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December 4, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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 Ms. Salas:

On behalf of the Yellow Pages Publishers Association (YPPA), Gil Geldon (Bell Atlantic Directory Services, Inc.), Dan Thompson (BellSouth Advertising and Publishing Corporation), and Joel Bernstein (Halprin, Temple, Goodman & Sugrue) met with Dorothy Attwood, Lisa Choi, Raelynn Tibayan Remy and Tonya Rutherford of the Common Carrier Bureau's Policy and Program Planning Division and David Konuch of the Common Carrier Bureau's Competitive Pricing Division on December 3, 1997. YPPA and the FCC staff discussed matters relating to subscriber list information in the above captioned proceeding raised in YPPA's previous filings in the proceeding.

YPPA specifically discussed materials contained in the Association of Directory Publishers' (ADP) ex parte filings of September 18, 1997 (two filings) and October 8, 1997. During the meeting, YPPA reiterated its position that the statute and the legislative history do not support the use of cost-based pricing for subscriber list information.

YPPA also discussed the Florida PSC hearing raised in ADP's September, 18 1997 ex parte filing. YPPA noted that the cost figures which ADP referred to in its ex parte were

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reviewed by Florida Public Service Commission (FPSC) and found to be reasonable. FPSC specifically rejected incremental cost as a basis for pricing subscriber list information, and the FPSC ruled its decision is consistent with Section 222(e) and (f). Furthermore, BellSouth Advertising and Publishing Company pays more to BellSouth Telephone Company for subscriber listings in Florida than independent publishers do under the BellSouth Telephone Company tariff. YPPA noted that the FPSC decision states that "BellSouth's services do not constitute a bottleneck function for FIDP, since other sources exist for the required information." (Florida PSC Order No. PSC-97-0535-FOF-TL, Page 8.) A copy of that decision is attached hereto and was distributed at the meeting.

YPPA and the staff discussed the differences between using subscriber list information for publishing a directory and for providing directory assistance and other purposes. YPPA noted that the statute only requires access for publishing directories. YPPA and the staff also discussed whether posting subscriber list information on the internet should be considered directory publication or directory assistance. YPPA noted that the FPSC determined that internet directories are directory assistance, not directory publishing, and BellSouth's tariff is structured to meet that definition. YPPA noted that Excell's petition requesting access to subscriber list information, filed in ADP's September 18, 1997 ex parte, is outside the scope of section 222(e), which only requires access to subscriber list information for the purpose of publishing directories.

YPPA does not contend that the FPSC pricing should be adopted nationally. Indeed, YPPA contends that each state may have a variety of reasons for approving subscriber list information tariffs. YPPA notes that where such a tariff exists, and where the tariff has been subject to state approval, that state most likely has determined that price to be reasonable. YPPA also discussed the cost difference per listing for providing initial subscriber list information and providing selective updates.

YPPA discussed that the antitrust lawsuit filed by GTE (contained in ADP's October 8 ex parte) against several RBOCs and internet service providers, claiming that the RBOCs are trying to corner the market on internet yellow pages, is irrelevant. The GTE complaint is about which internet yellow pages will be linked from which internet service providers. This has nothing to do with subscriber list information and section 222(e).

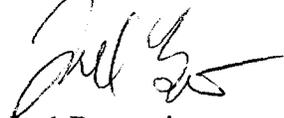
YPPA also discussed the relevance of the recent 8th Circuit Court of Appeals decision on the section 222(e) proceeding. YPPA stated that the interconnection rules are separate and apart from section 222(e), and, therefore, while the 8th Circuit decision may contain some guidance for the Commission, it is not necessarily controlling in this proceeding.

Finally, YPPA did not have an opportunity to discuss ADP's second September 18, 1997 ex parte regarding the U.S. Copyright Office report on Legal Protection of Databases. While YPPA has not taken a position on the pending database legislation, YPPA does not agree that subscriber list information is a "sole source" database. Indeed, as noted above,

Ms. Magalie Roman Salas
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the FPSC found the exact opposite. It is also irrelevant, as Congress has mandated access to subscriber list information for the purpose of publishing directories.

Sincerely,



Joel Bernstein

Enclosure

cc: Dorothy Attwood (w/o enclosure)
Lisa Choi (w/o enclosure)
Raelynn Tibayan Remy (w/o enclosure)
Tonya Rutherford (w/o enclosure)
David Konuch (w/o enclosure)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition and complaint)	DOCKET NO. 931138-TL
of Florida Independent Directory)	ORDER NO. PSC-97-0535-FOF-TL
Publishers to amend Directory)	ISSUED: May 9, 1997
Publishers Database Service)	
Tariff of BellSouth)	
Telecommunications, Inc. d/b/a)	
Southern Bell Telephone and)	
Telegraph Company.)	

