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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

BELLSOUTH REPLY COMMENTS

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), hereby responds to comments submitted pursuant to the Commission's *Notice of Proposed Rulemaking*[1] in the above-styled matter.

Summary and Introduction

Participants in this proceeding essentially fall into two camps: those who recognize and give meaning to the content and structure of the Communications Act of 1934, as amended (the "Act") and those who attempt to circumvent that content and structure. BellSouth stands squarely with those in the first camp.

As a number of the parties showed, Congress enacted clear statutory distinctions between the obligations local exchange carriers ("LECs") owe to directory publishers under Section 222(e)[2] and the obligations LECs owe to other carriers with respect to directory assistance under

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1 *Provision of Directory Listing Information Under the Telecommunications Act of 1934*, CC Docket No. 99-273, *Notice of Proposed Rulemaking*, FCC 99-227 (released Sept. 9, 1999) ("*Notice*").

2 47 U.S.C. § 222(e).

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Section 251(b)(3).[3] Although in some instances there may be some minor similarities between the two directory service categories, those similarities provide a totally insufficient basis for eviscerating the distinctions Congress engrafted in the Act. Accordingly, BellSouth joins others in urging the Commission not to read Sections 222(e) and 251(b)(3) more broadly than they were intended.

BellSouth also agrees with those who argue that non-carriers are not entitled to nondiscriminatory access to directory assistance data under Section 251(b)(3). That section is explicit in conferring benefits upon a limited class -- providers of telephone exchange service or telephone toll service, and the Commission should reject the various efforts of those outside that class to conduct an end run of those limitations.

Finally, BellSouth agrees that Section 251(b)(3) does not require LECs to provide nondiscriminatory access to non-local directory assistance data. LECs have no arguable advantage in obtaining that data from third parties in the marketplace. Thus, the policy concerns underlying Section 251(b)(3) are not implicated and its requirements should not attach to such third party data.

I. Directory Assistance and Directory Publishing Are Mutually Exclusive Activities Under the Act.

BellSouth concurs with those asserting that directory assistance and directory publishing remain discrete, mutually exclusive activities under the Act.[4] Congress adopted specific provisions that address LECs' obligations to competing providers of telephone exchange and

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[3] 47 U.S.C. § 251(b)(3).

[4] Yellow Pages Publishers Association at 3-4; USTA at 6-7; Cincinnati Bell at 8-11; Bell Atlantic at 3-4; GTE at 4-8. *See also* US West at 2-3 (classification determined by information provided and purchasing clientele, not by transmission vehicle).

telephone toll service with respect to directory assistance in Section 251(b)(3). Congress adopted in Section 222(e) equally specific but *different* obligations that LECs owe to a *different* set of competitors in the directory publishing market. The Act thus reflects Congress' view of *different* markets, *different* participants, *different* services, and *different* obligations. The Commission should reject the efforts of some to have the Commission turn a blind eye to these statutorily-embraced distinctions.

Although availability of directory information over the internet or other new technologies for delivery of directory information may at times make the differences a bit less defined, the statutory structure remains clear. A service cannot be both directory assistance and directory publishing under the Act. Thus, while BellSouth historically has considered directory information on the internet to be more like a directory assistance service, BellSouth acknowledges that internet directories may instead be determined to fall within the meaning of "directory publishing in any format" under Section 222(e).[5]

If the Commission does conclude that internet directories constitute directory publishing under Section 222(e), however, BellSouth concurs with those insisting on the need for reasonable conditions on the use of subscriber list information ("SLI") obtained from carriers that directory publishers make available on the internet.[6] First, Section 222(e) contains the express limitation that local exchange carriers must provide SLI only "for the purpose of publishing directories." The Commission recently determined that carriers may enforce this limitation by requiring all directory publishers to certify in a contract or otherwise that the

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5 *See*, Cincinnati Bell Telephone Company at 2-7; Bell Atlantic at 2-4; GTE at 2-4.

