

WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

NOV 19 1996

November 19, 1996

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

Dear

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

Dear Mr. Caton:

On October 14, 1996, representatives of the Association of Directory Publishers ("ADP") met with William Kehoe and Dorothy Attwood of the Common Carrier Bureau to discuss issues raised in the comments and reply comments filed in the above-referenced proceeding. Representatives of ADP included Theodore Whitehouse and the undersigned.

During the meeting, ADP reiterated the views expressed in its comments and reply comments in the above-referenced proceeding. ADP also discussed the relationship between LECs and their directory publishing affiliates. More specifically, ADP discussed the following points:

1. Subscriber list information is generally compiled by LECs in their initial intake call with new telephone subscribers and then transmitted daily to the directory publishing affiliates. That point is demonstrated by the attached memorandum from Bill Hammack indicating that, during the initial intake call, BellSouth (a) solicits business headings and (b) informs subscribers of other services that may be obtained by speaking with the directory publishing affiliate, such as color or bold advertisements. ADP believes that, where such information is compiled by the LEC, it must also

Three Lafayette Centre	Telex: RCA 229800
1155 21st Street, NW	WU 89-2762
Washington, DC 20036-3384	Fax: 202 887 8979
202 328 8000	

Handwritten signature/initials

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be made available to competing directory publishers.

2. Many LECs are required -- either through state tariff or local rules of competition -- to provide subscriber list information. States with such tariffs or rules include Florida, Mississippi, Louisiana and California.

3. The market is not sufficient to constrain LECs' ability to use their market power anticompetitively to the detriment of competing (independent) directory publishers, as indicated by attached documentation showing that LECs are charging unreasonable prices for subscriber list information, refusing to provide updates, and refusing to unbundle such information geographically.

4. The statutory terms "unbundled" and "nondiscriminatory" impose separate requirements upon LECs, including the requirement that LECs unbundle subscriber list information on a geographic basis such that purchasers are allowed to obtain subscriber list information for designated areas.

5. The statutory terms "timely" and "nondiscriminatory", in addition to the House Commerce Report,¹ require LECs to make updated subscriber list information available for purchase (updates include new connects, disconnects, and changes of name, telephone number, or address).

6. The term "or" in Section 222(f)(3) should be read conjunctively (as "and") to avoid defeating the purpose of the statute or producing an unreasonable result in accordance with Bob Jones Univ. v. United States, 461 U.S. 574, 586-87 (1983) and Schuler v.

¹ Section 222(e) "is intended to ensure that [independent directory publishers] are able to purchase . . . subscriber listings and updates." See H.R. Rep. No. 104-204, Part I., 104th Cong., 1st Sess. at p.89 (1995).

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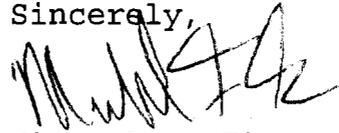
United States, 628 F.2d 199, 201 (D.C. Cir. 1980) (en banc), as otherwise the provision of only primary business classifications -- without names, addresses, or telephone numbers -- would appear to meet the statutory definition of subscriber list information; and

7. Competing directory publishers must have the ability to distribute their directories to non-published and non-listed subscribers as otherwise LECs will be discriminating in favor of their directory publishing affiliates who deliver their directories to such subscribers, using the address information provided by the unlisted subscriber.

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In addition, ADP distributed a summary of its positions in the above-referenced proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Finn", written over the word "Sincerely,".

Michael F. Finn

Enclosures

cc: Dorothy Attwood
Bill Kehoe

RECEIVED

NOV 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY



ALLTEL PUBLISHING CORPORATION
100 Executive Parkway • Hudson, Ohio 44236
(216) 650-7100

Margaret K. Murphy
Vice President - Production
(216) 650-7777

September 27, 1996

White Directory Publishers Inc.
Ms. Cheri Folckemer
1945 Sheridan Drive
Buffalo, New York 14223

Dear Ms. Folckemer:

Effective with orders placed on or after October 1, 1996, the price to license ALLTEL directory listing information will be reduced to \$.50 per listing. This revised price per listing applies to all directory listing information licensed by ALLTEL to directory publishers.

We are continuing to review our practices and further changes may be forthcoming including the provision of listing updates. We are in the process of developing the means by which to provide listing updates in an unbundled format and will keep you apprised of our progress and estimated completion date.

Sincerely,

A handwritten signature in cursive script that reads "Margaret Murphy".

