

WILLKIE FARR & GALLAGHER

EX PARTE OR LATE FILED

Washington, DC
New York
London
Paris

DOCKET FILE COPY ORIGINAL

April 6, 1998

EX PARTE

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

RECEIVED

APR 6 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Dear Ms. Salas:

On April 3, 1998, representatives of the Reuben H. Donnelley Co. ("Donnelley") met with Commission staff to discuss violations of Section 222(e), 47 U.S.C. § 222(e), contained in Cincinnati Bell's subscriber list "License Agreement." Commission staff included: Richard Welch; Larry Strickling; Blaise Scinto; Bill Kehoe; Doug Galbi; Tanya Rutherford; Dave Konuch, and Glenn Reynolds. Representatives of Donnelley included Stephen Wizniter, Dave Swanson, Guy Maser, Theodore Whitehouse, and the undersigned.

During the meeting, Donnelley circulated and discussed the License Agreement. The details of the discussion are contained in the attached handout, which was passed out during the meeting.

No. of Copies rec'd
List ABCDE

0+3

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000

Telex: BKA 229800
WU 88-2762
Fax: 202 687 8979

Ms. Magalie Roman Salas
April 6, 1998
Page 2

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,

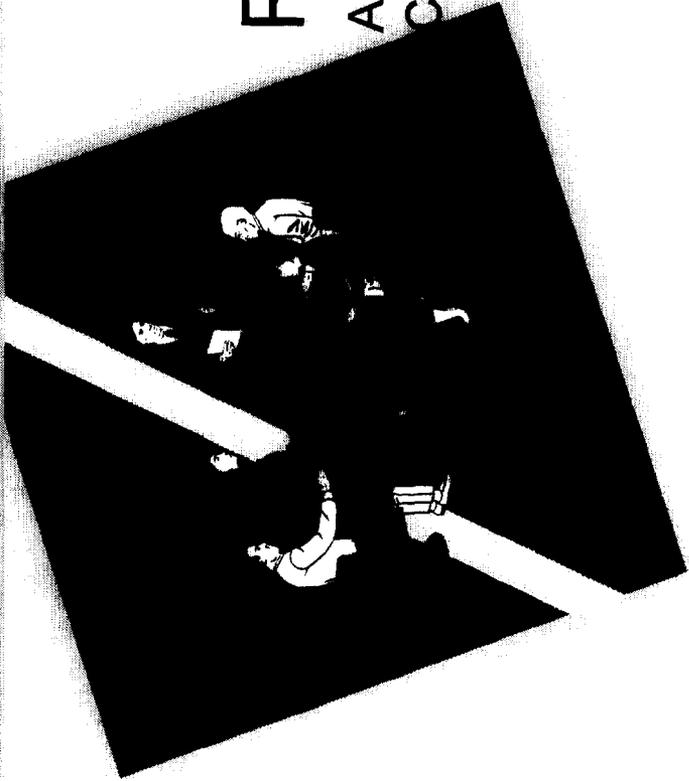


Michael F. Finn

Enclosure

cc: Richard Welch
Larry Strickling
Blaise Scinto
Bill Kehoe
Doug Galbi
Dave Konuch
Tanya Rutherford
Glenn Reynolds
Dorothy Attwood

Cincinnati Bell Listens Issue



R.H. Donnelley

A Company of the Dun & Bradstreet
Corporation

Company Overview

- R.H. Donnelley is the largest independent U.S. marketer of yellow pages advertising and a leader in publishing services
 - Founded 1886
 - Provide advertising or publishing services for 275 directories, 33 million circulation, 13 states
 - Service over 500,000 businesses
 - Over \$1 billion in ad sales
 - Operate through
 - relationships with Ameritech, Sprint and Bell Atlantic
 - as an independent publisher providing alternative yellow page products in selected markets
-

Company Overview

R H Donnelley Independent Operations

- Began Publishing Independent Directories in 1984 coincident with the break-up of ATT
 - Have published competing directories in over 60 markets since that timeFla., Tx., Ca., Pa., Ok., NJ., Md., Va., D.C.,.
 - Competed in markets with Bell South, Southwestern Bell, Pacific Bell, Bell Atlantic and GTE
 - September 1997 we launched The One Book Yellow Pages for the Cincinnati/Northern Ky. market as a competitive alternative to Cincinnati Bell
-

Cincinnati Operation

- **Employ 70 full time associates**
 - 53 sales and marketing
 - 17 publishing and customer support
- **1906 to 1997**

RH Donnelley provided sales, marketing and publishing services for the production of all yellow pages products for Cincinnati Bell
- **April 1997 we were unable to negotiate a continuation of our contract to provide these services to Cincinnati Bell**
- **September 1997 we exercised our contractual right to market a competing yellow pages in Cincinnati/ Northern Ky. with the launch of “The One Book Yellow Pages” sales campaign**

Why is Telco Listing Info Important?

