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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

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

Dear Ms. Salas::

The Association of Directory Publishers ("ADP") hereby submits the following documents in the above-docketed proceeding. The attached documents reveal that local exchange carriers ("LECs") are circumventing Section 222(e)'s requirements that subscriber list information be provided to directory publishers on reasonable and nondiscriminatory rates, terms, and conditions. Thus, ADP believes these documents are relevant to the Commission's deliberations concerning the need for, and substance of, rules governing the provision of subscriber list information.

**1. REFUSAL TO SELL LISTINGS.**

Based on conversations with its members, ADP believes that nearly every LEC is violating Section 222(e). As a matter of law, an offer to deal on unreasonable terms is the same thing as a refusal to deal.<sup>1</sup> Below, ADP demonstrates that LECs are attaching numerous, onerous terms in their listings agreements. Such terms -- which include outrageous prices and other anticompetitive conditions such as limits on the use of listings for Internet directories -- fly in the face of Section 222(e)'s

<sup>1</sup> See Fishman v. Wirtz, 807 F.2d 520, 450 (7th Cir. 1986); Delaware & Hudson Railway Co. v. Consolidated Rail Corp., 902 F.2d 174, 179-180 (2d Cir. 1990). See also Consolidated Gas Co. v. City Gas Co., 912 F.2d 1262, 1295 (11th Cir. 1990) (en banc) (Johnson J., concurring in part and dissenting in part).

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plain language. Consequently, the agreements proffered by most LECs do not comport with Section 222(e). ADP urges the Commission to issue rules governing the implementation of Section 222(e) and to prohibit the types of unlawful conduct discussed below.

**a. Unilateral power to alter contracts.**

One of the more onerous clauses contained in listings contracts is LECs' reservation for themselves of the power to alter the contract's terms. U S West's agreements, for example, give U S West the unilateral right to alter the "prices or product descriptions" in its agreements.<sup>2</sup> Ameritech has similar provisions in its agreements.<sup>3</sup> That listings agreements may be changed at LECs' sole option renders listings agreements nearly meaningless and ensures that competing directory publishers are not able to compete on a level playing field with the LEC. Specifically, publishers are hesitant to make long-term plans or commitments to large directory products since they are not assured that the terms of their contracts will remain fixed during the contract's life.

**b. Excessive profits.**

In spite of Section 222(e)'s admonition that listing prices be "reasonable," LECs continue to earn monopoly profits by charging prices bearing no relationship to cost. As the Commission is well aware, the only detailed cost data submitted in this proceeding has been ADP's submission of a BellSouth study showing that LECs' cost per listing is less than one hundredth of one cent.<sup>4</sup> BellSouth recently affirmed the validity of this study by testifying that it earns a 1,300% profit when selling its listings at 4¢/listing.<sup>5</sup> BellSouth recently told this Commission that this 1,300% profit was reasonable and in accord with the

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<sup>2</sup> See U S West Agreement with Telecom \*USA at § 5 (Attachment H).

<sup>3</sup> See Ameritech Listing Agreement with Midwest Directories Inc. at ¶ 2.2 (reserving right to "make changes in the form, content or scope of its Listing Information") (Attachment G).

<sup>4</sup> See, e.g., Exhibit 2 to Attachment A.

<sup>5</sup> See Testimony of BellSouth Witness Juneau before the Florida PSC (Jan. 13, 1997) at 130, 145 & 162, Exhibit 3 to Attachment A.

Act.<sup>6</sup> PacBell -- whose profits are presumably even greater since it charges 10¢/listing -- has confirmed that its prices are unrelated to costs, stating that "[n]othing in the Act requires Pacific's [subscriber list] tariffs to be set at our cost."

As shown in Attachment D, other large LECs charge even more egregious prices for their listings: GTE (35-40¢);<sup>8</sup> Southwestern Bell (25-50¢); and U S West (22¢). Medium and smaller LECs are even more outrageous: Alltel (50¢); Pigeon (60¢); PTI (75¢); and Mebtel (\$1.67).<sup>9</sup> Given ADP's uncontradicted showing that LECs' cost per listing is less than one hundredth of one cent, the pricing and profit margins enjoyed by LECs surely constitute the kind of "excess and discriminatory prices" barred by Section 222(e).

**c. Prices based on use of listings.**

Another unlawful pricing tactic employed by LECs is charging different prices for the exact same listing information depending on how the competing directory publisher intends to use the listings. BellSouth, for example, charges the following prices per listing:

- use in a single, printed directory is 4¢/listing;
- use in more than one printed directory is 12¢/listing; and
- use in a CD-ROM directory is 18¢/listing.<sup>10</sup>

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<sup>6</sup> See, BellSouth Reply Brief Supporting Section 271 Application for Louisiana, CC Docket No. 97-231 at 91 (filed December 19, 1997) (stating that its 4¢/listing tariff has "been approved by State commissions" and does not "violate Section 222(e)").

<sup>7</sup> See PacBell's Comments in Response to ALJ's Ruling Soliciting Comments on Directory Listing Issues, R 95-04-043 (Filed Aug. 15, 1997) (Attachment C).

<sup>8</sup> GTE charges only 10¢ a listing in California pursuant to California PUC regulations.

<sup>9</sup> See Attachment D.

<sup>10</sup> See Louisiana Tariff at A.38.2.3.1, Exhibit 1 to Attachment A.

The listings provided above are exactly the same and are delivered in exactly the same manner; only the price and profit margins change. At 18¢/listing, BellSouth earns a 6,000% profit on the sale of its listings for publication in a CD-ROM directory.<sup>11</sup> A mere 4,000% profit is earned when those same listings are sold to a publisher intending to use them in more than one printed directory.