Margaret Murphy
V.P. Production

MM/jkb

SunShine Pages

October 3, 1996

Linda Whitehead
GTE National Directory Center
RR 3, Box 40
Walnut Road
Warsaw, VA 22572

CERTIFIED MAIL

Dear Ms. Whitehead:

As you are aware, The SunShine Pages, Inc. recently executed an Agreement for Provision of Telephone Directory White Pages Listing Information. The purpose of this letter is to place GTE on notice that the agreement was executed under protest and signed under duress. GTE has imposed several unreasonable, non-negotiable conditions in their contract. However, we were forced to purchase these listings from you because there is no other source for this information. Subscriber list information is an essential facility to telephone directory publishing.

Specifically, GTE mandates an outrageous price for white page listings. At \$.35 per listing, GTE charges for a listing are unreasonable. As a comparison, Bell South, which serves adjacent areas with local exchange service, charges \$.04 per listing.

In addition, we object to GTE's refusal to provide updates to the information originally purchased. This refusal forces us to repurchase the entire listings for a community annually rather than allowing us to purchase only the new or altered listings each year after the initial purchase.

The SunShine Pages, Inc. strongly objects to the terms and conditions of the agreement. It is The SunShine Pages, Inc.'s position that the agreement violates the Telecommunications Act of 1996 and other federal and state laws. The SunShine Pages, Inc. intends to file complaints with the appropriate state and federal agencies regarding GTE's onerous and unreasonable conduct.

Very truly yours,



Magdalen Blessey Bickford
Vice President
Corporate Counsel

cc: Michael Finn, Esq.
Katherine King, Esq.
Florida Public Service Commission

Tel: 504.832.9835
Fax: 504.832.9931

3445 N. Causeway
4th Floor
Metairie, LA 70002

info@sunshinepages.com
http://www.sunshinepages.com

Memorandum



To: Bill Hammack, President
From: Marlene Patin, Vice President of Production
Date: September 25, 1996
Re: Inaccessibility of El Jobean Listings from
United Telephone - Florida

Attached you will find copies of my correspondence to United Telephone Company and their reply.

We need the directory listings for the city of El Jobean to complete our Stuart directory. I contacted United to get the listings, but I was informed that while I only needed two prefixes in the Port Charlotte area, we would have to purchase the listings for the entire area (12 prefixes) at \$.25 per listing. Because Port Charlotte has 28,659 listings, the total cost would be \$7,164.75. This means the cost of the El Jobean listings would ultimately be \$3.58 per listing.

Bill, I think this is cost prohibitive. What can we do?



3445 N. Causeway Blvd.
4th Floor
Metairie, LA 70002
Telephone: 504-832-9635
FAX: 504-832-8831

September 20, 1996

United Telephone Company
Attn: Terri Cason
Fax # 407-889-1595

Dear Terri:

As per our telephone conversation earlier today, the SunShine Pages are in the process of researching how we can purchase listings for the city of El Jobcan. From our conversation, it is my understanding that even though we wish only to purchase the listings for the prefixes of 625 & 627, we have to purchase all of the listings in your Port Charlotte calling area according to your policy. This area would include the listings for 12 different prefixes, all of which cost .25 cents per listing. Can you provide specific breakdowns on which cities cover which prefixes and how many listings are in each city?

As discussed earlier, I await your letter detailing the ordering procedures, all costs associated with purchasing these listings and the amount of time it will take for you to process the order. Further, I understand that we cannot purchase city name and zip codes for each listing with this order. Therefore, please explain in writing why this is not possible.

Thank you for your prompt assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Marlene M. Patin". The signature is written in a cursive style with a large, stylized initial "M".

Marlene M. Patin
Vice President of Production



Box 165000
Altamonte Springs, Florida 32716-5000

September 24, 1996

Sunshine Pges
Attn: Marlene M Patin
3445 N Causeway Blvd
Metairie, LA 70002

Dear Ms Patin:

On September 23 I faxed your office a copy of a Listing Agreement contract as you requested. El Jobean has listings in any of the 12 different exchanges within the Port Charlotte area. Some of the listing will have the community or city listed with them. As to listing zip codes it is not required in our program.

Estimates of number of listings, cost of listings, tape charges are:

Port Charlotte (including EL Jobean)	28,659
Cape Haze	8,238
Boca Grande	1,750

Listing fee is 25 cents per listing
Tape charges are \$20.00 per tape
CPU charges are estimated at \$41.00
Shipping is overnite mail charges ????

I hope the above information may be of help to you and is as you requested. If you have any questions please call me at 407 899-1335.