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 JOE GARCIA
 DIANE K. KIESLING

APPEARANCES:

Norman H. Horton, Jr., Esquire, Floyd R. Self, Esquire, Messer, Caparello, Metz, Maida & Self, P.A., Suite 701 215 South Monroe Street, Tallahassee, Florida 32302-1876
On behalf of Florida Independent Directory Publishers.

J. Phillip Carver, Esquire, Robert G. Beatty, Esquire, BellSouth Telecommunications, Inc., Suite 400, 150 South Monroe Street, Tallahassee, Florida 32301; and William J. Ellenberg II, Esquire, A. Langley Kitchings, Esquire, BellSouth Telecommunications, Inc., Room 4300, 675 W. Peachtree Street N.E., Atlanta, Georgia 30375.
On behalf of BellSouth Telecommunications, Inc.

Charles J. Pellegrini, Esquire, Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.
On behalf of the Commission Staff.

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ORDER ON DIRECTORY PUBLISHERS DATABASE SERVICE TARIFF

BY THE COMMISSION:

BACKGROUND

On November 24, 1993, the Florida Independent Directory Publishers (FIDP) filed a petition and complaint requesting that certain provisions of BellSouth Telecommunications Inc.'s (BellSouth's) Directory Publishers Database Service (DPDS) tariff be revised. FIDP is a group of seventeen independent directory publishers, whose spokesman is Gerry Screven, President of Direct Media Corporation. The independent telephone directory publishers compete with BellSouth's affiliate, BellSouth Advertising and Publishing Co., Inc., (BAPCO) in the publication of telephone directories. Currently, sixteen independent directory publishers subscribe to BellSouth's DPDS tariff in Florida.

On December 20, 1993, BellSouth filed a motion to dismiss the petition and complaint. We denied that motion in Order No. PSC-94-0641-FOF-TL, issued May 25, 1994, stating that, while the pleading did not meet the requirements of a complaint, it met the requirements of a petition. We also disposed of FIDP's allegation that it had received no prior notice of BellSouth's intention to file the DPDS tariff. We determined that BellSouth was not required to provide prior notice.

Subsequent to the issuance of Order No. PSC-94-0641-FOF-TL, our staff conducted discovery seeking information concerning the DPDS tariff. At the same time, BellSouth and FIDP entered into negotiations to settle their dispute. On November 1, 1994, the parties met with our staff to discuss the progress of their negotiations. At that meeting, FIDP offered to settle on the same terms and conditions to which it had agreed in a similar case it had filed in Louisiana. BellSouth agreed. In May 1995, however, FIDP advised that it had not reached an agreement and that negotiations were at an impasse. It requested that we resolve the dispute.

On March 29, 1996, we issued Proposed Agency Action Order No. PSC-96-0446-FOF-TL, in which we required certain amendments to BellSouth's DPDS tariff. These amendments were similar to the terms and conditions to which the parties had agreed in Louisiana. We ordered BellSouth to amend its Weekly Business Activity Reports (WBARs) to include residential listings, so that the WBAR could be used as an update service. Thereafter, on April 11, 1996, we issued Amendatory Order PSC-96-0446A-FOF-TL, in which we deleted as

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unnecessary the requirement that BellSouth amend its WBARs to include residential listings. Since we had already ordered BellSouth to provide an appropriate update service, which included residential listings, upon reflection we considered it unnecessary to require BellSouth to also amend its WBAR to include residential listings.

On April 19, 1996, FIDP filed a petition protesting Ammendatory Order PSC-96-0446A-FOF-TL. In its petition, FIDP claimed that adding residential listings to the WBAR, and creating an update service were two separate services. The matter was set for a formal administrative hearing.

On July 7, 1996, BellSouth filed revised tariff sheets to incorporate the changes that we directed be made in Orders Nos. PSC-96-0446-FOF-TL and PSC-96-0446A-FOF-TL. Then, on July 24, 1996, FIDP filed a Petition for Enforcement of Order and Modification of Tariff. In its petition, FIDP stated, "The modified tariff fails to recognize and incorporate directives of the Commission." FIDP stated that the tariff amendments filed by BellSouth failed to comply with our decision 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; and
- (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 our orders.

