traffic is commingled.[353] U S WEST also states that there is a "First Amendment problem associated with compelling an incumbent LEC to remain silent with respect to its traffic if it is incapable of branding traffic of its competitors . . . because the Commission cannot constitutionally mandate that lawful speech not occur simply because a LEC is incapable of speaking the 'preferred' message of the Commission."[354]

145. TRA and AT&T oppose NYNEX's request that the Commission clarify that rebranding is only required for interconnecting carriers, and that when and whether the branding will be performed should be left to negotiation or arbitration.[355] AT&T states that limiting the requirement to perform rebranding to requests from interconnecting LECs would exclude resellers from the benefits and protection of section 251(b)(3).[356]

146. We affirm the rule the Commission adopted in the *Local Competition Second Report and Order* that a providing LEC's failure to comply with a reasonable, technically feasible request to rebrand operator or directory assistance services in the competing provider's name, or to remove the providing LEC's brand name from the service provided to the competing provider, creates a presumption that the providing LEC is unlawfully restricting access to these services.[357] Although our rule does not require the providing LEC to strip its own brand from the services it is providing in those cases where it is technically infeasible to rebrand the services of requesting LECs, we are concerned about situations where a providing LEC may not be able to brand requesting LEC traffic because the providing LEC's network architecture allows the providing LEC to identify its own incoming traffic but does not allow the providing LEC to distinguish each individual requesting LEC's incoming traffic. Rather than seeking to accommodate such network architectures, we are concerned that facilitating such architectures could give providing LECs an incentive to arrange their network architectures to achieve an anticompetitive result. Accordingly, we clarify our branding rule to require that, where the providing LEC claims that it cannot brand requesting LEC traffic because of the manner in which its network architecture is structured, such failure to rebrand requesting LEC traffic is presumptively discriminatory, and the burden will be on the providing LEC to show that it is not technically feasible to arrange its network architecture to allow it to brand requesting LEC traffic. Further, because any alteration by a providing LEC of the manner in which it routes directory

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[353] *Id.* at n.47.

[354] *Id.* at 21-22.

[355] TRA Opposition at 15-16; AT&T Opposition at 14.

[356] AT&T Opposition at 14.

[357] 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19455, ¶ 128 (operator services), 19463, ¶ 148 (directory assistance).

assistance or operator services would alter "the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks . . . ,"[358] we require that all LECs disclose such network alterations pursuant to our section 251(c) network disclosure rules.[359]

147. We reject NYNEX's request that we clarify that our branding rule only applies to interconnecting carriers. Our branding rules are mandated by section 251(b)(3), which requires that non-discriminatory access be provided to competing providers of telephone exchange service or telephone toll service,[360] a category that includes resellers. We have also been asked to clarify that the timing of rebranding or unbranding be left to negotiation or arbitration. We decline this request because we agree with AT&T that relying on interconnection agreement negotiations or arbitration to resolve the time by which the providing LEC would brand directory assistance and operator services calls would similarly exclude resellers from key benefits and protections of section 251(b)(3).[361] We note, however, that because section 51.217(d) of our rules requires the rebranding or unbranding of directory assistance and operator services to occur promptly upon a competing carrier's request, it is implicit in our branding requirement that specific timing may be negotiated between the providing and requesting LECs. We also conclude that by not requiring a providing carrier to strip its own operator and directory assistance services of the providing carrier's brand, we obviate NYNEX's concern that our rule would force it to violate TOCSIA.

148. With respect to First Amendment concerns, we note that our rules do not compel the providing LEC to remain silent because, as we discuss above, the providing LEC is not prevented from branding its own traffic. Our rules merely require that an incumbent providing LEC identify and brand, to the extent technically feasible, the traffic that it provides to its competitors. Because our branding rules do not prohibit speech of any kind, we need not address U S WEST'S arguments that the Commission cannot constitutionally bar lawful speech.

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[358] 47 U.S.C. § 251(c)(5).

[359] *See* 47 C.F.R. §§ 51.325, *et seq.*

[360] 47 U.S.C. § 251(b)(3).

[361] AT&T Opposition at 14.

E. Nondiscriminatory Access to Directory Assistance Databases

1. Background

149. In the *Local Competition Second Report and Order,* we defined nondiscriminatory access to directory assistance to mean that "[a] LEC shall permit competing providers to have access to its directory assistance services so that any customer of a competing provider can obtain directory listings[, except for unlisted numbers,] on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested."[362] By this ruling, we intended to ensure that customers of every provider would have access to the listed telephone numbers of all providers. The *Local Competition Second Report and Order* also concluded that a highly effective way to accomplish nondiscriminatory access to directory assistance is to allow competing providers to obtain read-only access to the directory assistance databases.[363] We also required LECs to share directory listings in readily accessible magnetic tape or electronic formats in a timely fashion upon request.[364]

2. Discussion

150. USTA asks the Commission to clarify that its local competition rules do not require that LECs transfer their directory assistance databases to a requesting carrier.[365] Bell Atlantic, U S WEST, Ameritech, and USTA also ask us to clarify that section 251(b)(3) does not require providing LECs to transfer databases.[366] U S WEST states that section 251(b)(3) does not mention "databases," nor suggests that LECs must provide database access.[367] U S WEST interprets section 251(b)(3) to require LECs to provide directory listings in any manner that permits competing providers to produce their own directory assistance and operator services, and that LECs must accept the numbers and listing of those customers being served by new entrants and include that information in the LEC's directories and

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[362] 47 C.F.R. § 51.217(c)(3)(i); *see also Local Competition Second Report and Order*, 11 FCC Rcd at 19457-58, ¶ 135.

[363] *Local Competition Second Report and Order*, 11 FCC Rcd at 19461, ¶ 143.

[364] *Id.* at 19460, ¶ 141.

[365] USTA Petition at 3-4.

[366] *See* Bell Atlantic Opposition at 7-8; U S WEST Opposition at 16-17; Ameritech Opposition at 13-14; USTA Petition at 4.

