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March 4, 1997

EX PARTE

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

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Federal Communications Commission
Office of Secretary

Re: GN Docket No. 96-115

In the matter of Implementation of the
Telecommunications Act of 1996
Telecommunications Carriers' Use of
Customer Proprietary Network Information and
Other Customer Information

Dear Mr. Caton:

The Yellow Pages Publishers Association (YPPA) is filing this ex parte letter in response to the ex-parte presentations of the Association of Directory Publishers (ADP) filed on January 16, 1997 and January 30, 1997.

In its January 16 filing, ADP provides materials claiming that a few, small LECs are violating the statute with respect to subscriber list information. While YPPA has no independent knowledge of, and therefor cannot attest to the veracity of, these allegations, YPPA strongly urges the Commission not to promulgate broad rules based on isolated alleged incidents.

As YPPA noted in its comments to the Commission in this proceeding, Section 222(e) of the Communications Act was effective on the date of enactment, February 8, 1996. There is no statutory requirement for the FCC to promulgate rules to implement this section. Should a party believe that a violation of section 222(e) has occurred, the Commission has well-defined complaint proceedings under Section 208 of the Communications Act. There is no reason for an allegedly aggrieved party to wait for the Commission's Report and Order in the above captioned proceeding for that party to avail itself of the Commission's complaint process.

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YPPA believes that the principle of non-discrimination, as required in section 222(e), is the appropriate way to resolve issues brought by independent publishers. Put simply, a LEC is required by law to treat an independent directory publisher in the same manner it treats its own directory publishing operations with regard to the provision of subscriber list information. It does not matter whether the LEC performs its own directory publishing operations, or the LEC contracts for these services. The principle remains the same -- non-discriminatory treatment.

The interconnection agreements ADP attached to its January 16 ex parte letter are irrelevant to the issues ADP raises. BOC-CLEC agreements are subject to entirely different regulatory requirements. They are governed by sections 251 and 271 of the Act. Section 271(c)(2)(B)(viii) requires that a BOC offer a CLEC "White page directory listing for customers of the other carrier's telephone exchange service." This is to allow a customer leaving a BOC for a CLEC to be listed in the BOC's directory assistance database, and to be included in the BOC's white pages directory. Congress imposed these requirements so that customers of CLECs would not lose their listings if they chose to change local exchange service providers.

To the extent a CLEC is providing this information to a BOC so that the BOC can satisfy the CLEC's publishing obligation, the CLEC must make the same information available to independent publishers. An independent publisher has the right to that information -- directly from the CLEC -- on reasonable and non-discriminatory terms. While a CLEC may request that a BOC provide the CLEC's subscriber information to independent publishers on behalf of the CLEC, that is a matter of contract and negotiation -- not legislative requirement. The Act leaves no doubt that the requirement to make subscriber information available for the purpose of publishing a directory is a requirement which pertains only to the local exchange provider's information about its own subscribers, since the requirement only applies to information "gathered in its capacity as a provider of such service."

In its January 30 filing, ADP includes a recent California Public Utilities Commission (CPUC) order. ADP notes that the CPUC decision discusses the availability of non-published addresses for third-party directory publishers for the purpose of directory delivery, that independent publishers should be given updates of the residential addresses for published subscribers for the purpose of directory delivery, and that the CPUC has not yet determined the appropriate pricing structure in the state of California.

The CPUC decision on use of non-published addresses for third party directory delivery is not relevant to the federal statutory requirement of section 222(e). The CPUC's decision is not based on the provisions of the Telecommunications Act of 1996. That legislation excludes information which is not published or accepted for publication from the definition of subscriber list information. Section 222(f)(3)(B). Thus, the question of whether

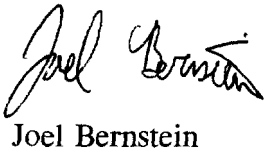
information that is not subject to the Telecommunications Act should be made available to independent directory publishers is not the subject of this proceeding. YPPA urges the Commission to recognize that the CPUC's decision on this matter is outside the scope of the statute and the Commission's authority.

Regarding the issue of availability of updates, YPPA once again urges the Commission to follow the statutory requirement of non-discrimination. If the LEC provides updates in a particular manner to its own directory publisher for the purpose of publishing a directory, the LEC is required to treat an independent publisher the same way.

The last point ADP makes regarding the pricing decisions in California is interesting for several reasons. First, the CPUC has already determined that provision of subscriber list information is not an essential facility for directory publishing. CPUC Decision in Docket No. 96-02-072, Conclusion of Law No. 29. at p. 56. Second, the issue of subscriber list information rates is far from settled in California.

Finally, the federal statutory requirement for subscriber list information is that it be made available at reasonable and non-discriminatory rates. The California PUC, and every other PUC in the country, should have the flexibility to determine what is reasonable and what is not reasonable within its own borders. YPPA reiterates its adamant opposition to incremental pricing, or any other Commission-mandated pricing scheme. Congress deliberately did not require that rates for subscriber list information be cost-based or that incremental prices be adopted. Reasonable and non-discriminatory will vary according to many factors, including the costs of gathering and maintaining the data, the size and sophistication of the database and the price the LEC charges for providing the information to its own directory publishing operations. A one size fits all solution, as requested by ADP, would violate the plain language and intent of the statute.

Sincerely,



Joel Bernstein
Counsel for YPPA

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