by ADP to price directory listing data at the incremental cost of reproducing the data.[11] Indeed, the CPUC found that Pacific Bell's market price was reasonable and should be adopted. CPUC Decision at 48.

Reasonable and nondiscriminatory rates means that telephone companies are fairly compensated for the value of the information, while still ensuring that independent directory publishers have access to the information. Reasonable terms and conditions should include those terms and conditions designed to protect the value of the information.[12] Reasonable

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[9](...continued)
1996). As indicated at the beginning of every House of Representatives Congressional Record section, that typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor. Neither statement ADP relies on was spoken on the House Floor, and therefore, neither statement was part of the actual debate and neither statement carries much weight in determining Congressional intent.

[10] Congress understands the concept of incremental costs. When S. 652 passed the Senate floor, it contained a requirement that common carrier video platform services allow access to certain programmers at "no higher than incremental-cost-based rates." S. 652 (as passed by the Senate) Section 202, creating section 613(b)(4). This provision was dropped by the Conference Committee. If Congress had so desired, it would have included the concept of incremental costs in the statute or in the relevant legislative history.

[11] CPUC Decision 96-02-072. In that same decision, the CPUC concluded: "Access to the LEC's subscriber information database and provision of subscriber listings by the LEC is not an essential service." Conclusion of law 29, at p. 56

[12] In its letter, ADP attempts to convince the Commission that one cent per listing is reasonable. However, the examples cited by ADP are not relevant to determining reasonable
(continued...)

terms and conditions also means that both the party selling the listings and the party purchasing the listings will have the necessary flexibility to consider any factors unique to that particular transaction.

D. Availability of Updates

Because freshness of the information is important to directory publishers, updates to the subscriber list information should be made available on a periodic basis. Here again, the rules of nondiscrimination and reason should prevail This means that the carrier should provide updates to non-affiliated publishers on the same periodic basis as it provides updates to itself or its affiliate. The price of periodic updates may differ with the frequency, format, size, and complexity of such updates. Any rules implementing this section must be flexible in order to allow such variations.

[12/](...continued)
cost. Exhibit 16 of ADP's letter includes a 1991 draft agreement for publication of AT&T's 800 service subscribers. AT&T, however, requires that the publisher only publish AT&T's own 800 telephone numbers, and AT&T, unlike most local telephone services, is compensated for each call placed to one of its 800 service subscribers. ADP's exhibit 12 includes a 1990 Missouri cost study. This, however is a six year old study of the incremental costs for a single company's operations in one state. As noted above, incremental costs is only one of three elements used in determining reasonable costs.

E. Formats

The Commission asks for comments on the format in which the information should be available. The listings should be available by hard copy, or in electronic format, if the carrier has such a format available. The electronic format may be magnetic tapes, computer diskettes, or other electronic storage means, depending on what equipment the carrier is using. As noted above regarding unbundling of the information, the Commission should not require that the carrier perform additional engineering, programming or work, or expend additional resources to place the information in a particular electronic format.

F. For Purposes of Publishing a Directory

In paragraph 46, the Commission asks how to ensure that a person seeking subscriber list information is doing so for the purpose of publishing a directory. The statutory language is clear. A carrier may, if it so chooses, reject requests for subscriber list information if it reasonably believes the information is to be used for any purpose other than directory publishing. This can also be guaranteed within the terms of the contract for the sale of the information. Directory publishing can mean paper publishing, electronic publishing, or other publishing via other media, such as a CD-ROM telephone directory.

G. Written or Oral Requests

Finally, the Commission seeks comment on whether such requests for subscriber list information should be made in writing or whether they can be made orally. YPPA's view is that all requests subject to Section 222(e) should be made in writing, and followed by a written agreement between the parties. This ensures that the carrier and the directory publisher will be able to verify any request for subscriber list information; written requests, in most cases, will be consistent with the normal course of doing business.

