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WILLKIE FARR & GALLAGHER

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Washington, DC 20036-3384

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Fax: 202 887 8979

July 26, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

Dear Ms. Salas:

On behalf of the Association of Directory Publishers ("ADP"), this letter responds to BellSouth's ex parte filing of July 16, 1999. In its filing, BellSouth raises several issues concerning the directory publishing business that have previously been addressed by ADP:

- BellSouth asserts, without citation to any authority, that independent publishers can obtain SLI from sources other than the local exchange carriers ("LECs"). This is not the case. Accurate and up-to-date SLI can only be obtained from the LECs. See ADP Ex Parte Filing of Dec. 11, 1998, at 8-12, attached hereto as Exhibit A; see also "FCC Grants US WEST Significant Regulatory Relief to Provide Nonlocal DA Service," News Release, June 9, 1999 (recognizing that US WEST has "monopoly control" over the telephone numbers of its subscribers).
- BellSouth asserts that it already adheres to all the obligations set forth in Section 222(e). Again, this statement is untrue. BellSouth's update services are priced at such high levels that that few, if any, independent publishers are able to afford to subscribe to them. In addition, BellSouth's WBAR service requires publishers to purchase the small percentage of updated listings that they desire at a rate that is multiplied by the total number of listings maintained by each Central Office involved, thereby failing to provide SLI on an "unbundled" basis in accordance with the statutory language. See Exhibit A, at 12-14. In addition, BellSouth does not permit its listings to be used for Internet directories. See ADP Ex Parte Filing of July 14, 1999.
- BellSouth continues to claim that the profitability of the directory publishing business is relevant to the Commission's implementation of Section 222(e) and that the Commission should not change the status quo. However, if Congress had not perceived a genuine need to ensure competitively meaningful access to SLI, Section 222(e) would have been unnecessary. The Commission must ensure that Congress' goal of promoting competition in the directory publishing business is achieved by

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Magalie Roman Salas

July 26, 1999

Page 2

establishing cost-based, presumptive benchmarks for SLI and SLI updates. See Exhibit A, at 2-8.

- Finally, BellSouth assails ADP's contention that ILECs should be required to provide CLEC listings that the ILECs gather from CLECs in their capacity as telecommunications providers as a condition to interconnection with CLECs. As illustrated in ADP's joint filing with ALTS, Section 222(e) requires ILECs to provide publishers with SLI obtained from CLECs. See ALTS/ADP Ex Parte Filing of Aug. 7, 1998, attached hereto as Exhibit B. Moreover, most CLECs wish the ILECs to release their listings to independent directory publishers, as this is the most efficient means of ensuring that their subscribers appear in independent directories.

Pursuant to the Commission's rules, an original and one copy of this letter are being filed. Please call me at (202) 429-4730 if you have any questions regarding this filing.

Sincerely,



Sophie J. Keefer

cc: Dorothy Attwood
Bill Bailey
Kyle Dixon
Linda Kinney
Sarah Whitesell
Larry Strickling
Bill Kehoe
Daniel Shiman

Attachments

EXHIBIT A

WILLKIE FARR & GALLAGHER

**WF&G
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11 December 1998

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

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DEC 11 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte
CC Docket No. 96-115

Dear Ms. Salas:

The Association of Directory Publishers ("ADP") hereby submits the attached memorandum in response to BellSouth Corporation's ("BellSouth") ex parte filing of November 19, 1998 in the above-referenced proceeding.

Pursuant to the Commission's rules, two (2) copies of this letter are being filed. Please call the undersigned at (202) 429-4746 or Sophie J. Keefer at (202) 429-4730 if you have any questions regarding this filing.

Sincerely,

Theodore Whitehouse
(TK)

Theodore Whitehouse
Attorney for ADP

Attachments

cc: Lawrence E. Strickling
Dorothy T. Attwood
Jane E. Jackson
William A. Kehoe III
Douglas Galbi

RESPONSE OF THE ASSOCIATION OF DIRECTORY PUBLISHERS TO
BELLSOUTH'S EX PARTE FILING OF NOVEMBER 19, 1998

DECEMBER 11, 1998

I. INTRODUCTION AND SUMMARY.

The Association of Directory Publishers ("ADP") hereby responds to BellSouth Corporation's ("BellSouth") ex parte filing of November 19, 1998 in the above-referenced proceeding. In its filing, BellSouth has attempted to mislead the Commission concerning the importance of reasonable, nondiscriminatory access to subscriber list information ("SLI") to healthy competition in the directory publishing business and to discourage the Commission from promulgating rules consistent with the Congressional mandate of Section 222(e) of the Telecommunications Act of 1996.

BellSouth's basic point is that it and other local exchange carriers ("LECs") can be trusted to carry out their duty under Section 222(e) to deal fairly with their independent directory publisher competitors so that no Commission rules are needed to protect those independent publishers. Of course, Congress already rejected that argument when it decided to enact Section 222(e). BellSouth's latest filing is, itself, powerful evidence of the need for rules. The cynical lack of candor this filing shows toward the Commission is but a pale shadow of the harsh treatment BellSouth inflicts upon its relatively powerless would-be rivals in the yellow pages business.

In this most recent submission, BellSouth has:

- used unsubstantiated (and probably incorrect) data concerning independent directory publishers' profitability in order to suggest that the Commission disregard the Commission's determination in implementing Section 222(e);
- erroneously claimed that an independent publisher who regularly obtains SLI from BellSouth does not obtain SLI from BellSouth;

- overstated the number of independent publishers who obtain SLI from alternative sources by including publishers who do not publish in BellSouth's service areas or region, or who are no longer in business; and
- failed to explain that independent publishers do not subscribe to many of BellSouth's SLI service options, such as the New Connect Report and Daily Updates services, due to the unreasonably high prices BellSouth charges for these services.

BellSouth would have the Commission believe that independent publishers can obtain SLI from sources other than the LECs and still successfully compete with BellSouth's directory-publishing affiliate, BellSouth Advertising & Publishing Corporation ("BAPCO"). The truth is that independent publishers can not bring consumers the benefits of meaningful competition with BAPCO and other LEC-affiliated publishers without access to BellSouth's and other LECs' listings. There is only a single, primary source for SLI and that is the LEC with whom the dial tone customer has subscribed. Any other secondary source is, by definition, less accurate, complete, and up-to-date. The persistently misleading presentations to the contrary by and on behalf of incumbent LECs, of which BellSouth's is the most recent, have delayed and misled the Commission long enough. For the reasons set forth below, the Commission should recognize BellSouth's November 19, 1998 ex parte filing for what it is and promptly promulgate rules implementing Section 222(e).

II. THE PROFITABILITY OF THE DIRECTORY PUBLISHING BUSINESS IS IRRELEVANT TO THE COMMISSION'S IMPLEMENTATION OF THE CONGRESSIONAL MANDATE OF SECTION 222(e).