FIDP's petition for enforcement expanded the scope of its protest. Noting that the petition should actually have been docketed separately, the Prehearing Officer determined that the issues it raised were essentially the same as the issues set for

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hearing, and that they would be resolved by our decisions on those issues. We held an administrative hearing on January 13, 1997. At the hearing, we took official recognition of our earlier orders in this docket.

After reviewing the evidence of record, the arguments of the parties, and the recommendation of our staff, we set forth our decision below.

DECISION

NEW CONNECTIONS LISTING SERVICE

Service Defined

FIDP witness Screven contends that the current DPDS tariff does not meet FIDP's needs. He points out that the WEAR, which is an option in the DPDS tariff, is a list of every central office activity, disconnections, changes, transfers, and new business connections. Witness Screven asserts that the new connections information is bundled together with information that is "needless and useless" to directory publishers.

Witness Screven states that directory publishers want an optional service offering that would provide subscribers with a list of new residential and business connections. He states that this list would be used to distribute directories to new residential and business telephone subscribers, as well as to solicit advertising from new business subscribers. He asserts that a new connections listing would allow directory publishers the same opportunity as BAPCO to market their products to new customers. He states further that FIDP does not want the new connections information for any other purpose, including selling this information to telemarketing firms, a use prohibited by BellSouth's tariff.

Witness Screven states that the new connections service should include the billing addresses for the new connections and the complete mailing addresses for unlisted or non-published numbers. 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." He states that FIDP would accept the restriction that the customers' billing addresses and the mailing addresses for unlisted or non-published numbers would only be used for directory delivery purposes.

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Witness Screven states that the new business connections currently found in the WBAR would be used to solicit yellow pages advertising and to deliver directories to new business customers. New connections listings are very important to directory publishers, because, witness Screven claims, annually they represent twenty percent of the activity in BellSouth's region.

Witness Screven states that BellSouth's DFDS tariff does not currently provide an appropriate way to obtain residential and business new connections information. He states that the WBAR only contains new business connections, and this information is bundled with unnecessary information and offered at an excessive rate. He maintains that FIDP does not want to pay the tariffed rate of \$.006 per listing for the entire central office database. He proposes a new connections listing service providing only new residential and business connections. The proposed service would eliminate the change, disconnections, and transfer information that currently is bundled with the new business connections information in the WBAR. FIDP would only have to pay for the essential new connections information.

Witness Screven also asserts that the services currently offered to the directory publishers are not the same as those provided to BAPCO. He claims that BellSouth should provide the same information to all parties. He states that "[i]t 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." He observes, however, that FIDP does not want to develop the programming capability, at its expense, to receive the data in the same format in which it is transmitted to BAPCO. For that reason, he states that FIDP seeks a new connections service, to be developed by BellSouth, that is unbundled, that is priced appropriately, and that contains the information FIDP requests, so that independent directory publishers can compete with BAPCO.

Witness Screven states that sufficient demand exists to warrant BellSouth's development of the service options that the directory publishers want. He also affirms that he is authorized to represent each one of the FIDP publishers. He states that if BellSouth develops the requested service, they all would buy either a portion of it or all of it.

BellSouth witness Juneau asserts that the current DFDS tariff is an appropriate tariff for directory publishers and that no change to the tariff is warranted. He states that the DFDS tariff is a Commission-approved tariff that has been thoroughly reviewed.

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He advises that, currently, sixteen customers subscribe to the DFDS tariff, with four directory publishers subscribing to the WBAR.

Witness Juneau further asserts that lists consisting solely of new connections are not required to publish directories. He acknowledges that such a list would be more convenient; he points out, however, that independent publishers use directory information from sources besides the tariffed services, including BellSouth's "on the street" directory.

Moreover, witness Juneau asserts that there is no demand for a new connections service from anyone other than Mr. Scraven himself. He states that BellSouth has become aware in this proceeding for the first time that a separate listing of new connections activity is desired. He contends that FIDP's request for a new connections service does not express the will of the directory publishing industry. He asserts that BellSouth should not be required to develop a new residential and business connections listing service for which there is insufficient demand.

Witness Juneau refutes FIDP's assertion that it wants exactly what BAPCO receives from BellSouth. He states that BAPCO receives an unedited electronic transmission of every service order activity item that occurs daily in BellSouth's nine-state region. He states further that BAPCO installed equipment and developed software at its own expense to identify the information it culls from the raw data. He contends that FIDP, on the other hand, wants BellSouth to develop, at BellSouth's expense, the capability to sort the raw data and provide FIDP with unbundled sorted information.