Ameritech's prices are equally monopolistic:

- (1) use in a single publication is 13¢/listing; and
- (2) use in multiple publications is 25¢/listing.<sup>12</sup>

There is no reasonable basis for charging different listing prices based upon the type of directory in which the listings will be used. This pricing strategy is intended to be a barrier to independent directory publishers creating multiple directory products and/or using CD-ROM technology.<sup>13</sup> In short, such tactics are designed to discourage competition by making it unprofitable. This behavior is exactly what Section 222(e) prohibits.

**d. Unlawful control over updates.**

A recent poll of ADP members revealed that several LECs including SNET, Frontier, and Sprint/Central will not provide updates -- new connects, disconnects, and change of address -- to competing directory publishers.<sup>14</sup> Such LECs,

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<sup>11</sup> With a cost of \$0.003/listing, BellSouth earns 6,000% profit when selling listings for CD-ROM directories at 18¢/listing. BellSouth has explained that CD-ROMs provide a "greater value" to end users and thus BellSouth should be able to extract a greater price from purchasers. See Juneau Testimony at 148-49, 151, & 161-62, Exhibit 3 to Attachment A.

<sup>12</sup> See Appendix B to Ameritech Listing Agreement with Midwest Directories Inc. (Attachment G).

<sup>13</sup> No such barriers exist for the LEC's directory affiliate.

<sup>14</sup> As of 3 November 1997, ADP members were still unable to acquire updates from SNET, Frontier, GTE, Sprint/Central Telephone and others. See Attachment F (containing letters stating that certain LECs are not providing updates). Non-ADP member Destin Directories has also submitted a letter alleging that Sprint-Centel refuses to provide it with updates.

of course, provide their directory affiliates and directory assistance services with updated listing information.<sup>15</sup> Aside from the discriminatory nature of such actions, the refusal to provide updates is a blatant violation of Section 222(e).

Those LECs that do provide updates impose unreasonable prices and/or other unlawful restrictions. BellSouth, for example, will provide daily updates for \$1.50 or daily new connects for \$2.00.<sup>16</sup> Ameritech's daily charges are equally astounding:<sup>17</sup> \$1.75 for daily updates and \$1.25 for daily new connects.

Although BellSouth will provide a weekly business report ("WBAR") for .006¢/listing, subscribers are required to pay for the entire NXX to obtain the few changes that have occurred during the week. Previously, BellSouth charged WBAR subscribers for only the changed numbers in the NXX, i.e., new connects, disconnects, and changes of address. Thus, what typically cost competing publishers only a few hundred dollars a month now costs several thousand dollars. At least one APD member, The Sunshine Pages, has canceled access to the WBAR because it is "cost

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(Attachment F). See also EZ to Use Directories' Letter of 3 November 1997 (Attachment D).

<sup>15</sup> See Juneau Testimony at 125-126, Exhibit 3 to Attachment A (stating that BAPCO receives daily updates to allow it "to sell advertising and to distribute[] directories"). BellSouth also requires that CLECs provide it and BAPCO with updated listings on a "daily" basis." See, e.g., PrimeCo Agreement Section X, Appendix B, Tab 28 to BellSouth Section 271 Louisiana Application; Sprint Spectrum Agreement Section XI, Appendix B, Tab 30 to BellSouth Section 271 Louisiana Application.

<sup>16</sup> See Louisiana Tariff at A.38.2.3.A.5 & .7, Exhibit 1 to Attachment A. An additional problem with these services is that BellSouth's tariff expressly requires that "the ordering customer(s) would be required to pay BellSouth a minimum of the *entire cost of service development.*" See id. at A.38.2.1.E. BellSouth has not provided any estimates of the development costs for these services. Hence, at this time, the services are unavailable and, in any event, their full costs are unknown.

<sup>17</sup> See Appendix B to Ameritech Listing Agreement with Midwest Directories Inc. (Attachment G).

prohibitive."<sup>18</sup> Again, this type of pricing is designed only to erect entry barriers to independent publishers.

**e. Listings for Internet directories.**

Many LECs are choosing to ignore completely Section 222(e)'s requirement that listings be provided for publishers of directories "in any format." BellSouth, for example, will not provide listings for use in Internet directories under its directory publication ("DPDS") tariff.<sup>19</sup> Rather, it claims that Internet directories are directory assistance and therefore it will permit listings to be used for Internet directories only when such listings are purchased under BellSouth's *directory assistance* tariff.<sup>20</sup> That tariff, however, requires the Internet publisher to pay BellSouth 3.5¢ each time the Internet directory is accessed. Thus, the more popular and useful the directory, the more expensive the listings become. According to one ADP member, BellSouth's "open ended cost [structure for Internet listings] prohibits us from including this product in our directory and directly damages our ability to compete in the global marketplace."<sup>21</sup> At the same time that BellSouth imposes such barriers on its competitors, it has been extremely aggressive in introducing its own Internet directory products.

Ameritech is another LEC imposing limitations on the use of Internet listings. According to several ADP members, Ameritech forbids publishers from using its listings on the Internet to facilitate searches yielding more than fifteen responses.

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<sup>18</sup> See Exhibit 5 to Attachment A.

<sup>19</sup> By its terms, BellSouth's directory publication tariff does not encompass the sale of listings for use in an Internet directory and BellSouth will not permit listings sold under this tariff to be used in Internet directories. See Louisiana Tariff, at A.38.2.1.A, Exhibit 1 to Attachment A; Juneau Testimony at 107 & 182, Exhibit 3 to Attachment A.

