

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Provision of Directory Listing Information
under the Communications Act of 1934,
As Amended

CC Docket No. 99-273

COMMENTS OF BELL ATLANTIC

Congress wrote section 222(e) and section 251(b)(3) to deal with two specific issues. Section 222(e) was written to ensure that publishers that wanted to publish directories — in particular, Yellow Pages directories — could get the subscriber listing information they wanted on reasonable terms. Section 251(b)(3) was to ensure that, in the newly competitive local exchange marketplace, all carriers would have access to directory assistance capabilities. The Notice asks whether both of these provisions should be read more broadly than they were intended. If expansively read, the two provisions would overlap and conflict, and much of the Notice deals with how to resolve these conflicts. When read as written, there are no such problems. Bell Atlantic¹ urges the Commission not to try to have these sections do more than Congress intended or to read requirements into them that are not there.

1. Internet Databases Can Be “Directories” under Section 222(e).

Section 222(e) can apply to making telephone numbers and related information available over the Internet.² A database accessible through the Internet can be a “directory,” depending

¹ Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; New England Telephone and Telegraph Company and Bell Atlantic Directory Services.

² Notice ¶ 173.

upon its features, characteristics and how it is marketed. Like directories published on paper or CD-ROMs, Internet directories must enable users to look up listings needed to place telephone calls. However, not all Internet databases that contain names, addresses and telephone numbers are “directories.” A database is not a “directory” if it includes features or characteristics that enable or facilitate a user to reproduce, resell or make commercial marketing use of the database. Nor is a search engine a “directory.” To be a “directory,” the Internet offering must not include the capability to download or accept bulk transfer of listings.

If an Internet service is a “directory” for section 222(e) purposes, a local exchange carrier must make its listings available to the directory’s publisher on reasonable and non-discriminatory terms and conditions. These “reasonable terms” may well include terms that are not part of the LEC’s agreements with paper directory publishers.³ For example, because of the unique characteristics of the Internet, it may be appropriate for a carrier to impose additional controls to protect the integrity of its listings. In the context of a print directory, reasonable terms may include restrictions on resale, or prohibiting use of the listings for non-directory purposes. In the context of an electronic Internet directory, practical considerations may require that technical restrictions be applied to achieve the same limitations. Any rules issued by the Commission should recognize that reasonable terms may be different between licensing data for a paper product and licensing data for an electronic one.

The Commission should not permit state rules and regulations that are inconsistent with its approach under section 222(e).

³ Notice ¶ 176.

The Notice asks whether carriers providing information “may restrict how third parties may access and use Internet directories containing that information.”⁴ A carrier may ensure that the information it provides is used only in a “directory,” and this may include restrictions on how the publisher’s users access and use the information. For example, to the extent that the information could be downloaded in bulk and then manipulated by the user or be resold for marketing and sales purposes, it would no longer be a directory.

2. Internet Databases Are Not “Directory Assistance” under Section 251(b)(3).

The provision of telephone numbers over the Internet is not a “directory assistance service” and is not subject to section 251 obligations.⁵

Directory assistance is a service that is an adjunct to basic telephony and is provided by or on behalf of a telephone company. This is what Congress had in mind when it limited the beneficiaries of section 251(b) to telephone carriers. Directory assistance requires an end-user customer to dial an access code (*e.g.*, 411) and use a voice path to communicate with a live or automated operator for the purpose of obtaining a telephone number of a person or business. It is generally subject to regulation by state public service commissions. Internet directories have none of these characteristics.

Directory publishing and directory assistance are different and mutually exclusive.⁶ Congress recognized this and handled them separately and differently in the 1996 Act. Thus, in section 222(e), Congress explicitly required that carriers only need to provide published listings of its own subscribers. Requirements relating to the provision of access to listings and directory assistance under section 251(b) is directed to enabling competing local exchange and toll

⁴ Notice ¶ 177.

⁵ See Notice ¶ 178.