He states that BellSouth is willing to develop a new connections service offering for directory publishers to use for the purpose of distributing directories. He observes that BAPCO isolates new connections information not to publish directories, but to sell advertising and to distribute directories to new connections.

Upon consideration, we find that FIDP's request for an optional new connections listing service is reasonable. We note that because BellSouth's current DFDS tariff is bundled, directory publishers have to purchase unneeded data to obtain what they want. We also note that FIDP can do without the new connections service, and that it has done so for some time. For example, the record shows that Mr. Scraven entered the publishing business in 1986 and has never subscribed to BellSouth's DFDS service. Instead, he obtains the information he needs from BellSouth's "on the street" directory. Nevertheless, we find it appropriate that FIDP be afforded access to new connections information in the manner it

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requests. We find it inappropriate that independent directory publishers should be required to purchase the entire central office listings database, a significant portion of which is of no use to them.

We note that BellSouth is not opposed to developing a new connections service offering if it is to be used to distribute directories to residential and business subscribers or for soliciting advertising from new business subscribers. Indeed, FIDP states that it wants this information for only those purposes.

Based on the evidence of record, we require BellSouth to file a tariff offering a new connections listing service for residential and business customers on an unbundled basis. Because there are existing subscribers to the WBAR service, the new service shall be made available in addition to the WBAR service. Thus, directory publishers will have the flexibility of choosing the option that best fits their business needs. In addition to its existing DPDS tariff, BellSouth shall develop the following options:

- (1) New residential customers listing;
- (2) New business customers listing;
- (3) Billing addresses for new customers; and
- (4) Complete mailing addresses for unlisted or non-published numbers.

With the exception of new business customers, we find it appropriate to limit these new listings for the delivery of directories. The list of new business customers, however, may be used for soliciting yellow page advertising.

Rates

FIDP witness Screven asserts that the WBAR rates under the DPDS tariff are prohibitive, because they are not based on incremental cost. He would define 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."

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. He explains 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, or \$600. He claims that it is unfair to have to purchase the entire WBAR database, observing that there may not be any new customers.

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BellSouth witness Juneau states that BellSouth's pricing methodology for the DPDS tariff is market-based. He asserts that market-based pricing is appropriate for DPDS because of the value of the information being provided. He claims that, to his knowledge, BellSouth's rates are the lowest available in the market. Moreover, he notes that on a per listing basis BAPCO pays significantly higher rates than the presently tariffed DPDS rate.

Witness Juneau contends that BellSouth should be allowed to recover the costs of developing the capability to offer the new connections listings service to the independent directory publishers. He advises that BellSouth proposes a rate of \$2.00 per new connection listing. He explains that this rate is based on the projected demand for the new connections listing service. He notes that this demand is based solely on FIDP's claim that most FIDP publishers would purchase these services. He observes, however, that if fewer than twelve publishers were to purchase the new service, BellSouth would seek higher rates because the unit cost is extremely sensitive to the number of subscribing customers.

We do not agree with FIDP that incremental cost pricing is appropriate for the requested services. These are non-basic services. Price protection is not necessary for them, as it is for basic services. Also, we find that BellSouth's services do not constitute a bottleneck function for FIDP, since other sources exist for the required information. Furthermore we find that incremental pricing is not consistent with the market value of new connections information. The record shows, for example, that because yellow pages advertising revenues and returns have been historically quite high, independent directory publishers have the potential to earn substantial returns on their investments, just as BAPCO does. Finally, we find that BellSouth should be able to recover the cost of developing the programming capability required to comply with FIDP's request.

We find that BellSouth's proposed market-based rates are reasonable for the service offerings requested by FIDP. Thus, we require that independent directory publishers purchase the new connections listing information for both residential and business customers on an unbundled basis at a rate of \$2.00 per listing.

47 U.S.C. §222

47 U.S.C §222(e), the Telecommunications Act of 1996 (the Act), requires local exchange companies to provide "subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and

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reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format."

47 U.S.C. §222(f)(3) defines subscriber list information as any information:

(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.

We interpret 47 U.S.C. §222(e) to require BellSouth to provide subscriber list information to any directory publisher upon request for the purpose of publishing directories. Accordingly, we find that our decisions herein concerning new connections listings comply with 47 U.S.C. §222(e).