<sup>20</sup> See id. at 114 & 182-88. There is no basis for BellSouth's contention that an Internet directory is directory assistance. To the extent that an Internet directory requires "look-up" by the user, so too does a printed directory.

<sup>21</sup> See Sunshine Pages Letter of November 5, 1997 at 4 (Attachment E).

**f. Unlawful refusal to provide CLEC listings.**

Section 251(a)(3) of the Act requires LECs and CLECs to provide their listing information to competing providers of telephone exchange service. Pursuant to that provision, a LEC receives CLEC listings as part of its provision of local exchange service. Section 222(e) obligates LECs to provide to directory publishers all listings "gathered in [their] capacity as a provider of [telephone exchange] service." Consequently, all CLEC listings obtained by LECs must be provided to competing directory publishers. As discussed below, many LECs refuse to sell listings obtained from CLECs while permitting their directory affiliates to make full use of such information. That refusal violates Section 222(e).

In its interconnection agreements and corresponding directory listing agreements, BellSouth, for example, requires CLECs to turn over their "directory listings and daily updates to those listings" to BellSouth and BAPCO<sup>22</sup> at the CLEC's expense "and at no charge" to BAPCO.<sup>23</sup> These clauses guarantee that BellSouth's directory will be complete and that BAPCO will be able to solicit CLEC customers for directory advertising. BellSouth, however, refuses to sell CLEC listings to directory publishers on the grounds that CLEC listings are obtained by BAPCO via a contractual relationship separate from BellSouth.<sup>24</sup> In fact, BellSouth refuses to sell CLEC listings to independent publishers even when authorized to do so by the CLEC. As shown above, the listings are obtained pursuant to Section 251 interconnection agreements<sup>25</sup> and must be sold to competing directory publishers by the LEC.

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<sup>22</sup> See, e.g., Sprint Spectrum Agreement Section XI. & Attachment C-1, Appendix B, Tab 30 to BellSouth' Section 271 Louisiana Application.

<sup>23</sup> Id.

<sup>24</sup> BellSouth has rejected numerous requests for CLEC listings from ADP member and Louisiana publisher, The Sunshine Pages. See Sunshine Pages Letter of November 5, 1997 at 4 (Attachment E).

<sup>25</sup> The BAPCO contract is entered into as part of the interconnection agreement with BellSouth. For example, BellSouth's interconnection agreement with WinStar Wireless, Inc. states that it is "[s]ubject to execution of an agreement between . . . BAPCO, . . . the execution thereof to be a condition precedent to the effectiveness of this Agreement with respect to

**g. Refusal to provide business classifications.**

Several LECs are not complying with Section 222(e)'s requirement that the primary advertising classification -- plumbing, auto repair, etc. -- be turned over with each business listing. Indeed, Frontier and SNET will not indicate if a listing is business or residential let alone provide the advertising business classifications.<sup>26</sup> NYNEX is another LEC refusing to provide business classifications.<sup>27</sup>

**2. COMMISSION AUTHORITY OVER LECS' DIRECTORY AFFILIATES.**

ADP understands that many LECs (or CLECs) may prefer that their directory publishing affiliates perform the data processing and other work necessary to discharge the telephone company's obligation to provide listings to independent directory publishers. ADP does not oppose such a scheme because the Commission has full jurisdiction over LEC's directory affiliates the purposes of Section 222(e) compliance. In other words, any regulations promulgated by the Commission under Section 222(e) apply equally to LECs' (or CLECs') directory affiliates. To do otherwise would permit LECs to evade their statutory obligations under Section 222(e) by shifting responsibilities to their directory affiliates. The Commission has long forbade such tactics.<sup>28</sup>

In General Telephone, the Fifth Circuit held that the Commission properly applied Section 214 -- which encompassed only "common carriers" -- to such carrier's

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Directory Listings and Directory Distribution." See WinStar Agreement § 6.13.a, Appendix B, Tab 8 to BellSouth Section 271 Louisiana Application (emphasis added). Because the BAPCO agreement is linked to BellSouth's interconnection agreements, the CLEC listings are gathered as part of BellSouth's provision of local service.

<sup>26</sup> See The GUIDE, letter of 20 October 1997 (Attachment F).

<sup>27</sup> Id.

<sup>28</sup> See General Telephone Co. v. FCC, 449 F.2d 846, 855 (5th Cir. 1971). See also Capital Telephone Co. v. FCC, 498 F.2d 734, 738 (D.C. Cir. 1974); Mansfield Journal Co. v. FCC, 180 F.2d 28 (1950).

non-carrier cable affiliates. The Commission did so to prevent telephone companies from favoring their non-carrier affiliates over competitors. In affirming the Commission, the court stated:

[T]he activities of the non-common carrier affiliates may be imputed to the common carrier parent. To hold otherwise would balk the Commission in the execution of its statutory duties. The anticompetitive practices, real and potential, which the Commission sought to eradicate through its rules are effected through the instrumentality of an affiliated . . . company. Where the statutory purpose could thus be easily frustrated through the use of separate corporate entities, the Commission is entitled to look through corporate form and treat the separate entities as one, and the same for purposes of regulation.<sup>29</sup>

More recently, in Transcontinental Gas Pipe Line Corp. v. FERC, 998 F.2d 1313, 1320 (5th Cir. 1993), the court held that FERC properly forbade a gas company from using subsidiaries to sell excess gas at prices which the company itself could not legally sell gas. Given the above precedent, the Commission has ample authority to apply Section 222(e) to LECs' or CLECs' directory publishing affiliates to the extent necessary to ensure effective compliance with Section 222(e).