⁶ Notice ¶ 179.

providers to offer these services to their respective telephone subscribers. Different rules may be appropriate for listings provided for the purpose of providing directory assistance.

3. Oral Provision of Information Is Not “Publishing a Directory.”

There is nothing in the legislative record to suggest that Congress thought that the oral provision of information constituted “publishing a directory,”⁷ and reading that phrase to include oral provision would be inconsistent with the plain words of the statute.

Under the Act, these are different services, and the requirements to provide information are intended to meet different regulatory and statutory purposes. Section 222(e) is designed to make listings available to publishers of Yellow Pages and other directories. A review of the legislative history confirms that the provision was introduced at the request of independent publishers of printed directories to assure that they would have guaranteed access to listings to publish a directory. The Act balanced various needs, and required that listings be made available at reasonable and non-discriminatory terms and conditions, but for the limited purpose of publishing a directory. Section 251(b)(3) was designed to encourage local exchange competition. Congress never intended that the pricing, terms and conditions for listings purchased under these two sections be identical.

Directory assistance providers may not obtain subscriber list information under section 222(e). Listings obtained under that section may be used only for the purpose of publishing a directory. If, however, the Commission were to somehow conclude that oral dissemination (*i.e.*, directory assistance) is the same as publishing a directory—which it is not—then that publisher would have to pay the same prices that other directory publishers pay under section 222(e).

⁷

Notice ¶ 180.

4. Section 251 Cannot Be Used To Require LECs To Provide Directory Assistance Information to Entities That Are Not Carriers.

Bell Atlantic is in complete agreement with the Commission's tentative conclusion 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 [section 251(b)]."⁸

The Act is perfectly clear on this. Section 251(b) applies only to carriers. It requires all local exchange carriers to permit "competing providers of telephone exchange service and telephone toll service" to have non-discriminatory access to directory assistance and directory listings. A directory assistance provider that is neither a provider of telephone exchange service nor a provider of telephone toll service cannot get the benefits of section 251(b).

If a carrier that is entitled to the benefits of section 251(b) instructs a LEC to deliver directory assistance information to another entity as its agent or subcontractor, then the LEC must do so.⁹ However, this would not authorize the other entity to use the information for any other purpose, as it would be acting outside its role as agent for the carrier.

Whether a directory assistance provider becomes a provider of telephone exchange or telephone toll service when it offers call completion services¹⁰ depends on how it provides those services. However, if such arrangements turn the provider into a provider of telephone exchange or telephone toll service for purposes of section 251(b), they would also turn the provider into a carrier for all purposes, including contributing to support universal service and number administration.

⁸ Notice ¶ 184.

⁹ Notice ¶ 184.

¹⁰ Notice ¶ 185.

The Commission notes that “[s]ection 251(b)(3) does not, by its terms, limit the use of directory assistance data solely to the provision of directory assistance” and goes on to ask whether a LEC providing data may impose such limitations.¹¹ Bell Atlantic has previously argued — and still believes — that section 251(b)(3) does not require the transfer of directory assistance *data* in the first place. By its terms, the section requires only that a LEC provide other carriers with access to its directory assistance service. The phrase in the statute “with no unreasonable dialing delays” makes no sense in connection with transferring the data itself. Given that the statute did not contemplate the provision of data, it is not surprising that it does not contain the same sorts of use limitations as section 222(e) does.

Even though the Commission has disagreed with Bell Atlantic’s reading of section 251(b)(3), it should not extend that section to broaden the permitted uses of the data. If the statute requires a LEC to provide information for a certain purpose, it is reasonable to allow the LEC to limit the use of that information to that purpose. If the LEC chooses to license another carrier to use this information for purposes other than directory assistance, it may do so, but on whatever terms the two parties agree to.

The Commission asks whether the requirement to “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.”¹² Consistent with section 51.217(a)(2) of the Commission’s rules, the LEC must offer directory assistance on the same terms and at the same rates it imputes to itself.

¹¹ Notice ¶ 186.

