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15 April 1997

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**APR 15 1997**

Federal Communications Commission  
Office of Secretary

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

Re: CC Docket No. 96-115

Dear Mr. Caton:

The Association of Directory Publishers ("ADP") hereby brings to the Commission's attention the attached April 2, 1997 Staff Memorandum of the Florida Public Service Commission ("PSC") which was approved yesterday by the PSC Commissioners. The PSC's formal Order approving the Staff Memorandum should be issued within the next 21 days. ADP was not a party to the PSC proceeding.

Among other things, the PSC decision requires BellSouth to (1) offer new connects for both residential and business customers on an unbundled per listing basis; (2) provide independent directory publishers with address information of BellSouth's unpublished subscribers sufficient to allow directory delivery to those subscribers; (3) provide "daily" updates; and (4) offer numerous "sort options" to enable directory publishers to extract data by zip code, residential only, business only, etc. Unfortunately, the Florida PSC rejected arguments that new connects and updates should be provided at incremental cost and instead accepted BellSouth's arguments that such services should be priced at "market rates" of \$2.00 for each new connect listing and \$1.50 for each daily update. As discussed in numerous filings in this proceeding, BellSouth's cost studies show that the cost of providing listings is far below one cent per listing. Hence, ADP believes the PSC Staff's suggested prices contravene Section 222(e) of the Communications Act.

Relevant language from the Staff Memorandum is supplied below. As noted, the Florida PSC approved the Staff Memorandum during its meeting yesterday.

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- **NEW CONNECTS:** Over BellSouth's opposition, the Staff found that BellSouth must allow directory publishers to purchase new connects. (p.4). The staff noted BellSouth's directory publishing affiliate, BAPCO, receives "an unedited electronic transmission of every service order activity item that occurs daily in BellSouth's nine-state region." (p.7). It noted also that BellSouth currently offered new connects only on a bundled basis, forcing directory publishers to "purchase unneeded data to obtain just the portion [they] desire[d]." (p.7). The new service, noted the Staff, "will not require the independent directory publisher to purchase the entire central office listings database." (p.4). Thus, the Staff recommended that BellSouth provide new connects, including the following options: (a) new residential customers; (b) new business customers; (c) new customers billing addresses, and (d) complete mailing addresses for unlisted or non-published numbers. (p.4).
- **UNPUBLISHED LISTINGS:** The Staff concluded that BellSouth should be required to provide complete mailing addresses to permit directory publishers to deliver their directories to BellSouth's non-published and unlisted subscribers. (p.8).
- **UPDATES:** The Staff determined that it "is in the public interest" for BellSouth to provide daily updates to independent directory publishers to enable such publishers to provide "the most current information" to end users. (pp.11, 14). Thus, the Staff recommended that BellSouth amend its update service from monthly to daily. (pp.11, 14). The Staff also recommended that the daily updates contain "sort options" to allow publishers to extract information "by Central office, prefix, zip code, residential only, business only, and/or A to Z which includes FXs, RCFs, 800 #s, etc." (p.11). In requiring these changes, the Staff explained that BellSouth's monthly update service required publishers to compare thousands of listings each month to discern what changes had occurred. (p.11). The Staff noted also that BellSouth's monthly update service "has never been used by independent directory publishers in Florida or Louisiana" and that there was "no demand" for the service (p.14).<sup>1</sup>

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<sup>1</sup> ADP believes the lack of demand was caused by (1) the staleness of the data (*i.e.*, BellSouth had exclusive rights to solicit new businesses during the interim weeks between updates) and (2) the difficulty in combing through thousands of listings in order to determine what changes occurred during the month. BAPCO, of course, does not confront that difficulty because the new connect information it receives is accompanied by explanatory codes.

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- **PRICING:** The Staff rejected arguments favoring incremental cost and instead found that BellSouth should be permitted to price its new connect and daily update services at "market prices" of \$2.00 per new connect and \$1.50 per daily update (pp.10,14). The staff found that incremental cost was inappropriate because neither new connects nor updates were essential services and sources other than BellSouth could provide such information. (p.10). No further elaboration was provided on those points. Furthermore, the Staff concluded that incremental pricing was unjustified "because of the market value of the new connect information." (p.10). According to the Staff:

[Y]ellow pages advertising revenues and returns are historically quite high, and, independent directory publishers have the potential to earn substantial returns on their investments, just as BAPCO does. (p.10).

Thus, the Staff concluded that "BellSouth's proposed market-based rates are reasonable." (p.10).

The flaws in the Staff's reasoning are obvious. BAPCO's historical high returns are the result of its monopoly status, which it preserves in large part because independent directory publishers are denied the right to compete. Real competition would be conventionally expected to eliminate the "substantial returns" being earned in a monopoly environment. Such real competition is at the heart of Section 222(e) which, as discussed above and in ADP's pleadings in this proceeding, requires incremental pricing of subscriber list information. That the Florida PSC Staff chose otherwise and recommended a market-based approach violates Section 222(e) and underscores the need for the FCC to issue clear pricing guidelines.

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Should you have any questions concerning the enclosed materials, please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael F. Finn". The signature is written in a cursive style with a long horizontal flourish at the end.