BellSouth provides "illustrative" models intended to show that the directory publishing business is so profitable that no

regulation of SLI is necessary.¹ This argument is, of course, utterly irrelevant. Nothing in the statute conditions BellSouth's obligations or independent publishers' rights on anyone's profitability. Even if relevant, BellSouth's data would have to be disregarded because they are wholly unsubstantiated. Of course, any sample that includes LEC-affiliated publishers like BellSouth's BAPCO will show substantially higher profitability, because publishers like BAPCO enjoy monopoly profits that would be striking in any industry.

In addition, BellSouth fails to provide any evidence to support its assertion that \$300 per inch is "a conservative industry estimate for the sales price for yellow pages advertisements,"² a statement that, in any event, addresses only revenue, not profit. Indeed, one of the principal reasons BellSouth and other LECs wish to stymie the growth of independent publishers, like ADP's members, is that independent publishers typically offer lower advertising rates and more innovative and consumer-friendly products. In addition, BellSouth's model does not take into account BellSouth's other SLI service offerings, including Daily Updates (\$1.50 per listing) and New Connect Reports (\$2.00 per listing). Finally, if these models are to be given any weight at all by the Commission, BellSouth should be required to provide similar data regarding the profits of BAPCO, which are likely to be orders of magnitude higher

¹ Ex Parte Filing of BellSouth in CC Docket No. 96-115, at 2-3 (Nov. 19, 1998) ("BellSouth Ex Parte").

² Id. at 3.

than the profits of even the most successful independent publishers. For these reasons, the Commission should disregard BellSouth's models because they are unsubstantiated and biased.

More importantly, however, BellSouth's observations regarding independent publishers' revenues are entirely irrelevant to the Commission's implementation of Section 222(e). That independent publishers enjoy some profit should surprise no one since it is elementary economics that American businesses exist to make profit. Although SLI is but one input in the directory publishing process, every directory publisher (including BAPCO) knows that a successful directory can not be published without accurate and up-to-date SLI. When listings are absent or incorrect, consumers form the perception that the directory is of inferior value than the LEC-affiliated directory. In turn, advertisers are less willing to purchase advertising space and the independent publisher's ability to compete is diminished.³ Acknowledging this reality, Congress enacted Section 222(e) in order to ensure nondiscriminatory and reasonable access to SLI. If Congress had not perceived a genuine need to ensure competitively meaningful access to the LECs' SLI by independent publishers, Section 222(e) would have been unnecessary.⁴

³ BellSouth contends that "[t]he only party that will benefit from [price] regulation [of SLI] is the independent publishers who will receive higher profits." Id. at 3 n.4. To the contrary, price regulation will enable increased competition in the directory publishing market. In turn, advertising rates will more closely resemble their underlying costs, thereby reducing the cost of advertising for businesses. Consumers will benefit from the commensurate reduction in the prices of goods and services.

⁴ As a matter of statutory construction, it is assumed that Congress intends to give effect to all statutory provisions so

In the face of the clear Congressional mandate of Section 222(e), BellSouth's contention that "directory publishing is a competitive business and should be allowed to operate in an unregulated environment" is disingenuous.⁵ An industry in which, in any given place, an incumbent like BellSouth has more than 90 percent of the market, and a few small firms, dependent on the incumbent for essential inputs, fight for the rest could not possibly be called "competitive."

III. PURSUANT TO ITS LONG-STANDING DEFINITION OF "REASONABLE RATES", THE COMMISSION MUST REQUIRE SLI TO BE PROVIDED AT COST-BASED RATES.

BellSouth's central contention is that Section 222(e) does not permit the Commission to require that LECs provide SLI at cost-based rates.⁶ BellSouth is wrong in assuming that the Commission may not adopt a standard based on cost simply because Congress did not explicitly define "reasonable rates" in Section 222(e). Congress enacted Section 222(e) in order to promote competition in the directory publishing market. Congress' goal can only rationally be achieved by ensuring that independent publishers pay for listings at a price approaching the incremental cost of providing them.⁷

that no part will be inoperative or superfluous. See Sutherland Stat. Const. § 46.06 (6th ed.).

⁵ BellSouth Ex Parte at 1.

⁶ See id. at 4 ("[T]here is no statutory basis to require LECs to provide [SLI] services under cost based rates.").

⁷ BellSouth claims that cost-based pricing would "exclude[] any contribution to [its] overhead costs, much less an economic profit" BellSouth Ex Parte at 4. BellSouth ignores that fact that, as a LEC, it is required to maintain a subscriber database regardless of whether directory publishers purchase these listings. Thus, all fees paid by publishers in

Congress' decision to leave the defining of reasonable rates to the Commission as expert agency does not mean that Congress rejected a standard based on cost.⁸ Indeed, given the Commission's long history of using cost as the touchstone for calculating a reasonable rate,⁹ Congress must be understood to have incorporated this definition in Section 222(e).¹⁰

As a result, BellSouth's reliance on findings made by the Florida Public Service Commission and recommendations made by Louisiana Public Service Commission staff¹¹ unequivocally underscores

excess of the incremental cost of providing SLI represent return on BellSouth's investment. Cost data indicate that SLI costs BellSouth less than \$0.003 per listing to maintain. Accordingly, BellSouth's \$0.04 price represents profits of more than 1,300 percent. See BellSouth Cost Study (Feb. 8, 1993), submitted as Attachment 1 to ADP Ex Parte in CC Docket No. 96-115 (filed Feb. 24, 1997). By any measure, 1,300 percent is an "economic profit".

⁸ In Direct Media Corporation v. Camden Telephone, No. CV296-108 (S.D. Ga. Dec. 2, 1998), a U.S. District Court concluded that "[t]he question of what constitutes a reasonable rate for telephone directory listings under Section 222(e) should be resolved by the FCC" because "[t]he FCC has more knowledge and expertise in this area . . . , and uniformity in this determination is important." Id. at 17.

⁹ 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.").

¹⁰ See CBS, Inc. v. FCC, 453 U.S. 367, 385 (1981) (Where Congress has failed to repeal or revise a statutory term in the face of long-standing administrative interpretation of such term, its actions may be taken as "persuasive evidence that that interpretation is the one intended by Congress.")

¹¹ ADP notes that, to date, the staff recommendations have not been adopted by the Louisiana Public Service Commission. Thus, the Commission would be ill-advised to rely on the staff recommendations, as BellSouth urges.

the need for national rules concerning the provision of SLI. While Florida and Louisiana have fundamentally misunderstood the mandate of Section 222(e) and approved "market-based" pricing of SLI, other states, such as New York and California, have come to the opposite conclusion and explicitly required cost-based pricing. Accordingly, it is the responsibility of this Commission to set national guidelines to ensure that directory publishers, many of whom publish directories in multiple states, are not burdened by inconsistent state regulations.

