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

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

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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SBC Communications Inc., on behalf of itself and its subsidiaries (collectively referred to as "SBC"), submits these reply comments in response to the Commission's notice of proposed rulemaking in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

In the NPRM, the Commission addresses the convergence of directory publishing and directory assistance. It further explores the scope of local exchange service providers' obligations to provide lists of customers to directory publishers under section 222(e) of the Act and to competing telecommunication service providers under section 251(b)(3). Finally, it also

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1 *In the Matter of Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC Docket No. 99-273, Notice of Proposed Rulemaking, FCC 99-227 (released September 9, 1999) ("NPRM"). In the same document (FCC 99-227), the Commission released its Third Report and Order in CC Docket No. 96-115 concerning the provision of subscriber list information under section 222(e) of the Communications Act, as amended (the "Act"), and the Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98 concerning access to directory assistance under section 251(b)(3) of the Act. For the purpose of these comments, citation to FCC 99-227 will be denominated as a reference to the "NPRM" – regardless of whether the reference is to the NPRM itself or to one of the accompanying orders in the same

considers the scope of its authority to expand those obligations on its own.

The language of the statutory sections in question, as the Commission itself admits, limits the parties to whom local exchange service providers must provide the information and the purpose for which that information, once provided, can be used. Applying the statutory language to the questions raised by the Commission in the NPRM leads to logical answers.

First, neither an Internet directory search service nor an oral directory assistance service constitute directory publication. In neither case is a directory "published" – in any format. Thus, the providers of such services are not entitled to the benefits of section 222(e).

Second, section 251(b)(3) obligates local exchange carriers ("LECs") to provide access to directory assistance only to "competing providers of telephone exchange service and telephone toll service." Thus, stand-alone providers of national directory assistance service, for example, are not entitled to the information. Moreover, competing carriers may only use the information in connection with their provision of competing telephone exchange or telephone toll service.

Third, similarly, to the extent the Commission interprets section 251(b)(3) as obligating a LEC to provide directory assistance information – unbundled from the LECs' directory assistance service – the LEC should not be obligated to provide national or other third-party directory listing information contained in its directory assistance database. The Commission has already concluded, with respect to subscriber list information ("SLI") under section 222(e), that a provider of telephone exchange service is not required to act as a "clearinghouse" supplier of

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document.

other carriers' information. There is no reason for the Commission to read a clearinghouse requirement into section 251(b)(3), especially in light of the de-regulatory interpretation which must be given to the provisions of the Telecommunications Act of 1996 (the "1996 Act").

Finally, since directory assistance is not a mandated unbundled network element ("UNE"), the Commission's total element long run incremental cost ("TELRIC") pricing standard does not apply. Moreover, the Commission should conclude that pricing of directory assistance information in a manner consistent with the standard by the Commission applied to SLI under section 222(e) is presumptively reasonable.

II. THE COMMISSION'S AUTHORITY TO PROMULGATE RULES CONCERNING THE PROVISION OF DIRECTORY LIST INFORMATION IS LIMITED BY SECTIONS 222(e) AND 251(b)(3).

In examining the Commission's authority to promulgate rules concerning SLI and directory assistance list information (jointly referred to as "directory list information"), a review of the Supreme Court's decision and *AT&T Corp, et al. v. Iowa Utilities Board, et al.*, 525 U.S. 366, 119 S. Ct. 721, 142 L.Ed. 2d 834, 1999 U.S. LEXIS 903 (1999) ("*AT&T*"), is instructive. In that case, the Court dealt specifically with the Commission's authority to promulgate rules implementing various provisions of the 1996 Act. Justice Scalia, writing for the majority, concluded that section 201(b) gives the Commission broad authority with respect to those statutory provisions inserted by Congress into the Communications Act of 1934.[2] Thus, with

[2] *AT&T*, 119 S. Ct. at 730, 142 L.Ed. 2d at 849. Section 201(b) reads, in relevant part: The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.

respect to those matters specifically embraced by section 222(e) and section 251(b)(3), the Commission has been given pre-emptive rulemaking authority.