[367] U S WEST Opposition at 16.

directory assistance and operator services databases.[368] USTA and U S WEST state that the Commission should not require more than "per-query access" to directory assistance or operator services databases.[369]

151. MCI opposes the USTA petition and requests that the Commission clarify that the *Local Competition Second Report and Order* requires providing LECs to share directory assistance databases in magnetic tape *or* electronic format at the election of the requesting carrier.[370] MCI cites the *Local Competition Second Report and Order*'s requirement that providing LEC's must share directory assistance data with competing carriers in readily accessible tape or electronic formats in a timely fashion upon request.[371] MCI states that "it is common practice for existing companies to exchange data by magnetic tape or electronic format to accomplish dialing parity goals."[372] MCI concludes that

> [b]ecause the ILECs have demonstrated the technical feasibility of providing access to DA [directory assistance] and OS [operator services] databases, these databases should be available to all new entrants. . . Thus, the DA database should be forwarded to new entrants electronically, since incumbent LECs already exchange DA data in that fashion. Updates should be provided on a daily basis . . . All customers benefit from DA services based on a complete and accurate database since each carrier has the same responsibility for maintaining up-to-date information on subscribers. However, because this

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[368] *Id.*

[369] *See* USTA Petition at 4; U S WEST Opposition at 20. "Per query access" means that the competing LEC would be required to dip into the incumbent LEC's database each time it wanted a listing.

[370] MCI Reply at 6-7.

[371] *Id.* The *Local Competition Second Report and Order* also concluded that the requirements for directory assistance and listings are intertwined and that any customer of a competing provider should be able to access any listed number through directory assistance. *Local Competition Second Report and Order*, 11 FCC Rcd at 19457-58, ¶ 135.

[372] MCI Reply at 8 (citing *GTE California, Inc.*, Decision 89-03-051, 31 CPUC2d 370, 378 (Cal. PUC 1989) (attached as Exhibit 3 to MCI Reply)) ("[t]he key circumstance that has permitted this competition to break out is the sharing of local DA databases by [GTE] and [Pacific Bell] for the primary purpose of offering a seamless 411 service on a local basis. Of course, [Pacific Bell] has been using the joint database to provide interexchange DA service for some years now").

obligation should be mutual, carriers should not be allowed to charge for providing those updates.[373]

152. We conclude that section 251(b)(3) prohibits providing LECs from providing directory assistance database information in a manner that is inferior to that which they supply to themselves. Without access to directory assistance in a readily accessible format, new entrants will be ill-equipped to compete against providing LECs because new entrants' customers would have only limited access to that information. Although some competing providers may only want per-query access to the providing LEC's directory assistance database, per-query access does not constitute equal access for a competing provider that wants to provide directory assistance from its own platform. With only per-query access to the providing LEC's database, new entrants would incur the additional time and expense that would arise from having to take the data from the providing LEC's database on a query-by-query basis and then entering the data into its own database in a single transaction. Moreover, if the requesting LEC cannot enter the data into its own database, but is limited to supplying directory assistance to its customers by dipping into the providing LEC's database on a query-by-query basis, the requesting LEC would not have control over service quality and could be subject to degraded service and dialing delays with no control over the management of the database. Further, competitors limited to providing directory assistance through per-query dips into the providing LEC's database would be unable to offer certain enhanced services such as call completion.[374] Such extra costs and inability to offer comparable services would render the access discriminatory.

153. In connection with the requirement that LECs provide nondiscriminatory access, "read-only" access means that providing LECs may only prohibit "write" access to their own databases.[375] By supplying databases in an electronic format, the providing LECs will be able to protect the integrity of their databases. We thus conclude that LECs must transfer directory assistance databases in readily accessible electronic, magnetic tape, or other format specified by the requesting LECs, promptly upon request, as indicated below. We also conclude that non-discriminatory access requires that updates be provided to requesting LECs in the same manner as the original database transfer, and that such updates be made at the same time as updates are made to the providing carrier's database. Consistent with our

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[373] *Id.* Excell also observes that gaining access to the providing LECs' databases is not sufficient for competing providers to be able to offer directory assistance on a competitive basis because of the "many millions of dollars" needed to match the various database systems, technologies, and protocols used by different providing LECs. Excell Petition at 8.

[374] Call completion allows a directory assistance service provider, once it has provided a number to a caller, to complete the call.

[375] Requesting LECs may, of course, write to their own directory assistance databases.

conclusion today in the *Third Report and Order*,[376] the providing LEC shall provide access to its directory assistance database in any format specified by the requesting LEC, if the providing LEC's internal systems can accommodate that format. If the providing LECs systems cannot accommodate the requested format, within thirty days of when it receives the initial request the providing LEC must inform the requesting LEC of that fact and tell the requesting LEC which formats it can accommodate. We have revised our rules to reflect these requirements. The new regulations are contained in Appendix D.

154. As stated in paragraph 149, *supra*, section 251(b)(3) requires that every LEC's customers be able to access each LEC's directory assistance service and obtain a directory listing. We agree with U S WEST and MCI that non-discriminatory access thus imposes a reciprocal obligation on all LECs to accept the listings of competing providers' customers for inclusion in their directory assistance and operator services databases.[377] This requirement also ensures that a competing LEC that does not wish to provide its own directory assistance service, but rather wishes to use the incumbent LEC's service, will have its customers listed. We decline, however, to grant MCI's request that carriers not be allowed to charge for these transfers of customer information.[378] The obligation to provide access may be mutual, but the costs for each carrier to supply such access will not necessarily be identical. Thus, it would not be just or reasonable for those carriers that face greater costs to require that carriers not be allowed to charge for these transfers of customer information. Our decision in this regard merely constitutes our determination of what comprises non-discriminatory access. We make no determination of what the price should be for directory assistance data transfer.

155. On June 10, 1997, Listing Service Solutions, Inc. (LSSI), a provider of directory assistance services, filed an *ex parte* letter requesting that the Commission clarify that, under section 251(b)(3), LECs should provide nondiscriminatory access to their directory assistance databases to all third party directory assistance providers, even those that do not themselves provide telephone exchange service or telephone toll service.[379] In support of its argument, LSSI points to a decision in which the California Commission concluded that section 251(b)(3) and the *Local Competition Second Report and Order* require that "third party independent vendors as well as CLCs [competitive LECs] and other competitors should

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[376] *See* part II.I, *supra*.

[377] *See* U S WEST Opposition at 16-17; MCI Reply at 8.

[378] MCI Reply at 8.