Yours truly,

Helen Sammons
Coordinator-Directory

LOUISIANA PUBLIC SERVICE COMMISSION
(PROPOSED AMENDMENTS of 6/11/96 & 9/30/96)

REGULATIONS FOR COMPETITION IN
THE LOCAL TELECOMMUNICATIONS MARKET

SECTION 101. Definitions

38. Subscriber List Information - any information (a) identifying the listed names of subscribers of a TSP 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, and (b) that the TSP or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(BRI and Comm. Dixon proposed this amendment. The definition is practically identical to the one provided in section 222(f) of the 1996 Act. In the Act, the word "carrier" is used instead of TSP and BRI had suggested the words "ILEC or a CLEC" instead of the word "carrier.")

[The above amendment will require the amendment of the numbers for current definitions 38-39, to reflect the numbering 39-40].

41. Telecommunications Directory Publisher (TDP) - any person or entity, including affiliates of an ILEC, engaged in the business of publishing subscriber list information, in any format.

(BRI and Comm. Dixon proposed this amendment. The word "telecommunications" was used instead of "telephone" for consistency purposes.)

[With the addition of this definition and the prior renumbering, the number for current definitions 40-46, will require an amendment to reflect the new numbering sequence, 42-48.]

SECTION 301. Certification of Telecommunications Services Providers

E. Each applicant hereunder shall submit to the Secretary of the Commission an original and five (5) copies of its application along with an application fee of \$250.00 to cover the administrative costs of processing the application. ~~The applicant shall also supply each Commissioner with a copy of its application simultaneously therewith.~~ Upon request by the Secretary, and when reasonably feasible, an applicant shall also submit in addition to the original and five copies, a copy of its application on computer disk in a format specified by the Secretary. All applications shall include the following:

(Comm. Dixon proposed this amendment.)

SECTION 401. Tariffs

C.2. Format

- g. On each page shall appear the Effective Date in the upper right-hand corner of the page. The Effective Date will be the date indicated on the provider's transmittal letter to the Commission for the tariff to go into effect.

(Arnold Chauvier suggested this amendment.)

[With the addition of this provision, current paragraphs g and h, will need to be amended to become paragraphs h and I.]

C. 3. Information to Accompany All Tariff Filings

- a. The original and one copy of a letter of transmittal to the Commission shall accompany each tariff filing, which lists the sheets (by section, page number, and revision level) being transmitted and gives a brief description of all changes included therein and the reasons for the change(s). The letter must also include a paragraph stating (i) the service or product affected, (ii) the type of customer affected, (iii) the impact on the customer of the proposed change, and (iv) whether the affected service or product is competitive or non-competitive. In addition, if the tariff filing affects an optional service the letter must specify the existing price or rate for service and any proposed change to the price or rate. The Commission reserves the right to request additional data, including cost of service data.

SECTION 901. Interconnection

"D. Consistent with Section 252(a)(1) of the Telecommunications Act of 1996, upon receiving a request for interconnection, services, network elements, or reciprocal compensation pursuant to Section 251 of the Telecommunications Act, an ILEC may negotiate and enter into a binding agreement with the requesting TSP without regard to the costing standards set forth in subsection C of this Section. However, negotiated compensation arrangements for the exchange of local traffic shall provide for equal treatment and rates between competing TSPs. Rates of negotiated compensation arrangements shall be mutual, reciprocal, nondiscriminatory and cost-based, and shall be effective between the negotiating parties. Nothing in this section shall be interpreted as advocating or precluding the adoption of an in-kind rate or the adoption of an explicit rate as the negotiated compensation mechanism for the exchange of local traffic.

~~D. Exchange of local traffic between competing carriers shall be reciprocal and compensation arrangements for such exchange shall be mutual. That is, TSPs shall pay the same rate to each other for the termination of calls on the other's network. This rate will equal the intrastate switched access service rate less the residual interconnection charge and the carrier common line charge on a per-minute basis.~~

E. The Commission shall be notified in writing by the negotiating parties of the date the request for interconnection was submitted by the requesting TSP. The interconnection agreement shall include a detailed schedule of itemized charges for interconnection and each service or network component (element) included in the agreement. All agreements shall be submitted to the Commission for approval. Any party negotiating an agreement hereunder may, at any point in the negotiations, request the Commission to participate in the negotiation and to mediate any differences arising in the course of negotiation.

