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September 22, 1998

EX PARTE

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

Re: GN Docket No. 96-115

ORIGINAL

In the matter of Implementation of the
Telecommunications Act of 1996
Telecommunications Carriers' Use of
Customer Proprietary Network Information and
Other Customer Information

Dear Ms. Salas:

On behalf of the Yellow Pages Publishers Association (YPPA), this letter responds to the August 7, 1998 ex parte letter of the Association of Directory Publishers (ADP) and the Association for Local Telecommunications Services (ALTS). YPPA also brings to the Commission's attention a recent Louisiana Public Service Commission Staff recommendation on directory listing issues.

Provision of CLEC listings

In their letter, ADP and ALTS contends that incumbent local exchange carriers (ILECs) should be required to provide subscriber listing information of competitive local exchange carriers (CLECs) to independent directory publishers. In the past, ADP has claimed that independent publishers are unable to obtain CLEC subscriber listing information.¹ YPPA finds it interesting that the trade association representing these same

¹ See ADP Ex Parte Letter of December 30, 1997, at p. 7.

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CLECs is now filing a joint letter in an attempt to totally absolve CLECs from providing directory listing information directly to independent publishers.

An independent publisher has the right to a CLEC's subscriber listing information -- directly from the CLEC -- on reasonable and nondiscriminatory terms. YPPA supports the right of directory publishers to obtain this information from CLECs and believes that CLECs have the obligation to provide this information in compliance with Section 222(e). Yet, it is apparent that ADP does not wish to obtain the information directly from the CLECs.

ADP and ALTS claim that the statute requires that ILECs provide CLEC listing because ILECs providing interconnection with CLECs are providing a "telecommunications service." ADP and ALTS assert that CLECs provide subscriber listing information to ILECs as part of interconnection, and, therefore, ILECs should provide that information to independent directory publishers. ALTS and ADP, however, ignore the plain words of the statute. Subscriber listing information is defined as information "identifying the listed names of subscribers of a carrier..."^{2/} Indeed, the statute requires that telecommunications carriers need only provide the listing information of their own subscribers.

It is YPPA's understanding that some CLECs have requested that some ILECs provide the CLECs' subscriber information to independent publishers on behalf of the CLECs. That, however, is a matter of contract and negotiation -- not legislative requirement. Absent an agreement with the CLEC to the contrary, the ILEC may not have the legal right to provide a CLEC's subscriber listing information.^{3/} The method by which an ILEC obtains CLEC subscriber listing information is irrelevant.^{4/}

ALTS and ADP also attempt to confuse the issue by citing the FCC's Local Competition Order.^{5/} The Local Competition Order deals with the statutory requirements

^{1/} 47 U.S.C. 222(f)(3)(A) (emphasis added).

^{2/} In fact, YPPA has been informed that some CLECs actually prohibit ILECs from reselling CLEC subscriber listing information.

^{3/} YPPA has been informed that interconnection agreements between some facilities-based CLECs and ILECs do not provide for the exchange of subscriber listing information.

^{4/} Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order and Memorandum Opinion and Order*, CC Docket No. 96-68 (August 6, 1998).

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relating to local exchange service competition. Non-discriminatory access to LEC facilities are required for the purpose of providing telecommunications services. Section 251(b)(3) and the rules promulgated thereunder are intended to provide dialing parity between competing providers of local exchange service. Those provisions have nothing to do with access to listings for the purpose of publishing directories.

Section 251 obligations inure only to providers of telephone exchange and telephone toll service. The purpose of those requirements is to allow for the provision of competitive local telephony. Section 251 requirements are not related to the publishing of telephone directories. Publishing telephone directories, however, is the sole purpose of section 222(e).

Congress enacted Section 222(e) because some independent directory publishers claimed that some LECs were not cooperating with them. Some independent directory publishers alleged that some LECs were not providing information to competing directory publishers and some were only providing the information at exorbitant rates. ADP has claimed in the past that the LEC is the only source of up-to-date subscriber listing information.^{6/} Logically, ADP should recognize that the most up-to-date and complete source of CLEC subscriber listing information is the CLEC itself.^{7/}

Section 222(e) is intended to end the problems of independent directory publishers. Should an independent directory provider find that a LEC, whether ILEC or CLEC, is not providing subscriber listing information, or is providing it at an unreasonable price, the publisher can file a complaint at the Commission. In the more than 30 months that since the adoption of Section 222(e), YPPA is not aware of a single formal complaint filed at the Commission.^{8/}

^{6/} YPPA has demonstrated in previous filings that other sources of this information do exist. See YPPA Ex Parte Letter of February 27, 1998.