[379] *See* Letter from Jeffrey Blumenfeld, LSSI, to Regina Keeney, Chief, Common Carrier Bureau, FCC, at 1 (filed June 10, 1997) (*LSSI June 10, 1997 Letter*); *see also* Letter from Richard Thayer, Excell, to William F. Caton, Secretary, FCC (filed Sept. 18, 1997) (*Excell September 18, 1997 Letter*).

have non-discriminatory access to the LECs' DA [directory assistance] database."[380] U S WEST argues in response that the LSSI letter should be rejected as an untimely petition for reconsideration, and that LSSI has no rights under section 251(b)(3) because the section only applies to providers of exchange and toll services.[381]

156. We decline to resolve LSSI's request in this *Second Order on Reconsideration*. LSSI's June 10, 1997 Letter cannot be treated as a petition for reconsideration because it was not filed within the 30-day filing period required by section 405(a) of the Act.[382] The Commission lacks discretion to waive this statutory requirement.[383] Further, we note that the Common Carrier Bureau (Bureau) has ruled that a directory assistance provider that is not a provider of telephone exchange or telephone toll services is not entitled to non-discriminatory access to LEC directory assistance databases under section 251(b)(3).[384] We do acknowledge the conclusion of the California Commission that directory assistance providers like LSSI, INFONXX, and Excell Agent Services, Inc. (Excell) provide a service consistent with the competitive environment contemplated by the Act. Thus, in a *Notice of Proposed Rulemaking* we release today as part of this document, we solicit comment on whether the Commission can and should grant directory assistance providers that are not themselves telephone exchange service providers or telephone toll service providers nondiscriminatory access to LEC directory assistance databases.[385]

F. Definition of Directory Listing

1. Background

157. In the *Local Competition Second Report and Order*, the Commission adopted section 51.217(c)(3)(ii) of our rules, which requires LECs to share subscriber listing information with their competitors in readily accessible tape or electronic formats and that

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[380] *LSSI June 10, 1997 Letter*, *supra* note 379, at 2 (*citing California Commission 1997 Decision*, *supra* note 36, at 29-30).

[381] *See* Letter from Richard A. Karre, U S WEST, to William F. Caton, Secretary, FCC (filed Aug. 1, 1997 (*U S WEST Aug. 1, 1997 Letter*).

[382] *See* 47 U.S.C. § 405(a); 47 C.F.R. § 1.429(d).

[383] *Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993).

[384] *INFONXX, Inc. v. NYNEX*, Memorandum Opinion and Order, 13 FCC Rcd 10288 (Com. Car. Bur. 1998) (*INFONXX v. NYNEX*).

[385] *See* part IV, *infra*.

such data be provided in a timely fashion upon request.[386] We also concluded that the requirements for nondiscriminatory access to directory assistance and directory listings are intertwined and that the term "directory listings" means the listings that comprise a directory assistance database.[387]

2. Discussion

158. All of the petitioners addressing this issue agree that the Commission unnecessarily mixed the requirements for nondiscriminatory access to directory assistance with those for directory listing.[388] MFS argues that the rule in section 51.217(c)(3)(ii) "would more sensibly be construed as part of the duty to provide nondiscriminatory access to directory assistance," and that treating directory listing as redundant of directory assistance violates the principles of statutory construction.[389] MFS states that "directory listing" refers to the act of placing a customer's listing information in a published directory compilation, such as in white pages or an Internet directory.[390] MFS asserts, therefore, that nondiscriminatory access to directory listing should mean that "a LEC publishing a telephone directory has a duty to incorporate a listing supplied by its competitor with the same level of accuracy, in the same manner, and in the same time frame that it would list its own customer's information."[391] It states that access to listings suggests a duty to provide a carrier with access to a compilation of information in a directory, while access to directory listing involves listing a particular subscriber in a directory.[392]

159. Bell Atlantic states that it agrees with MFS's interpretation of nondiscriminatory access to directory listing.[393] USTA contends that section 251(b)(3)'s nondiscriminatory access requirement was intended merely to ensure that all carriers could arrange to have their customers' names listed in other carriers' directories, including the

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[386] 47 C.F.R. § 51.217(c)(3)(ii); *see also Local Competition Second Report and Order*, 11 FCC Rcd at 19460-62, ¶¶ 141-45.

[387] *Local Competition Second Report and Order*, 11 FCC Rcd at 19457-58, ¶ 135.

[388] *See, e.g.*, U S WEST Opposition at n. 38; Bell Atlantic Opposition at 7; MFS Petition at 10-11.

[389] MFS Petition at 11-12.

[390] MFS Reply at 3.

[391] MFS Petition at 10-11.

[392] *Id.* at 11.

[393] Bell Atlantic Opposition at 7-8.

white pages books and directory assistance databases.[394] Bell Atlantic and GTE argue that the Commission erred in defining directory listings to be identical to "subscriber list information," as defined in section 222(f)(3) of the Act.[395] According to these parties, had Congress wanted to require that incumbent LECs supply competitors with subscriber list information, the Act would specifically have required incumbent LECs to do so.[396]

160. We agree with those petitioners who contend that our rules should be modified to recognize the difference between directory "listing" and directory "listings," and that our rules should recognize that these terms are distinct from directory assistance under the 1996 Act. We conclude that the section 251(b)(3) requirement of non-discriminatory access to directory listing is most accurately reflected by the suggestion of MFS and Bell Atlantic that directory listing be defined as a verb that refers to the act of placing a customer's listing information in a directory assistance database or in a directory compilation for external use (such as a white pages).[397] We believe that interpreting the Act's requirements of non-discriminatory access to directory listing and directory assistance in this manner will clear up any ambiguities concerning LEC obligations to provide access to directory assistance databases to competitors and to list competitors' information. We also agree with Bell Atlantic and GTE that it is not necessary for the Commission to describe directory listings to be identical to "subscriber list information," as defined in section 222(f)(3) of the Act. The definition in section 222(f)(3) includes "primary advertising classifications" under which businesses are listed in yellow pages directories.[398] These classifications are not necessarily used in the provision of directory assistance. We therefore adopt these interpretations, and adopt revised new regulations incorporating these distinctions.

G. Access to Customer Guides and Informational Pages

1. Background

161. The *Local Competition Second Report and Order* concluded that there is no need for the Commission to state whether the term 'directory assistance and directory listings' includes the White Pages, Yellow Pages, 'customer guides,' and informational

[394] USTA Petition at 4.

[395] *See* part II.A.1, *supra*, for that statutory definition.

[396] Bell Atlantic Opposition at 8; GTE Opposition at 8.

[397] *See* MFS Reply at 3; Bell Atlantic Opposition at 7.