BellSouth and other LECs urge the Commission to adopt "market rates" for SLI.¹² However, there is no "market" for SLI. The concepts of "market price" and "market value" presuppose the existence of an open market, in which a willing vendor "and a purchaser who desires to buy but is not compelled to take the particular article" agree on a price through negotiation and mutual assent.¹³ These conditions are not present in the "market" for SLI. For every subscriber, there is only a single provider of listing information, the LEC to which that individual or business subscribes for local telephone service. Because each LEC is the monopoly provider of its own SLI, independent publishers must pay the price LECs ask, or forego the purchase of SLI altogether.¹⁴ BellSouth is

¹² See BellSouth Ex Parte at 5-6; see also Ex Parte Filing of USTA in CC Docket No. 96-115 (Nov. 20, 1998) ("USTA Ex Parte").

¹³ Black's Law Dictionary 670-71 (6th ed. 1991).

¹⁴ The U.S. Copyright Office and the LECs themselves have acknowledged that SLI is an "essential facility" in the directory publishing business. See U.S. Copyright Office, Report on Legal Protection for Databases, at 102 (August 1997); Affidavit of T.H. Avery III, Vice President and General Manager

well aware that if its charges are far above cost, its competitors are disadvantaged. BellSouth makes its money on yellow pages, not SLI, so it does not care if its high prices for SLI drive away all of its independent publisher customers. This is precisely the problem Congress sought to correct in enacting Section 222(e).

IV. ACCURATE AND UP-TO-DATE SLI CAN BE OBTAINED FROM NO PRACTICAL SOURCE BUT THE LECs.

BellSouth insists that "SLI can be obtained from entities other than LECs."¹⁵ As shown below, most "alternative sources" for SLI obtain these data from the LECs themselves. Inevitably, these data are significantly less accurate and up-to-date than SLI obtained directly from the LECs because non-LEC databases cannot be updated as frequently as LEC databases. Most other databases of names, addresses, and telephone numbers contain data copied from published telephone directories that were stale when the book was published. Independent publishers are, of course, free to copy such data themselves. If that were good enough, ADP's members would not be bearing the costs of continued participation in this proceeding.

As ADP has advocated before the Commission on numerous occasions, the LECs are the only source of up-to-date and accurate SLI. Advertisers and consumers will not have the benefit of meaningful competition in the yellow pages business if the Commission does not act to ensure independent publishers reasonable

of Southwestern Bell Media, Inc., BellSouth Advertising & Publishing Corp. v. Donnelly Info. Pub., Inc., Case No. 85-3233-CIV-SCOTT, at 4 (U.S. Dist. Ct. S.D. Fla. 1986).

¹⁵ BellSouth Ex Parte at 7.

access to these data. "SLI" stands for "subscriber list information." Only the LECs have subscribers. A second-hand list of people who were subscribers six months or a year ago is in no sense equivalent to a list of subscribers. If other, reliable sources for SLI existed, independent publishers would have taken advantage of these sources. By claiming that SLI is available from other sources, BellSouth attempts to render Section 222(e) a nullity.

BellSouth claims that SLI is available from sources such as "the Internet, new business lists from selected communities, or Chamber of Commerce lists."¹⁶ These sources of SLI are not comparable to BellSouth's database of subscriber listings. For example, a call to American Business Information, Inc.'s ("ABII") toll free number disclosed that ABII obtains its listings from published telephone company white pages and only updates them twice a year.¹⁷ BellSouth knows this, having unsuccessfully sued ABII for copyright infringement for copying these very data from BellSouth's directories.¹⁸ Use of ABII's on-line "U.S. Directory Assistance" to obtain business and residential listings service revealed that many listings included in the LECs' directory for a given geographic area

¹⁶ Id.

¹⁷ Telephone Conference Between Sophie J. Keefer, Associate, Willkie, Farr & Gallagher, and S.K. Hashmi (1-800-284-8353 ext. 4457), Sales Representative, InfoUSA, Inc., on December 8, 1998.

¹⁸ See BellSouth Adver. & Publ'g Corp. v. American Bus. Lists, Inc., Civil No. 1:90-cv-149-JEC (N.D. Ga.).

are absent from ABII's directory.¹⁹ BellSouth itself revealed that Metromail's database is only "95 percent" complete and is only "updated 65 times per year."²⁰ It, too, is based on copying of published telephone books, as BellSouth well knows from years of unsuccessful copyright litigation. BellSouth's database, by contrast, is updated daily and is 100 percent complete for BellSouth's region.

BellSouth also claims that 23 publishers in BellSouth's region "are obtaining their listing information from sources other than BellSouth."²¹ BellSouth's assertions are both inaccurate and misleading and should be disregarded by the Commission. Of the 23 publishers that BellSouth claims obtain listings from alternative sources, only five are current ADP members. Of these five, only one ADP member, Impact Directories, Inc., would have reason to purchase from BellSouth, but has been forced to use secondary sources because of the excessive cost of purchasing SLI from BellSouth, recognizing that such a decision renders its directory less competitive. Thus, no ADP member chooses not to purchase BellSouth SLI because suitable alternative sources of SLI are available, as BellSouth suggests.

BellSouth maintains that Paxton Media Group, an ADP member, does not purchase listings from BellSouth. This is not true; Paxton Media Group regularly purchases listings from BellSouth. Larson Directories and Valley Yellow Pages, also ADP members, are listed by

¹⁹ See Attachment A.

²⁰ BellSouth Ex Parte at 7.

²¹ Id.

BellSouth as not purchasing listings. Neither Larson Directories nor Valley Yellow Pages publishes directories in BellSouth's service areas and consequently neither has reason to purchase BellSouth SLI. McLeod USA Publishing, another ADP member, is also listed, yet has never published in the BellSouth region. Thus, it is not surprising that this publisher does not purchase BellSouth listings. Therefore, it is misleading to suggest that these publishers have chosen not to purchase BellSouth listings in favor of viable alternative sources for SLI.

In addition, Main Street Directories, Inc. and Platinum Pages, Inc., former ADP members also on the list, are no longer in business.²² It consequently is not remarkable that these publishers do not purchase listings from BellSouth. Again, it is misleading to suggest that these publishers have made a conscious choice not to purchase BellSouth SLI. All other publishers who allegedly do not purchase listings from BellSouth are not ADP members. It is very likely that these publishers either do not publish in BellSouth's service areas or do not publish directories that are competitive with BellSouth's.²³ BellSouth's pattern of repeated misrepresentations concerning the source of SLI has unnecessarily

²² Platinum Pages was purchased by The SunShine Pages. The SunShine Pages purchases SLI from BellSouth. Thus, Platinum Pages also purchases SLI from BellSouth. Similarly, Mainstreet Directories was purchased by Southern Directory Publishing. Southern Directory Publishing purchases SLI from BellSouth.