~~E. No ILEC or CLEC shall pay any other ILEC or CLEC for more than 110% of the minutes of use of the provider with the lower minutes of use in the same month. For example, if TSP number one has 10,000 minutes of local traffic terminated on TSP number two's network, and TSP number two has 15,000 minutes of local traffic terminated on TSP number one's network, TSP number two will compensate TSP number one on the basis of 11,000 minutes (10,000 minutes x 110%). Such an arrangement avoids significant payment differences due to a traffic imbalance.~~

F. In accordance with Section 252(b) of the Telecommunications Act of 1996, either party to the negotiation may petition the Commission to arbitrate any open issue to the negotiation. When an ILEC and TSP are unable, through negotiations, to agree to rates for the

interconnection of facilities and equipment, network elements and/or reciprocal compensation, any party to such negotiations may request the Commission to impose rates and conditions binding upon the parties to the agreement which comply with the results of the studies performed pursuant to subsection C.2 of this Section, and which are consistent with the mandates of Section 252(d) of the Telecommunications Act of 1996.

(Staff proposed the above amendments which amendments incorporate into the LPSC Regulations the requirements of the Telecommunications Act of 1996. The following amendments proposed by Commissioner Dixon are incorporated within the above language:

- "3. An ILEC must negotiate in good faith on the requirement for interconnection.
4. An ILEC may enter into interconnection negotiations voluntarily. All agreements must be submitted to the Commission for review and the carrier in negotiation may request that the Commission arbitrate any issue still open during the 135th-160th day of negotiations.")

[Due to the addition of the above provision, current sections F through N, will need to be amended to become sections G through O.]

SECTION 1001. Unbundling

D. TSPs shall be able to interconnect with all unbundled basic network components at any technically feasible point within an ILEC's network. Access, use and interconnection of all basic network components shall be on rates, terms and conditions identical to those an ILEC provides to itself and its affiliates for the provision of exchange, exchange access, intraLATA toll and other ILEC services.

(Paul Guarisco suggested the proposed amendment based on the CMRS Petitions for Reconsideration.)

J. ILECs and CLECs providing local telecommunications services shall provide subscriber list information gathered in their capacities as local telecommunications services providers on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person or entity (including TSPs and TDPs) for the purpose of publishing directories in any format.

(Commissioner Dixon and BRI proposed this amendment, though some of the terms have been changed for consistency purposes. BRI additionally proposed to add the words "and cost-based rates" after the word "conditions," but that amendment was not included. This amendment is based on section 222(e) of the 1996 Act.)

K. ILECs and CLECs providing local telecommunications services shall provide the names and addresses of non-published or non-listed subscribers gathered in their capacities as local telecommunications services providers on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person or entity (including TSPs and TDPs) for the purpose of directory delivery.

(Commissioner Dixon and BRI proposed this amendment, though some of the terms have been changed for consistency purposes. BRI additionally proposed to add the words "and cost-based rates" after the word "conditions," but that amendment was not included.)

[With the addition of the two new provisions above, current paragraphs J and K will need to be amended to become paragraphs L and M]

SECTION 1101. Resale

A. To encourage and promote competition in the local telecommunications markets, all facilities based TSPs shall make unbundled retail features, functions, capabilities and services, and bundled retail services available for resale to other TSPs on a nondiscriminatory basis.

D. During the transition to a competitive local telecommunications market, ILEC unbundled retail features, functions, capabilities and services, and bundled retail services, including vertical features, shall be tariffed and provided to other TSPs at reasonable wholesale rates, based on cost information. The cost information shall be derived from the cost studies mandated in Section 901.C.2 above. These studies shall be provided to the Commission in accordance with the provisions of Section 901.C.2. Avoided costs studies This information will be used by the Commission to determine costs avoided by an ILEC when an ILEC's unbundled retail features, functions, capabilities and services, and bundled retail services, including vertical features, are resold by another TSP, and to establish a wholesale discount percentage. An the ILEC's tariffed wholesale resale rates will be determined by discounting the ILEC's retail rates by the wholesale discount percentage. There is no mandate that resold services be provided by an the ILEC to TSPs at the ILEC's ~~its~~ TSLRIC or LRIC of providing such services.

(Staff proposed this amendment to incorporate into the LPSC Regulations the requirements of the Telecommunications Act of 1996.)

SECTION 1201. Consumer Protection.

B. The following additional consumer protection rules shall apply to all TSPs providing local telecommunications services:

(Gayle Kellner proposed this change in order to eliminate the ambiguity as to whether the provisions in Section 1201 apply to all TSPs no matter what services are being provided or just to TSPs providing local service. The change now specifically addresses local telecommunications services only.)