Michael F. Finn

Enclosures

cc: Dorothy Attwood  
Florence Setzer

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FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 2, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (MUSSELWHITE, <sup>ESM</sup> MORTON) *[Signature]*  
DIVISION OF LEGAL SERVICES (PELLEGRINI) *[Signature]*

RE: DOCKET NO. 931138-TL - BELL SOUTH - PETITION AND COMPLAINT  
OF FLORIDA INDEPENDENT DIRECTORY PUBLISHERS TO AMEND  
DIRECTORY PUBLISHERS DATABASE SERVICE TARIFF OF BELL SOUTH  
TELECOMMUNICATIONS, INC. D/B/A SOUTHERN BELL TELEPHONE  
AND TELEGRAPH COMPANY.

AGENDA: APRIL 14, 1997 - REGULAR AGENDA - POST HEARING DECISION-  
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\931138TL.RCM

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CASE BACKGROUND

On November 24, 1993, the Florida Independent Directory Publishers (FIDP) filed a petition and complaint requesting that certain provisions of BellSouth's Directory Publishers' Database Service tariff be revised. FIDP is not an association, but appears to be a group of seventeen (17) independent directory publishers, led by Mr. Gerry Screven, President of Direct Media Corporation. The independent telephone directory publishers compete with BellSouth's affiliate, BAPCO, in the publication of telephone directories. Currently, sixteen independent directory publishers subscribe to BellSouth's Directory Publishers Database Service (DPDS) in Florida.

On December 20, 1993, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (BellSouth) filed a motion to dismiss the petition and complaint. The Commission denied that motion in Order No. PSC-94-0641-FOF-TL issued May 25, 1994, stating that the pleading met the requirements of a petition, but not a complaint. It also disposed of FIDP's argument that it had received no prior notice of BellSouth's intention to file this tariff. The Order stated that BellSouth was not required to provide prior notice.

DOCUMENT NUMBER-DATE

03388 APR-25

FPSC-RECORDS/REPORTING

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Subsequent to the issuance of this Order, staff conducted discovery seeking information concerning the DPDS tariff. In addition, BellSouth and FIDP entered into negotiations for the purpose of settling this dispute. On November 1, 1994, the parties met with staff to discuss the progress of their negotiations. At that same meeting, FIDP offered to settle under the same terms and conditions that it had agreed to in a similar case which they had filed in Louisiana. BellSouth agreed and the attorney for FIDP agreed to draw up an agreement for the parties' signatures. More discussions took place between BellSouth and FIDP, and staff subsequently requested a letter informing us of the status of the negotiations.

In early 1995, the parties individually agreed that more time was needed to iron out some apparent difficulties. Finally, in May 1995, staff received a letter from FIDP stating that the parties had not reached an agreement and could not resolve their differences. FIDP also requested that staff make a recommendation. Staff attempted to discover the nature of the problems and the reason for the failure of the parties to reach a negotiated settlement in Florida.

On March 29, 1996, the Commission issued Proposed Agency Action Order No. PSC-96-0446-POF-TL, in which it required certain amendments to BellSouth's DPDS tariff. These amendments were similar to the terms and conditions that the parties had agreed to in Louisiana. On April 11, 1996, the Commission issued Amendatory Order PSC-96-0446A-POF-TL, in which it deleted as unnecessary the requirement that BellSouth amend its Weekly Business Activity Reports (WBARs) to include residential listings. In Order PSC-96-0446-POF-TL the Commission ordered BellSouth to amend its WBAR to include residential listings, so that the WBAR could be used as an update service. However, since the Commission had already ordered BellSouth to provide an appropriate update service which included residential listings, it was considered unnecessary to require it to also amend its WBAR to include residential listings. Hence, the Commission issued the amendatory order.

On April 19, 1996, FIDP filed a Petition protesting the Amendatory Order. FIDP did not agree with the action taken by the Commission in the Amendatory Order and filed a protest to that Order, because it deleted the requirement to provide residential listings in the WBAR. FIDP argued that adding residential listings to the WBAR, and creating an update service were two separate services. The matter was set for hearing, and several issues were identified. BellSouth and staff agreed to the issues proposed by FIDP, although they went beyond the scope of the original protest.

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On July 7, 1996, BellSouth filed revised tariff sheets to incorporate the changes directed by the Commission in its Orders. Then, on July 24, 1996, FIDP filed a Petition for Enforcement of Order and Modification of Tariff in this docket. In its Petition, FIDP stated, "the modified tariff fails to recognize and incorporate directives of the Commission." FIDP specifically stated that the tariff amendments filed by BellSouth failed to comply with the decision of the Commission as reflected in its Order in the following respects:

- a) BellSouth inappropriately restricts directory publishers from publishing directories;
- b) BellSouth has failed to modify the DPDS tariff to provide information on residential new connections for directory distribution purposes;
- c) BellSouth has failed to modify its tariff to provide an update service that is reasonable in format, unbundled, and at a reasonable rate, so as to enable directory publishers to maintain an accurate directory database.

On August 13, 1996, BellSouth filed an Answer to Petition for Enforcement of Order and Modification of Tariff of the Florida Independent Directory Publishers. In its response, BellSouth denied that the tariff failed to comply with the Commission's Order.

