

April 2, 1998

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Dear Ms. Salas:

The Association of Directory Publishers ("ADP") hereby brings to the Commission's attention the attached subscriber list "License Agreement" of Cincinnati Bell Telephone Company which was offered to ADP member, The Reuben H. Donnelley Corporation ("Donnelley"). As discussed below, the License Agreement contains several anticompetitive provisions which violate Section 222(e) of the Communications Act.

I. LISTING PRICES ARE UNREASONABLE.

Cincinnati Bell's prices for its subscriber list information are among the highest prices in the U.S. and, moreover, are unreasonable under Section 222(e). Cincinnati Bell requires payment in order to publish a listing in a Yellow Pages or White Pages directory. In other words, publishers who offer a co-bound directory (i.e., one containing Yellow Pages and White Pages) must purchase the same listing twice in order to publish it in both parts of the directory. Even more egregious, publishers also must repurchase the listing in order to deliver their directories because Cincinnati Bell prohibits the use of listing information for delivery purposes. Instead, it requires publishers to purchase the same information as "Distribution Data."

Cincinnati Bell's prices are unreasonable. BellSouth has admitted in numerous documents in this proceeding that

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it earns a 1,300% profit when supplying listings at 4¢ per listing. Using BellSouth's cost figures as a guide -- and including only Cincinnati Bell's price per listing and not its other charges, Cincinnati Bell's profit per listing for use in a Yellow Pages directory is at least thirty thousand percent (30,000%).¹ A similar profit is earned for use of listings in a White Pages directory.² Thus, Cincinnati Bell earns 60,000% in selling a listing for use in both a Yellow Pages and White Pages directory. **The Commission has not previously allowed a regulated entity to earn such astounding profits.** It should not begin doing so now.

A. Printed Directories.

For publication in a printed Yellow Pages directory, Cincinnati Bell charges 90¢ per business listing to print the listing once a year as well as a 45¢ per listing "listing charge". See License Agreement Schedule A. Thus, a listing costs \$1.35 in order to be used in a printed Yellow Pages. In addition, Cincinnati Bell imposes a set-up/extract charge the amount of which has yet to be determined. Id.

Cincinnati Bell charges 90¢ per White Page listing along with a "[n]ot yet determined" set-up and extract fee. See License Agreement Schedule A. In light of the above, a publisher must pay \$2.25 per listing in order to utilize the listing in both a Yellow Pages and White Pages directory: it must pay \$1.35 per listing for placement in a Yellow Pages directory and another 90¢ for use in a White Pages directory.

Likewise, for Yellow Pages updates, Cincinnati Bell charges 90¢ per business update in addition to a 90¢ per

¹ BellSouth has stated that its cost per listing is .003¢. Hence, Cincinnati Bell's charge of 90¢/listing divided by BellSouth's cost per listing of .003¢ yields a profit of 30,000%. As discussed below, Cincinnati Bell also charges a 45¢/listing fee for Yellow Pages directories which adds another 15,000% profit.

² Cincinnati Bell also charges 90¢/listing for use in a White Pages directory.

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listing "[u]pdate transmission" fee. Thus, the update price is \$1.80 per listing which represents a profit of 60,000%.³ As it does for its basic listings, Cincinnati Bell also imposes a set-up/extract charge which remains undetermined. Id.

B. Internet Directories.

Cincinnati Bell's listing prices are \$1.15 per listing for use of White Page listings in an Internet directory. The \$1.15 price -- which is 25¢ higher than use of the same listing in a printed directory -- does not include Cincinnati Bell's "[n]ot yet determined" set-up and extract fees. See License Agreement Schedule A. Using BellSouth's cost figure of .003¢ as a guide, Cincinnati Bell would be earning a profit in excess of thirty-eight thousand percent (38,000%). Such a figure cannot be considered reasonable under Section 222(e).