- Most complete and comprehensive database of business telephone subscribers
 - Most current listing data available for business telephone subscribers
 - In our 16 years of independent publishing experience we have found no other source that can replicate these 3 critical components
-

Ramifications of Not Using Telco Listings

Consumer Impact

It is generally known throughout our industry that when someone looks up a business in a non telephone company related directory and that business either doesn't appear or appears with inaccurate information, a perception is formed that the product is of lesser quality and value than the phone company yellow pages and the likelihood of them using that directory again drops dramatically.

Ramifications of Not Using Telco Listings

Advertiser Impact

- Lower usage and retention leads to fewer references
- Fewer references mean advertisers receive fewer calls
- Fewer calls mean advertisers return on investment is diminished and advertiser satisfaction drops

Business Impact on the Publisher

- Advertiser dissatisfaction leads to fewer advertiser renewals
 - Claims activity and uncollectables go up
 - Employee satisfaction and turnover increase
 - Lack of growth and profitability soon follow
-

Chronology of Listing Activity

- 1996 Cincinnati Bell Telephone made list information available to purchasers at a rate of \$.11 for business and \$.09 for residential listings
- June 1997 Cincinnati Bell Telephone announced that it was raising the price of its list information from the \$.11 and \$.09 respectively to \$.90 (*See exhibit 1 attached*)
- November 1997 RH Donnelley notifies CBT of its desire to purchase listings complete with a proposed listing agreement and price list (*See exhibit 2 attached*)
- December 1997 CBT responds with their services and license agreement and price list (*See exhibit 3*)
- January 1998 a meeting was held in Cincinnati to review all terms and conditions, file layout specifications and price list. At this meeting a formal request for them to reconsider the pricing was made

Chronology of Listing Activity

- March 1998 we sent back executed copies of CBT's license agreement for business white page listings only. It was duly noted that we were signing these agreements under protest regarding their rates and terms.
 - We also indicated that we had the desire to purchase residential listing data, service order activity and the distribution data file, however we were precluded from doing so because they had made it cost prohibitive (*See exhibit 4*)
 - We provided CBT with our specific requirements for the listings request
-

Unreasonable Pricing

We believe this pricing is in clear violation of section 222e based on the following:

- Bell South's admission that it has a 1,300% profit over incremental cost when selling listings at \$.04 per listing
- Cincinnati Bell is unwilling to pay CLEC's anything for their list information
- Other LEC's list rates of \$.04 for Bell South, \$.22 for U.S. West, \$.10 for Pac Bell, \$.25 for Southwestern Bell
- The fact that Cincinnati Bell Telephone thought that \$.11 per listing was reasonable until the threat of competition emerged

Who gets Harmed?

R. H. Donnelley

- Unreasonable additional cost for us to purchase the white
- Causing us to forego buying the updated yellow
- Caused us to forego buying the ongoing updates
- Will cause us to publish a product that may be at a competitive disadvantage to the Cincinnati Bell product because of lack of parody in the listing base thus putting our ability to compete in the future in question
- We are quite sure based on other activities that are being done today that Cincinnati Bell will attempt to discredit the quality of our directory should they have an inherent advantage in quality and currency of listing base

Who gets Harmed?

The Consumer

- R.H. Donnelley is responding to consumer research showing a desire for an accurate and up to date directory covering the entire market
- The consumer always wins when competitive alternatives exist

The Advertiser

- Is denied a viable competitive option
- Is denied the benefits that competition brings to market pricing of advertising rates

(See attachment 6)

What Do We Want?

We request the following

- At minimum for you to persuade Cincinnati Bell Telephone to immediately return its listing prices to ^{no more than} \$.11 as they were before we entered the market
- Persuade Cincinnati Bell to allow us to use a purchased listing in both the white and yellow page sections of the directory without duplicate costs *YP classifications*
- Invoke rules regarding actual prices, terms and conditions consistent with the spirit of section 222e as soon as possible
- Invoke rules that don't discriminate against the format a listing is published in be it print or electronic

Yellow Pages & Directory Report

Sr. Editor Tom Maguire ...ext. 395
Sr. Managing Editor Natalie Schwartz ext. 396
Associate Editor Jessica Nutley ..ext. 394
Editorial Director Carl Mercurio ...ext. 384
VP & General Manager ... Megan St. John .ext. 261
Marketing Michele Wolff ...ext. 310
Circulation Nancy Romano .ext. 336
Customer Service Sophia Pilkiewicz ext. 308

Subscriptions: \$549 for 22 issues/year.
 Airmail: \$50 extra per year. Single copies: \$25.