UPDATE SERVICE

BellSouth's current update service is the Monthly Refresh Files (MRF) service. It is offered in compliance with Order No. PSC-96-0446-FOF-TL. This service offers an initial central office NPA-NXX listing file and eleven subsequent monthly files. The subsequent files contain the same data as the initial file with the addition of any changed or new listing activity occurring in the past month. To identify any activity that occurred during the past month, a publisher compares the file to the file for the prior month.

BellSouth currently offers its MRF update service to 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 directory. Selection of multiple editions of a printed directory allows publishers to publish their initial or basic directory and any specialized directories. This enables the publishers to sell additional advertising. The rate for multiple editions of printed directories is \$48 per listing. Selection of the CD ROM directory allows the publisher to publish

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electronic directories in either CD ROM or diskette format. The rate for CD ROM directories is \$.54 per listing. For the period July 1996 through June 1997, the record shows that BellSouth projects no demand for the MRF service.

BellSouth witness Juneau states that the rates and terms of the MRF update service have their origin in a December 1994 regional meeting, in which BellSouth met with independent directory publishers to present a number of options for an update service. The options reviewed were based on earlier regional meetings between BellSouth and independent directory publishers, in some of which Mr. Screven participated. At the presentation, witness Juneau states that BellSouth offered to develop the option of the publishers' choosing and that the publishers chose a monthly refresh files option. This was later incorporated into BellSouth's DPDS tariff in Louisiana.

In Order No. PSC 96-0446-FOF-TL, we required BellSouth to provide an appropriate update service consisting of new and corrected residential and business listings in order to allow publishers to maintain accurate directory databases. The record shows that BellSouth used the Louisiana tariff provisions with the addition of the CD ROM rate element as a basis to comply with our order. Witness Juneau states that BellSouth has no subscribers to this service in either Florida or Louisiana.

FIDP witness Screven states that the MRF update service is an inappropriate offering, because the update information is bundled with information that publishers have already purchased. He contends that by purchasing the update service FIDP would to a great extent be purchasing the same information eleven additional times a year, and that this is not reasonable. He also claims that the rates for the update service are outrageous. He states that no publisher in Florida or Louisiana is interested in this service as presently structured.

Witness Screven states that to put the update information in useful form, publishers have to download the database, refine it, and then extract from it the changes, additions and deletions. He asserts that this requirement is unreasonably burdensome. He states that FIDP wants a simplified update service comprised of only the activities that occurred in the last month. He states that, as an option, FIDP wishes to have a service offering in which BellSouth would maintain customer databases with sort predicates that would enable publishers to order list extractions by NXX code, zip code, residential customers, and business customers, and/or "a to z" extractions of foreign exchanges, remote call forwarding, 800 numbers, and other such predicates. He maintains that FIDP wishes

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to have as another option an update service offering by which BellSouth would furnish FIDP publishers with the daily service orders affecting the designated database of listings, sorted as above.

BellSouth witness Juneau asserts that the MRF service conforms with the requirements of the update service that we required in Order No. PSC-96-0446-FOF-TL. Nonetheless, he states that BellSouth will provide the update services requested by FIDP. He advises that BellSouth proposes a daily service order update for \$1.50 per listing if the service is purchased by twelve publishers. He further advises that BellSouth proposes an extract option for \$.10 per listing that would enable sorts as requested, again, if the service is purchased by twelve publishers. As with the new connections listings, witness Juneau states that BellSouth's price proposals are very sensitive to volume and that they are based on FIDP's representation that most of the independent publishers will purchase these services. He advises that these prices also are market-based.

Upon consideration, we find that FIDP's request for an update service is reasonable. We, therefore, require that BellSouth offer the requested services in place of the existing MRF update service. There is no demand for the MRF update service, present or projected, and, therefore, no customers affected by revising the offering. We find that it is in the public interest for independent publishers to be able to provide the most current information to their customers. We further find that the update service FIDP requests will give FIDP publishers the means to maintain a current database and allow them to provide their customers with the most current data available and to compete effectively with BAPCO.

Based on the record and the requirements of Sections 222(a) and (f)(3) of the Act, we find it appropriate to require BellSouth to offer directory publishers the optional update services requested by FIDP. We find that the update service rates proposed by BellSouth are reasonable. BellSouth should be able to recover its cost of developing the programming capability needed to provide sorted list extractions to publishers. Thus, we require that independent directory publishers purchase the daily service order option at the rate of \$1.50 per listing and the list extraction option at a rate of \$.10 per listing.

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FORM OF PUBLICATION

In Order No. PSC-96-0446-FOF-TL, we required 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.