C. Distribution Data.

Cincinnati Bell charges publishers twice for the same listing information because it will not allow publishers to utilize listing information to distribute their directories. Instead, publishers must buy "Distribution Data" which essentially is the same information as the listing. Specifically, "Distribution Data" is "a collection of names, addresses and other data that permits distribution of telephone directories. See License Agreement § 2.5. Distribution Data costs 4¢ per residential listing and 4.5¢ per business listing plus 30¢/listing fee to "[u]se the Distribution Data." See License Agreement Schedule A. In other words, distribution data is approximately 34¢ per listing. Of course, there is also a "[n]ot yet determined" set-up and extract fee. Id.

With respect to Distribution Data updates, Cincinnati Bell charges 25¢ for residential updates, 45¢ for business updates, and a 30¢/listing fee for "use of listing information updates for distribution." See License

³ Cincinnati Bell's charge of \$1.80/listing divided by BellSouth's cost per listing of .003¢ yields a 60,000% profit.

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Agreement Schedule A. And, there is a "[n]ot yet determined" set-up and extract fee. Id.

Given that publishers who buy Cincinnati Bell's listings will have information sufficient to distribute their directories, there is no reason to require that Data Distribution be obtained. Such charges are designed to exclude competitors from the marketplace in violation of Section 222(e).

II. LISTINGS MAY BE USED ONLY ONCE.

Cincinnati Bell sells listings on a one-time usage basis. As stated in Section 3.2, a "[l]icensee may use the Business Listings Data for one year in connection with publishing only one annual edition of its Yellow Page directories. If Licensee desires to use the Business Listings Data for future editions of its Yellow Pages directories, a separate license fee must be paid for each edition." (emphasis added). Likewise, as shown in Section I.C above, publishers may not use the listing information to deliver their directories. As ADP has informed the Commission in numerous filings, such limitations are designed to force publishers to purchase the same listings again and again, each time they wish to publish a directory.

III. WHITE PAGE LISTINGS MAY NOT BE USED FOR CD-ROM DIRECTORIES.

Cincinnati Bell unlawfully prevents publishers from utilizing its listings in CD-ROM, computer diskette, and other types of non-paper, non-Internet directories. Section 5.1 of the License Agreement states that a publisher may use "extracts of White Pages Data in connection with publishing only one annual edition of its paper-based Yellow Pages." (emphasis added). Section 5.4 likewise states that a publisher may "use any extract of White Pages Data only as part of a paper-based telephone directory, or in connection with publishing an Internet Directory . . . and for no other purpose whatsoever without [Cincinnati Bell's] prior written consent, which consent may be withheld in [Cincinnati Bell's] sole discretion." White Pages Data is defined in Section 2.8 of the License Agreement as "the names, addresses and telephone numbers of [Cincinnati Bell's] customers included in the White Pages directory." The above sections of the License Agreement

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are contrary to law as Section 222(e) states plainly that listings are to be provided to "any person upon request for the purpose of publishing directories in any format." (emphasis added).

IV. UNLAWFUL LIMITATIONS ARE PLACED ON INTERNET DIRECTORIES.

Cincinnati Bell erects significant entry barriers for directory publishers wishing to enter the Internet directory market. Specifically, Cincinnati Bell provides listings on only a six-month interval. See License Agreement § 7.1. ADP notes that Section 4.1 of the License Agreement permits publishers to purchase daily updates.

More importantly, Cincinnati Bell requires that publishers of Internet directories format their Internet directories so they are "not [] capable of permitting an end user to download or view more than 15 listings with a single command." See License Agreement § 7.1. There is no reason for such limitations. Section 222(e) does not permit publishers to impose technical limitations on the search engines offered by directory publishers. That Cincinnati Bell would attempt to do so is contrary to law.

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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,

A handwritten signature in black ink, appearing to read "Michael F. Finn". The signature is written in a cursive style with a large initial "M".