Cowles/Simba Information also publishes *Yellow Pages Market Forecast*, *Internet Yellow Pages*, *Yellow Pages Sales & Marketing* and several other research studies on the yellow pages industry. This newsletter is also available online. Call Cowles/Simba Information for more information.

Yellow Pages & Directory Report is protected by copyright. It is illegal under Federal law (17USC101 et seq.) to make copies or faxes of this newsletter without permission - even for internal use. Violators risk criminal penalties and \$100,000 damages per offense.

Cowles/Simba Information will pay a reward of up to \$1,000 for actionable evidence of illegal copying or faxing. Contact Carl Mercurio to report abuses. Confidentiality assured. Contact Richard Greco at ext. 309 for information about Cowles/Simba's attractive bulk subscription discounts and Cowles/Simba's reproduction policy. For information on customized reprints, contact Reprint Management Services, 147 W. Airport Rd., P.O. Box 5363, Lancaster, PA 17606; Tel: (800) 290-5460; Fax: (717) 560-2063. Address changes can be e-mailed to info@simbanet.com.

Entire contents © 1997 Cowles/Simba Information
 ISSN #: 1071-2461



Box 4234, Stamford, CT 06907-0234 USA
 Tel: (203) 358-9900 Fax: (203) 358-5824
 e-mail: info@simbanet.com
 Internet: http://www.simbanet.com

Gerald Crotty, ITT senior vice president and chairman of ITT Information Services, will become chief executive of ITT WD.

ITT WD will have a market value of about \$1.7 billion, and carry a debt load of about \$1.05 billion. ITT WD, with over 2,400 employees, publishes or acts as a consultant for over 600 directories with a combined circulation of nearly 150 million.

Revenues at ITT WD fell about 1.1% to \$646.7 million in 1996, according to Cowles/Simba Information estimates based on ITT Corp.'s 1996 Annual Report. Operating income rose 9.1% to \$210.4 million.

Cincinnati Bell Increases Listings Prices To \$0.90 Per Listing

While most telcos have cut listings prices to comply with the Telecom Act of 1996, Cincinnati Bell Telephone (Cincinnati) recently increased its fee to \$0.90 per listing from \$0.11 per business listing and \$0.09 per residential, YP&DR has learned.

R.H. Donnelley--which hasn't ruled out publishing independent directories in Cincinnati since losing its sales contract in November 1996--declined to comment on the price increase.

"It's an outrageous price increase, and it's symbolic of the telephone companies' disregard for the principles of free competition," said Rick Lewis, chief executive officer of White Directory Publishers (Buffalo, NY) and chairman of the Association of Directory Publishers. "It's a very obvious attempt to limit competition."

A Cincinnati Bell Telephone spokesperson confirmed the price increase, but refused to comment further.

The Telecommunications Act of 1996 contains a provision requiring telephone companies to provide subscriber list information under "reasonable rates, terms and conditions."

Exhibit 2

One Manhattanville Road
Purchase, New York 10577

David C. Swanson
Executive Vice President and General Manager
Proprietary Operations
Tel: 914.933.6859
Fax: 914.933.6637
E-mail: dswanson@msmail.dnb.com

November 26, 1997

Ms. Cori G. Rothenbach
Vice President Operations & Directory Services
Cincinnati Bell Telephone
209 West 7th Street
Cincinnati, Ohio 45202

RE: Ongoing Listing Data

Dear Ms. Rothenbach:

Reuben H. Donnelley (RHD) would like to obtain from Cincinnati Bell Telephone (CBT) on a periodic basis, electronic files with business listings information from Cincinnati Bell Telephone's listing database. A proposed Listings Agreement (with an attached data layout) has been provided, which covers all types of data extracts that RHD needs to publish directory products.

This letter also serves as our formal request for the following:

- 1) to obtain a current copy of the entire listings base, and
- 2) establishing a periodic data transmission of service order data for business listings.

Inasmuch as RHD is not aware whether CBT has published rates for different types and frequency for periodic data transmission of service order data for business listings, we would like to obtain pricing under the following scenarios:

- Receipt of Service Order Information (all types of orders) once a month by transmission to RHD.
- Receipt of Service Order Information (all types of orders) bi-weekly by transmission to RHD.

- Receipt of Service Order Information once a month by transmission to RHD for all types of orders except New Connects orders. Send New Connect orders weekly.
- Receipt of Service Order Information bi-weekly by transmission to RHD for all types of orders except New Connect orders. Send New Connect orders weekly.
- Receipt of Business listings by transmission to RHD upon request with a thirty day notice once a year with the exception of New Connect orders. Send New Connect orders weekly.

