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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Submission, CC Docket No. 96-115

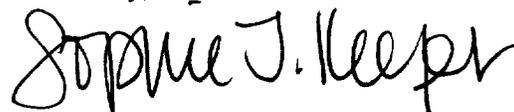
Dear Ms. Salas:

Yesterday, on behalf of the Association of Directory Publishers ("ADP"), I met via telephone conference with Bill Kehoe of the FCC's Common Carrier Bureau regarding the above-referenced rulemaking proceeding. Specifically, ADP urged the FCC to adopt ADP's proposals to implement Section 222(e).

ADP also responded to BellSouth's recent *ex parte* submission. Attached hereto is ADP's response to BellSouth's submission.

In accordance with the Commission's rules, an original and one copy of this letter are being filed. Please feel free to contact the undersigned at (202) 429-4730 should you require any additional information.

Sincerely,



Sophie J. Keefer

enclosure

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ADP'S RESPONSE TO BELLSOUTH'S 3 MAY 1999 EX PARTE SUBMISSION

BellSouth has stated that the Weekly Business Activity Report ("WBAR") is an "optional report [that] falls outside of Section 222(e)." Bell South Supplemental *Ex Parte* Submission of 3 May 1999, at 2. BellSouth insists that because the WBAR is intended to facilitate directory delivery and yellow pages sales solicitation, it is "offered for reasons unrelated to directory publishing." *Id.* That is nonsense. Publishing, by definition, encompasses the entire range of activities that lead to the public availability of a directory. *See, e.g.,* Webster's New Twentieth Century Dictionary, at 1457 (2d ed. 1979) ("publish" defined, *inter alia*, as "to cause to be printed and offered for sale; to issue from the press to the public; to put into circulation.") Delivery of directories and solicitation of advertising sales are integral to publishing telephone directories. Without these functions, no directory could be published. BellSouth's attempt to carve out these important aspects of publishing a directory from the reach of Section 222(e) reveals the transparently anticompetitive motives for its submission.

If the Commission were to actually determine -- contrary to the statute -- that SLI that is used for delivery of directories or solicitation of advertising is not protected by Section 222(e), independent directory publishers would be driven out of the directory publishing business by the ILECs. Because all listings are used for delivery and all business listings are used to solicit advertising in the ordinary course of publishing a directory, ILECs could easily abuse their control over SLI to prevent independent directory publishers from performing these essential functions. This is exactly the result that Congress sought to prevent in enacting Section 222(e).

In a transparent attempt to deflect the Commission's attention away from BellSouth's 1993 cost study, BellSouth states that ADP has misconstrued the relevance of this study. Bell South Supplemental *Ex Parte* Submission of 3 May 1999, at 2. However, the 1993 cost study is indisputably relevant to the reasonableness of a six cent presumptive benchmark for updates. BellSouth admits that the WBAR consists of "service order listing changes for business main listings." *Id.* at Attachment C. Thus, the WBAR is indistinguishable from an update service, except to the extent that it is less, rather than more, inclusive of the service order activities included in an update service. If anything, then, the WBAR ought to be more costly to provide because it requires more processing by BellSouth.

BellSouth has stated that the per unit cost to provide the WBAR is \$0.004. Thus, the WBAR is approximately 33% more costly to provide on a per unit basis than the initial load, which costs \$0.003 to provide, according to BellSouth. The six cent benchmark price for updates, suggested by ADP, represents a 50% increase over BellSouth's four cent price for listings that are part of the initial load. BellSouth has offered nothing to contradict this conclusion. BellSouth also states that the cost study is "erroneous, stale and outdated." *Id.* at 2. However, it is unlikely that it has become more, rather than less, costly to provide SLI since the date of the study. The important point, of course, is that BellSouth does not produce, even confidentially, a new study. Its conclusory assertion that an undisclosed and unsupported number should supersede its cost study cannot be taken seriously.

BellSouth claims that "BellSouth's actual costs for its base SLI daily update service far exceed ADP's suggested six cent (\$.06) update price." *Id.* In Attachment D to its filing, BellSouth's purports

to provide the unit cost for such listings. Because BellSouth has submitted this number under a request for confidentiality, ADP can not comment on its reasonableness. Moreover, BellSouth produced absolutely no cost data in support of this figure. The Commission should not rely on BellSouth's naked, conclusory assertion that its unit cost to provide updates exceeds six cents. The weight of the evidence presented by ADP and others in this proceeding suggests that a per listing charge of six cents would permit most ILECs to recover their costs plus an ample profit. For example, U.S. West has stated that the per unit cost to provide an update is no more than two cents per listing. Pacific Bell charges ten cents per listing for updates.

BellSouth asks that the Commission be "aware that the smaller independent LECs have costs that in many cases substantially exceed BellSouth's costs." Id. No data whatsoever are produced to support this conclusory assertion, and BellSouth does not even claim to possess such data. The reasons for BellSouth's expression of concern for other LECs also are not disclosed. In any event, BellSouth's concerns are groundless. In its joint proposal with the U.S. Small Business Administration, ADP urged the Commission to exempt rural telecommunications carriers, most of whom are small, from the benchmarks. In addition, carriers who believe that their costs exceed the benchmarks, may continue to charge higher prices subject to enforcement proceedings brought by directory publishers. If such carriers present cost data that demonstrates that a higher price is appropriate, the benchmarks would not apply.