[398] *See* part II.E.2, *supra*.

pages. The Commission was merely adopting a "minimum standard" for the provision of directory assistance and directory listing.[399]

2. Discussion

162. NYNEX states that the *Local Competition Second Report and Order* is unclear as to whether LECs must provide competitors with access to the customer guides and information pages that appear in the LECs' printed telephone directories because the use of the term "minimum standard" does not specify what information, in addition to subscriber list information, the Commission intended the LEC to put into its directories.[400] According to NYNEX, because section 271(c)(2)(B)(viii) of the Act[401] merely requires incumbent LECs to provide non-discriminatory access to white pages directory listings, the Commission should clarify that incumbent LECs are not required to provide competitors with access to customer guides and informational pages.[402] NYNEX argues that requiring incumbent LECs to provide competitors with customer guides and informational pages for placement into the competitors' telephone directories could also lead to disputes between competitors and incumbent LECs regarding incumbent LECs' right to exercise editorial control over such information after it is given to the competitor.[403] GTE also contends that there is no support for the proposition that access to listings might include customer guides and informational pages, "or other wholly unregulated elements of directories," and requests that, in order to eliminate any confusion, the Commission should clarify here that LECs are not required to provide their competitors with access to these pages.[404] MFS, however, states that the term "minimum standard" "correctly recognizes the authority of State commissions, when acting as arbitrators under Section 252, to determine the full scope of nondiscriminatory access to directory listing services."[405] MFS also states that 271(c)(2)(B)(viii) applies only to BOCs, not all incumbent LECs. Consequently, this section only establishes conditions that must be met before a BOC may be authorized to provide interLATA service.[406]

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399 *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59, ¶ 137.

400 NYNEX Petition at 7-8.

401 47 U.S.C. § 271(c)(2)(B)(viii).

402 NYNEX Petition at 8.

403 *Id.* at n.21.

404 GTE Opposition at 8.

405 MFS Opposition at 6.

406 *Id.* at n.5.

163. Our rules do not require incumbent LECs to provide competitors with access to the customer guides and information pages that appear in the LECs' printed telephone directories, but neither do these rules preclude States from establishing such a requirement, to the extent they have such authority. What our rules, as clarified in this *Second Order on Reconsideration*, do require is that providing LECs grant requesting LECs access to directory assistance and directory listing equal to that which the providing LEC grants itself. NYNEX has not demonstrated that this language is either unclear or confusing. We adopted "subscriber list information" in the *Local Competition Second Report and Order* to be merely a minimum definition of "directory listing" to accommodate States that may require more stringent requirements as part of nondiscriminatory access to directory listings. Although we dispense with "subscriber list information" as a definition for "directory listings,"[407] a State may require, for example, listing of State-specific NXX codes and services that are subject to State tariff. To the extent that a providing LEC is required to list such information in its directory assistance database, the providing LEC must grant a requesting LEC non-discriminatory access to such information.

H. Access to Nonpublished Numbers

1. Background

164. The *Local Competition Second Report and Order* requires that a

> LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available. The LEC shall ensure that access is permitted only to the same directory information that is available to its own directory assistance customers.[408]

The Commission found this to be consistent with the definition of subscriber list information, which is limited to the listed names of subscribers of a carrier.[409]

2. Discussion

165. Excell states that LECs should be required to make the names, addresses and telephone numbers of customers with non-published numbers available to competing directory

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[407] *See* part III.F, *supra*.

[408] *Local Competition Second Report and Order*, 11 FCC Rcd at 19457-58, ¶ 135; 47 C.F.R. § 51.217(c)(3)(iii).

[409] *See* 47 U.S.C. § 222(f)(3).

assistance providers, with appropriate requirements for privacy and confidentiality.[410] According to Excell, this availability is necessary for competitors to provide "a full range of information and services in competition with the LECs,"[411] including, Excell argues, the ability of a LEC to contact in an emergency a subscriber whose number is unpublished.[412] Excell interprets the current rule to mean that the names of subscribers with unpublished numbers have to be shared, even if the numbers are withheld.[413] It states that this information is essential to enable a competing directory assistance provider to inform callers that the number requested is unlisted, whereas, with no information on the subscriber with an unpublished number, the operator cannot be helpful to the caller in any way.[414] Excell states that it is compelled to use commercially available lists that do not distinguish between published and non-published numbers and thus can afford no opportunity for operators to protect the privacy of individuals with non-published numbers.[415] MCI agrees that database access must include information that will allow competing directory assistance providers to tell a caller that a subscriber's number is unlisted.[416] U S WEST also agrees that this information is "necessary to provide directory *assistance*, where individuals can get telephone number information pertaining to those customers who have *no directory listing*."[417]

166. Roseville and USTA oppose the sharing of listing information for those subscribers that have unlisted numbers.[418] Roseville states that such an arrangement would be inconsistent with the California Commission's requirements that allow subscribers to choose not to have their telephone numbers, addresses, and names listed in telephone and

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[410] Excell Petition at 9. Excell did not file a Petition for Reconsideration, but rather, on September 9, 1996, filed a Petition for Relief and Compliance in Docket No. 96-98. Numerous parties filed comments in response to the Excell petition as part of their opposition and reply pleadings in this reconsideration proceeding. We treat Excell's petition as an informal comment and address it within this *Second Order on Reconsideration*. *See* 47 U.S.C. § 154(j).

[411] *Id.*

[412] *Id.*

[413] *Id.*

[414] *Id.*

[415] *Id.*

[416] MCI Reply at 7.

[417] U S WEST Opposition at n.38 (emphasis in the original).

[418] *See* Roseville Opposition at 2-4; USTA Opposition at 14.

street address directories, or published in the directory assistance records available to the general public.[419] Roseville also states that under the California privacy requirements:

> [C]ompetitive directory assistance providers, such as EAS [Excell], are not subject to any competitive disadvantage. Neither Roseville nor EAS may disclose the name of a subscriber who has requested that his/her name or number be unlisted, and both must return to the inquirer with a result of "not found."[420]

Roseville interprets the 1996 Act as protecting the privacy of subscribers and allowing disclosure of listing information only for subscribers with listed numbers.[421] Roseville also cites the Commission's billing name and address (BNA) rules, which prohibit LECs from sharing BNA information unless the subscriber affirmatively chooses to allow its distribution.[422]

167. Excell is correct that our rules require that a LEC share the names and addresses of subscribers with unpublished numbers if the LEC provides those names to its own directory assistance operators. Our rules, however, also prohibit a LEC from providing access to those customers' unlisted telephone numbers, or any other information that the LEC's customers have asked the LEC not to make available. We believe that this approach does not disadvantage competitive LECs, but rather is consistent with the Act's non-discriminatory access requirement that the providing LEC supply access to directory assistance services equal to that which it provides itself.[423] If a LEC, in its provision of directory assistance service to itself, allows its own directory assistance operators to see the names and addresses of subscribers with unlisted information, this information must also be made available to the requesting competitive LEC. If, as in the case of California, no customer information is available to the operator, no access need be given to the competitor. We agree with MCI and Excell that a requesting LEC is at a disadvantage if it does not have the names of non-published subscribers for its own directory assistance service. As Excell correctly observes, the names and addresses are essential to enable a competing directory

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[419] Roseville Opposition at 4 (*citing* CPUC Decisions Nos. 92860 and 93361, Case No. 10206).