²³ If they published directories substitutable for BellSouth's, they would more than likely be ADP members.

prolonged this rulemaking and exhibited a lack of regard for the Commission's personnel and procedures that is inexcusable.²⁴

V. **BELLSOUTH DOES NOT PROVIDE SLI UNDER REASONABLE, NONDISCRIMINATORY, OR UNBUNDLED TERMS AND CONDITIONS.**

BellSouth contends that it offers SLI services on a "non-discriminatory and unbundled basis" and that its rates are "non-discriminatory and reasonable."²⁵ Even a cursory review of BellSouth's schedule of prices reveals that these statements are patently untrue. For instance, several BellSouth SLI service offerings fall short of the "reasonable" standard of Section 222(e). BellSouth's update services are priced at such high levels that few, if any, independent publishers are able to afford to subscribe to them. For example, BellSouth testified before the Louisiana Public Service Commission that no publishers purchased its Daily Updates and New Connect Report services.²⁶ While BellSouth characterizes this result as "very little demand,"²⁷ the reality is that most publishers consider the prices for these services excessive and unreasonable.

²⁴ See Letter from Dolores E. Wagner, White Directory Publishers, Inc., to Kathryn C. Brown, then-Chief, Common Carrier Bureau, FCC, and S. Jenell Trigg, Assistant Chief Counsel, Telecommunications, Office of Advocacy, U.S. Small Business Administration, dated Oct. 21, 1998, submitted as an ex parte filing in CC Docket No. 96-115 by ADP on Oct. 27, 1998 (requesting the retraction of misleading statements made by BellSouth to the FCC and the Office of Advocacy at SBA concerning the source of White Directory's listings).

²⁵ BellSouth Ex Parte at 2.

²⁶ See Attachment B.

²⁷ BellSouth Ex Parte at 5 n.7.

In addition, BellSouth does not provide SLI on an "unbundled" basis in accordance with the Section 222(e). Specifically, BellSouth requires independent directory publishers purchasing its WBAR service to purchase the small percentage of updated listings that they desire at a rate that is multiplied by the total number of listings maintained by each Central Office involved. Independent publishers typically publish "area wide" or community specific directories that reflect the way people move and shop, not the way telephone company lines are laid. In order to obtain all updates for its service area, usually spanning more than one BellSouth Central Office, an independent publisher must, in essence, repurchase the entire database for each Central Office week after week. Hence, BellSouth does not provide listings on an "unbundled" basis.

Nor does BellSouth provide listings on a "non-discriminatory" basis. Independent publishers do not receive listings under terms and conditions equal to the terms and conditions under which BAPCO receives listings.²⁸ For example, as discussed above, many LECs have procedures in place to generate SLI for their directory-publishing affiliates that reflect static service areas. The area wide and neighborhood directories published by many independent publishers require more dynamic capability on the part of the LEC. Unless a

²⁸ The fact that BAPCO is "charged rates in excess of those established in BellSouth's tariffs" is irrelevant. Id. at 4 n.6. BAPCO is a wholly-owned subsidiary of BellSouth. See 3 Directory of Corporate Affiliations at 208 (1988). Thus, whatever BellSouth charges BAPCO for SLI simply flows back to BellSouth.

LEC can provide SLI that is unbundled or sorted according to the specific needs of independent publishers, LEC-affiliated directory publishers effectively will control the content, scoping, and publication dates of competing directories. This is not the result intended by Congress in enacting 222(e), a statute which was conceived in order to promote more choices for consumers, not fewer.

VI. CONCLUSION.

For the reasons set forth above, BellSouth's tactics to delay the implementation of rules requiring reasonable, cost-based prices for SLI should be rejected by the Commission.

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Cops: No company found

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- Click "New Search" to start again.

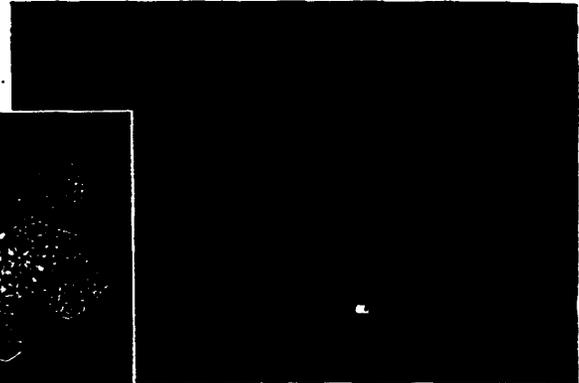

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Barber Carl J sty 851 Camp 70130
Res 57 Grand Canyon Dr 70131
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Barber Robert J sty 1300 Poydras St 70132
Res 501 Shamrock Dr Kenner 70045
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5100 Laplace Blvd Marr 70072
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Office 202 Greiner 70122 568-5900
Barkasoy Brian MD etc
220 Henry Clay Jr 70118 899-9511
**BARKER BOUDREAU LAMY &
FOLEY** sty 218 Barone 70112 586-9395
Barker E Ann Dr Ochsner Clinic-Kenner 443-9500
Barker Leasing Inc 22 S Charles St 70130 541-3433
Barker Richard M sty 102 Camp St 70130 529-7666
Bardley Newton Buckner Jr etc
3201 Westbank Espy Marr 70072 341-1635
Res 210 Behre Dr 70124 482-2637
Barkley Robert E Jr sty 1515 Poydras 70112 595-3350
BARKLEY & THOMPSON L C sty
1515 Poydras 70112 595-3350
Barkley William H CPA
2100 3rd Kenner 70042 448-8241
Barkdale Bill Licensed Massage
Therapist 309 French St 70124 484-7545
Barkdale Phillip MD
Office 208 Greiner 70122 568-3900
Appointments 568-3921
Barkley's Towing 445-0725
Barnard Co Inc prices 720 Union 70130 523-4747
Barnes & Sutcliffe Corp
104 Village Rd Slidell 70461 847-9698
Barnes A D (Dn) Jr sty
3071 Williams Blvd Kenner 70045 443-5415
Barnes Baby J sty 1340 Poydras St 70112 584-0341
Barnes-Cochran Judith L PhD etc
1426 Assala St New Orleans 70115 891-6828
Res 3115 De Soto
Barnes Environmental International
Dale St 243-2205
Barnes Insurance
2121 Aldre Dr Metairie 70001 834-6433
Barnes J Robert MD
1421 Napoleon Jr 70115 891-7808
Barnes Janet Duncan Dr
4335 Elysian Fields Jr 70122 282-8499
Barnes-Johns-Barne
2121 Aldre Dr Metairie 70001 831-0404
Res 422 Laburne Dr Metairie 70001 833-0008
Barnes Mini Store 407 N Greiner 70117 943-9825
Barnes & Noble Bookellers
3723 Veterans Memorial Blvd Metairie 70002 435-0929
Barnes Rudy Company Inc
2533 Louisiana Jr 70119 821-9736
Barnes Shelton W Dr etc
6030 Baller Jr 70126 243-0210
Barnes Shelton W Dr etc
6030 Baller Jr 70126 282-8499
Barnes Shelton W Dr etc
2025 Greiner 70122 523-5815
Barnes Stan R etc 822 Galois St 70117 949-3100
Barnes Steven MD 1415 Tulane Jr 70115 577-7625
Barnes True Value Hardware
3000 E Judge Perez Dr Marr 70075 277-5096
Barnes Twest Inc
2121 Aldre Dr Metairie 70001 834-6433
Barnes Walter J Electric Co Inc
422 Oak Jefferson 70121 835-1756
Barnes Walter S Inc
2121 Aldre Dr Metairie 70001 834-6433
Barnes Wilson H sty 3748 N Causeway Blvd 838-8343
Barnett Arlene S Dr dentist
8736 Oak Metairie Hwy 70127 246-8218
Barnett & Associates
3012 19th St Metairie 70002 834-1436
Barnett Bobby Racing Stable
1751 Canby Blvd 70119 949-3342
Barnett Brass & Copper
110 W Aldre Hwy Kenner 70045 466-5544
BARNETT & CASARIAN INC
3434 S I-10 Service Rd W Metairie 838-0104
Barnett David L sty 230 S Charles Jr 70131 527-8700
Barnett Greg sty 639 Loyola Jr 70113 525-3200
Barnett Henry H etc 201 Canal 70112 525-5893
Barnett James S etc
3012 19th St Metairie 70002 834-1436
Res 105 Mulberry Dr Metairie 70005 831-1414
Barnett John L Dr
8734 Oak Metairie Hwy 70127 246-8218
Barnett Linda Nelson sty
701 Magellan St 70130 581-1750
Barnett Marcus E Inc
2610 Edwards Jr Metairie 70002 883-2580
Barnett Maristessa sty
235 Derbyway St Gretna 70052 342-7740
Barnett Marine Inc
2709 N Concord Rd Belle Chasse 70002 394-6853
BARNETT MORRIS G DR
800 Terry Hwy Terrytown 70054 394-8545
BARNETT OPTICAL CORP
8220 NAPOLEON AV
70115 897-4580
317 Metairie Rd 837-1535