FIDP's latest petition expanded the scope of its protest of the Commission's amendatory order. The Prehearing Officer noted that it should actually have been docketed separately. However, since the issues contained in the petition were essentially the same as the issues set for hearing, it was found appropriate to permit the parties to address both matters in this proceeding. This matter then went to hearing on January 13, 1997.

Staff would note that according to BellSouth, a request by a customer for a service of this description would normally be provided on a contract basis. However, BellSouth tariffed this service. At this point, staff does not believe that negotiations would result in an agreed upon contract.

Further, staff would note that Issue 1 and Issue 2 appear to be very similar. As discussed above, FIDP witness Screven argues that the new connect service and the update service are two different offerings, and staff and BellSouth agreed to the issues as he requested.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should BellSouth be required to offer a listing service consisting of new connections of residential and business subscribers? If so, what are the appropriate rates, terms, and conditions?

**RECOMMENDATION:** Yes. Staff recommends that BellSouth should be required to file a tariff offering new connections for residential and business customers on an unbundled, per listing basis at a rate of \$2.00 per listing requested. However, since there are existing subscribers to WBAR, staff recommends separate options so that directory publishers have the flexibility to choose the option that best fits their business needs. Staff recommends that BellSouth file an addition to its existing DPDS tariff, which includes the following options:

- (1) List of new residential customers
- (2) List of new business customers
- (3) Billing address for new customers
- (4) Complete mailing address for unlisted or non-published numbers

With the exception of new business customers, this information may only be used for delivering directories. The list of new business customers may also be used for soliciting yellow page advertising. The new connect service will not require the independent directory publisher to purchase the entire central office listings database.

### POSITION OF PARTIES

**FIDE:** Yes. BellSouth should be required to comply with the Order of the Commission and offer a listing of new residential and business connections on a timely basis, on an unbundled basis and at a reasonable rate based on incremental costs.

**BELLSOUTH:** No. BellSouth should not be required to offer the requested new services. This position is supported by at least two facts: 1) Lists consisting solely of new connects are not required to publish directories; 2) There is no demand from publishers.

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**STAFF ANALYSIS:**

**Analysis of New Connect Options**

FIDP contends that the current DPDS tariff does not meet its needs. The Weekly Business Activity Report (WBAR), which is an option in the DPDS tariff, provides the entire central office activity list. Activities include disconnects, changes, transfers, and new business connects. According to FIDP witness Screven, the new connect information is bundled together with "needless and useless" information to the publisher ordering the WBAR. (EXH 3, p.1)

FIDP asserts that directory publishers want an optional service offering that would provide subscribers with a list of new residential and business connections. According to FIDP's witness Screven, this list would be used to distribute directories to new residential and business telephone subscribers. It would also be used to solicit advertising from new business subscribers. (EXH 3, p.22) Witness Screven believes a new connect offering used in this way would allow publishers the same opportunity as BellSouth Advertising and Publishing Company (BAPCO) to market new customers. (TR 31, 32) Witness Screven further states that FIDP does not want the new connect information for any other purpose, including selling this information to telemarketing firms, which is currently prohibited by BellSouth's tariff. (TR 44; EXH 6, p.7)

Witness Screven states that the new connect service should include the billing address for new connects, and the complete mailing address for unlisted or non-published numbers. (TR 21) He states that FIDP needs this information to "make sure that our book is delivered to all new connect people so we have an opportunity to have them choose our directory as well as BellSouth's." (TR 54) FIDP then asserted that they would accept the restriction that the customer's billing address and the mailing address for unlisted or non-published numbers would only be used for delivery purposes. (Screven, TR 54, 55)

FIDP argues that the new business connects, currently found in the WBAR, are used to solicit and sell yellow pages advertising and to deliver directories to new business customers. (EXH 3, p.1) The new connects are very important to directory publishers because, according to FIDP, they annually represent 20% of the activity in BellSouth's area. (Screven, TR 31)

FIDP witness Screven states that BellSouth's DPDS tariff does not currently provide an appropriate way to obtain residential and business new connect information. Witness Screven states that

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the WBAR only contains the new connects for business customers, and this information is bundled with unnecessary information at a high rate. (TR 18) FIDP argues it does not want to pay the tariffed rate of \$.006 per listing for the central office database requested. (TR 20; EXH 6, p.9) Therefore, FIDP witness Screven has proposed the new connect service whereby independent directory publishers would receive only the new residential and business connects and pay only for this information. (EXH 3, p.22) FIDP contends that the proposed service would eliminate the change, disconnect, and transfer information that currently appears "bundled" with the new connect business activity information in the WBAR, and thus FIDP would not have to the entire central office database. FIDP contends that this will eliminate the bundling of information, and thus, FIDP will only pay for the essential "new connect" information that it can utilize to deliver directories and solicit and sell yellow pages advertising. (Screven, TR 21)

FIDP also argues that the services which the independent directory publishers are offered are not the same as those provided to BAPCO. FIDP states that BellSouth should provide the same information to all parties. Witness Screven states, "It is our understanding BAPCO receives all of the information that we need that is necessary for us to publish and compete, and we would like to have at least that amount of information." However, the witness further argues that FIDP does not want to have to develop the programming capability, at its expense, to receive the data in the same format that it is transmitted to BAPCO. For these reasons, FIDP states it is seeking a new connect service, developed by BellSouth, that is unbundled, priced at an appropriate rate, and contains the information FIDP is requesting so independent directory publishers can compete with BAPCO. (TR 51)