Michael F. Finn

Enclosure

cc: Jim Schlichting
Richard Welch
Larry Strickling
Bill Kehoe
Pat Donovan
Jay Atkinson
Doug Galbi
Dave Konuch
Tanya Rutherford
Dorothy Attwood

LICENSE AGREEMENT

CINCINNATI BELL TELEPHONE COMPANY, an Ohio corporation ("CBT"), and THE REUBEN H. DONNELLEY CORPORATION, a Delaware corporation ("Licensee"), hereby agree as follows effective as of March 1, 1998 (the "Effective Date"):

1. Recitals.

1.1 CBT is a local exchange carrier of telecommunications services and is required by applicable regulatory requirements to publish an alphabetical directory of telephone listings commonly known as the "White Pages" directory.

1.2 Licensee is a publisher of independent telephone directories and desires to obtain one or more licenses to use certain listing information of CBT in connection with publishing its telephone directories.

2. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms will have the following meanings for purposes of this Agreement:

2.1 "Business Listings Data" means a collection of the names, addresses and telephone numbers of CBT's customers that are business customers.

2.2 "CBT's customers" means business and residential subscribers to CBT's local exchange services. The term "CBT's customers" also includes business and residential subscribers to CLECs' services whose listing information CBT is permitted to use, publish and license to third parties.

2.3 "CLEC" means a competitive local exchange carrier (also known as a new entrant carrier (NEC)) operating in CBT's operating territory.

2.4 "Daily Business Listing Updates" means the daily changes in the Business Listings Data.

2.5 "Distribution Data" means a collection of names, addresses and other data that permits distribution of telephone directories. Distribution Data may be licensed for all or a portion of the geographic area where CBT distributes its White Pages directory.

2.6 "Internet Directory" means a telephone directory that is published on the Internet.

2.7 "White Pages" or "White Pages directory" means the published alphabetical listing (usually printed on white paper) of CBT's customers, that CBT is required to publish annually.

2.8 "White Pages Data" means the names, addresses and telephone numbers of CBT's customers included in the White Pages directory. White Pages Data does not include non-published listings.

2.9 "Yellow Pages" or "Yellow Pages directory" means a published listing (usually printed on yellow paper) of business customers and advertisements, classified into various business groupings, together with advertisements, informational material, covers, and related materials. The term also includes a Yellow Pages directory containing White Pages Data for a particular geographic area (i.e., a "combined" Yellow Pages directory).

3. License for Business Listings Data.

3.1 Upon request of Licensee, CBT will license to Licensee the Business Listings Data for Licensee's use in connection with the sale and publishing of its Yellow Pages directories. CBT will supply the Business Listings Data in a mutually agreed upon format.

3.2 The per listing license fee for the Business Listings Data is set forth in the attached Schedule A. Licensee may use the Business Listings Data for one year in connection with publishing only one annual edition of its Yellow Pages directories. If Licensee desires to use the Business Listings Data for future editions of its Yellow Pages directories, a separate license fee must be paid for each edition. The license fee for future editions will not include the "extract portion" of the license fee if Licensee has continuously been licensing Daily Business Listing Updates and paying the applicable license fees.

3.3 Licensee will use the Business Listings Data only in connection with the sale and publishing of its Yellow Pages directories and for no other purpose whatsoever without CBT's prior written consent, which consent may be withheld in CBT's sole discretion.

4. Daily Business Listing Updates.

4.1 Upon request of Licensee, CBT will furnish to Licensee each business day the Daily Business Listing Updates received by CBT on the preceding business day and will license to Licensee such Daily Business Listing Updates for Licensee's use in connection with the sale and publishing of its Yellow Pages directories.

4.2 The per update license fee for Daily Business Listing Updates is set forth in the attached Schedule A. If Licensee fails to pay the applicable license fees as and when the same are due, CBT may cease furnishing Daily Business Listing Updates to Licensee, and Licensee will not use any information in any Daily Business Listing Updates for which the license fees have not been paid.

4.3 Licensee will use such Daily Business Listing Updates only in connection with the sale and publishing of its Yellow Pages directories and for no other purpose whatsoever without CBT's prior written consent, which consent may be withheld in CBT's sole discretion.