Additionally, RHD needs to understand the process that CBT will use for the generation of service order activity as a result of Alternative Competitive Local Exchange Carriers (ALEC's). Kindly provide such information with your response.

Time is of the essence. We would like to have your response back by December 19, 1997. Your contact for any addition information should be Ken Clark at 919.462.1010.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'K' followed by a long, wavy horizontal line.

LISTINGS AGREEMENT

This document memorializes the agreement made as of the ____ day of December, 1997 (the "Effective Date"), between CINCINNATI BELL TELEPHONE COMPANY ("CBT"), an Ohio corporation with a principal place of business at 209 West Seventh Street, Cincinnati, Ohio, and THE REUBEN H. DONNELLEY CORPORATION ("RHD"), a Delaware corporation with a principal place of business at One Manhattanville Road, Purchase, New York.

WHEREAS CBT is a telecommunications carrier that provides exchange service and is therefore required by Section 222(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, to provide subscriber list information gathered in its capacity as a provider of exchange telecommunications services on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions to any person upon request for the purpose of publishing directories in any format, and

WHEREAS RHD is a firm engaged in publishing directories and requires CBT subscriber listing information for the purpose of publishing directories,

CBT and RHD, intending to be legally bound, have agreed as follows:

DEFINITIONS

For purposes of this agreement, the following terms shall have the following meanings:

A. "Subscriber Listing" means the name, address, telephone number, and, for a business subscriber, the primary yellow pages classification, of a subscriber to exchange telephone service.

B. "Subscriber Listing Information" means any information (a) identifying the listed names of subscribers to exchange telephone service and such subscribers' telephone numbers and addresses (and, in the case of business subscribers, the primary advertising classifications as such classifications are or were assigned at the time of the establishment of exchange telephone service) or any combination of such listed names, numbers, addresses, or classifications, (b) that CBT or an affiliate thereof has published, caused to be published, or accepted for publication in any directory format.

C. "Listing System" means the computer automated database system or systems on, through, or by means of which CBT (directly or indirectly) processes, edits, maintains, and stores Subscriber Listing Information.

D. "Service Order Record" means a collection of information relating to a particular subscriber to exchange telephone service and the service provided or to be provided to such subscriber that is contained in a paper or electronic record traditionally known in the telephone industry as a "service order".

SUBSCRIBER LISTING INFORMATION TO BE PROVIDED

1. CBT will provide subscriber listing information as described below to RHD at RHD's request on the following terms and conditions.

2. Upon request by RHD, CBT will provide current and complete listing data from the Listing System for any geographic area, exchange, prefix, central office, wire center, NXX, or other category or grouping of subscribers (including but not limited to

subscribers to particular classes of telephone service, such as business or residential) that the Listing System is technically capable of extracting through the use of a file extract program. To the extent that fulfillment of an RHD request for subscriber listing information requires CBT to write or modify a file extract program, CBT will advise Donnelley of the actual and reasonable charges for that work in accordance with Paragraph 9, below, and must receive Donnelley's written commitment to pay such charges before undertaking such work.

3. CBT will provide Subscriber Listing Information for all CBT subscribers within the requested category, class, or area (or combination of category(ies), class(es), and area(s)) and for any subscribers to the services of other local exchange carriers for which CBT maintains Subscriber Listing Information that it is authorized to provide to third parties such as RHD. CBT will use its best efforts to obtain from such other local exchange carriers the right to provide Subscriber Listing Information to RHD in accordance with this agreement.

4. CBT will not make available Subscriber Listing Information pertaining to subscribers that have requested non-published or non-listed service, except that CBT will separately provide the name and mailing address of such subscribers for use by RHD only for the purpose of delivering RHD directories (and any accompanying printed materials) to such subscribers. RHD shall keep any such information strictly confidential, and use it only for the purpose of delivering directories to the subscribers identified therein.

SERVICES AND PRICES

5. Base file: CBT will provide from time to time, within 30 days of RHD's submission of a written request therefor, a base file of Subscriber Listing Information, including business listings, with the format and content illustrated on Exhibit A or an alternative mutually agreed format. The information will be provided by telephonic data transmission or on magnetic or optical storage media, as may be mutually agreed between RHD and CBT. The price for each such base file will be \$0.04 per Subscriber Listing, plus any charges arising under Paragraphs 9 and 10, below, and applicable taxes.