Witness Screven testified that sufficient demand exists to warrant BellSouth's development of the service options that the directory publishers want. He also affirmed that he was authorized to represent each one of the Florida Independent Directory Publishers. (TR 95,96; EXH 3, p.25,26) The witness stated that if the requested services were developed by BellSouth, then each one of these companies would buy either a portion or all of it. (TR 96)

BellSouth's witness Juneau argues that the current DPDS tariff is an appropriate tariff for the directory publishers, and that no change to its tariff is warranted. (TR 108) BellSouth states that the DPDS tariff is a Commission approved tariff that has been thoroughly reviewed, and has existing customers. Currently, sixteen customers subscribe to BellSouth's DPDS tariff, with four directory publishers subscribing to the Weekly Business Activity Report (WBAR). (TR 68; EXH 4, p.54)

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BellSouth's witness Juneau argues that lists consisting solely of new connects are not required to publish directories. (TR 106) BellSouth acknowledges that such a list would be more convenient; however, BellSouth points out that independent publishers use directory information from sources besides the tariffed services, including BellSouth's directory "on the street." (TR 59, 60)

BellSouth argues that there is not any demand for a new connect service, other than by witness Screven himself. (TR 176) BellSouth's witness Juneau further states that this proceeding is the first time that BellSouth had become aware that a separate listing of new connect activity has been requested. (TR 174) Thus, BellSouth contends that FIDP witness Screven's request for a new connect service is not representative of the directory publishing industry. (Juneau, TR 176) BellSouth contends there is insufficient demand to justify amending its tariff to include a new connect service consisting solely of residential and business new connects. BellSouth's witness Juneau asserts it should not be required to develop a service for which there is insufficient demand. (EXH 4, p.56)

BellSouth also refutes FIDP's argument that it wants exactly what BAPCO receives from BellSouth. BellSouth witness Juneau states that BAPCO receives an unedited electronic transmission of every service order activity item that occurs daily in BellSouth's nine-state region. (TR 125) BellSouth also states that BAPCO purchased the computer equipment and developed the programming to identify the information that they need from the raw data. (TR 170) BellSouth states that FIDP wants BellSouth to develop, at BellSouth's expense, the capability to sort the raw data and provide them with the unbundled, edited information. (Juneau, TR 51, 170)

BellSouth states that it is willing to develop a new connect service offering, but it currently has not developed the means to isolate new connect activity information. (EXH 4, p.37) BellSouth witness Juneau states, "We have no objection to the directory publishers having a listing of new connects if it is for the purpose of distributing directories." (TR 127) BellSouth also contends that BAPCO isolates new connect information "not to publish directories, but to sell advertising and to distribute directories to new connects..." (TR 126)

Staff believes that FIDP's request for a new connect service option is reasonable. Because BellSouth's current tariff is bundled, directory publishers would have to purchase unneeded data to obtain just the portion it desires. Staff recognizes that

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FIDP can survive without the new connect service option and has done so for some time. For example, FIDP witness Screven entered the publishing business in 1986 and has never subscribed to BellSouth's DPDS service. Instead, FIDP witness Screven primarily has obtained his publishing information from BellSouth's directory on the street. (TR 59) Nevertheless, staff believes it is appropriate that FIDP be afforded access to new connect information in the manner it requests.

Staff would note that BellSouth is not opposed to developing a new connect service offering if it is for the purpose of distributing directories to residential and business subscribers or for soliciting advertising from new business subscribers. (TR 127) FIDP has stated that it does not want this information for any purpose other than distributing directories and soliciting advertising from new business subscribers. (TR 31, 32)

Based on the evidence in the record, staff recommends that BellSouth should be required to file a tariff offering new connections for residential and business customers on an unbundled, per listing basis. However, since there are existing subscribers to WBAR, staff recommends separate options so that directory publishers have the flexibility to choose the option that best fits their business needs. Staff recommends that BellSouth file an addition to its existing DPDS tariff, which includes the following options:

- (1) List of new residential customers
- (2) List of new business customers
- (3) Billing address for new customers
- (4) Complete mailing address for unlisted or non-published numbers

With the exception of new business customers, this information may only be used for delivering directories. The list of new business customers may also be used for soliciting yellow page advertising. The new connect service will not require the independent directory publisher to purchase the entire central office listings database.