[420] *Id.*

[421] *Id.* at 2-3.

[422] *Id.* at 3-4 (*citing* 47 C.F.R. § 64.1201(e)(3)).

[423] For the reasons indicated in part III.E, *supra*, this *Second Order on Reconsideration* does not address that portion of Excell's Petition that requests relief under section 251(b)(3) for directory assistance providers that do not themselves provide either telephone exchange access or telephone toll access service. In part IV, *infra*, however, we invite comment on this area.

assistance provider to inform callers that the number requested is unlisted, whereas, where no information on the subscriber with an unpublished number is provided, the operator cannot provide any information on the requested number. The competitive disparity between incumbent and competitor in such a case clearly violates our rules and the non-discriminatory access provisions of section 251(b)(3) of the Act.

168. We decline, however, to require the sharing of non-published numbers. The Act and our rules require LECs to provide access equal to that which they supply to themselves. Incumbent LEC directory assistance operators are supplied with the names and addresses, but not the numbers of those customers whose numbers are not published. Thus, requesting LECs would suffer no competitive disadvantage by not being supplied the numbers. To require providing LECs to include the numbers of customers whose numbers are unlisted is not necessary to create a level playing field for the provision of directory assistance. We do agree with Excell, however, that it is important that a requesting LEC should be able to ensure that its subscribers will have the same ability as the providing LEC's subscribers to contact subscribers with unlisted numbers in an emergency.[424] We note that requesting LECs can arrange through interconnection agreements to have the providing LEC, upon request of the requesting LEC, contact the unlisted subscriber in such a situation.[425]

169. We note that, because of differences in statutory language, requiring LECs to provide other LECs with access to the names and addresses of subscribers with unpublished numbers as part of the LECs' provision of nondiscriminatory access to directory assistance under section 251(b)(3) is consistent with our determination in part II.E.3, above, that section 222(e) does not require LECs to provide directory publishers with those names and addresses. Specifically, in requiring "nondiscriminatory access to . . . directory assistance,"

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[424] Excell Petition at 9. The definition of "emergency" would vary among LECs, but would typically include medical emergencies. For instance, a LEC might have a policy of contacting its unlisted subscribers on behalf of persons stating that a medical condition required such contact. If the LEC extended this service to its own subscribers, it also would have to extend it to other LECs' subscribers. In this circumstance, the calling party's LEC would contact the called party's LEC, whose operator would, in turn, contact the unlisted subscriber.

[425] We do not agree with Roseville that requiring providing LECs to supply unlisted or unpublished numbers would violate our BNA rules. In the *BNA Order*, the Commission required LECs to obtain explicit authorization from customers with an unlisted or unpublished numbers before releasing the customers' BNA. *Policy and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, *Second Report and Order*, 8 FCC Rcd 4478, 4486-87, ¶ 40 (1993), *recon. denied*, 8 FCC Rcd 8798 (1993) (*BNA Order*). Our nondiscriminatory access requirements require only the release of information that the providing LEC uses in its directory assistance operation. Each directory assistance provider that receives this information is also bound by the BNA rules and thus would have to obtain explicit customer authorization before using the customer's name and address for purposes not permitted by our BNA rules.

section 251(b)(3) encompasses all the customer information, including the names and addresses of persons with unpublished numbers, that a LEC uses to provide directory assistance. In contrast, section 222(f)(3) explicitly excludes unpublished and unlisted information from the definition of subscriber list information. A carrier, therefore, need not provide that information to a directory publisher pursuant to section 222(e).

IV. NOTICE OF PROPOSED RULEMAKING

A. Relationship between Directory Publishing and Directory Assistance

1. Overview

170. Traditionally, consumers, service providers, and regulators have considered directory publishing and directory assistance to be distinct products or services. In directory publishing, the traditional products consist of two types of paper directories: white pages directories and yellow pages directories. White pages directories provide the names, addresses, and telephone numbers of telephone exchange service subscribers within particular geographic areas that do not elect to have unlisted numbers. Yellow pages directories provide the names, addresses, and telephone numbers of businesses receiving telephone exchange service within particular geographic areas. These directories include headings that direct users to groups of listings for businesses providing similar products or services (e.g., restaurants, automotive repair services, and the like) and to the advertising that accompanies those listings. Directory assistance, in contrast, traditionally has been a service in which live operators provide users with the telephone numbers and, in some instances, addresses of individual telephone exchange service subscribers. These operators obtain the information from databases that contain the names, addresses, and telephone numbers of the telephone exchange service subscribers within particular geographic areas that do not elect to have unpublished numbers.

171. In their traditional guises, directory publishing and directory assistance were easy to distinguish: directory publishing provided users with paper directories, while directory assistance provided users with access to a live operator. Technological advances have blurred this distinction. For instance, Internet users can now obtain access to databases that share many of the characteristics of both paper directories and directory assistance. As with paper directories, users of these databases can "look up" the telephone numbers of individual telephone exchange service subscribers. As with directory assistance, those users may obtain subscriber list information without consulting a paper directory. In this *Notice*, we invite comment on issues arising out of the development of Internet directories and the convergence of directory publishing and directory assistance.

2. Internet Directories

172. The recent explosion in Internet usage has spawned a number of innovative applications that rely on subscriber list information. These include databases that allow the user to obtain the names, addresses, and telephone numbers of telephone subscribers as well as a wealth of information concerning listed businesses. In some of these databases, a user may search electronically from among millions of listings by criteria such as business name, business category, location, zip code, brands carried, operating hours, and methods of payment accepted. A typical application would permit the user to obtain a list of hotels in a particular city, select a likely candidate, and obtain the hotel's address and telephone number as well as a street map of the area surrounding the hotel. More advanced applications provide hyperlinks to advertisers' web sites, where the user could obtain hotel rate information and make a reservation. As Internet usage increases, additional applications should make Internet databases containing subscriber list information a major source of advertising revenues.[426]

173. Section 222(e) entitles directory publishers to obtain subscriber list information "for the purpose of publishing directories in any format."[427] We seek comment on whether the phrase "in any format" indicates Congress' intent not to restrict the kinds of directories that could be published using subscriber list information obtained pursuant to section 222(e). We ask commenters to address whether and under what conditions the making available of subscriber list information on the Internet to users should be considered publication of a directory. We seek comment on whether section 222(e) entitles directory publishers to obtain subscriber list information for use in Internet databases.[428] We ask the commenters to address, in particular, whether the language of section 222(e) compels us to conclude that a person is obtaining subscriber list information "for purposes of publishing directories in any format" when the person obtains that information for use in an Internet database. We also ask the commenters to address whether interpreting that statutory language as encompassing the use of subscriber list information in Internet databases would be consistent with the legislative history, the broader statutory scheme, and the policy objectives of the 1996 Act.