6. Updates: CBT will provide directory-affecting service order information on a monthly or weekly basis at RHD's option, by telephonic data transmission or on magnetic or optical media, with the format and content set forth on Exhibit A or an alternative mutually agreed format. The price for such service order information will be \$0.10 per Service Order Record, plus any charges arising under Paragraphs 9 and 10, below, and applicable taxes.

7. New Connects: CBT will provide, by telephonic data transmission, directory-affecting information contained in Service Order Records relating to new-connect subscriber orders, with the format and content set forth on Exhibit A or an alternative mutually agreed on a daily basis within 24 hours of entry of such orders into CBT's automated service order entry system. The price for such new connect information will be \$0.10 per Service Order Record, plus any charges arising under Paragraphs 9 and 10, below, and applicable taxes.

8. Directory delivery information for non-published and non-listed subscribers: CBT will provide, on a weekly, monthly, or annual basis at RHD's option, a

file containing subscriber name and address information sufficient to enable RHD to make hand or US Postal delivery of directories to exchange telephone service subscribers that have non-published or non-listed service. Such delivery information will be provided with the format and content set forth on Exhibit A or an alternative mutually agreed at a price of \$0.04 per address.

9. Programming: Writing or modification of extract programs to fulfill RHD requests different from, or additional to, those for which CBT already has an available extract program: CBT will charge RHD a fee not in excess of \$50.00 per person hour (plus the cost of materials consumed and reasonable overheads) for work performed by or for CBT to enable CBT to write or modify computer software otherwise unavailable to CBT and necessary to process RHD's requests.

10. Data Transfer: In addition to the charges specified herein, RHD will provide, or pay the actual and reasonable costs (including a reasonable amount to cover overhead and a reasonable profit) of, data transmission or magnetic or optical storage media necessarily associated with the transmission of listings by CBT to RHD hereunder.

LIMITATIONS AND RESTRICTIONS

11. Subscriber listing information may be used by RHD for any lawful purpose directly related to the publication of directories in any format, including but not limited to soliciting and selling advertising in such directories, compiling and publishing subscriber listings in alphabetical, classified, or other arrangements, delivering directories, and rendering bills for directory advertising and other related services.

12. RHD may disseminate Subscriber Listing Information obtained pursuant to this agreement only in directories published by RHD and may not otherwise sell or provide such information to third party publishing companies.

13. RHD must keep subscriber name and address information with respect to non-listed and non-published service provided pursuant to Paragraph 8 strictly confidential, and must not publish such information or use it for any purpose other than delivery of RHD's directories (and any accompanying printed materials) to those subscribers. RHD will not publish Subscriber Listing Information relating to subscriber service that CBT advises RHD is or has become non-listed or non-published in its directories or use it for any purpose other than delivery.

14. CBT WILL PROVIDE SUBSCRIBER LISTING INFORMATION TO RHD THAT IS THE MOST ACCURATE AND COMPLETE DATA IN CBT'S POSSESSION, CUSTODY, OR CONTROL, BUT CBT OTHERWISE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY DATA OR INFORMATION PROVIDED UNDER THIS AGREEMENT AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

15. This Agreement is intended to be consistent and compliant with applicable federal and state statutes and the rules and decisions of regulatory agencies having jurisdiction of the subject matter hereof. If a disagreement arises between the parties concerning the consistency of this Agreement or acts thereunder with the Communications Act of 1934, *as amended*, or Federal Communications Commission rules adopted pursuant thereto, the exclusive forum for resolution of such a disagreement

shall be through the institution of an appropriate proceeding before the Federal Communications Commission (subject to subsequent judicial review in accordance with applicable law). If a disagreement arises between the parties concerning the consistency of this Agreement or acts thereunder with the laws of the State of Ohio, or administrative regulations promulgated pursuant thereto, the exclusive forum for resolution of such a disagreement shall be through the institution of an appropriate proceeding before the Ohio Public Service Commission (subject to subsequent judicial review in accordance with applicable law).

TERM AND TERMINATION

16. This Agreement is effective as of the Effective Date and, unless terminated earlier as provided herein, will remain in effect for a period of five years, and will renew automatically for one year terms thereafter unless either party gives written notice of termination to the other as provided below.

17. After the initial five year term hereof, either party may terminate this Agreement for any reason or no reason at all upon 180 days' written notice to the other party.

18. In the event that either party believes the other to be in violation of this Agreement, it shall so notify the other party, in writing. If the alleged breach is not cured within 30 days of such notice, the aggrieved party may seek a judicial determination of its rights in a court of competent jurisdiction, provided, however, that breaches or violations alleged to arise from matters within the scope of Paragraph 15, above, may only be brought before the responsible regulatory agency. Performance of this Agreement by