### 3. LECS ARE THE SOLE SOURCE OF LISTING INFORMATION.

In recent testimony before the Florida PSC, BellSouth admitted that it has no competitors for the provision of its listings to directory publishers.<sup>30</sup> When questioned on this point, BellSouth conceded that it knew of no RBOC or LEC competing against it to provide listing information to publishers.<sup>31</sup> That concession comports with the Copyright Office's finding that telephone directory listings are a "prototypical example" of sole source data because it is

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<sup>29</sup> General Telephone., 449 F.2d at 855.

<sup>30</sup> See Testimony of BellSouth Witness Juneau before the Florida PSC (Jan. 13, 1997) at 132-133 & 156. This testimony is contained as Exhibit 3 to Attachment A of this pleading.

<sup>31</sup> Id.

"simply not possible" for listings to be obtained  
"independently of the LEC."<sup>32</sup>

\* \* \* \*

Pursuant to the Commission's rules, two copies of this document are being filed with your office. Should you or the Commission staff require further information concerning the attached documents, please feel free to contact Michael Finn at (202) 429-4786.

Sincerely,

*Michael Finn*

Michael F. Finn

cc:  
Dorothy Attwood  
Dave Konuch

cc w/o attachment:  
Paula Silberthau  
Raelyn Tibayan-Remy

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<sup>32</sup> See Report on Legal Protection for Databases 102 (U.S. Copyright Office 1997). See also AT&T's Comments on the Appropriate Regulatory Treatment of Subscriber Listings Data, R 95-04-043 (Filed Aug. 15, 1997) (asking PUC "to conclude that the provision of subscriber listings . . . LECs is an 'essential service'"), Attachment B to this filing.





**SOUTH CENTRAL BELL  
TELEPHONE COMPANY  
LOUISIANA**  
ISSUED: August 16, 1995  
BY: President - Louisiana  
New Orleans, Louisiana

**GENERAL SUBSCRIBER SERVICES TABLE**

Second Revised Page 1  
Cancel First Revised Page 1

EFFECTIVE: September 15, 1995

**A38. LISTING SERVICES**

**A38.1 Directory Assistance Database Service (DADS)**

**A38.1.1 Description of Service**

- A. Upon request, the Company will provide local exchange subscriber name, address and telephone number listings (except as limited by D. following), solely for the customer's expressed purpose of providing Directory Assistance type services to his end user. The term "end user" denotes any entity who obtains Directory Assistance type services for its own use from a DADS customer. Directory Assistance type services are defined as:
  - 1. Value Directory Assistance (DA Operator or DA Operator System defined), and
  - 2. Electronic Directory Assistance (Data Systems defined).
- B. DADS is available and may be ordered on a Business, Residence or combined Business and Residence Listings basis for each Central Office requested. The data provided will include all eligible listings as outlined in C. and D. following.
- C. DADS will include the following:
  - 1. Base File

An extract containing all qualified listed names, addresses and telephone numbers of Company and Independent Telephone Company (to the extent permitted by contractual agreement with the individual Independent Telephone Company) subscribers located in a requested NPA, which includes the following:

- a. Listed Name - As input on the Company service order.
- b. Listed Address - House Number Prefix or Suffix, Street Name Prefix or Suffix, Address Prefix or Suffix, Community Name, State Name.
- c. Telephone Number
- d. Account NPA - Originating NPA
- e. Account NXX - Originating NXX
- f. Exchange Code - Originating Community Code
- g. Date - Current date of Extract/Update
- h. Directory Indicator - Alternate Community Name Indicator. If applicable indicator will be set for foreign directory name.
- i. Directory Name - Alternate Community Name. If applicable for foreign directory name listing.
- j. Various Business/Residence/Government Indicator
- k. Phrase Codes - Special information regarding listing's telephone service (e.g. telephone observing equipment, in-type service for the deaf).

In addition to the preceding listed information, the customer may optionally request Non-Listed Listings which will include the information defined in a, b, and c. preceding and/or Non-Published Listings which will include information defined in a. preceding.

The Company will require sufficient time (approximately one month) after receiving an order to prepare the Base File.

**2. Daily Updates**

Daily updates will reflect all listing change activity occurring since the customer's most recent update. The updates are provided on a Business, Residence, or combined Business and Residence basis. The updates shall be used solely by the customer to keep his information current. Delivery of Daily Updates will commence the day after the customer receives his Base File.

## A38. LISTING SERVICES

### A38.1 Directory Assistance Database Service (DADS) (Cont'd)

#### A38.1.1 Description of Service (Cont'd)

- D. DADS is not a verbatim copy of the Company's Directory Assistance (DA) Database or of the Company's Directory. The following listings will not be provided with DADS:
1. (DELETED) (D)
  2. (DELETED) (D)
  3. Secondary Listings
  4. (DELETED) (D)
  5. Listings that are deemed by the Company as inappropriate to provide
- E. The Company reserves the right to exclude any name at the request of the Company's subscribers.
- F. License fees, Cancellation fees, and Termination Liability fees for DADS are as set forth in A38.1.3 following.