We further stated in that Order that:

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 we directed it to make in Order No. PSC-96-0446-FOF-TL. We ordered that the tariff 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. BellSouth witness Juneau explains that for purposes of the tariff a diskette and CD ROM are to be considered the same. He further explains that the price for listing files published in diskette form would be the same price as stated in the tariff for CD ROM.

FIDP witness Screven contends that BellSouth's CD ROM tariff provision is not an "allowance" but a restriction on its ability to produce directories in any format. He asserts that no restrictions or limitations should be imposed on FIDP's ability to produce any kind of directory. He further asserts that our Order requires 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."

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We do not agree with FIDP. In Order No. PSC-96-0446-FOF-TL, we defined "electronic" directories as diskette or CD ROM for purposes of BellSouth's DPDS tariff. Indeed, witness Screven states that FIDP only wants to be able to produce "electronic" directories in diskette or CD ROM form. We find that BellSouth has followed our intent in Order No. PSC-96-0446-FOF-TL. We directed BellSouth to amend its DPDS tariff to allow independent directory publishers the ability to produce CD ROM and diskette directories. Although BellSouth included only CD ROM directories in its tariff, witness Juneau states that the tariff language should be read to mean both CD ROM and diskette directories. Nevertheless, we will require that BellSouth revise the tariff to state explicitly that both CD ROM and diskette are acceptable directory formats.

From the evidence developed in this record, we have determined that the underlying concern of both parties is the posting of directory listings on the Internet. Witness Screven's definition of "electronic" directories was expanded throughout this proceeding to now include directories on the Internet. We find, however, that this is permissible only through BellSouth's Directory Assistance Database Service (DADS) tariff. Although witness Screven does state that independent directory publishers do not want to provide directory assistance, he maintains that "[i]f 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, [BellSouth] should not decide if it is appropriate or proper."

Witness Juneau contends that under the current tariff, DPDS subscribers are not allowed to reproduce DPDS listing data on the Internet. He states that "[s]uch 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."

He further states that publishers who want to enter the directory assistance service business may do so by utilizing BellSouth's DADS tariff. He notes that a BellSouth affiliate, BellSouth Intelligent Media Ventures, has a trial business directory on the Internet. He explains that this directory consists only of business listings, not white pages, and the listing information is purchased under the DADS tariff. We find that BellSouth's Internet trial is comparable to what witness Screven proposes FIDP be allowed to do. We agree with BellSouth that the posting of directory listings on the Internet amounts to the provision of directory assistance, and that, thus, the right to do so must be purchased from the DADS tariff.

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Witness Screven states that FIDP wants to produce directories in any format free of any restrictions. We conclude that this would require major revisions to the DPDS and DADS tariffs, something that is beyond the scope of this proceeding.

DIRECTORY DEFINED

BellSouth witness Juneau proposes a definition of "directory" that would maintain a distinction between a directory and directory assistance. He proposes that "directory" be defined as "[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."

FIDP witness Screven would define "directory" as a compilation of listings without regard to the manner, format, or method by which it is published, distributed, or displayed. We find that FIDP's proposed definition would eliminate the DADS tariff as a separate offering.

We find it appropriate, therefore, to define "directory" in the following way:

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

We shall require BellSouth to incorporate this definition into its DPDS tariff.

Finally, we shall require BellSouth to file all required modifications to its DPDS tariff within seven days following this Order to become effective five days after the correct tariffs are filed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that each and all of the specific findings set forth in the body of this Order are approved in every respect. It is further

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ORDERED that BellSouth Telecommunications, Inc., shall file a tariff offering a new connections listing service for residential and business customers on an unbundled basis, and as further described in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc., shall offer the new connections listing service for both residential and business customers on an unbundled basis at the rate established in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc., shall offer the update services requested by Florida Independent Directory Publishers, as more fully described in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc., shall offer the update services requested by Florida Independent Directory Publishers at the rates established in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc., revise the Directory Publishers Database Service tariff to state explicitly that both CD ROM and diskette are acceptable directory formats. It is further

ORDERED that BellSouth Telecommunications, Inc., shall incorporate into its Directory Publishers Database Service tariff the definition of "directory" that we have approved and set forth in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc., shall file all required modifications to its Directory Publishers Database Service tariff within seven days following this Order, to become effective five days thereafter.

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By ORDER of the Florida Public Service Commission, this 9th
day of May, 1997.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed
copy of the order may be obtained by
calling 1-904-413-6770.

(S E A L)

CJP

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.