^{7/} ADP and ALTS claim that requiring CLECs to respond to subscriber list inquiries will put an undue burden on the CLEC. It appears to YPPA that ILECs are required to expend resources servicing directory listing requests, so the principles of non-discrimination and competition would dictate that CLECs should also be required to provide this service directly to independent publishers.

^{8/} YPPA is aware of an informal complaint which the Commission is attempting to resolve without going through a formal complaint process. YPPA applauds the Commission in its efforts to expeditiously resolve that complaint.

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A CLEC's refusal to provide subscriber listing information to directory publishers, for use as described in the Act, is a clear violation of section 222(e). If a CLEC is, indeed, refusing to provide the information to directory publishers, the publishers should file a complaint at the FCC, instead of jointly attempting to shift the burden from the CLEC to the ILEC. To force ILECs to provide CLEC subscriber listing information simply for the convenience of ADP members, however, is clearly outside the bounds of sections 251 and 222(e).

Louisiana Public Service Commission Staff Recommendation

The Louisiana Public Service Commission Staff issued a recommendation on August 7, 1998 regarding BellSouth's revision to its directory publishing database service tariff.^{9/} First, the PSC staff specifically rejected the notion (advocated by ADP members) that "reasonable rates" in Section 222(e) means incremental costs.^{10/} In its conclusion, the staff writes, "A reasonable rate is one that allows that the telephone companies be fairly compensated for the value of the information, including the cost of gathering and maintaining the data, while still ensuring that independent directory publishers have access to the information."^{11/} The staff recommendation relies heavily on the House Report language describing section 222(e).^{12/}

The independent directory publishers also requested that the PSC require BellSouth to provide CLEC listings. The staff concluded that BellSouth "is under no statutory or legal requirement to provide such a listing to [independent directory publishers]."^{13/} Further, the staff recognized that, even though other provisions of the Telecommunications Act of 1996 may require BellSouth to publish CLEC listings in its own directory, "other telephone company subscriber listing information is not [BellSouth's] to provide. Therefore, Staff

^{9/} In Re: Revision to Directory Publisher Database Service (DPDS) Tariff to Include the Option of a Monthly Refresh File, Louisiana Public Service Commission Staff's Post-Hearing Statement, Docket No. U-21760 (August 7, 1998), attached hereto as Attachment 1.

^{10/} Id. at p. 4.

^{11/} Id. at p. 7.

^{12/} H.R. Rep. No. 104-204, Part I, 104th Cong., 1st Sess. at p. 89 (1995).

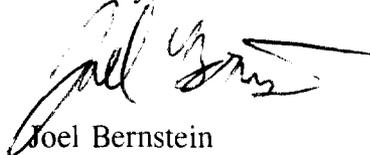
^{13/} Louisiana Public Service Commission Staff's Post-Hearing Statement, Docket No. U-21760, at p. 6.

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recommends that if the intervenors desire the CLEC's listings they should obtain them directly from the independent local exchange companies."¹⁴

Clearly, the Louisiana PSC staff disagrees with the position taken by ADP and ALTS in their August 7 ex parte on CLEC listings, and ADP on its constant request for the Commission to ignore the statute and clear Congressional intent by imposing incremental costs for subscriber listing information. YPPA believes the Louisiana PSC made the right decision, and respectfully urges the Commission to also determine that ILECs are not required to provide CLEC listings and to not impose incremental pricing under section 222(e).

Sincerely,



Joel Bernstein
Attorney for the Yellow Pages Publishers Association

Attachments

cc: Kathryn Brown
James Schlichting
Jay Atkinson
Dorothy Attwood
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William Kehoe
Tonya Rutherford
David Konuch
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¹⁴ Id.

**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE HEARINGS DIVISION**

LOUISIANA PUBLIC SERVICE COMMISSION

DOCKET NO. U-21760

In re: Revision to Directory Publishers Database Service (DPDS) Tariff to include the option of a monthly refresh file.

**COMMISSION STAFF'S
POST-HEARING STATEMENT**

Pursuant to instructions of the Administrative Law Judge in this proceeding, the Louisiana Public Service Commission Staff ("Staff") submits the following Post-Hearing Brief.

INTRODUCTION

BellSouth Telecommunications, Inc. ("BST" or "BellSouth") initiated this proceeding through the filing of a tariff with the Louisiana Public Service Commission (the "Commission") on October 30, 1995. BST's tariff, sometimes referred to as the DPDS Update Tariff, proposed to offer three products (New Connect Report Option, Sort Extract Option and Daily Update Option), establishes a termination penalty, and sets a rate for CD-ROM version of an original subscriber list. The New Connect Option provides the customer with the name, telephone number, listed address, and billing address (if different from the list address) of new BST residential or business subscribers. The Sort Extract Option provides the customer with a one-time extract of listings sorted by 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. The Daily Update Option provides the customer with a daily service order activity affecting the designated database of listings maintained by the customer sequenced in any of the Sort Extract

Option formats.