#### A38.1.2 Regulations

- A. All right, title and interest in and to DADS, including all intellectual property rights pertaining thereto, will remain with the Company. The Company licenses the use of DADS to the customer. The title to DADS shall remain solely with the Company whether or not it is in the possession of a customer.
- B. Use of DADS shall be limited solely to the customer's provisioning of Directory Assistance type services as defined in A38.1.1 preceding.
- C. DADS may not be used for any purpose which violates federal or state laws, statutes, regulatory orders or tariffs.
- D. Except for the permitted uses, the customer shall not disclose DADS to others and shall use due care in providing for the security and confidentiality of DADS. The customer shall not rent, license or resell DADS for any purpose, nor shall customer permit its end users to do the same. The customer shall not reproduce DADS except for the preparation of archival or backup copies. Failure to comply with the provisions of this Tariff shall result in termination of the service and customer shall immediately return to the Company all copies of DADS in its possession and shall make no further use of DADS data. The Company may refuse to furnish the service when it has reasonable grounds to believe that such service shall be used in violation of this Tariff. Upon customer termination of DADS the customer shall return all copies of DADS or provide adequate written proof that the data has been removed from their system and destroyed.
- E. The minimum service period for DADS is twelve (12) months. The regulations as set forth for deposits and payment of service in A2.4 of this Tariff shall apply. If a customer cancels an order for the Base File prior to the scheduled delivery date, the customer shall pay the Company a cancellation fee as specified in A38.1.3.B. If a customer terminates his subscription to DADS on or after the scheduled delivery date of the Base File, termination fees are due as outlined in A38.1.3.C.
- F. The customer shall provide written specifications, signed by a duly authorized representative of the customer, for each DADS order. All orders must be confirmed in writing by the customer. The Company shall not be liable for any errors or deficiencies in the data provided. The customer agrees to release the Company from any and all liability which may arise due to any errors and omissions in the Company's listings.
- G. The customer shall protect, indemnify, save harmless and defend the Company from and against any and all loss, liability, damages and expenses arising out of any demand, claim, suit or judgment for damages that may arise out of the Company's supplying of DADS or use of data contained therein irrespective of any fault, failure, or negligence on the part of the Company.
- H. Unless, expressly permitted, neither the customer nor its employees, agents or representatives shall represent in any way to any person or make any advertising claim that its directory assistance type service is sponsored or approved by the Company or that the Company or any of its affiliates are in any way connected with the customer or that the Company or any of its affiliates have any responsibility for the customer's service.

SOUTH CENTRAL BELL  
TELEPHONE COMPANY  
LOUISIANA  
ISSUED: August 16, 1993  
BY: President - Louisiana  
New Orleans, Louisiana

GENERAL SUBSCRIBER SERVICES TARIFF

Second Revised Page 3  
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EFFECTIVE: September 15, 1993

A38. LISTING SERVICES

A38.1 Directory Assistance Database Service (DADS) (Cont'd)

A38.1.3 Regulations (Cont'd)

- L. Unless expressly permitted in writing, the customer, its employees, representatives or agents shall not use any methods of advertisement, solicitation, order form, billing invoice, statement, promotional material or any articles or devices which would tend to create the impression or imply that the customer was or is associated with or sponsored by the Company or any of its affiliates. In addition, the customer shall prominently display its name on each of the above and identify itself by name when providing directory assistance type services to its end users.
- J. The customer shall make to the Company monthly an itemized statement of usage by Central Office.
- K. The customer shall make available to the Company upon request necessary records to allow the Company to audit the number of requests received from the DADS customer's end users. The Company may perform an audit at anytime. The results of the audit will be prepared to be correct. The Company will adjust the customer's bill and will bill the customer per the results of the audit.
- L. The Company may terminate the service when it has reasonable grounds to believe that full payment is not being made.
- M. The customer will be billed a usage charge as determined by the Company in the event the customer does not report their usage on a monthly basis.
- N. Prior to making of the Basic File the customer must provide the Company with a written plan outlining the method used to report and accumulate the amount of usage to be reported to the Company.

A38.1.3 Rates and Charges

- A. The following license fees apply for Directory Assistance Database Service.
  - 1. (DELETED)
  - 2. Use Fee:
    - (a) Per DADS Customer's End User Request  
Rate  
\$1000 NA USOC (b)
  - 3. Monthly Resourcing Fee
    - (a) Monthly Rate  
\$100.00 DDEAV (c)
- B. Cancellation Fees:
  - 1. Prior to scheduled delivery of initial base file
    - (a) Per month  
Resourcing Charge  
\$- NA USOC (c)

Note 1: Per Cancellation

Note 1: DADS must be ordered for a minimum of twelve consecutive months.

Note 2: The resourcing cancellation fee will be computed to allow the Company to recover all cost incurred by the Company for work performed prior to cancellation.

### A38. LISTING SERVICES

#### A38.1 Director / Assistance Database Service (DADS) (Cont'd)

##### A38.1.3 Rates and Charges (Cont'd)

###### C. Termination Fees<sup>1</sup>

1. On or after scheduled delivery of initial base file

	Nonrecurring Charge	USOC
(a) Per Termination	\$-	NA

#### A38.2 Director Publishers Database Service (DPDS)

##### A38.2.1 Description of Service

- A. At the request of a customer, the Company will provide Directory Publishers Database Service (DPDS) to a customer solely for the compilation, production, publication correction, and distribution of directories in printed booklet, CD ROM or diskette directories and/or numerically sequenced classified telephone directories for general telephone number service and/or for the sale or solicitation of advertising from business customers to be contained in a published directory. A directory is 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 within the central office NPA-NXX codes requested for publishing in printed, diskette or CD ROM format. (C)

- B. Directory Publishers Database Service (DPDS) will optionally provide a Weekly Business Activity Report (WBAR) which may be used for the sale or solicitation of advertising to be contained in a published directory. The WBAR may also be used for update and/or delivery of directories; however, WBAR may not be suitable for these purposes. The customer assumes full responsibility for the use of the WBAR to update and deliver directories.