#### Analysis of BellSouth's Proposed Rates

FIDP witness Screven argues that the WBAR rates under the DPDS tariff are cost prohibitive, because the rates are not based on incremental cost. (EXH 3, p.1) FIDP defines rates that are based on incremental cost as rates that are "based solely on the actual cost to provide the service/information, plus a reasonable return." (TR 24)

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FIDP's witness Screven states that a publisher purchasing the WBAR service, which reports all business service order activity, pays for every listing within a central office. As an example, FIDP states that for a central office of 100,000 customers, an independent publisher pays the tariff rate of \$.006 per listing each time the WBAR is purchased. This equals \$600 per purchase of the WBAR. FIDP states that it is unfair to have to purchase the entire WBAR database, since there may not be any new customers. (TR 10)

BellSouth's witness Juneau states that its pricing methodology for the DPDS Tariff is market-based. BellSouth asserts that market-based pricing is the appropriate pricing approach for DPDS. BellSouth contends that this pricing is appropriate because of the value of the information being provided. (EXH 4, p.60; TR 163) Witness Juneau also stated that BellSouth believes that the other LECs should be upset with its rate, not the directory publishers, because BellSouth's rate is the lowest that he knows about. (TR 131)

BellSouth's witness Juneau contends that it should be allowed to recover the cost of developing program capabilities to offer new connect listings to directory publishers. BellSouth argues that BAPCO developed at its own expense the capability to interpret the "raw data" furnished from BellSouth. BAPCO receives an electronic transmission of unedited, unprocessed, service order activity occurring that day. (TR 170; EXH 4, p. 28)

BellSouth has proposed a rate of \$2.00, per new connect listing selected by a customer. This rate is based on the projected demand for the new connect service. (EXH 8, p.2) BellSouth states its demand estimate is "based solely on Mr. Screven's assertion that most FIDP customers would consider purchase of these services." (EXH 8, p.1) BellSouth further contends that if fewer than 12 publishers were to purchase service, BellSouth would seek higher rates because the unit cost is extremely sensitive to the number of customers who subscribe. (EXH 8, p.1)

Staff would point out that the BellSouth/BAPCO financial arrangement is very different from that of the independent directory publishers. BellSouth is currently under contract with BAPCO to provide subscriber listing data, directory delivery information, and billing and collection service to BAPCO. BAPCO in turn publishes and delivers white and yellow page directories for BellSouth. As compensation for the services BellSouth and BAPCO provide each other, BAPCO receives 45.75% of the advertising revenue and BellSouth receives 54.25%. This contract arrangement

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means that on a per listing basis, BAPCO pays significantly higher rates than the tariffed DPDS rate, which is what the directory publishers would pay. (TR 171)

Staff disagrees with FIDP's pricing proposal for the DPDS tariff for several reasons. First, staff believes that pricing protection, like that afforded to basic services, is not necessary for this non-basic service. Second, BellSouth's services do not constitute a bottleneck function for FIDP, i.e., other options exist. Third, because of the market value of new connect information, staff does not believe that incremental pricing is appropriate. For example, yellow pages advertising revenues and returns are historically quite high, and independent directory publishers have the potential to earn substantial returns on their investments, just as BAPCO does. (Juneau, TR 163) Fourth, staff believes that BellSouth should be able to recover the cost of developing the programming capabilities as requested by FIDP.

Staff believes that BellSouth's proposed market-based rates are reasonable for this type service offering. Currently, the directory publishers who purchase information from the WBAR must buy the entire central office listing database at a rate of \$.006 per listing. BellSouth's proposal would allow directory publishers to purchase only the information that is needed for \$2.00 per listing.

Staff would note that Section 222 (e) of the Telecommunications Act of 1996 (the Act) requires local exchange companies to provide unbundled 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. Staff believes this recommendation complies with Section 222 (e) of the Act. The requirements of the Federal Act are addressed in further detail in Issue 2. Staff recommends approval of BellSouth's proposed rate of \$2.00 per listing request for new connect services.

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**ISSUE 2:** Is BellSouth's newly effective update service appropriate? If not, what changes should be made?

**RECOMMENDATION:** The existing offering complies with Order PSC-96-0446-FOF-TL; however, based on the record subsequently developed in this proceeding staff recommends that the offering be revised to provide an optional daily update service with complete, accurate and up-to-date listings that are extracted from one or more databases, to be published in the white pages section of competitive directories. The offering should also contain certain sort options that enable directory publishers to order extractibns by any of the following sorted sequences: by Central Office, prefix, zip code, residential only, business only, and/or A to Z which includes FXs, RCFs, 800 #s, etc. Staff recommends that the Commission price this service at the rates proposed by BellSouth in this proceeding.

#### POSITION OF PARTIES

**FIDP:** No. BellSouth's proposed update tariffs are not appropriate and should be changed so that update information is provided on an unbundled basis, at reasonable rates.

**BELLSOUTH:** Yes. BellSouth's update service is appropriate. The Monthly Refresh option was implemented based on negotiations with independent publishers.

**STAFF ANALYSIS:** BellSouth's current update service is the Monthly Refresh Files Service. It was offered in compliance with Order No. PSC-96-0446-FOF-TL issued in this proceeding. This update service offers a Central Office NPA-NXX Listing File plus 11 more Central Office NPA-NXX Listing Files. The Monthly Central Office Listing Files contain the same data found in the original listing file with the addition of any changed or new listing activity occurring in the associated month. To identify any activity that has occurred during the month, a publisher would have to compare the listing information from the prior month to the new listing information that it has just received. The most recent information is then used by the publisher to publish a directory.

