

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Provision of Directory Listing Information)	CC Docket No. 99-273
Under the Telecommunications Act of 1934,)	
As Amended)	

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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October 13, 1999

U.S. Telephone Association
Comments
October 13, 1999

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SUMMARY

To the extent that there is convergence occurring with respect to directory publishing and directory assistance, the FCC must exercise restraint in revisiting existing regulations upon such a converging market. Any attempt by the FCC to adopt regulations that expand a LEC=s obligations to provide, or provide access to, information that is beyond existing statutory mandates would be unlawful.

1. INTRODUCTION

The United States Telephone Association (USTA),¹ through the undersigned, hereby files

¹USTA is the nation=s oldest trade organization for the local exchange carrier industry. Today, USTA represents more than 1200 telecommunications companies worldwide that provide the full spectrum of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service and are leaders in the competition to deploy

advanced telecommunications capabilities to American and international markets.

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its comments in the above-referenced proceeding. These limited comments express USTA's concern at the direction signaled by the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) and offer its views on several specific queries presented in the NPRM. USTA respectfully urges the FCC to exercise considerable restraint as it examines the regulatory implications of the movement of certain customer information products and services to electronic media, in particular the Internet.

II. COMMENTS

The Internet, as a transactional medium, has yet to reach its full flower. Nonetheless, the explosive growth in the utilization of the Internet as an information resource and a vehicle for transacting business is dramatically affecting the conduct of commerce domestically and internationally. The FCC has correctly observed that a policy of regulatory nonintervention with respect to the Internet has proven successful for consumers and the Nation.

We bear in mind that A[t]he Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation² and that it is the policy of the United States Ato preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;...²

USTA sees no reason why the FCC, in the context of the issues raised in the NPRM, should

²Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Report, CC Docket No. 98-146, FCC 99-05 (rel. Feb. 2, 1999) (Section 706 Report), & 105.

deviate from this stated, and heretofore successful, policy of regulatory nonintervention.

In the NPRM, the FCC acknowledges that the movement of customer information products and services to the Internet has led to innovation and the availability of advanced applications.

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.³

There is no countervailing offer by the FCC of facts that would suggest a need for the FCC do anything other than allow the resourcefulness and innovative instincts of the marketplace and the entrepreneurs that operate in it to continue unencumbered by needless and debilitating regulation.

There is no justification offered by the FCC for attempting to expand its jurisdictional reach under Sections 201(b), 202(a), 222(e) or 251(b)(3)⁴ and impose regulatory constraints on Internet products and services that were not contemplated at the time that these statutory provisions were promulgated.

³NPRM at & 172.

⁴47 U.S.C. §§ 201(b), 202(a), 222(e) and 251(b)(3).

It is observed in the NPRM that there is a convergence of directory publishing and directory assistance that has resulted from the development of Internet directories.⁵ The FCC invites comments on what it should do in response to issues that it believes arise out of this development. As a general matter, USTA believes that the FCC should use this as an opportunity to demonstrate its ability to forgo the temptation to insert itself into a successfully developing market through the imposition of regulations. This is an ideal time to begin implementing one of the major goals of the FCC as set forth in the Chairman's Draft Strategic Plan -- A New FCC For The 21st Century (Strategic Plan).⁶

Deregulate As Competition Develops

Eliminating outdated rules will play an important role in accelerating the transition to fully competitive markets. Consumers ultimately pay the cost of unnecessary regulation. Thus, one of our primary objectives must be to deregulate as competition develops, and to substitute market-based approaches for direct regulation. In addition, we must resist imposing legacy regulations on new technologies. Our goal should be to deregulate the old instead of regulating the new.⁷

USTA could not agree more, and this docket is as good a place to implement this goal as any.

USTA has stated that it supports and encourages the FCC to evaluate convergence in the

⁵NPRM at & 171.

⁶Delivered to Congress on August 12, 1999.