174. We recognize that, in a May 1997 *Order*, the Florida Commission determined "the posting of directory listings on the Internet amounts to the provision of directory assistance, and that, thus the right to do so must be purchased" under BellSouth's directory

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[426] *See Sandberg Article*, *supra* note 9.

[427] 47 U.S.C. § 222(e).

[428] *ADP Dec. 30, 1997 Letter*, *supra* note 85, at 6. YPPA states that it takes no position on whether the language of section 222(e) encompasses Internet directories. *YPPA Feb. 27, 1998 Letter*, *supra* note 52, at 5.

assistance, rather than its directory publishing, tariff.[429] In reaching this conclusion, the Florida Commission observed that a BellSouth affiliate, BellSouth Intelligent Media Ventures (BellSouth Media), was offering a trial business on the Internet.[430] BellSouth Media's Internet offerings, however, seem to have evolved considerably since the Florida Commission issued its *Order* in May 1997. The present offerings include a database containing subscriber list information, which BellSouth markets as "The Real Yellow Pages."[431] Users of this database can access listings and associated advertisements for businesses located within all areas of BellSouth's in-region states. We note that those listings are divided into categories such as automobile dealers, appliances, insurance, and restaurants and dining, similar to what is found in paper yellow pages.

175. Other Internet companies maintain similar databases. Bell Atlantic BigYellow, for instance, bills itself as "Your Yellow Pages on the Web and More." YAHOO! offers access to Internet directory listing databases maintained by five Regional Bell Operating Company affiliates.[432] Other Internet service providers rely on directory listing databases provided by non-carriers.[433] These Internet databases, including BellSouth Media's offerings, illustrate why the phrase "for the purpose of publishing directories in any format" in section 222(e) may encompass requests for subscriber list information for use in Internet databases. We invite comment on this matter.

176. We also recognize that some carriers, such as CBT and BellSouth, charge different prices for subscriber list information that will be used in printed directories than for subscriber list information that will used in Internet directories.[434] We invite comment on whether, in the event we conclude that Internet directories fall within the scope of section 222(e), we should preclude carriers from imposing on requesting directory publishers rates,

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[429] *Florida Commission 1997 Decision*, *supra* note 30, at 13. The Florida Commission did not explain the basis for this conclusion. *See id.*

[430] *Id.*

[431] Internet users can access this offering at http://yp.bellsouth.com

[432] *See, e.g., Yahoo! Selects Regional Bell Directory Companies to Provide Yellow Pages Service for Netscape Guide by Yahoo!*, www.yahoo.com/docs/pr/release105.html (Jul. 21, 1997) (discussing agreement between Yahoo! and Ameritech, BellSouth, NYNEX Big Yellow (now Bell Atlantic Big Yellow), Pacific Bell, and U S WEST to distribute the companies' "Internet yellow pages").

[433] *E.g.*, Business Wire, *MindSpring Goes Online with World's Largest Yellow Pages Directory* (June 15, 1999) (discussing Internet directory licensing agreements between SBN.COM and Internet service providers representing five million subscribers).

[434] *ADP Apr. 2, 1998 Letter*, *supra* note 144, at 3; *Florida Commission 1997 Decision*, *supra* note 30, at 13.

terms, and conditions for subscriber list information obtained to publish Internet directories that differ from the rates, terms, and conditions the carrier imposes for subscriber list information obtained to publish other directories. We also invite comment on whether we should preclude State regulation that requires or permits different rates, terms, and conditions for subscriber list information depending on the type of directory in which the information will be used.

177. We invite comment, in addition, on whether carriers that provide subscriber list information pursuant to section 222(e) may restrict how third parties may access and use Internet directories containing that information. For example, ADP asserts that CBT requires directory publishers to format their Internet directories so that they are not "'capable of permitting an end user to download or view more than 15 listings with a single command.'"[435] We ask commenters to address whether this and similar restrictions are consistent with section 222(e).

178. We further invite comment on whether the provision of access to an Internet directory through a web site constitutes the provision of directory assistance within the meaning of section 251(b)(3). That section requires each LEC to provide competing providers of telephone exchange service and telephone toll service with "nondiscriminatory access to . . . directory assistance . . . ."[436] In the *Local Competition Order*, the Commission defined "directory assistance service" as including "making available to customers, upon request, information contained in directory listings."[437] We invite comment on whether allowing Internet users to access a database containing directory listing information falls within this definition.

179. We ask the commenters to address, in particular, whether directory publishing under section 222(e) and directory assistance under section 251(b)(3) are mutually exclusive categories, so that a conclusion that placing subscriber list information in an Internet database constitutes directory publishing would necessarily preclude a conclusion that the provision of online access to the database also constitutes directory assistance. We also invite commenters to provide specific proposals on whether and, if so, how we should change our rules implementing sections 222(e) and 251(b)(3) in the event we conclude that Internet directory providers are engaged in both directory publishing under section 222(e) and directory assistance under section 251(b)(3).

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[435] *ADP Apr. 2, 1998 Letter*, *supra* note 144, at 5 (*quoting* Unexecuted License Agreement between Cincinnati Bell Telephone Co. and Reuben H. Donnelley Corp. at § 7.1).

[436] 47 U.S.C. § 251(b)(3).

[437] *Local Competition Order*, 11 FCC Rcd at 16198 (text of section 51.5 of the Commission's rules).

