

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF U S WEST COMMUNICATIONS, INC.

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October 13, 1999

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. THE CONVERGENCE OF DIRECTORY PUBLICATION AND DIRECTORY ASSISTANCE	2
III. "INDEPENDENT DIRECTORY ASSISTANCE" PROVIDERS	4
IV. ACCESS TO NON-LOCAL LISTINGS.....	6
V. CONCLUSION	8

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I. **INTRODUCTION AND SUMMARY**

U S WEST Communications, Inc. (“U S WEST”) comments below on the three issues on which the Federal Communications Commission (“FCC” or “Commission”) seeks comment in a Notice of Proposed Rulemaking:¹ the convergence of directory publication conduct and the provision of directory assistance services; the provision of directory assistance information to service providers who themselves provide neither telephone toll nor telephone exchange services; and the need to mandate incumbent local exchange carriers (“ILEC”) to provide out-of-region directory listings to other carrier service providers. With respect to all issues, the Commission should terminate the rulemaking proceeding and allow the market to

¹ In the Matters of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, (“Second Order on Reconsideration”) and Notice of Proposed Rulemaking in CC Docket No. 99-273, FCC 99-227, rel. Sep. 9, 1999 (“NPRM”).

operate unfettered of federal regulatory intervention. None of the issues being investigated by the Commission in the NPRM warrant the exercise of federal action. All are matters prime for market resolution or would involve the exercise of federal authority beyond that anticipated by Congress in the passage of the Telecommunications Act of 1996 ("1996 Act" or "Act").

II. THE CONVERGENCE OF DIRECTORY PUBLICATION AND DIRECTORY ASSISTANCE

The Commission inquires into what it sees as the potential convergence of directory publication activity with directory assistance. This discussion is, apparently, prompted by a Commission assumption that the status of "Internet name, address, and telephone number" information is in a state of limbo. In support of that assumption, the Commission points to a state regulatory order requiring a local exchange carrier ("LEC") to provide customer listing information to an Internet service provider ("ISP") out of the LEC's tariff addressing directory assistance listings, rather than the tariff involving directory publication listings.²

While the referenced state regulatory order obviously speaks for itself, from the perspective of whether this Commission needs to exert federal regulatory authority to "clarify" or fix the matter, the answer is a resounding "no." The "status" of an electronic listing product/offering -- whether offered on the Internet or through some other access vehicle (such as CD-ROM or dial-up) -- will generally be determined by the information that is included in the offering and the

² Id. ¶ 174.

entities/customers interacting with the information rather than the fact that the transmission vehicle is the Internet.³ For example, as the Commission notes in its NPRM, U S WEST has an Internet Yellow Pages, as well as a White Pages, offered through our directory affiliate. This information is accessible by, and accessed by, all sorts of individuals, ranging from customers to carriers to other businesses.

On the other hand, U S WEST also provides a tariffed Electronic Directory Assistance (“EDA”) offering.⁴ While there are no restrictions on the purchase of this offering,⁵ as a general matter the purchasers are other carriers and large businesses.

In addition to the differences in the purchasing clientele, the information made available through a “directory publication” and “directory assistance” is often different. A “directory publication” will generally not include names and addresses associated with customers having either non-listed telephone numbers (such numbers being available through directory assistance but not “listed” in telephone directories), while “directory assistance” offerings generally contain non-listed subscriber information but not non-published information.⁶

³ Thus, the material factor is not that information is provided through “access to an Internet” offering “through a web site.” See ¶ 178.

⁴ U S WEST Tariff F.C.C. No. 5, Section 9.2.2 (“EDA Tariff”).

⁵ See, e.g., In the Matter of Amendment of Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry), Memorandum Opinion and Order on Reconsideration, 2 FCC Rcd. 3035, 3051 ¶ 109 (1987).

⁶ Compare EDA Tariff. And compare the Commission’s discussion, in its Second Order on Reconsideration, regarding the accessibility to non-listed and non-published customer information. Second Order on Reconsideration ¶¶ 164-169.

The Commission need do nothing at this time to resolve anything since there is no "issue" to resolve. U S WEST would assume that -- outside of the Florida Commission Order -- most incumbent LECs provide subscriber list information ("SLI") (which does not contain either non-listed or non-published customer information) to ISPs, who we generally refer to as "Internet directory publishers." This is buttressed by the fact that -- most often -- the service provider making the customer information available to the public is neither a provider of telephone exchange service or telephone toll service. Thus, such providers would not qualify -- under existing regulatory jurisprudence -- to receive directory listings (see next discussion) but would qualify as "publishers" to receive SLI.

Thus, it is clear that it is not so much the manner in which the information is transmitted, i.e., the Internet, that is the critical factor in determining whether one is dealing with a "directory publication" or "directory assistance," but the information included in the offering, as well as the status of the purchasing/service providing entity. The Commission need do nothing further by way of "clarification" or regulatory intervention regarding the matter.