Certainly, that is a conclusion that can be logically drawn from the Court's discussion of the Commission's authority to set pricing standards under section 252(d)(1). The Court found that, even though that section refers to state commission determination of the "just and reasonable rate" for interconnection and network elements under section 251(c), the Commission has authority to adopt mandatory pricing standards because Congress included section 251(d)(1) in the Communications Act of 1934 and, as noted above, section 201(b) confers the appropriate rulemaking authority in that case.[3]

But this authority is necessarily confined in scope to those matters specifically included by Congress in the Communications Act of 1934. With respect to intrastate matters, the Court confirmed that section 152(b)[4] retains its vitality. That section states:

> Except as provided in sections 223-227, inclusive, and 332 and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or give the Commission jurisdiction with respect (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier...

The Court's joint reading of sections 201(b) and 152(b) is that the Commission is given broad rulemaking authority over an intrastate matter that is dealt with specifically in the Communication Act. Otherwise, section 152(b) prevents the Commission's ancillary jurisdiction from attaching and precludes the Commission from regulating an intrastate matter

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[3] *Id.*

[4] Section 2(b) of the Act, codified as 47 U.S.C. 152(b).

"solely because it furthered an interstate goal."[5]

In this regard, section 222(e) deals with an intrinsic aspect of the provision of telephone exchange (intrastate) service – the names, addresses, and telephone numbers of subscribers of telephone exchange service that the service provider has published in any directory format.[6] Both the compilation of a list of local exchange service customers and the publication of a directory of those customers' names, addresses, and telephone numbers are matters over which state commissions have historically had jurisdiction. In fact, typically "non-pub" and "non-list" service -- whereby customers elect not to have their telephone numbers listed in the carrier's published directory – are tariffed state offerings. Thus, although the Commission has authority to promulgate regulations to implement the provisions of section 222(e), section 152(b) precludes the Commission from creating any additional obligations for local exchange carriers relative to SLI and the publication of directories because of the inherently local nature of the subject matter.

Similarly, section 251(b)(3) – with respect to the provision of access to competitive carriers to directory assistance -- deals with matters inherently intrastate in nature. First, the obligation is only on local exchange carriers – i.e., carriers providing local exchange (intrastate) service. Second, the obligation is to provide access to "competing providers" – i.e., providers of essentially intrastate service. Finally, the requirement involves providing access to directory assistance – a service whereby a local exchange carrier offers information to its customers about

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[5] *AT&T,* 119 S.Ct. at 731, 142 L.Ed. 2d at 850-51.

[6] See the definition of subscriber list information contained in section 222(f)(3).

the telephone numbers of other local service customers under terms that have historically been subject to state commission oversight. As noted above, the "non-pub" service – which also constitutes a customer's election not to have her telephone number given out by the carrier's directory assistance service – is typically tariffed at the state level.

Because of this inherently intrastate nature of the matters involved in both sections, although the Commission has authority to promulgate rules to implement those sections, its authority is strictly limited to those matters specified in those provisions. In other words, the Commission has no authority to create additional requirements with respect to the provision of directory list information by local exchange carriers.

III. NEITHER INTERNET DATABASE SERVICE NOR ORAL DIRECTORY ASSISTANCE SERVICE INVOLVES "DIRECTORY PUBLISHING" UNDER SECTION 222(e).

Section 222(e) requires providers of telephone exchange services to provide SLI to "any person upon request for purpose of publishing directories of any format." The Commission has inquired whether use of SLI in an Internet database is contemplated by the above language.[7] The Commission also asks whether the above language encompasses "the oral publication of listing information by a directory assistance provider."[8] In both cases, the answer must be no – because in neither case is a directory "published."

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[7] NPRM at ¶173.

[8] *Id.* at ¶180.

Arguments that directory publication results from the provision of an Internet database search service[9] or oral directory assistance[10] misconstrue the plain meaning of the statutory language. Webster's Ninth New Collegiate Dictionary defines "publish" as follows:

> 1a: to make generally known b: to make public announcement of 2a: to place before the public: disseminate b: to produce or release for publication; specif: print c: to issue the work of (an author).