- C. BellSouth will commence development of a New Connect Report (NCR) upon receipt of a bona fide order(s) for such service; which may then be provided as a DPDS option to be implemented 30 days from the initial order date. While there would be no minimum subscription period for NCR, the ordering customer(s) would be required to pay BellSouth a minimum of the entire cost of service development, regardless of the subscription period. In the event the ordering customer(s) cancel service prior to the time the Company has recovered its costs via rates paid for the NCR option(s), these costs will be recovered via a termination fee to be paid by the customer(s). The termination fee would be equal to the difference in rates paid for the option by the customer(s) to BellSouth and the Company's total development costs incurred. (N)

The NCR option developed would include provision of only the names, telephone numbers, listed address and billing addresses (if different from the listed address) of new BellSouth residential and/or business subscribers (ordering DPDS customers may specify residence, business or both). The listing data provided would include only the complete mailing addresses for non-listed and non-published numbers. Residence listings provided via NCR may be used solely for the purpose of delivering telephone directories. Business listings provided via the NCR may be used for soliciting yellow page advertising and for delivering directories. (N)

- D. BellSouth will commence development of a Sort Extract option which would provide a one time extract of listings sorted in any of the following sequences: NPA-NXX code, zip code (when available on records), residential customer, business customer and/or "A to Z" extractions of foreign exchanges, remote call forwarding and 800 numbers upon receipt of a bona fide order(s) for such service. In the event a bona fide order is received, the Sort Extract option may then be provided as a DPDS option to be implemented 30 days from the initial order date. While there would be no minimum subscription period for Sort Extract option, the ordering customer(s) would be required to pay BellSouth a minimum of the entire cost of service development, regardless of the subscription period. In the event the ordering customer(s) cancel service prior to the time the Company has recovered its costs via rates paid for the Sort Extract option, these costs will be recovered via a termination fee to be paid by the customer(s). The termination fee would be equal to the difference in rates paid for the option by the customer(s) to BellSouth and the Company's total development costs incurred. (N)

Note 1: The DADS termination fee applies when the customer requests termination of DADS service prior to the 12 month minimum subscription period. The termination fee will be determined by multiplying the number of months remaining in the 12 month subscription period by the monthly recurring rate, referenced in A38.1.3.A, preceding. (M)

## A38. LISTING SERVICES

### A38.2 Directory Publishers Database Service (DPDS) (Cont'd)

#### A38.2.1 Description of Service (Cont'd)

- E. BellSouth will commence development of a Daily Update option which would provide daily service order activity affecting the designated database of listings maintained by the customer sequenced in any of the Sort Extract option formats described in paragraph J, preceding. In the event a bona fide order is received, the Daily Update option may then be provided as a DPDS option to be implemented 90 days from the initial order date. While there would be no minimum subscription period for Daily Update option, the ordering customer(s) would be required to pay BellSouth a minimum of the entire cost of service development, regardless of the subscription period. In the event the ordering customer(s) cancel service prior to the time the Company has recovered its costs via rates paid for the Daily Update option, these costs will be recovered via a termination fee to be paid by the customer(s). The termination fee would be equal to the difference in rates paid for the option by the customer(s) to BellSouth and the Company's total development costs incurred. (M)
- F. Directory Publishers Database Service (DPDS) is available and must be ordered by Central Office codes as specified in A38.2.3. (M)(T)
- G. DPDS will provide the following: (M)(T)
1. NPA-NXX Listing File  
An extract containing the listed names, addresses, primary business classification (where available) and telephone numbers of Company subscribers located within the NPA-NXX codes requested. (M)  
NPA-NXX Listing Files will be provided on either magnetic media (round 9-track 6250 BPI tape) or printed paper at the customer's request. (M)  
The Company will require sufficient time (approximately 2 weeks) after receiving an order to prepare the NPA-NXX Listing File. (M)
  2. Weekly Business Activity Report (WBAR) (M)  
Weekly reporting changes affecting the business listings of the Company's subscribers served by a requested Central Office will be provided optionally, at the customer's request, as specified in A38.2.3 following. These reports will include changes in main listed names, addresses and telephone numbers resulting from orders establishing, terminating or orders transferring main service (N.D.R.X.C and T orders). The business subscriber data will include: (M)
    - a. Listed Name (M)
    - b. Listed Address (M)
    - c. Listed Telephone Number (M)
    - d. Billing Name (if different from the listed name) (M)
    - e. Billing Address (if different from the listed address) (M)
    - f. Primary Business Classification (as selected by the business subscriber if such business classification was obtained by the Company)
- H. The customer must take reasonable steps to remove from its records and not publish in its directory any listings relating to subscriber service upon reasonable notice given by the Company and confirmed in writing that the listing has become non-published or non-listed in the records of the Company. (T)
- I. The Company will take reasonable steps to provide accurate and current information when listings are ordered under this Tariff. Customer understands and acknowledges, however, that the data will require editorial review and revision. When the customer suspects errors or omissions in the listing information received, the customer agrees to contact the Company and supply it with copies of the suspected errors or omissions. The customer may change the listing provided to reflect the corrected listing information in the directory it publishes. The Company has no obligation to update the information after it has been transmitted to customer, except as provided in any tariff update service. (T)
- J. Upon any request for Directory Publishers Database Service, the Company shall provide the customer with or will notify the customer of a reasonable procedure for obtaining such additions and discontinuances of central office codes. The Company is not required to provide notice of such additions and discontinuance of central office NPA-NXX codes to the customer as long as there is a reasonable method by which the customer can obtain that information. (T)
- K. Rates for the use of DPDS are as set forth in A38.2.3 following. (T)
- L. Any information shared between the Company and customer is confidential and proprietary to both companies. (T)

### A38. LISTING SERVICES

#### A38.2 Director / Publishers Database Service (DPDS) (Cont'd)

##### A38.2.2 Regulations

- A. The Company authorizes the use of DPDS pursuant to the terms of this Tariff. By virtue of such authorization, the Company does not transfer right, title or interest (including intellectual property rights), if any, which it may have in and to DPDS. This Tariff does not create or negate any rights, restrictions, or prohibitions which exist pursuant to federal copyright or state and federal trademark law. The rights and obligations of the parties under those laws shall be determined in the appropriate agency or forum.

