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March 10, 1998

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

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Docket No. 96-115

Dear Ms. Salas:

The Association of Directory Publishers ("ADP") hereby submits the following documents in the above-docketed proceeding in order to provide further proof of local exchange carriers' ("LECs") anticompetitive behavior. Specifically, the attached documents show:

- the Yadkin Valley Telephone Company is refusing outright to provide subscriber list information to independent directory publishers; and
- the Pine Tree Telephone Company is giving free Yellow Pages advertisements to businesses which do not advertise in independent directories.

I. Refusal to Sell Listings.

As shown in Attachment A, Yadkin Valley Telephone Company has stated that "it has been Yadkin Valley's policy not to sell directory listings to companies other than those we already have mandated agreements with." For that reason, Yadkin Valley stated that "we have decided not to engage in a licensing agreement with [ADP member] White Directory." Yadkin Valley's decision flies in the face of Section 222(e)'s plain language which states that a telecommunications carrier "shall provide subscriber list information . . . upon request" for the purpose of publishing directories." Section 222(e) does not grant a

¹ 47 U.S.C. § 222(e) (emphasis added).

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LEC discretion to choose between competing providers of subscriber list information. That Yadkin Valley would flaunt such an express statutory provision highlights the need for immediate Commission action concerning the issuance of rules implementing Section 222(e).

II. Coercing Advertisers to Boycott Competing Publishers.

As demonstrated in Attachment B, the Pine Tree Telephone and Telegraph Co. ("Pine Tree") has for the past several years offered free advertising to parties who renew their advertising arrangements with Pine Tree. This year, however, Pine Tree is providing the free advertising only to advertisers "who renew last year's ad and use [Pine Tree's directory] exclusively. . . ." In other words, a business wishing to purchase advertising in a competing directory publication could face at least a 100% increase in the cost of advertising in the incumbent LEC's directory based solely on the fact that the business has advertised in a competing directory.

ADP believes that Pine Tree's actions are unlawful, anticompetitive, and are designed to permit Pine Tree to use its dominant market power to discourage advertisers from purchasing advertising from competing directory publishers. Moreover, Pine Tree's behavior appears to violate basic principles of market competition. The Supreme Court has found that a local media outlet with dominant market power violates the Sherman Anti-Trust Act when it refuses advertising space to advertisers who purchase advertising on a competing media outlet.² Like

² See Lorain Journal Co. et al. v. U.S., 342 U.S. 143, 152-53 (1951) (local newspaper which historically enjoyed substantial monopoly violated Section 2 of the Sherman Anti-Trust Act by refusing to sell advertising to any party purchasing advertising from a local radio station).

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the near-monopoly media outlet in Lorain Journal which sought exclusive agreements with advertisers, Pine Tree appears to be attempting to encourage advertisers to enter exclusive agreements. Such actions undermine the purpose of Section 222(e) and should not be tolerated by the Commission.

* * *

ADP believes that LECs' anticompetitive behavior is increasing in the subscriber list arena due to the absence of rules implementing Section 222(e). ADP therefore urges the Commission to issue swiftly such rules so as to enable independent directory publishers to bring the fruits of competition to the directory publishing market.

Please direct any questions regarding this notification to undersigned counsel for the Association of Directory Publishers.

Sincerely,



Michael F. Finn

Enclosures

cc: Richard Welch
Dorothy Attwood
David Konuch
Blaise Scinto

ATTACHMENT A

Phone: 910-463-5059
Fax: 910-463-5005



Fax

To: Delores Wagner	From: J. Gordon McGriff
Fax: 716-874-4585	Date: February 25, 1998
Phone:	Pages:
Re: License Agreement	CC:

- Urgent For Review Please Comment Please Reply Please Recycle

•Comments:

Ms. Wagner,

After much discussion, we have decided not to engage in a licensing agreement with White Directory. It has been Yadkin Valley's policy not to sell directory listings to companies other than those we already have mandated agreements with and we feel that we must uphold this longstanding commitment to our customers. Thank you for your interest and good luck with your directory.

J. Gordon McGriff

ATTACHMENT B

The Pine Tree Telephone and Telegraph Co.

GRAY, MAINE 04089

TIMOTHY D. HUTCHISON
PRESIDENT

Incorporated 1899

Phone (207) 657-9911
GRAY, MAINE

Dear Valued Customer:

1997 has come to a close and we welcome the new year. Hopefully, 1997 was successful for you and your business. Looking to this year, we will soon begin work on the 1998 Pine Tree Telephone Gray & New Gloucester Directory. As you know, our directory includes telephone numbers of our subscribers and other numbers of local interest. The Pine Tree Telephone book continues to be very popular. Over 7,000 copies of the directory are distributed and used by our subscribers each year. As a community telephone company we want to support local businesses, help neighbors to be able to find neighbors quickly and accurately, and have a handy reference guide for our many telephone features and services.

For several years charges for ads have been waived for those customers renewing ads from the previous directory. Recently, some customers have also chosen to support a competing local directory with paid ads. We find nothing wrong with that, but reason that if an advertiser supports our competitor's book, they should also support ours if they wish to use it. The cost to publish the Pine Tree directory is high, and it is provided only as a supplement to the regional Bell Atlantic book which we have designated as our official directory. In order to continue publishing it we need reasonable support.

Accordingly, this year our 100% discount policy will be available to advertisers who renew last year's ad and use our book exclusively for local directory advertising during 1998. The monthly advertising rates for the 1998 directory are:

Regular Ad -	
1/4 Page	\$30.00
Premium Ad - Inside the cover or on the index page:	
1/4 Page	\$50.00
1/2 Page	\$90.00

Current advertiser's renewal space in the 1998 directory is reserved. We will contact these customers within the next few weeks regarding advertising needs for the upcoming directory. Renewals should be made at that time to secure discounts. If you should have any questions, please contact our business office at (207) 657-9911.

The Pine Tree Telephone & Telegraph Co.