Each of the above options is available upon the submission of genuine order. If a customer orders one of the options, and later cancels the order, the tariff provides for a termination penalty, which is based on BST's development costs for the option selected.

If a customer wants a CD-ROM or diskette version of an original subscriber list, BST will provide that at the rate of \$0.18 per listing, compared to the rate for a paper version of a single edition of a printed directory (\$0.04) and the rate for a paper version of multiple editions of a printed directory (\$0.12). The rates for the paper version of both the single and multiple editions are not at issue in this proceeding. Those rates were the subject of the Settlement Agreement and Joint Stipulation reached in Docket No. U-20564.

PROCEDURAL BACKGROUND

Notice of BST's proposed tariff was published in the January 12, 1996 edition of the Commission's Official Bulletin. Timely petitions for intervention were filed by the Small Company Committee of the Louisiana Telephone Association ("SCC"), excluding Kaplan Telephone Company and BRI, Inc. Over the objections of BST, the late-filed petitions for intervention by Buyer's Guide, Inc., Associated Directories, St. Bernard/Tri-Parish Telephone Directory and Trans-Western Publishing were allowed. In light of the filing of the interventions, BST's application was docketed and administered pursuant to Rules 54 through 66 of the Commission's Rules of Practice and Procedures governing proceedings in which a hearing is requested or required.

An initial status conference was held on April 1, 1997 at which a second status conference and tentative hearing dates were set. Following the second status conference held on May 7, 1997, BST withdrew its original tariff filing and agreed to file a new tariff which reflected a then recent

order of the Florida Public Service Commission ("FPSC").¹ On May 23, 1997, BST filed revisions to the DPDS Tariff that were consistent with the aforementioned FPSC order.

After an extensive period of discovery, a hearing on the merits of BST's DPDS Tariff revisions was held May 14-15, 1997. At the hearing, BST's sole witness was Mr. Lynn Juneau. The only intervenor participating in the hearing was BRI, Inc. BRI's witnesses were Dr. James Richardson and Mr. William Hammack. At the conclusion of the hearing deadlines were established for the filing of post-hearing briefs by the parties.

DISCUSSION

The dominant issue presented in this docket is whether the Commission should approve or reject BST's DPDS Update Tariff. After careful examination of the issues and testimony presented at the hearing in this matter, Staff believes that the DPDS Update Tariff should be approved. The tariff is consistent with both federal and state laws in that the proposed update offers provide subscriber list information 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. Through the course of the proceedings in this docket, there have been many issues raised. For the purpose of this post-hearing brief, the Staff will consider only those issues relevant to the dominant issue which are: (1) Compensation for Update Options; (2) Termination Fee; (3) CLEC Listings; and (4) Rate for CD-ROM version.

I. Compensation for Update Options

In the Telecommunications Act of 1996 ("the Act") Congress addressed the issue of local exchange companies, such as BST, providing subscriber list information to independent directory

¹See FPSC Order No. PSC-97-0535-FOF-TL.

publishers such as the intervenors in this case. 47 U.S.C. § 222 (e) states:

(e) SUBSCRIBER LIST INFORMATION.-Notwithstanding subsections (b), (c), and (d) [of 47 U.S.C. § 222], a telecommunication carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service 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.

This section of the Act was designed to balance the needs of the independent publishers for access to subscriber data on reasonable terms and conditions, while at the same time ensuring that the telephone companies that gather and maintain such data are fairly compensated for the value of the listing. The key provisions of this section states that rates must be nondiscriminatory and reasonable. The term nondiscriminatory suggest that similarly situated publishers with similar requests will be sold subscriber listings on the same or similar rates, terms and conditions. Reasonable rates means that the telephone companies are fairly compensated for the value of the information, including the cost of gathering and maintaining the data, while still ensuring that independent directory publishers have access to the information.

The intervenors in this docket have suggested that reasonable rates means incremental costs. Upon reconsideration, Staff rejects this argument. It is important to note that DPDS update services are nonbasic services and thus should be priced at market value. The Staff believes, as did the FPSC, that incremental pricing is not consistent with the market value of new connections information.

In § 1001 (J) of the Commission's Regulations for Competition in the Local Telecommunications Market, the Commission requires ILECs and CLECs to "provide subscriber list information in their capacities as local telecommunication services providers on a timely, unbundled basis, under nondiscriminatory and reasonable rates, terms and conditions, to any person or entity

(including TSPs and TDPs) for the purpose of publishing directories in any format. The Commission regulations lacks any references to a cost-based rate, as suggested by the Intervenor, in its discussions of subscriber list information. Thus, the Staff finds no basis for imposing an incremental cost standard on the rates for updated subscriber list information.