BellSouth currently provides its update service to the independent directory publishers at a rate of \$.16 per listing per NPA-NXX Listing File, for a single edition of a printed directory. Independent directory publishers may also produce multiple editions of a printed directory, or CD ROM directories. The selection of the multiple editions of a printed directory allows the publisher to publish its initial directory plus any specialized, additional directories. This also gives the publisher the opportunity to sell

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additional advertising for its specialty directories. The selection of the CD ROM directory allows the publisher to publish an electronic CD ROM or diskette directory. Table A shows BellSouth's rates, projected demand, and revenues associated with these DPDS service offerings for the period July 1996 - June 1997. (EXH 4, p.14)

**TABLE A**  
**Projected Demand For Update Service**

Each Central Office NPA-NXX Listing File Plus 11 Monthly Refresh Files Requested; for use to publish			
	RATES	UNITS	REVENUE
Single edition of a printed directory, Per Listing	\$ .16	-0-	-0-
Multiple editions of printed directories, Per Listing	\$ .48	-0-	-0-
CD ROM directory, Per Listing	\$ .54	-0-	-0-

BellSouth contends that the rates and terms of the Monthly Refresh Files update service were derived from a December 1994 regional presentation, whereby BellSouth met with independent directory publishers to present three service options for an update service. The three options presented were based on regional meetings between BellSouth and independent directory publishers. Witness Screven participated in two of the regional meetings. (TR 45) At the presentation BellSouth agreed to pursue the option of the directory publishers' choosing. It was agreed that BellSouth would spend development money for the option the publishers said they would buy. (EXH 7, p.1) The directory publishers selected Option 2 (a), which resulted in the Monthly Refresh Files option being implemented in the Louisiana DPDS Tariff. (EXH 7, p.1, 2)

The directory publishers then pursued similar amendments to BellSouth's Florida DPDS tariff. In Order No. PSC 96-0446-FOF-TL, the Florida Commission ordered BellSouth to provide an appropriate update service consisting of new and corrected residential and business listings, in order to allow directory publishers to keep and maintain a directory database. Once this decision was made, BellSouth used the Louisiana Tariff's Monthly Refresh Files update service for its Florida DPDS update service, with the addition of the CD-ROM rate element. Currently, BellSouth has no subscribers to its monthly refresh files update service in Florida or Louisiana. (EXH 4, p.14, 44)

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FIDP states that the Monthly Refresh Files update service is an inappropriate offering, because the update information is bundled with information that they have already received. (EXH 3, p.6) FIDP witness Screven contends that by purchasing the update service FIDP would essentially be buying the same information 11 additional times a year. (TR 47) FIDP states that it is unreasonable for the directory publishers to have to purchase the same information each time. FIDP further states that the rates for the update service are outrageous and unreasonable. Witness Screven also asserts that no FIDP member or any publisher in Louisiana is interested in buying this service. (EXH 3, p.6)

Witness Screven states that to decipher the update information publishers have to download the information, "merge and purge" it, and then extract the new changes, additions and deletions. The witness argues that this puts an undue burden on directory publishers to obtain that information. (TR 47, 48) Therefore, the independent directory publishers want to simplify the format in which they receive update information. FIDP states that it wants a refresh option that is comprised of only the activities that occurred in the last month. (TR 48) Specifically, witness Screven argues that FIDP is requesting an optional update service whereby BellSouth would furnish FIDP with the daily service orders affecting the designated database of listings. FIDP argues that directory publishers want complete, accurate and up-to-date listings that are extracted from one or more databases containing BellSouth's customers, to be published in the white pages section of FIDP directories. FIDP asserts it would maintain this database with certain sort options that enable directory publishers to order the one time extraction by any of the following sorted sequences: by Central Office, prefix, zip code, residential only, business only, and/or A to Z which includes Foreign Exchanges, Remote Call Forwarding, 800 #s, etc. (EXH 3, p.22)

BellSouth asserts that the Monthly Refresh Files conform with the requirements of the update service ordered by the Commission. However, BellSouth states that it is willing to provide the services requested by Mr. Screven. (EXH 8, p.1) BellSouth has proposed the Daily Service Order Option Update for \$1.50 per updated listing. BellSouth is also offering an additional extract option for \$.10 per updated listing. This offering allows directory publishers to sort for listings by central office, prefix, zip code, residential only, business only, etc. (EXH 3, p.22) BellSouth's witness contends that its proposed prices are based on FIDP witness Screven's testimony that most of the independent publishers will buy this service with these sort options. (EXH 8, p. 1, 2) BellSouth also states that if fewer than twelve (12) publishers buy the services, then BellSouth would

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seek higher rates because the unit cost is extremely sensitive to the number of customers who subscribe. (EXH 8, p.1) As discussed in Issue 1, BellSouth's prices for the DPDS Tariff offerings are market based.

Staff believes that FIDP's requested update service is reasonable, and we believe that BellSouth should provide the requested service in place of the existing Monthly Refresh Files update service. The Monthly Refresh Files update service has never been used by independent directory publishers in Florida or Louisiana. (EXH 4, p. 14, 44) Even BellSouth has stated that it is not satisfied with this take rate. (EXH 4, p.45) Because there is no demand, and therefore, no customers to be affected, staff believes that it is in both parties' interest for the update service to be amended. Staff further believes that it is in the public interest for the DPDS subscriber to be able to provide the most current information to the end user. Staff believes that the proposed update service will give FIDP the means to maintain a current database, and thus allow FIDP to provide its customers with the most current data available.

