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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

Dear Ms. Salas:

The Association of Directory of Publishers ("ADP") respectfully requests that the Federal Communications Commission ("FCC or Commission") adopt rules defining a reasonable price for subscriber list information ("SLI") under Section 222(e) of the Communications Act, 47 U.S.C. § 222(e). ADP recently met with the Office of Advocacy, U.S. Small Business Administration ("Advocacy") to discuss these rules. The proposal outlined below was developed jointly by ADP and Advocacy.

Specifically, ADP urges the Commission to adopt pricing rules for SLI which:

- make clear that "market-based" prices are unreasonable and that only cost-based prices satisfy Section 222(e);
- establish a four cent benchmark rate for SLI and SLI updates;
- provide for an exemption from the benchmark for rural telecommunications carriers; and
- permit waivers for local exchange carriers ("LECs") or competitive exchange carriers ("CLECs") that can prove their costs exceed the four cent benchmark.

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List A B C D E

A. Market-Based Pricing is Impermissible

Many LECs are offering SLI prices that are not cost-based. For example, BellSouth's tariffed prices for the same listing information vary depending on how the competing directory publisher intends to use the listing. Under BellSouth's tariff, the price per basic listing for use in a single directory is ¢0.04. See Louisiana Tariff at A.38.2.3. The price is ¢0.12 for the same listing for use in multiple directories and ¢0.18 for use in CD ROM directories. See id. Daily updates are \$1.50 per listing and new connect reports are \$2.00. See id. Ameritech also charges different prices depending on the type of directory in which the listing will be used. Use in a single publication is ¢0.13 per listing while use in multiple publications is ¢0.25 per listing. See Ameritech Listing Agreement with Midwest Directories, Inc. (Sept. 24, 1997). Ameritech's daily charges are \$1.75 for updates and \$1.25 for new connects. See id.

The independent directory publisher's use of the listing does not affect the LECs' costs; the cost to BellSouth and Ameritech is the same per listing regardless of whether it is used in a single directory, multiple directories, or a CD ROM directory. Hence, the difference in rates cannot be justified on the basis of cost. Rather, these rates represent "market-based" pricing, *i.e.*, prices that are based on what the market will bear as opposed to the incremental cost of providing the service plus a reasonable profit. Indeed, BellSouth expressly testified that its SLI pricing is market-based. See Testimony of BellSouth Witness Juneau before the Florida PSC (Jan. 13, 1997) at 129. Because SLI represents an "essential facility" which independent directory publishers can not duplicate, the LECs are able to use market-based SLI pricing to extract monopoly profits. See U.S. Copyright Office, Report on Legal Protection for Databases (August 1997) (concluding that SLI is a "prototypical" example of data which is available from only one source). Hence, the Commission must regulate SLI rates, as described below, to ensure that they are nondiscriminatory and reasonable.

B. Four Cent Benchmark

Section 222(e) requires that LECs and CLECs provide SLI to directory publishers at "nondiscriminatory and reasonable" rates. ADP notes that it is bedrock law that a reasonable price has been interpreted to mean a cost-based

price. See, e.g., ALLTEL Corp. v. FCC, 838 F.2d 551, 557 (D.C. Cir. 1988) ("[A] basic principle used to ensure that rates are 'just and reasonable' is that rates are determined on the basis of cost.") ADP believes that four cents should serve as an appropriate benchmark rate for SLI and SLI updates. That price is being offered by BellSouth -- a company which presumably engages in efficient pricing -- for basic listings in several markets and has been approved by several State Public Utility Commissions ("PUCs"). While there is evidence that a four cent price may in fact not be cost-based, it certainly is capable of serving as a reasonable benchmark. Directory publishers who believe that any LEC or CLEC's four cent (or lower) price is in fact unreasonable would retain the right to file Section 208 complaints.

C. Exemption From the Four Cent Benchmark

ADP understands that certain small telecommunications carriers may have costs in excess of the four cent benchmark. Consequently, an exemption from the benchmark may be appropriate for rural telecommunications carriers as defined in Section 3(37) of the Communications Act, 47 U.S.C. § 153(37). Such exemptions are typically granted to rural telecommunications carriers. See, e.g., 47 U.S.C. § 251(f)(1) (exempting rural telephone companies from Section 251(c)'s obligation to interconnect, to provide access to network elements on an unbundled basis, and to resell telecommunications services unless the State PUC finds that such interconnection is not "unduly economically burdensome [and] is technically feasible"). In creating such an exemption, the Commission would retain the right to revisit the exemption should circumstances change. Directory publishers who believe that rural telecommunications carriers are pricing SLI in excess of cost would, of course, maintain the right to file complaints under Section 208 of the Act.

D. Waivers For Permission to Exceed the Four Cent Benchmark

ADP believes that it is also appropriate that any LEC or CLEC that believes the four cent benchmark is too low to cover costs for that carrier should be permitted to seek a waiver and thereby exceed the benchmark. In that circumstance, the burden of proof would be on the LEC or CLEC to provide a full accounting of its costs. As evidence of such a showing, a carrier would have to

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demonstrate that it does not provide SLI to any other entity for any purpose at a price less than the price it seeks to charge for SLI.

In summary, ADP supports the adoption of (1) pricing rules for SLI that are "cost-based"; (2) a four cent benchmark for SLI and SLI updates; (3) provisions for an exemption from the four cent benchmark for small rural telephone companies; and (4) a waiver process for permission to exceed the four cent benchmark for all carriers not subject to the exemption.

Pursuant to the Commission's rules, two (2) copies of this letter are being filed. Thank you for your consideration of this proposal. Please call Michael Finn at (202) 429-4786 or Sophie Keefer at (202) 429-4730 if you have any questions about this filing.

Sincerely,

Michael F. Finn (SK)
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