EX PARTE OR LATE FILED

WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

DOCKET FILE COPY ORIGINAL

RECEIVED

OCT - 2 1996

Federal Communications Commission
Office of Secretary

October 1, 1996

VIA Hand Delivery

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex Parte Meeting
CC Docket No. 96-115

Dear Mr. Caton:

Yesterday, representatives of the Association of Directory Publishers ("ADP") met with Lauren Belvin, Senior Legal Advisor to Commissioner James Quello, Regina Keeney, Chief of the Common Carrier Bureau, her legal advisor Melissa Newman, and William Kehoe to discuss issues raised in the comments and reply comments filed in the above-referenced proceeding. Representatives of ADP included William Hammack, Theodore Whitehouse and the undersigned.

During the meeting, ADP reiterated the views expressed in its comments and reply comments in the above-referenced proceeding. In addition, ADP distributed a summary of its positions and proposed rules for the implementation of Section 222(e) of the Communications Act. Copies of those documents are attached.

Sincerely,

Michael F. Finn

No. of Copies rec'd 0+2
List ABCDE

~~EX PARTE OR LATE FILED~~

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000

Telex: RCA 229800
WU 89-2762
Fax: 202 887 8979

RECEIVED

OCT - 2 1996

Federal Communications Commission
Office of Secretary

ASSOCIATION OF DIRECTORY PUBLISHERS'

PROPOSED RULES TO IMPLEMENT SECTION 222(e)

§ 64.XXX1. SUBSCRIBER LIST INFORMATION. (a) Any telecommunications carrier that provides telephone exchange service shall provide subscriber list information to directory publishers on a timely, unbundled basis and on nondiscriminatory and reasonable rates, terms, and conditions.

(b) "Subscriber list information" means any information identifying the names, addresses, telephone numbers, or primary classified advertising (line of business) classifications of a telecommunications carrier's subscribers (or any combination of such names, addresses, telephone numbers, or classifications) that such carrier has published, caused to be published, or accepted for publication in any form of telephone directory (including, but not limited to directories produced in printed, electronic, or optical form).

(c) "Timely" provision of subscriber list information means (i) the provision of up-to-date subscriber list information within not more than 20 (twenty) days of a request and (ii) the provision of updated and changed information necessary for directory publishers to maintain accurate up-to-date databases and to identify newly established businesses and residences for purposes of advertising sales and delivery of directories. Such data updates shall be made available on a regularly recurring basis (e.g., weekly, monthly).

(d) "Unbundled" provision of subscriber list information means the provision of only such information as is requested by the requesting publisher. For example (but not by way of limitation), subscriber list information should be available separately for business and residence subscribers, or sorted by reasonable geographic criteria such as prefixes or postal codes. Subscriber list information shall also be unbundled on a temporal basis such that a listing, once purchased, need not be repurchased each time a directory publisher desires to publish a directory.

(e) "Nondiscriminatory" provision of subscriber list information means the provision of such information to all publishers on rates, terms, and conditions that, in practical effect, confer no advantage on the telecommunications carrier's affiliated or sponsored directory publisher over competing or other directory publishers.

(f) "Reasonable" rates, terms, and conditions for the provision of subscriber list information means:

(i) rates that do not exceed the telecommunications carrier's incremental cost to provide the subscriber list information, including the actual cost of computer programs reasonably necessary to provide the information to the publisher, the direct costs associated with provision of the information to the publisher, and a reasonable return, and

(ii) terms and conditions that enable efficient and economical use of subscriber list information by directory publishers for production of directories.

(g) Format: Subscriber list information must be provided in a format that is convenient, usable, and reasonably feasible, both for telecommunications carriers to provide and for directory publishers to utilize. Subscriber list information should be available in both a "camera ready" format and in an electronic medium that is generally available (e.g. ASCII).

(h) Complaints regarding the provision of subscriber list information and the rates, terms, and conditions for such provision may be brought before the Commission by the filing of a complaint. The complaint must be in writing and must identify the complainant and describe with reasonable clarity the act, omission, practice, rate, term, or condition alleged to be unlawful or unreasonable. The telecommunications carrier shall have 30 days from service of the complaint in which to file a written response, which must be served on the complainant. The burden shall be on the telecommunications carrier to prove that the challenged act, omission, practice, rate, term, or condition is lawful. Within 20 days after service of a response, the complainant may file and serve a reply which shall be responsive to matters contained in the response and shall not contain new matters. Failure to reply will not be deemed an admission of any allegations contained in the response.

(i) To the extent that a state public service commission actively supervises, by rule or tariff, the provision of subscriber list information, such rules and tariffs shall be consistent with Section 222(e) of the Communications Act of 1934, *as amended*, and these rules. Complaints regarding violation of a state commission's rule, order, or tariff governing the provision of subscriber list information to directory publishers, shall be brought before the state commission with a direct appeal to the Commission.

(j) Subscriber list information pertaining to a subscriber to a telecommunications carrier's services that requests that

such subscriber list information not be published in directories published by or for the carrier need not be provided to directory publishers except that, if the telecommunications carrier uses such unlisted or unpublished name and address information, or permits the use of unpublished name and address information by an affiliate or others, for the purpose of delivering directories, such unpublished information shall be furnished on reasonable and nondiscriminatory terms and conditions to all directory publishers that request it for the sole and exclusive purpose of enabling the recipient directory publisher to cause its directories to be delivered to the subscriber.

(k) A telecommunications carrier may require a person requesting subscriber list information pursuant to this section to certify in writing that the requesting person will use the information solely in connection with publishing directories in any format (including, but not limited to, soliciting and selling advertising in such directories, compiling and publishing subscriber listings in alphabetical, classified, or other arrangements, delivering directories, and rendering bills for advertising and other related services). If a telecommunications carrier believes that the certification is erroneous or untrue, it may seek permission from the Commission (or, if the provision of the subscriber list information at issue is actively regulated by a state public service commission by rule or tariff, from that commission) to refuse future provision of such information to the requesting person. Subscriber list information shall not be withheld during the pendency of any such request for permission to refuse the provision of information.

THE ASSOCIATION OF DIRECTORY PUBLISHERS -- CC DOCKET NO. 96-115

- ADP represents over 200 independent -- i.e., competitive -- directory publishers.
    - The Yellow Pages Publishers Association ("YPPA") speaks for the telephone companies, not directory publishers.
- Congress enacted Section 222(e) in the 1996 Act to protect and foster directory competition by depriving LECs of an oft-used weapon against competition.
- Telephone subscriber list information is an essential facility, available only from the LECs, access to which is vital to directory competition.
- Clear, prescriptive rules are needed to implement Congress' mandate in Section 222(e).
    - *Ad hoc* alternatives would suppress competition.
- The Commission must prescribe what subscriber list information is to be provided and the terms under which it is to be provided.
    - Information to be provided must include, at a minimum, updated listings (new connects, disconnects, and changes of address), primary business classifications (moving & storage, physicians, etc., which were recorded by the Telco when service was established), and some means to use non-listed listings to deliver directories where the LEC or its affiliated directory publisher uses them for that purpose.
    - The Commission's rules must require unbundling of subscriber list information on a geographic, class of service, and temporal basis such that directory publishers have the right to purchase:
        - Listings only for those areas where they wish to publish a directory.
        - Only residential, only business, or all listings.
        - Updates to permit competing publishers to maintain their own databases rather than needlessly repurchasing the same set of listings each year.
- The Commission's rules must prescribe a method or basis for pricing subscriber list information provided under Section 222(e).
    - There is a long history of excessive