The customer may amend suspected listing errors and publish corrected listing information in accordance with the procedure described in A38.2.1.F., preceding.

- B. At the request of a customer, the Company will provide Directory Publishers Database Service (DPDS) to a customer solely for the compilation, production, publication, correction and distribution of directories in printed booklet form as an alphabetical and/or numerically sequenced classified telephone directory for general telephone number service and/or for the sale or solicitation of advertising from business customers to be contained in a published directory.

- C. When ordering an initial NPA-NXX File, the customer must, within 180 days either:

- 1) Publish its directory, or
- 2) Order a subsequent Central Office File, or
- 3) If available, subscribe to an update service.

Customer must publish its directory within 15 months of receipt of the initial DPDS NPA-NXX Listing File. The directory shall be initially published within such time frames in order to assure reasonably current number services data to users of the directory and thus avoid unnecessary use of the Company network, facilities or operations.

- D. Customer shall furnish without charge to the Company, within one month of directory publication, a copy of the white pages from its published directory.

- E. Directory Publishers Database Service may not be used for any purpose which violates federal or state laws, statutes, regulatory orders or tariffs.

- F. The customer may not use DPDS to publish and distribute in any form lists of new or changed telephone subscribers. DPDS data may not be used for telemarketing purposes. The customer shall not reproduce, rent, license or resell DPDS for any purpose other than as provided for in this Tariff.

- G. Except for the permitted uses, the customer shall not disclose DPDS to others and shall use due care in providing for the security and confidentiality of DPDS. The Company may suspend, terminate or refuse service if it has reasonable grounds to believe that the customer has failed to comply with any material provision of this Tariff, including failure to pay amounts due. If there is a "bona fide dispute" over whether the customer has failed or will fail to comply, the Company will follow its internal procedures to investigate and resolve the dispute.

If the Company refuses to furnish service the Company shall give the customer notice by certified mail of the of the Company's grounds to believe that the customer will fail to comply and of the intent to refuse service. Prior to any suspension or termination of service, the Company shall give the customer notice by certified mail of the customer's failure to comply and of the intent to suspend or terminate service. Following ten days from receipt of the notice, the Company can suspend or terminate service.

The customer shall have the right to bring the issue of the suspension of, termination of, or refusal to furnish service before the Louisiana Public Service Commission and the Louisiana Public Service Commission shall have final authority over the suspension, termination, or refusal to furnish service. If service is suspended or terminated, the customer agrees to return immediately all copies of DPDS in its possession and to make no further use of DPDS data.

- H. Unless otherwise agreed to in writing, neither the customer nor its employees, agents, or representatives shall state or represent or use any methods of advertisement, solicitation, order form, billing invoice, directory, stationary, promotional material or any artifice or device which indicates that its directory is sponsored or approved by the Company or its affiliates. In addition, customer shall clearly display its name in print sufficiently large that a reasonable observer could easily determine the identity of the customer on each of the above.

- I. The customer shall undertake reasonable steps in advertising and publishing the directory to distinguish the identity of its directory from directories published by or on behalf of the Company.

**A38. LISTING SERVICES**

**A38.2 Directory Publishers Database Service (DPDS) (Cont'd)**

- J. The regulations set forth for deposits and payment of service in A2.4 of this Tariff shall apply for DPDS. (M) (T)
- K. The customer shall provide written specifications, signed by a duly authorized representative of the customer, for each DPDS order. All orders must be confirmed in writing by the customer. (M) (T)
- L. **Limitation of Liability** (M) (T)  
 The customer accepts the listing information as received from the Company's subscriber on an "as is" basis, with all the faults, errors, and omissions, if any, that exist when the Company receives the information from the Company's subscriber, and the Company does not warrant the accuracy of the information as received from its subscriber and furnished to the customer. The company assumes no responsibility or liability for any errors or omissions in the information as received by the Company from its subscriber and furnished to the customer. (M) (T)  
 The Company assumes no liability for errors and omissions of any kind contained in any paid advertisement included in publisher's directory. Customer agrees that all listing information derived from DPDS and contained in any such paid advertisement, including names, addresses and telephone numbers shall be obtained from or verified by the advertiser whose advertisement appears in publisher's directory. (M) (T)  
 The Company's liability to the customer shall be limited to a pro rata refund or credit of amounts paid for listings affected thereby. The subscriber's recovery for any and all damages resulting from errors or omissions in the listing information furnished by the Company to the customer for use in directories shall be limited to the amount of actual impairment of the subscriber's service and in no event shall exceed one-half the amount of the charge to the subscriber for Local Exchange Service during the period covered by the directory, or \$500.00, whichever is less.  
 The Company's liability for intentional or gross fault is not hereby limited.  
 Any claim or demand by the customer based on alleged errors or omissions in the information furnished must be brought to the attention of the Company within sixty days of the time the information is furnished to the customer.
- M. Customer shall indemnify, hold harmless, and defend the Company from and against any cost, damage, expense (including but not limited to reasonable attorneys fees and expenses) or liability arising out of any demand, claim, suit, or judgment for damages however caused, which may arise out of the customer's use of the listings provided under this Tariff, including but not limited to claims arising out of errors or omissions in any paid advertisements and claims arising out of publication or non-publication of listing information that changes after the listing is provided to the customer. The customer shall not be responsible for any cost, damage, expense or liability arising out of any fault or negligence of the Company. (T)
- N. Failure of the customer to indemnify the Company under the provisions of A38.2.2.N will constitute grounds for suspension or termination of service. (T)