3. Oral Provision of Listing Information

a. Section 222(e)

180. As indicated previously,[438] technological advances have blurred the distinction between directory publishing, which traditionally provided users with paper directories, and directory assistance, which traditionally provided users with access to live operators. We invite comment on how, if at all, the convergence between directory publishing and directory assistance should influence our implementation of section 222(e). In particular, we invite comment on whether the phrase "for purposes of publishing directories in any format" in section 222(e) encompasses the oral publication of listing information by a directory assistance provider.[439] We ask the commenters to address whether the statutory language compels us to conclude that a person is obtaining subscriber list information "for purposes of publishing directories in any format" when the person obtains that information to provide oral directory assistance. We also ask the commenters to address whether interpreting section 222(e) as encompassing the oral dissemination of listing information by a directory assistance provider would be consistent with the legislative history, the broader statutory scheme, and the policy objectives of the 1996 Act.

181. Assuming that a directory assistance provider may obtain subscriber list information pursuant to section 222(e), we invite comment on whether a telecommunications carrier is therefore precluded from imposing rates, terms, and conditions with regard to the provision of subscriber list information for use by a directory assistance provider different from those imposed with regard to the provision of subscriber list information for more traditional forms of directory publication. We also seek comment on whether a carrier's rates, terms, and conditions for subscriber list information provided to a directory assistance provider pursuant to section 222(e) must be identical to rates, terms, and conditions under which the carrier provides nondiscriminatory access to listing information to competing providers of telephone exchange service and telephone toll service pursuant to section 251(b)(3).[440] As stated above, the Florida Commission requires directory publishers subject to its jurisdiction to obtain subscriber list information for the purpose of publishing an Internet

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[438] *See* part IV.A.1, *supra*.

[439] *E.g.*, Letter from Gerard L. Waldron, Counsel for INFONXX, to Magalie Roman Salas, Secretary, FCC, at 1-3 (filed Apr. 30, 1999) (*INFONXX Apr. 30, 1999 Letter*); Letter from Gerard L. Waldron, Counsel for INFONXX, to Magalie Roman Salas, Secretary, FCC, at 1-2 (filed Apr. 22, 1999) (*INFONXX Apr. 22, 1999 Letter*);

[440] *E.g.*, Letter from Gerard L. Waldron, Counsel for INFONXX, to Magalie Roman Salas, Secretary, FCC, at 1 (filed June 24, 1999) (*INFONXX June 24, 1999 Letter*); Letter from Gerard L. Waldron, Counsel for INFONXX, to Magalie Roman Salas, Secretary, FCC, at 4 (filed June 29, 1999) (*INFONXX June 29, 1999 Letter*).

directory under BellSouth's directory assistance tariff, which imposes rates, terms, and conditions different from those in BellSouth's directory publishing tariff.[441] We ask that commenters address whether we should preclude State regulation that requires or permits rates, terms, and conditions for subscriber list information that will be published orally that differ from the rates, terms, and conditions for subscriber list information that will be published in other formats.

b. Section 251(b)(3)

182. Section 251(b)(3) of the Communications Act requires each LEC to provide competing providers of telephone exchange service and telephone toll service with "nondiscriminatory access to . . . directory assistance . . . ."[442] In the *Local Competition Second Report and Order*, the Commission concluded that the term "nondiscriminatory access," as used in section 251(b)(3), encompasses both "(1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC."[443]

183. The provision of directory assistance has become increasingly competitive. Interexchange carriers and competitive LECs often provide directory assistance platforms independent of those provided by the incumbent LECs. Interexchange carriers and competitive LECs, however, whether or not facilities-based, may not have the economies of scale to construct and maintain a directory assistance platform of their own. A competitive LEC, independent LEC, or interexchange carrier also may determine that contracting with a non-carrier directory assistance provider would allow them to offer features and service enhancements such as call completion or reverse directory assistance.[444] Finally, individual business and residential customers may wish to contract with an independent provider of directory assistance service to avail themselves of services that might not be available through their LECs. To meet this market-driven demand, the number of non-carrier providers of directory assistance has grown. These directory assistance providers play an increasingly important role in ensuring that consumers receive the benefits of competition in all telecommunications-related services. We tentatively conclude that the presence of these directory assistance providers benefits competition, and that we should encourage such

[441] *See* part IV.A.2, *supra*.

[442] 47 U.S.C. § 251(b)(3).

[443] *Local Competition Second Report and Order*, 11 FCC Rcd at 19444, ¶ 101 (footnote omitted).

[444] With reverse directory assistance, the caller can get the customer's name and address by giving the operator the customer's telephone number.

competition in the provision of directory assistance, whether or not the particular directory assistance provider also provides telephone exchange service or telephone toll service.

184. We invite comment on whether section 251(b)(3) authorizes us to require the provision of nondiscriminatory access to directory assistance to directory assistance providers that do not themselves provide either telephone exchange service or telephone toll service.[445] As stated above, section 251(b)(3) requires LECs to provide nondiscriminatory access to directory assistance to "competing providers of telephone exchange service and telephone toll service." We therefore tentatively conclude that a directory assistance provider that provides neither telephone exchange service nor telephone toll service does not fall within the class of entities that are entitled to the benefits of this section. We seek comment on this tentative conclusion.[446] In some cases, however, a non-carrier directory assistance service provider may be under an agency relationship with a carrier principal. We note that section 217 of the Act directs that "[i]n construing and enforcing the provisions of this Act, the act . . . of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act . . . of such carrier or user as well as that of the person."[447] We seek comment on whether a non-carrier directory assistance provider is entitled to nondiscriminatory access to directory assistance under section 251(b)(3) when that provider is an agent of a LEC or other carrier that qualifies for the benefits of section 251(b)(3).[448] We also seek comment on whether, if a carrier's agent is entitled to nondiscriminatory access under section 251(b)(3), that agent may use that access to provide directory assistance to persons other than the carrier's customers.

185. In addition, we note that directory assistance providers frequently complete calls to the requested numbers.[449] We seek comment on whether a directory assistance provider becomes a provider of telephone exchange or telephone toll service entitled to nondiscriminatory access to directory assistance under section 251(b)(3) when it offers call completion services.

186. Section 251(b)(3) does not, by its terms, limit the use of directory assistance data solely to the provision of directory assistance. We therefore seek comment on whether

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[445] Letter from Gerard L. Waldron, Counsel for INFONXX, to Magalie Roman Salas, Secretary, FCC, at 3 (filed July 1, 1999) (*INFONXX July 1, 1999 Letter*).

[446] We note that the Bureau reached such a conclusion in *INFONXX, Inc. v. NYNEX*, 13 FCC Rcd at 10293-95, ¶¶ 11-12.

[447] 47 U.S.C. § 217.

[448] *INFONXX July 1, 1999 Letter*, *supra* note 445, at 3.