Barnett Ralph L sty
29 Loubser Gretna 70052 348-4666
Barnett Randal L sty
2322 Lantana Blvd Marr 70072 348-0631
Barnett Robert A sty 639 Loyola Jr 70113 529-4141
Barnett Services Inc
Freight Dispatcher
1100 Edwards Jr Jefferson 70121 734-0580
Home Delivery Dispatcher
734-1019
Barnett William B sty
303 Hwy P Long Jr Gretna 70052 347-6055
Barnett William B etc
2709 N Concord Rd Belle Chasse 70037 394-6853
Barnett William M sty 630 Loyola Jr 70113 529-4141
Barnette William P sty
201 S Charles Jr 70130 582-8318
Barney Scott C sty 2300 Emory Centre 585-7080
Barnitus Auto Repair
2413 Greenwood Kenner 70042 447-6030
Barnie's Coffee & Tea Co Inc
New Orleans Centre 584-9468
Barold Drilling Fluids Inc
Regional Office 641 Poydras St 70130 524-8282
Barold Drilling Fluids Inc
8000 Jurina Rd 70126 245-0480
Barold Petroleum Services Division
Dresser Industries
See Barold Drilling Fluids Inc
Baron Oil & Gas
432 W Napoleon Jr Metairie 70001 456-6772
Baron Petroleum 210 Greiner Jr 70122 524-9100
Baron Sports Products
210 Greiner Jr 70122 524-9100
Barone Sales Dr sty 3517 Oak Dale 70118 482-1200
Barone Sales Inc 897-2709
Baroni Hair Designs
3028 N Causeway Blvd Metairie 70002 834-5244
Baroni J A Builders Inc
5940 Orig Jr Kenner 70045 887-2623
BARONNE DEVELOPMENT
210 Barone 70122 524-7311
Baronne Food Store 3401 Barone 70115 895-4086
Baronne Partners LLC
317 Barone St 70112 523-2822
Barousse John Design
333 S Charles Jr 70130 524-8098
Barousse's Professional
Installations 431-9326
Barovks & Bonura Engineers &
Consultants
5408 Noris St Jefferson 70121 733-0824
Bar's Bottled By The Louisiana
Coca-Cola Bottling Co Ltd
1028 S Jefferson Oaks Hwy 70125 821-2400
Barr John U Jr etc 1117 La Salle 522-1834
Barr Thomas III sty
National Bank Of Commerce Bldg
1302 Jackson Jr 70130 525-9823
525-2461
Barra Clarence Sr 2006 Volant 70115 891-3456
Barra Garofalo 8736 Oak Metairie Hwy 70127 242-6027
Barra Richard A etc 641 Elysian Fields Jr 70117 949-2080
Res 2710 AP Grand Jr 70119 949-4516
Barra Shirley 2334 Volant 70115 891-3456
Barreck Robert L MD 1415 Tulane Jr 70115 588-5821
Barrecaux Manufacturing Inc
211 Westbank Espy Westwego 70094 341-3229
Barres Builders Inc
1212 E Galle Oakdale 70043 279-8802
Barres Harold Body Shop
519 Avenue F Westwego 70094 341-9321
Barrese Judy Y sty 546 Canal St 70118 581-3200
Children's Telephone
1917 Grand Canyon Jr 70115 895-8143
Res 1917 Grand Canyon 70115 895-8073
Barre Barron B DDS
1546 Laplace Blvd Marr 70072 347-6355
Barre Clayton B DDS
1546 Laplace Blvd Marr 70072 347-6355
Barre Dental Care
1546 Laplace Blvd Marr 70072 347-6355
Barre J Kenneth Inc 300 Harrison Jr 70124 484-6424
Barreca Joseph A sty 897-5826
Barreca Joseph A sty 897-5826
824 Emerald Park Blvd Metairie 70122 734-8384
Barreca Joseph P etc
1001 E Galle St Oakdale 70043 279-8847
7300 Road Blvd 70127 528-3081
Barreca Marvin G sty One Shell Square 528-3081
Barreca Louis Nursery & Pets
1340 Hammond Jr Metairie 70005 834-7347
Barreca Tile & Marble Co Metairie 834-8958
BARRECA'S RESTAURANT
1100 Metairie Rd Metairie 70001 831-4546
Barreca Mini Market
403 Terry Hwy Terrytown 70054 341-0588
Barreca Alfred C sty 436-2466
129 S Junior Blvd Assumption 70004 523-3482
Barreca Leonard J Poydras 70130 523-3482
Barreca & Quin L L C
129 S Junior Blvd Assumption 70004 436-2466
Barre's Hi-Tech Janitorial Services
New Orleans 283-4342
Barrett Chiropractic Business
Office 3416 S I-10 Service Rd W Metairie 832-7250
Barrett Debbi Nagy Dr 101 Canine Pkwy Metairie 70001 454-2000