5. White Pages Listing Extracts.

5.1 If Licensee desires to publish a Yellow Pages directory that also contains certain White Pages Data, CBT will license to Licensee an "extract" of White Pages Data for a particular geographic area requested by Licensee. Licensee acknowledges that, due to restrictions imposed by CLECs or otherwise, White Pages Data may not include every subscriber of local exchange service in a particular geographic area.

5.2 The per listing license fee for an extract of White Pages Data is set forth in Schedule A. Licensee may use extracts of White Pages Data in connection with publishing only one annual edition of its paper-based Yellow Pages. If Licensee desires to use any extract of White Pages Data for future editions of its paper-based Yellow Pages directories, a separate license fee must be paid for each edition. A separate White Pages Data extract is required for each Yellow Pages directory that covers a specific geographic area.

5.3 In no event will CBT be obligated to furnish any extract of White Pages Data for any geographic area, or other subset of CBT's customer base, that CBT does not maintain in the ordinary course of business.

5.4 Licensees will use any extract of White Pages Data only as part of a paper-based telephone directory, or in connection with publishing an Internet Directory as provided in Section 7 (Internet Directory), and for no other purpose whatsoever without CBT's prior written consent, which consent may be withheld in CBT's sole discretion.

6. License for Distribution Data and Updates.

6.1 Upon request of Licensee, CBT will license to Licensee Distribution Data for Licensee's use in connection with distributing its paper-based Yellow Pages directories. Licensee may receive a license for Distribution Data for all or a portion of the geographic area where CBT distributes its White Pages directory.

6.2 Upon request of Licensee, CBT will furnish to Licensee updates to the Distribution Data licensed to Licensee. The license fee for updates to the Distribution Data is set forth in Schedule A. If Licensee fails to pay the applicable license fees as and when the same are due, CBT may cease furnishing updates to Distribution Data, and Licensee will not use any updates to any Distribution Data for which the license fees have not been paid.

6.3 Licensee will use the Distribution Data only in connection with distributing its paper-based Yellow Pages directories and for no other purpose whatsoever without CBT's prior written consent, which consent may be withheld in CBT's sole discretion.

6.4 In no event will CBT be obligated to furnish any Distribution Data, or any extract of Distribution Data for any geographic area, or other subset of CBT's customer base, that CBT does not maintain in the ordinary course of business.

7. Internet Directory.

7.1 At Licensee's request, CBT will license an extract of White Pages Data for use in connection with publishing an Internet Directory in 6-month intervals. Unless otherwise mutually agreed in writing, any Internet Directory will not be capable of permitting an end user to download or view more than 15 listings with a single command.

7.2 The license fee for White Pages Data, for use in connection with publishing an Internet Directory, is set forth in Schedule A. The other terms and conditions of this Agreement relating to White Pages Data also apply to the use of such data in connection with publishing an Internet Directory. Licensee will not update, modify or alter any White Pages Data used in connection with publishing an Internet Directory.

8. No Transfer or Resale. All data and other information delivered, licensed, or otherwise furnished by CBT to Licensee under this Agreement, and all copyrights and other intellectual property rights therein, is and will remain the sole property of CBT and will be used by Licensee solely for the purposes for which such information was furnished. Licensee will hold all data and information furnished hereunder in confidence and will take adequate steps and security precautions to secure it against unauthorized disclosure, access, and use. Licensee's contracts with its sales agents, subcontractors, and other persons who may obtain access to such data or information shall restrict such party's use and disclosure of the data and information in a manner consistent with this Agreement. Nothing in this Agreement will be construed to convey to Licensee any title or ownership interest in such data or information. All such data and information will be returned promptly to CBT upon termination or expiration of this Agreement. In no event will Licensee permit any third party (including sales agents and subcontractors) to use any data or other information furnished or licensed to Licensee hereunder without CBT's prior written consent. In no event will Licensee resell or transfer to any third party any data or other information furnished or licensed to Licensee hereunder without CBT's prior written consent.