Staff believes that this will give the directory publishers the ability to maintain an up-to-date directory listings database, and to effectively compete against BellSouth's publishing affiliate, BAPCO. Staff believes that the update service rates proposed by BellSouth are reasonable. Staff believes that BellSouth should be able to recover its cost of developing the programming capabilities to provide sort options to the publishers. This new offering should meet the needs of directory publishers, since the format is exactly what witness Screven has requested.

Staff also believes that its recommendation complies with Section 222 (e) and (f) (3) of the Telecommunications Act of 1996 (Act). Section 222 (e) of the Act states:

...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.

Section 222 (f) (3) of the Act defines subscriber list information as any information:

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- (A) identifying the 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; and
- (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

Staff interprets this section of the Act to require BellSouth to provide subscriber list information to any directory publisher upon request for the purpose of publishing directories.

Based on the record and the requirements of section 222 (e) and (f) (3) of the Telecommunications Act of 1996, staff recommends that the Commission order BellSouth to offer the directory publishers an optional update service as requested by FIDP. Staff recommends that the directory publishers pay \$1.50 per updated listing, for the Daily Service Order Option Update. Staff also recommends that the directory publishers pay \$.10 per updated listing, for the additional extract option that allows independent publishers to sort listings by any of the following sequences: by CO, prefix, zip code, residential only, business only, and/or A to Z which includes FX's, RCF's, 800#s, etc.

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**ISSUE 3a:** Does Section A38.2.1.A of BellSouth's tariff limiting directory publication to printed booklet or CD ROM comply with Order No. PSC-96-0446-FOF-TL?

**RECOMMENDATION:** Yes. BellSouth's tariff does comply with Order PSC-96-0446-FOF-TL; however, BellSouth should clarify that both CD ROM and diskette are acceptable directory formats, by inserting the word "diskette" into the applicable sections of its tariff.

**POSITION OF PARTIES**

**FIDP:** No. BellSouth's tariff does not comply with the Commission Order and it should be modified to permit publication in printed or electronic format as has been previously ordered.

**BELLSOUTH:** Yes, Section A38.2.1.A complies with the Commission's Order.

**STAFF ANALYSIS:** Order No. PSC-96-0446-FOF-TL, requires BellSouth to allow independent directory publishers:

...to produce any type of directory that they are capable of, whether specialty, white or yellow pages, or electronic. BellSouth should not unduly restrict its DPDS tariff to limit the type of directory or the frequency of its production. The restrictions currently existing in the tariff, which are designed to protect consumer privacy, should remain effective. (Order p.6)

The Order further states:

At the February 6, 1996 Agenda Conference, BellSouth expressed concern that "electronic directories" could be a form of directory assistance. According to FIDP, directory publishers do not wish to use the DPDS tariff to offer directory assistance. They only want to be allowed to offer directories on diskette or CD-ROM.

On July 7, 1996, BellSouth filed revised tariff sheets to incorporate the changes directed by the Commission in Order No. PSC-96-0446-FOF-TL. The Order states that BellSouth should allow independent directory publishers the option of publishing directories on diskette or CD ROM. BellSouth's revised tariff included the CD ROM option for directory publishers; however, the tariff did not explicitly state that the directory publishers could publish directories via diskettes. (EXH 6, p.4) In this proceeding, BellSouth defended its exclusion of the diskette element by stating that for purposes of its tariff, a diskette and

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CD ROM are the same. (EXH 4, p.2; TR 67, 182) BellSouth further stated that the price for listing files published in diskette form would be the same price as stated in the tariff for CD ROM. (EXH 4, p.5)

FIDP contends that BellSouth's CD ROM tariff provision is not an "allowance" but a restriction on its ability to produce directories in any format. (EXH 3, p.2) FIDP states that no restrictions or limitations should be imposed on FIDP's ability to produce any kind of directory. (EXH 3, p.3) Further, witness Screven argues that the Staff Recommendation and Order require BellSouth to allow independent directory publishers to publish directories in "electronic" format, which he defines as, "...diskette, CD ROM, on the World Wide Web/Internet-Intranet, laser disk, digital disks, magnetic tapes, optical disks, etc." (EXH 3, p.3)

In support of its argument, FIDP refers to the portion of the Order that states:

In addition, we believe that directory publishers should be allowed to produce any type of directory that they are capable of, whether specialty, white or yellow pages, or electronic. BellSouth should not unduly restrict its DPDS tariff to limit the type of directory or the frequency of its production. (Order p.6)

Staff would note that contrary to FIDP's argument, the Commission defined "electronic" directories as diskette or CD ROM for purposes of BellSouth's DPDS tariff, and even FIDP stated that it only wanted to be able to produce "electronic" directories in diskette or CD ROM form. (Order p.6) In staff's opinion, BellSouth has followed the intent of Order No. PSC-96-0446-FOF-TL. Staff believes that the Order directed BellSouth to amend its DPDS tariff to allow independent directory publishers the ability to produce CD ROM and diskette directories. Although BellSouth only put the CD ROM element in its tariff, BellSouth has stated that the two elements are interchangeable. Staff believes that BellSouth should clarify that both CD ROM and diskette are acceptable directory formats, by inserting the word "diskette" into the applicable sections of its tariff.