There are essentially three elements to the compensation for subscriber list information, as required in the House Commerce Committee Report--the pro rata cost of gathering and maintaining the information, the costs of providing the information to an independent publisher, and the value of the listing themselves.³ All three of these elements--not only the incremental costs of providing the information to independent publishers--must be part of any analysis of whether the compensation is reasonable. Such an analysis allows independent publishers to have access to the listing information, while allowing the telephone to recover the value of the listings.

In conclusion, the Staff recommends a finding that BellSouth's proposed market based rates are reasonable, nondiscriminatory, and consistent with the Telecommunications Act of 1996 and Commission Regulations. Thus, the intervenors proposal to base rates on incremental costs should be rejected.

II. Termination Fee

The DPDS Update Tariff as proposed by BellSouth provides for a termination fee which requires that independent publishers pay for the development of optional services implemented at their direct request either through rates paid on an ongoing basis or through a one time nonrecurring charge. At the hearing, BST agreed that it would quantify the termination fee for an update product

³See H.R. Rep. No. 104-204, Part I, 104th Cong., 1st Sess. (1995).

as one-twelfth (1/12) of the development costs of that product. According to BST, the development cost of the New Connection Report update product is \$1,404.00. Thus, the termination fee for a subscriber to that product would be \$117.00 (1/12 of 1,404.00).

In light of the above, Staff withdraws its objection to the termination fee provision of the DPDS Update Tariff. The Staff recommends a finding that it is reasonable and appropriate for BST to recover all costs involved with the development of optional services developed at the direct request of the independent directory publisher.

II. CLEC Listing

The intervenors in this docket have expressed their desire to obtain CLEC subscriber list information directly from BST rather than from the CLEC whose information is being sought. The Staff believes that BST is under no statutory or legal requirement to provide such a listing to the intervenors. In order to be in compliance with the Telecom Act, BST must publish the listings of CLECs in its telephone directory only if the CLEC request that BST do so. It is the Staff's opinion that other telephone company subscriber listing information is not BST's to provide. Therefore, Staff recommends that if the intervenors desire the CLEC's listings they should obtain them directly from the independent local exchange companies.

II. CD-ROM Rate

BST's DPDS Tariff provides for CD-ROM or diskette versions of an original subscriber list. BST will provide this version at the rate of \$0.18 per listing, compared to the rate for a paper version of a single edition of a printed directory (\$0.04) and the rate for a paper version of multiple editions

of a printed directory (\$0.12). According to BST, the CD-ROM version of the subscriber list information is a different product than the paper version and provides the user with much more flexibility. Thus, BST argues that the CD-ROM version has more commercial value to the intervenors than a standard version and should be priced accordingly. The Staff agrees with this argument and recommends a finding that the CD-ROM rate is a different type of multiple use rate and that the proposed rate is reasonable.

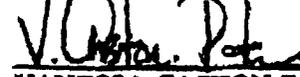
CONCLUSION

Pursuant to the arguments and findings stated above, Staff respectfully urge that this Administrative Law Judge recommend the following to the Commission:

1. **BellSouth's proposed rates in the DPDS Update Tariff for the New Connect Report Option, Sort Extract Option, and Daily Update option are reasonable, nondiscriminatory, and fully consistent with the Telecommunications Act of 1996 and this Commission's Regulations for Competition in the Local Telecommunications Market.**
2. **The Act requires prices charged by BST for the services offered in the DPDS Update Tariff to be nondiscriminatory and reasonable.**
3. **A reasonable rate is one that allows that the telephone companies to be fairly compensated for the value of the information, including the cost of gathering and maintaining the data, while still ensuring that independent directory publishers have access to the information.**
4. **The termination fee for an update product of one-twelfth (1/12) of the development cost of that product is reasonable. The termination fee provides for BST to recover all costs involved in the development of optional services developed at the request of the independent directory publishers.**
5. **BST be directed to revise its DPDS Update Tariff to reflect the above quantification of the termination fee.**

6. BST should not be required to provide to independent directory publishers CLEC subscriber list information. If the independent directory publishers desire the CLEC's listings, they should obtain them directly from the independent local exchange companies.
7. BST's proposed CD-ROM rate is a different type of multiple use rate.
8. BST's proposed CE-ROM rate of \$.018 is reasonable.

Respectfully submitted,
LPSO LEGAL DIVISION



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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing Post-Hearing Brief filed by the Louisiana Public Service Commission Staff to be served, by first class mail, on each party on the official service list.

Dated August 7, 1998 at Baton Rouge, Louisiana.



Vanessa Caston-Porter