Barrett Factory
Barrett Gulf Station
1011 Tchoupchea 70119
Barrett Nat etc 1540 Maple Dr Metairie
Res 409 Canine Pkwy Metairie
Barrett Ronald A Dr
5329 Veterans Memorial Blvd Metairie 70006
Barrett Sue In 1540 Metairie Blvd Metairie 70002
Barrett Theodore Jr
69 Loyola Jr New Orleans 70113
Barriett Herman R Sr
120 Anna La St Lake 70007
Barrier Member Containment Corp
1956 Hwy 21 Belle Chasse
Barriere Brent B sty Toussaint Centre
Barriere Construction Co LLC
Main Office 60 Lake Drive St 70130
Covington Office 201 Holiday Blvd 70001
Maintenance Office
1610 Barbery Jr Metairie 70002
Asphalt Plants
Sun Plant Sola
Souths Plant Metairie
1918 Pats Jr Harvey 70028
Barriere Crushed Concrete Sales
Dale St Jefferson
Barriere Construction Co
502 N Greiner St 70119
Barriere Enterprises Inc
630 Jackson Jr 70130
Barriere Eugene Jr sty 215 S Broad 70119
Res 3213 Lake Blvd Jr Kenner 70045
Barrierehouse Christopher N FACP
MD etc 435 Thoms Blvd Metairie 70006
Barrierehouse J Chris MA 4902 Canal St 70115
Barriere Bettye A sty One Shell Square
Barriere Dawn M sty 701 Poydras St 70130
Barriere E Gregg sty One Shell Square
Barriere Gerardo R sty Toussaint Centre
Barriere Gerardo R sty Toussaint Centre
**BARRIOS KINGSORF &
CASTEX LLP** sty
701 Poydras St 70130 5:
Barrios Niffen MD 1415 Tulane Jr 70115
Barrios Services Inc
1594 Edwards Jr Belle Chasse 70037
Barrios Steve Inc
111 Terry Hwy Terrytown 70054
Res 1401 Mann St Marr 70072
Barrios Wendy-Kruller Dr
4422 Oak St Metairie 70006
Barriester's 2120 Plaquemine Dr Outchouche 70018
Barriester's Gallery 524 Royal 70130
Barreca Albert Dr 5403 Canal Blvd 70127
Barreca Floyd E
Barreca Larry T 1413 N Pines 70116
Barreca Bruce A MD etc
LSU Eye Center
200 W Exchange Jr 70005
Barreca ERN FAL Arsi
400 N Pats St 70130
Res 1229 Louisiana 70118
Barreca G E etc 7140 Repton Ct 70126
**BARRON & TOUPS
ARCHITECTS**
408 N Pats St 70130 5:
Barron's Consultants
5400 Jefferson Hwy Jefferson 70125
Barrocco & Associates
Barrocco Ernest E II sty
230 Hwy P Long Jr Gretna 70052
Barrow Jack Mrs children care
2018 Grand Canyon 70115
Barrow's Restaurant And Bar
2774 Metairie St 70122
If We Answer Dial
BARRY--- See Also Berry
Barry Associates Ltd
Barry-Case & Associates
614 Powerth Jr Metairie 70005
Barry Denis A Judge etc Civil Court Bldg
Barry Francis J Jr sty 753 Maple 70130
Barry Mfg Better Menwear
Wholesale To You
2407 Williams Blvd Kenner 70042
7300 Road Blvd 70127
95-C Westbank Espy Gretna 70052
Barry Michael F sty 291 Loyola Jr 70112
Barry Robert S Dr dentist
403 Grand Metairie 70006
Res 3029 Rosset Dr Metairie 70002
Barry Stephen G sty 1515 Poydras St 70112
Barry William etc
Barry's Barber & Styling Shop
7654 Hwy 21 Belle Chasse
Barry's Shoe Store 1114 Canal 70112
Barry's Towing
101 Interbay St Jefferson 70121
Bart Morris sty 601 Poydras St 70112
Bart Morris Attorneys
801 Poydras St 70112
BartCo 3712 4th St Marr 70077
Barthe's Child Care Center
1506 Meador Dr Kenner 70042

American Directory Assistance

To search for a business, you have 3 options:

1. Enter the full Company Name. **Example:** Park Drive Garage
2. Enter one or two words of the Company Name. **Example:** Park Drive
3. Enter part of a name followed by an asterisk (*). **Example:** Park*

Then, enter a city name and state name or abbreviation in the boxes below.

Company Name:

City:

State:

Click "Search" to find the listings.



[| Home |](#) [CD-ROM Products |](#) [Yellow Pages |](#) [Directory Assistance |](#)
[Business Profiles |](#) [Sales Leads & Mailing Lists |](#)
[Product Pricing |](#) [Hot New Businesses |](#)

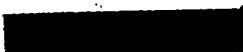
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5711 South 86th Circle - P.O. Box 27347 - Omaha, Nebraska 68127
Phone: (800) 321-0869 - Fax: (402) 537-6063
email: internet@infousa.com

Oops: No company found

American Directory Assistance

Oops!

- We couldn't find any listings for **BELLSOUTH YELLOW PAGES in NEW ORLEANS LA.**
Was everything entered correctly? See the instructions on the previous screen.
- Click "New Search" to start again.


[Home](#)	[CD-ROM Products](#)	[Yellow Pages](#)	[Directory Assistance](#)
[Business Profiles](#)	[Sales Leads & Mailing Lists](#)		
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 **BELLSOUTH**



*The Real
Yellow Pages®*



Visit The Real Yellow Pages® Online. www.yp.bellsouth.com

New Orleans

Yellow Pages



100% Recyclable
Printed on Recycled Paper

1998-99 Special Edition. © 1998 BAPCO

Includes customer listings for
local telecommunications companies



American Directory Assistance

To Search for a Person:

1. Enter the full last name of the person you're searching for. **Example:** Smith
2. Enter the first and last name of the person you're searching for. **Example:** Smith, John
3. Enter part of the last name, followed by an asterisk (*) **Example:** Smi*, John

Then, enter a state name or abbreviation in the box below. If you know the city name, enter it as well.

Last Name:

First Name: (Optional)

City: (Optional)

State:

After you're done entering your selections, please click "Search."

Reverse Phone Number Search:

Or, you can look up someone by entering their ten-digit phone number below:

Phone Number:

[Home](#)	[CD-ROM Products](#)	[Yellow Pages](#)	[Directory Assistance](#)
[Business Profiles](#)	[Sales Leads & Mailing Lists](#)		
[Product Pricing](#)	[Hot New Businesses](#)		

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 email: internet@infousa.com

American Directory Assistance

Oops!

- We couldn't find any listings for **SOPHIE KEEFER** in **WASHINGTON DC**. Was everything entered correctly? See the instructions on the previous screen.
- Click "**New Search**" to start again.