6 *See*, *e.g.*, Bell Atlantic at 2-3; Cincinnati Bell Telephone Company at 4-5.

publisher will use SLI only for publishing a directory.[7] Thus, for example, carriers may reasonably constrain publishers' opportunities to resell SLI or to use it for telemarketing purposes, other than for selling advertising in the publisher's own directory.[8]

BellSouth agrees with those noting that because of the unique characteristics of the internet, it may be appropriate for carriers to impose additional controls for internet publications. For example, carriers should be able to require internet directory providers to certify that they have taken appropriate steps to restrict end users' abilities to download data from the internet in bulk for resale or other uses.[9] Limitations on the number of listings that can be viewed or downloaded in a single command are also consistent with this principle.[10]

Just as the advent of internet directories does not override the statutory distinctions established by Congress, neither does oral delivery of directory assistance listing information cause that service to become directory publishing under Section 222(e).[11] When Congress enacted Section 251(b)(3) and 222(e), carriers were already providing oral directory assistance and publishers were already printing directories. Nothing in the text of the Act or its legislative history suggests that Congress intended Section 222(e) to encompass oral publications.[12]

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7 *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Third Report and Order*, FCC 99-227 (released Sept. 9, 1999) ("*SLI Order*") at ¶ 112-114.

8 *Id.* at ¶ 118.

9 Bell Atlantic at 2-3.

10 Cincinnati Bell Telephone Company at 4-5.

11 GTE at 7-8; Cincinnati Bell Telephone Company at 7-8; Bell Atlantic at 4.

12 *See*, Yellow Pages Publishers Association at 2-3.

Commenters who nevertheless suggest that "publishing directories in any format" is broad enough to encompass "oral publication" of listing information fail to focus on the operative word in that clause. It matters little whether "publication" may be oral in other contexts, such as libel law, or that "in any format" may not be inherently limited,[13] as some parties have asserted.[14] Rather, the clause specifies that it pertains to publication of "*directories*." No party has suggested, for they cannot plausibly maintain, that oral delivery of a single component of the directory listing information of an individual customer (*e.g.*, a telephone number) constitutes publication of a *directory*. Accordingly, the Commission must conclude that oral provision of directory listing information is not "publication of a directory" under Section 222(e).

II. LECs Are Not Required to Provide Directory Assistance Data to Entities That Do Not Provide Telephone Exchange or Telephone Toll Service.

Section 251(b)(3) is explicit in its wording that LECs' duty to provide nondiscriminatory access to directory assistance is limited to "competing providers of telephone exchange and telephone toll service." Although such competing carriers may act through their agents to exercise their rights to directory assistance under this section, the agents do not themselves gain any rights greater than or independent of those of the carrier. Nor do entities become providers of telephone exchange or telephone toll service merely by performing a call completion function. Finally, Sections 201(b) and 202(a) do not grant non-carriers rights to directory assistance data. Thus, there is no basis for granting non-carriers nondiscriminatory access to directory assistance data.

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[13] BellSouth believes that "in any format" *is* inherently limited and connotes presentation in tangible form. *See, e.g.*, Webster's Ninth New Collegiate Dictionary, 1984 ("format . . . 1: the shape, size, and general makeup (as of something printed)."

[14] *See*, INFONXX at 27-30; Teltrust at 9-10.

Section 251(b)(3) is clear on its face. Non-carriers simply "do[] not fall within the class of entities that are entitled to the benefits of [that] section."[15] The Commission should reject the various efforts to circumvent this clear congressional policy choice.

Parties asserting that agents of carriers have derivative rights under Section 251(b)(3) overstate common principles of agency.[16] An agent's authority to act does not extend beyond the rights of the agent's principal, and in all respects the agent's actions within the scope of the agency relationship must be on behalf of the principal. Thus, the agent is not vested independently with the rights of the principal. In other words, non-carriers do not inherit rights under Section 251(b)(3) merely by acting as agent for a carrier that has such rights.