**A38.2.3 Rates and Charges**

- A. The following rates for use of Directory Publishers Database Service (DPDS) apply:

- 1. Each Single NPA/NXX Listing File Requested

	Rate	USOC	
(a) Single edition of a printed directory, Per Listing	\$ .04	NA	
(b) Multiple editions of printed directories, Per Listing	.13	NA	
(c) CD ROM directory, Per Listing	.18	NA	(N) (D)

- 2. (DELETED)

- 3. Weekly Business Activity Report<sup>1</sup>

a) Per Listing (for all listings in the NPA-NXX requested)	.006	NA
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- 4. Cancellation Fees<sup>2</sup>

	Nonrecurring Charge	USOC
a) Each NPA/NXX Listing File	\$-	NA
b) Each Weekly Business Activity Report	-	NA

Note 1: The minimum service period is one month.

Note 2: The nonrecurring charge will be computed to allow the Company to recover all costs incurred by the Company for work performed prior to cancellation.

TELECOMMUNICATIONS, INC.  
 LOUISIANA  
 ISSUED: May 23, 1997  
 BY: President - Louisiana  
 New Orleans, Louisiana

EFFECTIVE: October 1, 1997

**A38. LISTING SERVICES**

**A38.2 Directory Publishers Database Service (DPDS) (Cont'd)**

**A38.2.3 Rates and Charges (Cont'd)**

A. The following rates for use of Directory Publishers Database Service (DPDS) apply: (Cont'd)

5. Daily Update				(N)
		<b>Rate</b>	<b>USOC</b>	
(a) Each Updated Listing Provided		\$ 1.50	NA	(N)
6. Sort Extract				(N)
(a) Per Listing		.10	NA	(N)
7. New Connect Report				(N)
(a) Per Listing Provided		2.00	NA	(N)
8. Termination Fee <sup>1</sup>				(N)
		<b>Nonrecurring Charge</b>	<b>USOC</b>	
(a) For Items 5, 6 and 7 Preceding		\$ -	NA	(N)

Note 1: The nonrecurring charge will be computed to allow the Company to recover all developmental costs incurred by the Company. (N)





**Southern Bell**

**Marshall M. Criser III  
Operations Manager  
Regulatory Relations**

Suite 400  
150 South Monroe Street  
Tallahassee, Florida 32301-15561  
904 222-1201  
FAX 904 222-8640

8 February 1993

**Mr. Walter D'Haeseleer  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0866**

**Re: DADS and DPDS Data Request**

**Dear Mr. D'Haeseleer:**

**Attached is Southern Bell's response to the above noted request.**

**If I can be of any further assistance, please advise.**

**Yours very truly,**

*for* **Operations Manager - Regulatory Relations**

**Attachment**

**COST STUDY  
DIRECTORY ASSISTANCE DATABASE SERVICE  
DIRECTORY PUBLISHERS DATABASE SERVICE**



1. Introduction and Overview

This cost study is performed to identify the incremental cost of Directory Assistance Database Service (DADS) and Directory Publishers Database Service (DPDS).

DADS provides a base file of directory listings and a daily update file of directory listing changes. These files are provided by Central Offices (by central office prefix, i.e., NNX) via magnetic media. This data is intended for customers providing alternate directory assistance service.

DPDS provides an extract of directory listings by requested Central Offices (by central office prefix, i.e., NXX). It also provides optional weekly reports of Central Office Business Activity.

The cost of both services includes, where appropriate, the labor cost for system development and maintenance, computer processing cost to produce the listing data, and material/packaging/delivery cost for the magnetic and paper media.



### 3. Description of Procedures

The estimated programmer analyst's hours for program development was divided by the number of requests over the initial three years to develop the average hours per file/extract. Similarly, the annual maintenance hours were divided by the average annual requests. The respective software costs were produced by multiplying these results by the appropriate directly assigned labor cost.

The Computer Processing Unit (CPU) hours required for the extracts were multiplied by the CPU cost per hour to develop the data processing costs.

Material cost for the magnetic tapes and the paper output, along with delivery, were added to the software and data processing costs. This result was divided by the average listings that will be billed each month to produce the cost per listing for each service.

For the Weekly Business Reports, the CPU hours were negligible.

DIRECTORY ASSISTANCE DATABASE SERVICE (DADS)  
DIRECTORY PUBLISHERS DATABASE SERVICE (DPOS)  
1993 INCREMENTAL UNIT COST

STATE: FLORIDA  
DATE: 04 JAN 1993  
SUMMARY

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DADS  
BASE FILE

COST PER LISTING \$0.001

FILE UPDATES

COST PER CO FILE PER MONTH \$11.81



DPOS

CENTRAL OFFICE EXTRACT  
COST PER LISTING \$0.003

BUSINESS ACTIVITY REPORT  
COST PER LISTING \$0.004