[New Search](#)

[Home](#)	[CD-ROM Products](#)	[Yellow Pages](#)	[Directory Assistance](#)
[Business Profiles](#)	[Sales Leads & Mailing Lists](#)		
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 **Bell Atlanti**

White Pages



Meridian Hill Park

District of Columbia

Residence Directory

Area Code 202

May 1998 – April 1999

Includes customer listings of all local telephone companies



RECYCLING INFORMATION
SEE CUSTOMER GUIDE

GOVERNMENT LISTINGS
SEE BLUE PAGES

364 389133 P. 02
RECEIVED

ATTACHMENT B

JUL 15 1998

To Just Below

**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

**BELLSOUTH TELECOMMUNICATIONS, INC.,
EX PARTE**

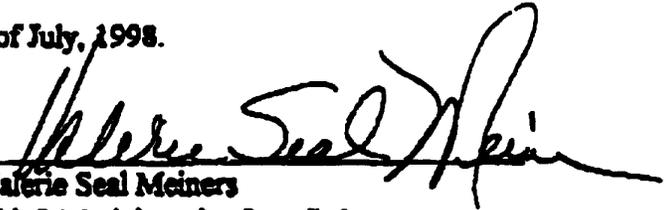
DOCKET NUMBER U-21760

In re: Revision to the Directory Publishers Database Service (DPDS) tariff to include the option of a Monthly Refresh File.

**NOTICE OF AVAILABILITY OF TRANSCRIPT
AND DEADLINES FOR FILING POST-HEARING BRIEFS**

PLEASE TAKE NOTICE that the hearing transcript has been finalized in this proceeding. Post-hearing briefs may be filed on or before August 7, 1998 and are to consist of proposed findings of fact and conclusions of law.

Baton Rouge, Louisiana, this 14th day of July, 1998.


Valerie Seal Meiners
Chief Administrative Law Judge

cc: Official Service List

**Louisiana Public Service Commission
Administrative Hearings Division
16th Floor, One American Place
Post Office Box 91154
Baton Rouge, Louisiana 70821-9154
Telephone (504) 342-3157**

Service List
Docket No. U-21760

Commissioners

Arnold Chauviere - LPSC Utilities Division

Vanessa Caston-Porter - LPSC Staff Attorney

Farhad Niami - LPSC Economics

Stanley Perkins - LPSC Auditing

**AA - Michael Twomey, BellSouth Telecommunications, 365 Canal St., Suite 3060,
New Orleans, LA 70130**

**I - Janet S. Boles, Boles, Boles & Ryan, 7809 Jefferson Hwy., Suite D3, Baton
Rouge, LA 70809 (Rep. Small Company Committee)**

**I - Katherine W. King, Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman,
P.O. Box 3513, Baton Rouge, LA 70821 (Rep. BRJ)**

IP - Jessica Lambert, 18547 Greenbriar Estates, Prairieville, LA 70769

**Louisiana Public Service Commission
Administrative Hearings Division
16th Floor, One American Place
Post Office Box 91154
Baton Rouge, Louisiana 70821-9154
Telephone (504) 342-3157**

1 **BELLSOUTH TELECOMMUNICATIONS, INC., EX PARTE. IN RE: REVISION TO**
 2 **THE DIRECTORY PUBLISHERS DATABASE SERVICE (DPDS) TARIFF TO**
 3 **INCLUDE THE OPTION OF A MONTHLY REFRESH FILE.**

4 **DATE OF HEARING: May 14, 1998**

5 **ADMINISTRATIVE LAW JUDGE: Valerie Seal Meiners**

6 **WITNESS** **PAGE NO.**

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PROPRIETARY

1 But, I would just ask the witness to -- or ask the court to instruct the witness to -- if he has an
2 explanation, make it relevant to the yes or no answer.

3 MR. TWOMEY: Well, Your Honor, I object to that characterization of Mr. Juneau's last
4 response as not being relevant. He asked Mr. Juneau if BellSouth --

5 MR. RABORN: As to not being responsive -- not relevant.

6 MR. TWOMEY: Well, you just said as it was relevant. I also object to you saying it wasn't
7 responsive because you asked the witness -- Mr. Raborn asked the witness whether or not
8 BellSouth could sell these services, and the answer is, we can and we do, and I think the
9 answer was perfectly appropriate, it was responsive, it was relevant, and I suppose if he's not
10 moving to strike it, I don't need to say anything else.

11 JUDGE MEINERS: So far I don't think Mr. Juneau is crossing that line.

12 MR. TWOMEY: Thank you, Your Honor.

13 MR. RABORN: Mr. Juneau, these very options proposed in this case are being offered in
14 Florida, are they not?

15 MR. JUNEAU: Yes.

16 Q. At these same rates?

17 A. Yes.

18 Q. Have any independent publishers subscribed to these services in Florida?

19 A. No, not that I'm aware of.

20 Q. Has BellSouth considered lowering the price to attract purchasers of the products?

21 A. Not at this point, no.

22 Q. Is that because BellSouth really doesn't want the independent publishers to have this
23 information?

24 A. No.

25 Q. If you've already incurred the cost to develop the product, why wouldn't BellSouth attempt
26 to recover its cost by lowering the price to attract purchases?

27 A. I'm not sure that I know how to answer that. At this point in time, it just has not come up
28 yet.

EXHIBIT B



EX PARTE OR LATE FILED

Association for Local Telecommunications Services

(202) 969-2583
RMETZOER@ALTS.ORG

RICHARD J. METZGER
VICE PRESIDENT &
GENERAL COUNSEL

August 7, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20054

RECEIVED
AUG - 7 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

Re: CC Docket No. 96-115

Dear Ms. Salas:

The attached letter dated July 16, 1998, is today being filed as an ex parte communication in the above docket on behalf of both ADP and ALTS.

Sincerely,


Richard J. Metzger

- cc: K. Brown
J. Schlichting
J. Atkinson
D. Attwood
D. Galbi
W. Kehoe
D. Konuch
T. Rutherford
K. Schroder

Number rec'd 022

July 16, 1998

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

Re: CC Docket No. 96-115

Dear Ms. Salas:

Pursuant to staff requests, the Association of Directory Publishers ("ADP") and the Association for Local Telecommunications Services ("ALTS") hereby explain why (1) ILECs that collect subscriber list information ("SLI" or "listings") from CLECs should provide such SLI to independent directory publishers; and (2) the Commission possesses abundant authority under which to impose such a requirement.

By requiring ILECs to provide independent directory publishers with CLECs' SLI, the Commission would enhance competition in the directory publishing and local exchange industries. Without such a requirement, CLECs and independent publishers will face unnecessary costs, threatening the competitive underpinnings of the Telecommunications Act of 1996.