Moreover, a non-carrier acting as agent for a carrier that has rights under Section 251(b)(3) cannot exceed the scope of that agency, nor can it misappropriate assets obtained within the scope of the agency for purposes outside the scope of that agency. Thus, a non-carrier obtaining directory assistance data through its principal to provide directory assistance service on behalf of that principal cannot then appropriate such data and hold itself out as a provider of directory assistance for additional carriers or for any other purpose. Rather, the non-carrier would be permitted to act on behalf of a second carrier only if the second carrier itself exercised its own rights under Section 251(b)(3), including properly compensating the LEC for the directory data.

Just as an agency relationship does not cause a non-carrier to become a provider of telephone exchange or telephone toll service, neither does the non-carrier's provision of call completion service necessarily make it so. The call re-direction function performed in such "call

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15 *Notice* at ¶ 184.

16 *See*, INFONXX at 13-20; Teltrust at 3-9.

completion services" is no different from the call transfer function performed thousands of times a day by PBXs across the country. Performance of that function alone is clearly insufficient to cause the provider to become a carrier under the Act. Even if some providers of call completion services are able to demonstrate that their particular service arrangements arise to a level of telephone exchange or telephone toll service, the Commission should make clear that any such provider seeking the benefits of Section 251(b)(3) as a carrier will also be subject to all of the regulatory requirements imposed on all carriers by the Act and under state law. Such providers cannot be selective with respect to the regulations to which they will be subject.

Finally, non-carrier providers of directory assistance should not be permitted to rely on Sections 201(b) or 202(a) to achieve the privileges from which they are overtly excluded under Section 251(b)(3). Indeed, it is precisely because Congress was so clear in Section 251(b)(3) in conferring benefits only on a limited and specified class that non-carriers should not be permitted to use the general provisions of Section 201(b) or 202(a) to achieve an end run of those congressional limitations. Accordingly, there is no basis for requiring LECs to provide nondiscriminatory access to directory assistance to non-carriers.

III. Section 251(b)(3) Does Not Require Carriers to Provide Nondiscriminatory Access to Third-Party Nonlocal Directory Assistance Data.

The Commission inquired whether LECs providing national directory assistance services are obligated under Section 251(b)(3) to provide nondiscriminatory access to nonlocal directory assistance data. All the parties addressing this issue roundly criticized it, except for one party who provided only a modicum of support for the notion. That support, however, was insufficient to overcome the showing of the majority. Accordingly, the Commission should not adopt such a requirement.

The parties demonstrated that nonlocal directory assistance data is not and should not be subject to Section 251(b)(3).[17] That information is readily available from third parties in the marketplace to LECs and other directory assistance providers alike. Thus, the policy issues underlying Section 251(b)(3) are not implicated and its requirements should not attach to such third party data.

Only one party offers any semblance of argument to the contrary, but the effort is tepid and ambiguous.[18] While asserting that "mandating access to nonlocal DA data would further the policy underlying the *Local Competition Second Report and Order*,"[19] that party offers no analysis or supporting explanation. Rather, the remainder of the discussion focuses on the "*in-region* listings of . . . subscribers [of LECs offering national or nonlocal directory assistance]" or on "data acquired from independent LECs and CLECs operating in a LEC's region."[20] This discussion of in-region data thus does little to rebut the showing that nonlocal information obtained from a third party is not subject to Section 251(b)(3).

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[17] GTE at 11-14; Cincinnati Bell Telephone Company at 13-14; Bell Atlantic at 8-9; US West at 6-8.

[18] MetroOne Telecommunications at 21-23.

[19] *Id.* at 21.

[20] *Id.* at 22.

CONCLUSION

For the reasons stated herein, the Commission should construe Sections 222(e) and 251(b)(3) to give meaning to their content and structure and should reject proposed interpretations that would circumvent that content and structure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 28th day of October, 1999, served the following parties to this action with a copy of the foregoing ***BELLSOUTH REPLY COMMENTS***, reference CC Docket No. 99-273, by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.

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