9. Data Delivery Format. If Licensee requests any data or other information in a format other than the format CBT customarily maintains for such information, and if CBT elects to provide the information in the requested format, Licensee will pay CBT on a time and materials basis for delivering the information in the requested format.

10. Taxes; Transportation Costs; Nondiscrimination.

10.1 The fees set forth in Exhibit A do not include sales tax or other applicable taxes, and all such taxes will be added to the fees.

10.2 The license fees set forth in Exhibit A include the cost of providing a "transport-ready" interface to Licensee, but do not include the cost of transporting the licensed data to Licensee. Licensee will pay such transportation costs on a time and materials basis. If Licensee requests any licensed data to be transported to more than one location, Licensee will pay to CBT on a time and materials basis the additional cost of transporting such data to such additional location(s). If Licensee requests a data transport protocol other than one of CBT's

standard data transport protocols, Licensee will pay the additional cost of providing such transfer protocol on a time and materials basis.

11. No Warranties; Limitations on Liability.

11.1 CBT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY DATA OR INFORMATION LICENSED UNDER THIS AGREEMENT AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11.2 IN NO EVENT WILL EITHER CBT OR LICENSEE BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, SAVINGS OR REVENUES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.3 The parties agree that the limitations on liability contained in this Agreement are fair and reasonable adjustments to the uncertain and difficult-to-ascertain damages which might arise under this Agreement and are intended to be reasonable allocations by the parties of the business risks inherent in this Agreement.

12. Term; Termination.

12.1 This Agreement will be effective on the Effective Date and, unless terminated earlier as provided herein, will remain in effect for a period of one year after the Effective Date.

12.2 A party not in material breach under this Agreement may terminate this Agreement if the other party is in material breach of this Agreement and such breach remains uncured for 60 days after written notice of such breach has been given to the breaching party.

12.3 CBT may terminate all licenses granted to Licensee hereunder if Licensee uses or discloses any data or information licensed to Licensee hereunder in a manner or for a purpose not permitted by this Agreement. In such event, CBT also may seek an injunction or restraining order from a court of competent jurisdiction and exercise all other legal and equitable remedies available to CBT.

13. Force Majeure. Neither party will have any liability for damages due to any cause beyond such party's reasonable control, including but not limited to fire, explosion, lightning, pest damage, power surges, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil authorities or the public enemy, inability to secure materials, transportation failures, or acts or omissions of communications carriers.

14. Assignment. Neither party may assign its rights or delegate its duties under this Agreement, or under any license granted hereunder, without the prior written consent of the other party. Notwithstanding the foregoing sentence, CBT may assign its rights or delegate its duties under this Agreement to Cincinnati Bell Inc. or to any affiliate or subsidiary of Cincinnati Bell Inc. without Licensee's consent.

15. Relationship of the Parties. Licensee's relationship to CBT under this Agreement will be that of a licensee only and Licensee will not have any authority to bind CBT in any respect. CBT will not have, with respect to Licensee or any of its employees, any obligation with respect to worker's compensation, insurance, social security, withholding tax or any other expense customarily paid by an employer with respect to an employee.

16. Trade Names and Trademarks. Each party acknowledges that it will acquire no rights in any trademark, service mark, trade name, or other intellectual property used or owned by the other party by reason of this Agreement and will take no action which violates this acknowledgement. Neither party will use any trademark, service mark, trade name, or other intellectual property used or owned by the other party without the prior written consent of such other party.

17. Cross Indemnity. Each party will indemnify, defend and hold harmless the other and the officers, employees, agents, shareholders, affiliates, successors and assigns of the other (with the indemnifying party hereinafter referred to as "Indemnitor" and the indemnified party together with its officers, employees, agents, shareholders, affiliates, successors and assigns hereinafter referred to as "Indemnitee") from any and all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses, arising out of the death or bodily injury of any persons or the damage, loss or destruction of property that result from or are caused by any negligent or willful act or omission of Indemnitor.