¹² Notice ¶ 187.

5. Sections 251 and 222(e) Are Independent of One Another.

A carrier that obtains directory assistance data pursuant to section 251(b)(3) may not use those data for anything other than providing directory assistance.¹³ The obligation is to provide directory listings for the provision of directory assistance services. A LEC is fully within its right to restrict the purchaser's right to use this information to the purpose prescribed in the statute. If an entity wants to publish a directory, it should purchase listings under section 222(e). Of course, any LEC may develop its own license agreement that permits multiple uses of the data, but this would be outside the reach of section 251(b)(3) or section 222(e).

The pricing structure of section 222(e) has no effect on the pricing which carriers provide listing information under section 251(b)(3).¹⁴ Since the products are separate and distinct, the pricing of one should not have any effect on the pricing of the other. If Congress wanted one price, it would have had one section and provided that listings would be made available at non-discriminatory prices for purposes of publishing a directory in any format or providing directory assistance.

6. The Commission May Not Impose New Access Obligations Under Section 201(b) or Section 202(a).

Sections 201(b) and 202(a) deal with unreasonable and discriminatory practices in connection with the provision of interstate communications services. Licensing information to be used to provide directory assistance is not a communications service at all. Even if it were, it would be an intrastate service, as directory assistance has traditionally been regulated by the states. These sections do not give the Commission authority to require a LEC to provide this information to others or to regulate the terms under which it does so.

¹³ Notice ¶ 186.

¹⁴ Notice ¶ 188.

This situation is different from the Commission's use of section 202(a) to protect paging carriers from discriminatory interconnection arrangements, referred to in the Notice.¹⁵ Interconnection is communications, and the Commission clearly has jurisdiction over interconnection matters. The *only* jurisdiction the Commission has over the provision of directory assistance information, however, is that limited authority Congress gave the Commission under section 251(b).

7. The Commission May Not Extend Section 251(b)(3) To Include Nonlocal or Nontraditional Information.

The Commission should not require a LEC that provides national directory assistance to provide nondiscriminatory access to nonlocal directory assistance data pursuant to section 251(b)(3)¹⁶ for all the reasons that the Commission did not impose such a requirement in its decision to forbear from section 272. In that decision, the Commission found:

“U S WEST is a new entrant in the market for nonlocal directory assistance service that faces competition from AT&T and MCI as well as from Internet service providers, providers of payphone and cellular telephone services, and independent directory assistance service providers, such as Metro One and INFONXX. More importantly, U S WEST does not exercise monopoly power over the components used to provide the telephone numbers of customers *outside* its region. Rather, like competing providers of nonlocal directory assistance, U S WEST must obtain the telephone numbers of subscribers outside its region from non-affiliated entities that compile national listings or other LECs. Given that U S WEST does not exercise monopoly power with respect to obtaining the telephone numbers of subscribers outside its region, we find no reason to require U S WEST to provide these numbers to unaffiliated providers of nonlocal directory assistance service.”¹⁷

¹⁵ Notice ¶ 189-90.

¹⁶ Notice ¶ 193.

¹⁷ *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, Memorandum Opinion and Order ¶ 33, CC Docket No. 97-172 (rel. September 27, 1999).

The same logic would apply to nontraditional information.¹⁸ It does not matter if the LEC combines all listings (its own and third party's) into a single database. The principles remain unchanged.

If a LEC obtains information from a third party, then other directory assistance providers may obtain it from that third party too. There is no reason to allow the other providers to free ride on the LEC's efforts. Moreover, as discussed above, the Commission lacks the authority to require a LEC to provide this information.

Conclusion

The Commission should construe these provisions of the 1996 Act as they are written and not extend their reach beyond what Congress intended.

Respectfully submitted,

John M. Goodman

Attorney for Bell Atlantic

1300 I Street, N.W.
Washington, D.C. 20005
(202) 336-7874

Michael E. Glover
Of Counsel

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¹⁸ Notice ¶ 195.