1. Any solicitation by or on behalf of a TSP to a customer to terminate his/her service with another provider and switch his/her service to a new TSP shall include current rate information of the new provider and all other information regarding the service(s) to be provided including, but not limited to the terms and conditions under which the new provider will provide the service(s). Upon request of a customer, a TSP shall provide the customer information pertaining to the technical specifications of the service(s) it is offering to the customer, ~~difference between services provided by the customer's former TSP and the new TSP.~~ All information provided shall be legible and printed in a minimum point size of type of at least 10 points. Failure to provide this information to the customer shall result in a fine of \$500 for each violation in addition to any other fine and/or penalties assessed.

(GTK proposed the above amendment. AT&T Wireless, et al. suggested an amendment to this section arguing that a huge burden would be placed on a TSP to know what the technical differences are between its product/service and its competitors and many times a TSP does not know the technical specifications of its competitors.)

2. In order to switch a customer from one TSP to another TSP, the new provider must obtain a signed and dated statement from the customer prior to the switch indicating that he/she is the subscriber of the telephone service for a particular telephone account and number, that he/she has the authority to authorize the switch of service to the new provider and that he/she does authorize the switch. This signed statement must be a separate or severable document whose sole purpose is to authorize the switch of the customer's TSP. The signed statement cannot be contained on the same document as promotional material, a registration to enter a contest or a form to contribute money to a charity.

Among other fines and/or penalties, the TSP making an unauthorized switch shall be subject to a fine not exceeding ten thousand dollars (\$10,000) per unauthorized switch, required to pay the costs of switching that customer back to the

customer's previous provider and required to refund to the customer amounts paid to the provider during the unauthorized service period and extinguish any other amounts due by the consumer and not billed and/or paid. Additionally, the TSP shall be liable to the customer's previously selected provider in the amount equal to all charges paid by the customer to the unauthorized TSP after the unauthorized switch. All TSPs are responsible for the actions of their agents that solicit switches in an unauthorized manner and/or result in unauthorized switches.

(GTK proposed this amendment. This change adds the liability provisions provided for in the 1996 Act, sec. 258, which imposes a liability on the unauthorized carrier in favor of the customer's previously selected carrier in the amount the customer paid to the unauthorized carrier during the unauthorized period.)

10. Unless fraud is suspected, No TSP can unilaterally and arbitrarily limit the amount of charges a customer can incur on his/her account regardless of whether the charges are for local, long distance or other toll charges unless the customer has a billed, outstanding balance due. If charges have been limited due to suspected fraud, the customer shall be informed in writing within two business days of the limits placed on the account and the reason for the limitations. Credit limits may be established when service is initiated, before charges are incurred or at any time upon an agreement between the TSP and customer.

(AT&T Wireless proposed the amended language in the first sentence and GTK proposed the remaining language.)

11. No TSP may release nonpublic customer information regarding a customer's account or calling record unless required to do so by subpoena or court order.

(AT&T Wireless proposed this amendment to allow it to release the information when required to do so by a court order or subpoena.)

12. Unless fraud is suspected, No TSP may unilaterally place a block on its customer's telephone service when a particular amount of charges have been incurred and the customer has not been presented the opportunity and a reasonable amount of time to pay or make other payment arrangements to pay the charges. If a block has been placed on a customer's telephone service due to suspected fraud, the customer shall be informed in writing within two business days of the block

placed on his/her telephone and the reason for the block. For inmate pay phone systems, a customer's telephone may be blocked from the receipt of calls from an inmate facility only if the TSP has a blocking policy submitted in a tariff format approved by the Commission.

(AT&T Wireless proposed the amended language in the first sentence and GTK proposed the remaining language.)

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).
 - Independent directory publishers continue to face significant problems in obtaining subscriber list information from incumbent LECs.
 - *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).

M E M O R A N D U M

TO: Rick Lewis, ADP
FROM: Bill Hammack, President, SunShine Pages
DATED: November 13, 1996

On Wednesday, November 13, I contacted the local business office of BellSouth Telecommunications to confirm my understanding of how primary business classifications are created by the utility.

Mag Bickford was present when we talked with Joucelyn Hammon of BellSouth. I told her that I was interested in opening a new business and wanted to find out how to get my business listed in the telephone directory yellow pages.

Ms. Hammon told us that she would take our order, assign a telephone number and then give us our choice of where we wanted to be listed in the telephone book. I asked her specifically if her office handled the assignment of the business classification. Her reply was "Yes, we assign the free listing for the directory. If you want a bold listing or color, you have to call our directory advertising office, but we handle the first listing." Ms. Hammon then gave us her direct number (504) 295-0586 to call her back when we were ready to place our order.

This conversation confirmed my understanding that the primary business classification is provided by the LEC, not by its publishing affiliate. At least this is true in the Bell territory.