III. "INDEPENDENT DIRECTORY ASSISTANCE" PROVIDERS

The Commission inquires into whether it should embellish upon the statutory requirements found in Section 251(b)(3) (dealing with LEC obligations within a dialing parity context) which require LECs to provide directory listings to

competing providers who offer telephone exchange and telephone toll services.⁷ The Commission notes, however, that an “independent” directory assistance service provider, acting as an agent for carriers offering telephone exchange or telephone toll service are entitled to such listings, might well be entitled to the information under standard principal/agency theory.⁸ And, it inquires into whether a LEC’s refusal to provide directory listing information to an independent directory publisher would violate Sections 201 and 202 of the Communications Act of 1934.⁹

With respect to “independent” directory assistance provider access to directory listings, U S WEST has taken the position that such providers, when acting as agents for providers of telephone exchange or telephone toll service under Section 251(b)(3), can purchase directory listings. However, we do restrict the use of the information to the specific purposes of Directory Assistance and operator services and to a use associated with the specific carrier-principal on whose behalf the purchase is being made.¹⁰ In the absence of such agency relationship, such information is not provided.

⁷ NPRM ¶ 184.

⁸ Id.

⁹ Id. ¶¶ 189-190.

¹⁰ The Commission notes that Section 251(b)(3) “does not, by its terms, limit the use of directory assistance data solely to the provision of directory assistance.” Id. ¶ 186. That is correct. However, standard licensing terms and conditions associated with the provision of information between parties often include restrictions on multiple uses. Such restrictions are not contrary to public policy and are negotiated between competent parties. The Commission should not proscribe such contractual arrangements, especially in the absence of any hint that Congress meant to lodge this matter in the Commission for regulatory resolution.

In those cases where an independent directory assistance provider is not associating its request for the information with a carrier-agency relationship, clearly the provisions of the 1996 Act do not require the information to be provided. Nor should such obligation be imposed on LECs through the general statutory provisions of Sections 201 and 202. The circumstances under consideration are unlike the Commission's decision in the Local Competition Second Report and Order to require LECs to provide telephone numbers to paging carriers. There, LECs were required to provide critical network information to other telecommunications carriers.

Independent directory assistance providers not acting in an agency capacity, however, are information providers. Nothing in the 1996 Act suggests that regulated carriers are expected to provide customer information to such providers outside of the provisions associated with directory publishers in Section 222(e). The Commission should not expand upon this clear Congressional determination by attempting to create a similar obligation through the vehicle of pre-existing regulatory statutes.

IV. ACCESS TO NON-LOCAL LISTINGS

The Commission inquires whether, under the authority of Section 251(b)(3), it should require LECs to provide access to "non-local" directory listings that are integral to the provision of a national directory assistance ("NDA") offering.¹¹ Noting that some access requirements were imposed on U S WEST with respect to

its NDA offering under Sections 271/272 of the Act,¹² the Commission seeks comment on whether to extend a similar obligation to all LECs.

In the U S WEST National DA Order, the Commission upheld U S WEST's provision of regional, non-local information to customers, on the condition that U S WEST provided non-discriminatory access to such information available to third parties.¹³ With respect to non-local nationwide data, however, the Commission held that "[g]iven that U S WEST does not exercise monopoly power with respect to obtaining the telephone numbers of subscribers outside its region, [the Commission found] no reason to require U S WEST to provide these numbers to unaffiliated providers of non-local directory assistance service."¹⁴

Consistent with that holding, the Commission should not require that LECs provide non-local, non-regional directory listings to third parties since those third parties have the same opportunity to secure the information directly on their own behalf from the data source.¹⁵ Just as the Commission has determined that LECs

¹¹ NPRM ¶¶ 192-195.

¹² Id. ¶ 192.

¹³ See id. ¶ 192, and see In the Matter of Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Petition of U S WEST Communications, Inc. for Forbearance, The Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket Nos. 97-172 and 92-105, Memorandum Opinion and Order, FCC 99-133, rel Sep. 27, 1999 ¶ 37 ("U S WEST NDA Order").

¹⁴ U S WEST NDA Order ¶ 33.

¹⁵ NPRM ¶ 194.

should not have to operate as "clearinghouses" for the provision of SLI,¹⁶ the Commission should not require that they act as such with respect to non-customer data readily available on the open market.

V. CONCLUSION

For all the above reasons, the Commission should refrain from acting in an affirmative manner with respect to any of the matters under consideration in the NPRM. All will work their way to resolution through market, negotiated and contract resolution. Nothing further is required at this time.

Respectfully submitted,

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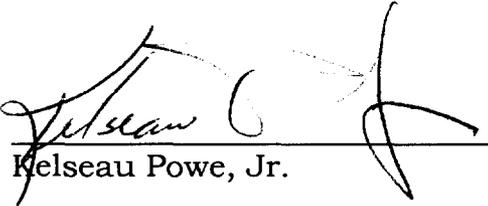
Of Counsel,
Dan L. Poole

October 13, 1999

¹⁶ U S WEST NDA Order ¶ 55.

CERTIFICATE OF SERVICE

I, Kelseau Powe Jr., do hereby certify that on the 13th day of October, 1999, I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be served, via hand delivery, upon the persons listed on the attached service list.


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