I. Section 222(e) Requires ILECs To Provide Independent Directory Publishers With SLI Obtained From CLECs.

Section 222(e) of the Communications Act of 1934 ("Section 222(e)") requires a telecommunications carrier that gathers SLI "in its capacity as a provider of [telecommunications] service" to provide such SLI to any person upon request.¹ In the course of providing telecommunications services, ILECs collect SLI from CLECs. BellSouth's interconnection agreements, for example, state that interconnection is conditioned upon the "execution of an agreement between [BellSouth's directory affiliate ("BAPCO")]

¹ 47 U.S.C. § 222(e) (all references to the "Act" are to the Communications Act of 1934).

and the CLEC for the provision of "Directory Listings and Directory Distribution."² In other words, the CLEC is compelled to sign an agreement with BellSouth's directory affiliate or forgo the interconnection agreement. An ILEC's interconnection agreement is inextricable from the provision of telecommunications service. When an ILEC gathers SLI pursuant to such an agreement, therefore, it does so "in its capacity as a provider" of telecommunications service. Thus, under Section 222(e), any SLI collected from a CLEC by an ILEC must be provided to independent directory publishers.

Section 222(e) also requires ILECs to provide SLI on "nondiscriminatory" rates, terms, and conditions.³ As described above, ILECs' directory publishing affiliates receive CLECs' SLI as a byproduct of interconnecting with the CLEC. By providing CLECs' SLI to their own publishing affiliate but not to independent directory publishers, ILECs discriminate between end users of SLI, in direct violation of Section 222(e).⁴

In the larger context of the pro-competitive goals of the Telecommunications Act of 1996, competition in the directory publishing and local exchange markets will be thwarted unless the Commission requires ILECs to provide independent directory publishers with CLECs' SLI. Independent directories that do not contain the listings of CLEC customers will be unable to compete with ILEC directories that, by virtue of the ILECs' market power in telecommunications services, contain all ILEC and CLEC

² Winstar Agreement § 2(a), filed in ADP Ex Parte Filing of Mar. 4, 1997 (Tab 6); see also ACSI Interconnection Agreement Attachment C-8 (requiring that ACSI "execute a directory listing agreement with BAPCO"), ACSI BAPCO Agreement § 2(a) (requiring ACSI to "provide to BAPCO, or its designee, at ACSI's expense and at no charge, listing information"), filed in ADP Ex Parte Filing of Mar. 4, 1997 (Tab 7).

³ 47 U.S.C. § 222(e).

⁴ See id. See also Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Doc. No. 96-68, ¶ 142 (Aug. 8, 1996) ("Local Competition Second Report") ("Under the general definition of 'nondiscriminatory access,' competing providers must be able to obtain at least the same quality of access to [directory listings] that a LEC itself enjoys.").

listings.⁵ Moreover, CLEC customers whose listings fail to appear in independent directories will be less inclined to continue subscribing to the CLEC.

ILEC refusal to provide CLEC listings to independent publishers imposes unnecessary burdens on publishers and CLECs. Publishers will be forced to identify and obtain listings from every CLEC in their directory coverage area. CLECs will be forced to build an infrastructure and employ personnel to process these requests. To avoid such costs and enhance competition among directory publishers and providers of telecommunications services, the Commission should require ILECs to provide independent publishers with CLECs' SLI.

II. The Commission Possesses Ample Authority To Compel ILECs to Provide Independent Directory Publishers with CLECs' SLI.

By its very terms, Section 222(e) grants the Commission authority to govern ILEC provision of CLEC listings. As stated above, the statute does not distinguish SLI acquired from CLECs as opposed to other sources. ILECs must provide all SLI gathered by virtue of providing telecommunications service to any person who so requests. By definition, this includes CLECs' SLI. The Commission may promulgate any rules necessary to implement this statutory mandate.⁶

Even if the Commission were to ignore this clear grant of authority, it could rely on the equally clear authority established in section 2 of the Act. Under this provision, the Commission has jurisdiction over "all interstate and foreign communication by wire. . . ." Communication by wire in turn includes "all instrumentalities, facilities, apparatus, and services . . . incidental to" the transmission of signals.⁷ ILECs collect and disseminate SLI in conjunction with their provision of telecommunications service. As the interconnection agreements referenced above show, ILECs collect CLECs' SLI as a

⁵ See ADP Ex Parte Filing of Apr. 7, 1998 (providing copies of an affiliated directory publisher's listing compared with an independent's that was not provided competitive LEC SLI).

⁶ See 47 U.S.C. § 154(i).

⁷ 47 U.S.C. § 152(a).

⁸ 47 U.S.C. § 153(51) (emphasis added). See also Beehive Telephone, Inc., Memorandum Opinion and Order, 12 FCC Rcd 17930, ¶ 16 (1997) (service ancillary to actual transmission of signals is within Commission's jurisdiction).

condition precedent to interconnecting with such CLECs. The provision of CLECs' SLI by ILECs therefore is a service incidental to the provision of telecommunications services and falls squarely within the Commission's plenary authority.

Given the Commission's statutory authority over ILEC provision of CLEC listings, it should be noted that the D.C. Circuit has upheld the Commission's authority to impose requirements in the interest of fairness among competitors.⁹ In Mobile Telecommunications, the Court upheld the Commission's authority under Section 4(i) and Section 309(a) of the Act to impose a payment condition on a PCS wireless licensee.¹⁰ The Commission, striving to create a more level playing field among license bidders, reasoned that a failure to impose such conditions "would have a significant adverse impact on the competitive marketplace."¹¹ Just as the Commission sought to foster a competitive wireless market, it should -- indeed, under the statute it must -- foster competition in the directory publishing and local exchange markets. To accomplish this goal, the Commission may impose requirements on ILECs and should require ILECs to provide independent directory publishers with CLECs' SLI.

⁹ See Mobile Telecommunications Technologies Corp. v. FCC, 77 F.3d 1399, 1404-07 (D.C. Cir. 1996), cert. denied, 117 S.Ct. 81 (1996) (upholding the Commission's authority to impose payment but remanding for failure to consider all arguments raised).

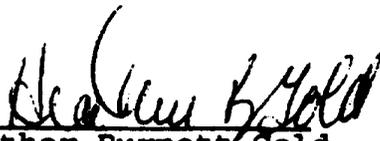
¹⁰ Id.

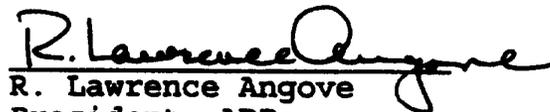
¹¹ Nationwide Wireless Network Corp., Memorandum Opinion and Order, FCC 98-94, File No. 22888-CD-P/L-94, at ¶ 7 (Rel. June 3, 1998) (reimposing payment following D.C. Circuit remand).

Ms. Magalie Roman Salas
July 16, 1998
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Please do not hesitate to contact Michael Finn or David Goodfriend at Willkie Farr & Gallagher, (202) 328-8000, should you need further information.

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