18. Regulatory Authorities. This Agreement is subject to applicable rules and regulations of the Public Utilities Commission of Ohio ("PUCO"), the Federal Communications Commission ("FCC"), and other agencies. If, in either party's reasonable judgment, any applicable regulatory requirement makes it impossible or commercially impractical to perform this Agreement, then this Agreement may be terminated by either party upon 180 days' written notice to the other party.

19. General.

19.1 Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be conclusively deemed to have been received by a party hereto and to be effective if delivered personally to such party, or sent by telecopy or other electronic means (followed by written confirmation), or by overnight courier service, or by certified or registered mail, return receipt requested, postage prepaid, addressed to such party at the address set forth below or to such other address as either party may give to the other in writing for such purpose. All notices will be effective upon receipt.

To CBT:

Cincinnati Bell Telephone Company
209 West Seventh Street, 8th Floor
Cincinnati, Ohio 45202
Attn: Vice President - Operator & Directory Services

To Licensee: The Reuben H. Donnelley Corporation
 One Manhattanville Road
 Purchase, New York 10577
 Attn: General Counsel

19.2 No Waiver. No term or provision hereof will be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by either party to, or waiver of, a breach by the other, whether express or implied, will not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

19.3 Partial Invalidity. If any term or provision of this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such term or provision only will be void to the extent of such invalidity, and the remainder of this Agreement will remain in full force and effect.

19.4 Binding Effect. This Agreement will be binding upon and, subject to Section 14 (Assignment), inure to the benefit of the successors and assigns of each party.

19.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which together will constitute one and the same instrument.

19.6 Entire Agreement. This Agreement, together with the Exhibits hereto, constitutes the entire agreement and understanding of the parties and supersedes all prior discussions and agreements relating to the subject matter hereof. This Agreement may be amended or modified only in a writing signed by CBT and Licensee.

19.7 Governing Law; Limitations. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. Any legal action between the parties arising under this Agreement must be filed within two (2) years after the cause of action arises and must be brought in a federal or state court located in Hamilton County, Ohio.

Executed at Cincinnati, Ohio as of the Effective Date.

CBT:

LICENSEE:

CINCINNATI BELL TELEPHONE
COMPANY

THE REUBEN H. DONNELLEY
CORPORATION

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

**RH Donnelley/CBT Services and License Agreement
Schedule A**

Price

10/19/00	
A. Business Listings Database - Printed Publication	
1. Initial Business Listings Database Extract	
1a. Setup including file extract and transport readiness*	Not yet determined
1b. License Fee:	
Listing charge	\$.45/business listing
Annual use of listing in printed publication	\$.90/business listing
2. Daily Business Listing Updates	
2a. Setup including daily feed programming and transport readiness*	Not yet determined
2b. License Fee:	
Daily Business Listing Update transmission	\$.90/daily business listing update
Annual use of Business Listing Update in printed publication	\$.90/daily business listing update

11/10/00	
A. White Pages Annual Listing Extract - Printed Publication	
1. Setup including file extract and transport readiness* (if necessary)	Not yet determined
2. License Fee:	\$.90/listing extracted
B. White Pages Listing Extract - Electronic Publication (available every six months)	
1. Setup including file extract and transport readiness*(if necessary)	Not yet determined
2. License Fee	\$1.15/listing extracted

11/10/00	
A. One Time Extract of Distribution Data	
1. Setup including File extract and transport readiness* (if necessary)	Not yet determined
2. License Fee:	
Distribution Data Charge	
Residence	\$.04/listing extracted
Business	\$.045/listing extracted
Use of Distribution Data	\$.30/listing extracted
B. Daily Updates	
1. Setup including file extract and transport readiness* (if necessary)	Not yet determined
2. License Fee:	
Daily Updates	
Residence	\$.25/residence update
Business	\$.45/business update
Use of listing information updates for distribution	\$.30/listing extracted

* Transportation readiness does not include the actual transport of data. See section 10.2 of Agreement.