⁷Strategic Plan at 14 (emphasis added).

communications industry.⁸ In USTA=s view, though, such an assessment should result in reduced regulation, especially for incumbent local exchange carriers (ILECs), not increased regulation for existing services or the imposition of regulations on new, innovative services.

To the extent that there is convergence occurring with respect to directory publishing and directory assistance, the FCC must exercise restraint in revisiting existing regulations upon such a converging market, or it risks stifling innovation and investment, both by incumbents and new entrants. Where the option exists under the law to regulate or not regulate Internet-based, customer information products and services, the FCC should opt to not regulate -- in the absence of a clearly documented and compelling need to do so. It should rely on the market, as reflected by customer demand, to drive convergence. Consumers will be far better served if the FCC defers to existing and future market forces to drive convergence rather than attempting to do so itself through unwarranted pricing regulations that may exceed statutory requirements.

Specifically, the FCC should not attempt to expand the reach of Section 222(e) beyond the rights conferred thereunder to persons who request Subscriber List Information for the purpose of publishing directories. Likewise, it should not attempt to expand the reach of Section 251(b)(3) beyond the provision of access (to telephone numbers, operator services, directory assistance, and directory listing) to "competing providers of telephone exchange

⁸See letter from Roy Neel, President and CEO of the United States Telephone Association to William Kennard, Chairman of the Federal Communications Commission, May 4, 1999.

service and telephone toll service."⁹ Any attempt by the FCC to adopt regulations that expand a local exchange carrier's (LEC's) obligations to provide, or provide access to, information beyond the explicit mandates in these statutory provisions would be unlawful. Further, the FCC should not attempt to use its general authority under Section 201(b) (to proscribe unjust or unreasonable practices and charges) or 202(a) (to proscribe unreasonable discrimination) to expand the obligations of carriers that are specifically prescribed in Sections 222(e) and 251(b)(3).

The NPRM asks "whether all LECs providing national directory assistance must provide nondiscriminatory access to non-local directory assistance data pursuant to section

⁹To the extent that a non-carrier serves as an agent for a carrier covered by Section 251(b)(3), it has the same access rights as the carrier for which it serves as agent. Its rights derive solely from its position as agent to the carrier. Accordingly, its use of information and services obtained through this access is limited to uses covered by the agency agreement. USTA also believes that a non-carrier does not become a telephone exchange carrier simply by offering call completion services. Telephone exchange carriers provide both call completion and call origination services (and may have other obligations as well).

251(b)(3)."¹⁰ USTA does not believe that such a requirement was envisioned when Section 251(b)(3) was written. As is observed in the NPRM, non-local number service was not provided in 1996 when Section 251(b)(3) took effect.¹¹ There is no justification for reading such an obligation into Section 251(b)(3) today since LECs have no advantage over any other person in securing access to non-local directory assistance data. Forcing LECs to provide such access pursuant to Section 251(b)(3) will not serve to create a "competitively neutral playing field for new entrants."¹² As to non-local directory assistance data, new entrants already have a level playing field and the same opportunity as LECs (including incumbent LECs) to arrange for the acquisition of this data from third-party sources. The imposition of such a requirement on LECs would skew the playing field to the disadvantage of LECs. A LEC competitor provided with mandatory access to the LEC's non-local directory assistance data would have no incentive to incur the time and expense to go to the original source of the data and negotiate its own arrangement for the data. There is no reasonable justification for imposing this obligation

¹⁰ NPRM at & 193.

¹¹ Id.

¹² Id.

on LECs.¹³

III. CONCLUSION

On the basis of the foregoing, USTA urges the FCC to resist inserting itself into an area that it acknowledges has experienced innovation and the availability of advanced applications. The FCC should remain true to its goal to Aderegulate the old instead of regulating the new.≡

Respectfully submitted,

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¹³ Certainly, a LEC should be free to make such access available on a nonregulated, commercial basis if it so chooses.