[449] *Id.*

an entity that obtains directory assistance data pursuant to section 251(b)(3) may use them for directory publishing or other purposes. We also seek comment on the extent to which a providing LEC's rates, terms, and conditions for listing information that a requesting LEC intends to use for purposes in addition to the provision of directory assistance may differ from the rates, terms, and conditions the providing LEC applies to other requesting LECs.

187. Moreover, we seek comment on what impact the growing convergence between directory publishing and directory assistance should have on the manner in which directory assistance is priced. For example, in part II.G, above, we conclude that:

> [T]he nondiscrimination requirement, as set forth in section 222(e), obligates each carrier that gathers subscriber list information in its capacity as a provider of telephone exchange service to provide that information to requesting directory publishers at the same rates, terms, and conditions that the carrier provides the information to its own directory publishing operation, its directory publishing affiliate, or another directory publishers.[450]

We seek comment on whether the requirement in section 251(b)(3) that a providing LEC must provide "nondiscriminatory access" to directory assistance similarly obligates such LECs to provide directory assistance to requesting carriers at the same rates, terms, and conditions that the LECs provide to themselves. We also invite comment on whether there are other alternatives for ensuring that the prices at which LECs provide access to directory assistance will be nondiscriminatory.

188. In part IV.A.2 above, we invite comment on whether the phrase "directories in any format" in section 222(e) encompasses Internet databases that contain subscriber list information.[451] We invite comment on whether and, if so, how our resolution of this issue should affect the prices under which carriers provide listing information under section 251(b)(3). We also seek comment on the effect, if any, on those prices in the event we conclude that the phrase "for purposes of publishing directories in any format" in section 222(e) encompasses the oral publication of listing information by a directory assistance provider.[452] We ask the commenters to address whether the prices a LEC charges for listing information under section 251(b)(3) must be identical to the rates the LEC charges for subscriber list information under section 222(e). We invite further comment on whether a

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[450] *See* para. 58, *supra*.

[451] *See* para. 173, *supra*.

[452] *E.g.*, *INFONXX Apr. 30, 1999 Letter*, *supra* note 439, at 1-3; *INFONXX Apr. 22, 1999 Letter*, *supra* note 439, at 1-2.

conclusion that section 222(e) entitles directory assistance providers to obtain subscriber list information from carriers would affect directory assistance pricing.

c. Sections 201(b) and 202(a)

189. In the *Local Competition Second Report and Order*, the Commission required incumbent LECs to provide access to telephone numbers to entities, such as paging carriers, that are not providers of telephone exchange service or telephone toll service, and thus not covered by section 251(b)(3).[453] The Commission reasoned that paging carriers are increasingly competing with other CMRS providers, and would be at an unfair competitive disadvantage if they alone could be charged discriminatory fees. The Commission concluded that charging discriminatory fees would violate the prohibition against unreasonable discrimination in section 202(a) and also would constitute an "unjust practice" and "unjust charge" under section 201(b).[454]

190. Non-carrier directory assistance providers may make innovative and increased services available to their customers, and also may compete with incumbent LECs to provide directory assistance to other LECs, interexchange carriers, and end-users. Just as paging carriers could not compete without access to numbers, we tentatively conclude that non-carrier directory assistance providers cannot compete without access to directory assistance equal to that provided to providers of telephone exchange service and telephone toll service pursuant to section 251(b)(3). We seek comment on whether, for reasons similar to those applied to paging carriers in the numbering context, we should require LECs to provide access to directory assistance to non-carrier directory assistance providers pursuant to sections 201 and 202 of the Act. We ask the commenters to address, in particular, whether the rates, terms, and conditions under which a LEC provides access to directory assistance are "charges, practices, classifications, and regulations for and in connection with [interstate

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[453] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538, ¶ 333; *see also INFONXX July 1, 1999 Letter*, *supra* note 445, at 3. Paging is not "telephone exchange service" within the meaning of the Act because it is neither "intercommunicating service of the character ordinarily furnished by a single exchange" nor "comparable" to such service. *See* 47 U.S.C. § 153(47).

[454] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538, ¶ 333. Section 201(b) provides, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service [i.e., interstate or foreign communication by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b). Section 202(a) provides that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage." 47 U.S.C. § 202(a).

communication by wire or radio]" within the meaning of section 201(b) or "charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service" within the meaning of section 202(a).

191. We also seek comment on whether a LEC's refusal to provide access to directory assistance to a non-carrier directory assistance provider constitutes a "charge, practice, classification, or regulation that is unjust or unreasonable" within the meaning of section 201(b) or "unjust or unreasonable discrimination" within the meaning of section 202(a). We seek comment, in addition, on whether section 201(b) or section 202(a) authorizes us to require LECs to provide non-carrier directory assistance providers with access to directory assistance at the same rates, terms, and conditions under which competing providers of telephone exchange service and telephone toll service obtain such access pursuant to section 251(b)(3), and, if so, whether we should exercise that authority.[455]

B. Access to Nonlocal Listings

192. Recently, we adopted the *National Directory Assistance Order*, which grants, in part, U S WEST's petition that we allow it to provide "national directory assistance," a service that permits a directory assistance customer to obtain the telephone numbers of subscribers located anywhere in the United States.[456] We concluded that, although U S WEST's provision of nonlocal numbers to in-region directory assistance customers constitutes the provision of in-region, interLATA service, the regionwide component of its nonlocal directory assistance service offering falls within the scope of the exception provided in section 271(g)(4).[457] Thus, US WEST may continue to provide this service without obtaining authorization from the Commission under section 271(d). We also concluded, however, that the nationwide component of U S WEST's nonlocal directory assistance service did not qualify for this same exception because U S WEST does not own the database used to provide directory assistance information to out-of-region customers.[458] Accordingly, we

[455] *INFONXX July 1, 1999 Letter*, *supra* note 445, at 3.

[456] News Release, "FCC Grants U S WEST Significant Regulatory Relief to Provide Nonlocal Directory Assistance Service" (rel. June 9, 1999). Directory assistance service is considered "local" whenever a customer requests the telephone number of a subscriber located within the local access and transport area (LATA) or area code from which the directory assistance call is placed.

[457] In the regionwide component of its nonlocal directory assistance service offering, U S WEST makes information regarding telephone exchange service subscribers from inside its region available to its directory assistance customers. U S WEST owns the database from which it retrieves this information.

[458] In the nationwide component of its nonlocal directory assistance service offering, U S WEST makes information regarding telephone exchange service subscribers from outside its region available to its directory assistance customers. U S WEST retrieved this information from a database owned by a third party.