However, from the evidence developed in this record, staff believes that the underlying concern of both parties is the issue of producing directory listings on the Internet. Witness Screven's definition of "electronic" directories has broadened throughout this proceeding. He now wants to be allowed to produce directories over the Internet, which is prohibited under the DPDS tariff, but

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allowed under BellSouth's Directory Assistance Database Service tariff. Witness Screven has stated that independent directory publishers do not want to provide directory assistance. (TR 60) However, he states:

If a competitive yellow pages publisher wishes to take the complete published product, including the white pages, and duplicate it on a web site for anyone surfing the net to have access to it, BST should not decide if it is appropriate or proper. (EXH 3, p.9)

BellSouth argues that under the current tariff, DPDS subscribers are not allowed to reproduce DPDS listing data on the Internet. BellSouth states:

Such use of listing data is not a directory publishing application, but constitutes the provision of a directory assistance type communications service - where consumers can request a single, specific listing via communications lines. (EXH 4, p.8)

BellSouth further states that publishers who want to enter the directory assistance service business may do so by utilizing BellSouth's Directory Assistance Database Service (DADS) tariff. Currently, BellSouth's affiliate, BellSouth Intelligent Media Ventures, has a trial business directory on the Internet. (TR 157) BellSouth witness Juneau testified that this Internet directory consists only of business listings, not white pages, and the listing information is purchased under the DADS tariff. (TR 157, 158) Staff believes BellSouth's Internet trial is comparable to the offering that witness Screven described above. Staff agrees with BellSouth that the provision of directory listings via the Internet would logically fall into the category of directory assistance, and should be purchased from the DADS tariff.

Staff would note that although FIDP protested only one part of the Order, its proposed issues encompassed a much broader range of conflict. BellSouth accepted the broader range of issues that FIDP proposed; however, FIDP's desires go beyond the accepted broader range of issues. FIDP suggests that staff and the Commission:

look at the listings information as a single source of an essential ingredient necessary for the development of products and services in a free and competitive market place. Surely BellSouth should not be allowed to impede or stifle development of better products and services to be offered to the consumers of the state of Florida, simply because they possess the basic ingredients

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necessary for FIDP to compete against BellSouth and other LECs that possess the same necessary information. (EXH 3, p.23, 24)

Staff believes that this statement goes to the heart of FIDP's competitive concerns. It would appear to indicate that FIDP witness Screven would like to see the distinction between the DPDS tariff and the DADS tariff disappear. The conflict clearly centers on what is appropriate for the DPDS tariff, and what is appropriate for the DADS tariff. FIDP has stated that it does not want any restrictions on its ability to produce directories in any format, including provision over the Internet. We believe that this would require major revisions to both the DPDS and DADS tariff concepts, which would go beyond the issues agreed to by the parties, including FIDP. Staff does not recommend wholesale dismantlement of BellSouth's DPDS and DADS tariffs in this proceeding.

Staff recommends that BellSouth should clarify that CD ROM and diskette are both offered via the DPDS tariff by inserting the word "diskette" into the applicable sections of its tariff. Staff does not recommend any further modification of BellSouth's tariff with respect to this issue in this proceeding.

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**ISSUE 3b:** For purposes of BellSouth's Directory Publishers Database Service (DPDS), how should "directory" be defined?

**RECOMMENDATION:** For purposes of the DPDS tariff, staff recommends that a directory be defined as a dated, tangible, alphabetically and/or numerically sequenced list containing the listed names, addresses, primary business classification (where available) and telephone numbers of BellSouth's subscribers located within the central office NPA-NXX codes requested for publishing in printed, diskette or CD ROM format. The Commission approved definition should be incorporated into BellSouth's DPDS tariff.

**POSITION OF PARTIES**

**FIDP:** A directory is a compilation of listings without regard to the manner, format, or method it is published, distributed or displayed.

**BELLSOUTH:** Directory: A dated, tangible alphabetically or numerically sequenced list containing all the names, addresses and telephone numbers of a specific group of persons and/or business and/or organizations included in the set of listings provided by BellSouth to its subscribing DPDS customer.

**STAFF ANALYSIS:** BellSouth's proposed definition would maintain a distinction between a directory and directory assistance. BellSouth defines a directory to be:

A dated, tangible alphabetically or numerically sequenced list containing all the names, addresses and telephone numbers of a specific group of persons and/or business and/or organizations included in the set of listings provided by BellSouth to its subscribing DPDS customer.  
(TR 119)

Staff believes FIDP's very broad definition of directory, i.e., a compilation of listings without regard to the manner, format, or method by which it is published, distributed, or displayed, would eliminate the DADS tariff as a separate offering. (TR 30) Since we have recommended in Issue 3a that this is not appropriate for this proceeding, we recommend that the following definition be used for purposes of the DPDS tariff. A directory should be defined as:

a dated, tangible alphabetical and/or numerically sequenced list containing the listed names, addresses, primary business classification (where available) and telephone numbers of BellSouth's subscribers located

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within the central office NPA-NXX codes requested for publishing in printed, diskette or CD ROM format.

Staff recommends that the Commission's approved definition should be incorporated into BellSouth's DPDS tariff.