V. LISTING INFORMATION IS PRESENTLY AVAILABLE ON REASONABLE TERMS AND CONDITIONS

Despite ADP's contention to the contrary (in their letter to A. Richard Metzger, cited as footnote 71 of the Notice) there is minimal evidence of significant current problems obtaining subscriber list information. Rather than discuss the current situation, ADP instead relies on out-of-date or irrelevant information. For example, ADP's exhibit 8, a list purported to represent the prices for subscriber list information, on its face is out-of-date, covering only the period from 1984 to 1991 (and, in one case, 1992). Additionally, ADP's exhibit lists a range of products that may or may not be comparable, and does not take into account any value-added components, frequency of updates, or any other distinctions among the products.

Yet the landscape has changed dramatically since 1991. In 1991, the Supreme Court of the United States ruled that white pages listings are not subject to copyright protection.[13] As a result, anyone can scan published directories, copy the factual information in that directory, and re-publish that information or resell it.[14] While not as current as subscriber list information purchased from a local exchange provider, the listings have provided an important alterative for independent publishers.

At around the same time, Great Western Directories, an independent directory publisher, sued for and obtained an antitrust verdict including an injunction concerning listing prices (the verdict itself has been twice reduced by the 5th Circuit Court of Appeals and remains on appeal today).[15] As a result, many telephone companies reviewed their listing

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[13] Feist Publishing v. Rural Telephone Service (1991) 499 U.S. 340, 133 L Ed 2d 358, 111 S Ct 1282. The court ruled that white pages listings are not subject to copyright protection because they are non-copyrightable facts and the defendant telephone company had not compiled or arranged these facts in any original way as to invoke copyright protections. The ruling in this case applied only to the white pages listings.

[14] For example, ADP cites one such company - Compact Publications, Inc., in exhibit 17. Of course, companies such as Compact Publications, Inc. do not incur any significant expense in gathering and maintaining white pages information - as they simply copy that information from white pages published by the telephone company. As such, Compact's rates for white pages listings are not relevant to the expenses carriers incur and the rates carriers may charge for white pages listings.

[15] Great Western Directories v. S.W. Bell Telephone, 1993 WL 755366, Civil Action Cause Numbers 2:88-CV-0218-J and 2:89-CV-003-J (N.D. Tex. July 2, 1993), *affirmed in part and reversed in part*, 63 F.3d 1387 (5th Cir. 1995), *petition for rehearing granted in part and denied in part*, 74 F.3d 613 (5th Cir. 1996). The Great Western case rejected an incremental cost argument. In that case, which is on appeal, the lower court issued an injunction setting a 13.5 cent charge for telephone subscriber listings. The 5th Circuit Court of Appeals has since suggested that the District Court review its injunction in the face of the invalidation and reduction of the lower court's damages findings. 74 F.3d at 615. The lower court had initially designed its injunction to "compensate Plaintiff's for their continuing

(continued...)

practices, and in many cases, made listings more readily available, and often at lower prices. And of course most recently, the Telecommunications Act of 1996 has imposed a federal standard on local exchange carriers - the prices charged must be reasonable, and must be nondiscriminatory.

The landscape has changed dramatically since 1991. While undoubtedly there are isolated instances of carriers who may not yet be in full compliance with the requirement of the Act, it would be unwarranted to assume at this time that there is a need for detailed regulation of this matter.

VI. CONCLUSION

Today, listing information is available to directory publishers on reasonable terms and conditions. The statutory language is intended to address those rare cases where a carrier charges unreasonable rates. The plain language of the statute requires "nondiscriminatory and reasonable" rates, terms and conditions. The proposal that incremental costs be the only basis for listing prices has been universally rejected - by Congress, the courts, and state commissions. The Commission should not adopt an incremental cost model, should allow carriers flexibility in negotiating rates, terms and conditions for the sale of subscriber list information, and should not try and dictate a "one-size-fits-all" solution.

[15/](...continued)
injuries subsequent to the jury trial, and to prevent future violations." See First Amended Findings of Fact and Conclusions of Law #131 (N.D. Tex., filed December 7, 1993).

Respectfully submitted,

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June 11, 1996

STAMP AND RETURN

Before the
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In the matter of	)	
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Implementation of the Telecommunications Act of 1996	)	GN Docket No. 96-115
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Reply Comments of the Yellow Pages Publishers Association

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