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March 31, 1999

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
455 12th Street, SW
TW-A325
Washington, D.C. 20554

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MAR 31 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: GN Docket No. 96-115

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:

The Yellow Pages Publishers Association (YPPA) is filing this ex parte at the request of the Commission staff. The staff has asked YPPA to provide a response to the Association of Directory Publisher's (ADP) proposal to set a benchmark of four cents a listing for subscriber listing information (SLI).

As YPPA has indicated in previous filings, it is very dangerous for the Commission to attempt to institute a "one size fits all" price for SLI. All SLI is not the same. There are many different products, from a straight "data dump" from the telephone companies as initially entered into the telephone company's database, to fully camera-ready, ready to publish information. The cost of creating the SLI and the value of the SLI varies significantly from product to product, market to market, and company to company.

The reasonableness of SLI pricing can be affected by the number of publishers wanting SLI for a particular area and the amount of SLI entries requested, which can vary profoundly from market to market. The Commission should not set a price ceiling which will be considered de facto reasonable. How can the same rate be reasonable for the sale of

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300 listings to a single publisher in one part of a state and 1,000,000 listings to five different publishers in another part of the state?

The statute gives the Commission flexibility to determine whether subscriber listing rates are reasonable. Value of the information, however, was specifically enumerated by Congress as a factor in determining reasonableness. The House Commerce Committee Report makes it clear that the listing information has some market value, and telephone companies are permitted to charge for listings based on that value. The report states that the subscriber list information provisions ensure "that the telephone companies that gather and maintain such data are compensated for the value of the listings."^{1/} The Commission appears intent on ignoring this portion of the legislative history.

If the Commission is determined to set a price ceiling for de facto reasonableness, the Commission must take into account not only the value of the SLI, but also several other considerations. First, state commission and court decisions setting prices for SLI should be considered reasonable.^{2/} Second, prices outside the ceiling should not be considered de facto unreasonable. Rather, as under the normal complaint process pursuant to Section 208, the complaining party must prove that a particular price outside the ceiling is unreasonable.

Most important, the Commission must narrowly define what SLI product is subject to the price ceiling. The SLI product subject to any price regulation should only be the initial data dump from the telephone company. This is SLI as initially entered by the telephone company. Once the telephone company begins to edit, manipulate, organize, and add value to the information, it should not be subject to any type of SLI price regulation. This does not mean the telephone company is not subject to the non-discrimination requirements of section 222(e). If the telephone company sells value-added SLI to its own publisher, the telephone company should offer that same product on the same or similar terms and conditions to unaffiliated publishers.

The statute clearly applies to all telecommunications carriers that provide telephone exchange service.^{3/} As YPPA has noted in the past, this statute applies in full force to all telecommunications carriers, from the largest Bell operating company to the smallest rural co-op to the newest competitive local exchange carrier. All telecommunications carriers

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

^{2/} Proceedings within states often are not isolated. A state may have a low initial data dump price, but will have a relatively high update price. Also, a state may look for less revenues from the sale of SLI in exchange for higher revenues from other portions of the business. In that context, the Commission should not upset state decisions on SLI, and should also not use those decisions as a hard and fast guide for reasonableness.

^{3/} The statute, of course, gives the Commission absolutely no authority to regulate directory publishers, whether or not the publisher is affiliated with a telecommunications carrier.

must make their SLI available to directory publishers for the purpose of publishing directories.

In order to help the Commission in completing its Report and Order in this proceeding, YPPA has polled the members of its Public Policy Committee to determine an acceptable de facto price ceiling for an unedited initial data dump. It is YPPA's understanding that this is similar to the BellSouth SLI offering which ADP constantly refers to in its pleadings. The average acceptable de facto reasonable price ceiling for those YPPA members responding to the request is 16.6 cents per listing. YPPA reiterates that the Commission should not set a price ceiling but should determine reasonableness only after reviewing the facts of each individual complaint. YPPA does not endorse using any de facto reasonable price ceiling.

The Commission has also asked for a similar acceptable price ceiling for updates. Unfortunately, there are many more update products than initial SLI products. These products range significantly in price and substance. There are many factors which should determine reasonableness, including demand for the service, programming costs, the specific material requested, and enhancements made to the material. Several YPPA members have noted that any specific ceiling is meaningless because no two update products are exactly alike.

Having noted the above, YPPA asked its members about a reasonable price for daily or weekly unedited updates (an update dump) of all changes, business and residential.^{4/} The responses varied so significantly as to make the entire exercise statistically meaningless. For the record, the average YPPA Public Policy Committee response for the reasonableness of such updates is 51.5 cents.^{5/} Again, YPPA does not endorse using any de facto reasonable price ceiling for updates.

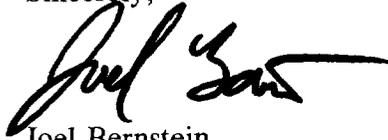
^{4/} Such a product may or may not be available from any particular telephone company. YPPA used this type of product because it is the most basic product used in publishing directories.

^{5/} The Commission should be cognizant that updates usually contain only a small portion of the listing database, so that the price for updates may be more per listing, but is can be substantially less costly and less work than repurchasing the initial data dump.

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YPPA is pleased to furnish any additional information the Commission needs to complete its Report and Order in this proceeding in an expeditious manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Bernstein", with a long horizontal flourish extending to the right.

Joel Bernstein

Attorney for the Yellow Pages Publishers Association

cc: Tom Power
Linda Kinney
Kevin Martin
Kyle Dixon
Paul Gallant
Larry Strickling
William Kehoe
Daniel Shiman
Doug Galbi
Jordon Goldstein
Robert Atkinson