In the case of Internet directory database services, customers are typically provided with discreet listings in response to searches by name, business category, location, etc.[11] Similarly, in the case of oral directory assistance, the querying party is typically provided with a discreet telephone number in response to a specific request for the number of a particular party. In neither case is any information "published." None of the information is made "generally known" or "placed before the public." Rather, that particular information is being made known only to the party requesting it.

Certain parties might argue that this situation is no different from that of a "published"

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[9] Metro One at 4-5; ADP at 3-4.

[10] INFONXX at 27-29; MetroOne at 4-5, ADP at 8-9.

[11] See NPRM at ¶172. The Commission further inquires whether the provision of access to an Internet directory constitutes the provision of directory assistance within the meaning of section 251(b)(3). (NPRM at ¶178.) The Commission noted that the Florida Commission found that such a service constituted directory assistance – at least for the purpose of the application of BellSouth's directory list tariffs. (NPRM at ¶174.) There are certain similarities between an Internet database search service and directory assistance – e.g., discreet listings are provided in response to discreet requests. However, there are significant differences. In the case of an Internet directory search service, the querying party typically performs the search herself. In the case of directory assistance, typically the search is performed for the customer. To that extent there is less "assistance" with an Internet directory search service than there is typically with directory assistance. However, assuming for argument sake, without conceding, that the Internet service would be a directory assistance service, the provider of such a service would be entitled to the benefits of section 251(b)(3) only if the provider was also a competing provider of telephone service and its use was limited accordingly. See Section IV, *infra*

book whose contents are made known, in a practical sense, only to those who purchase the book and choose to open it. Nonetheless, when a person publishes a book, the contents effectively become public information. The existence of one copy of the book on the shelf of a public library enables the public to obtain access to the contents of that book without consulting the publisher or the author. In the case of an Internet directory service and oral directory assistance, the individualized information distributed to individual inquiring parties has no such public quality. Anybody else desiring that information must consult the database custodian again and again.

Even if, however, the Commission concludes that making the information available to individual inquiring parties makes such information "public," what is being "published" in each case is only individual bits of information, not a directory. In fact, the only way the entire directory could be "published" under such circumstances would be in the unlikely event that, over time, every listing in the database had been requested and disclosed at least once. Thus, as a practical matter, the "directories" behind these Internet services and oral directory assistance will never be made "generally known" or "placed before the public."

By referring to "publishing directories in any format," Congress intended to permit directory publishers flexibility in the types of directories they published – e.g., regional directories, local directories, business directories, residence directories, reverse directories, whether in paper hard copy or on CD ROM. However, the statutory requirement is still that the directory be published – not doled out in bits to individual parties making specific inquiries. Thus, the Commission should conclude that neither an Internet directory service nor an oral

directory assistance service involves directory publishing within the scope of section 222(e).

IV. ONLY COMPETING CARRIERS HAVE A RIGHT TO ACCESS TO DIRECTORY ASSISTANCE, AND THEN ONLY FOR USE IN CONNECTION WITH THEIR PROVISION OF COMPETING TELEPHONE SERVICE.

A. Beneficiaries of Section 252(b)(3).

Section 251(b)(3) requires each LEC to provide non-discriminatory access to directory assistance to "competing providers of telephone exchange service and telephone toll service." The Commission correctly concluded that a directory assistance provider that provides neither telephone exchange service nor telephone toll service is not entitled to the benefits of this section.[12] Nonetheless, the Commission speculates that non-carrier directory assistance providers may make innovative services available to customers and carriers and tentatively concludes that those providers cannot compete without access to directory assistance equivalent to that provided by section 251(b)(3). Therefore, the Commission asks whether it should require LECs to provide access to directory assistance to non-carrier directory assistance providers pursuant to section 201(b) – which requires just and reasonable practices -- and section 202(a) – which prohibits unjust or unreasonable discrimination.[13] The answer is no, because, despite the allegations of parties such as LSSI and INFONXX to the contrary,[14] those sections of the

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[12] NPRM at ¶184.

[13] *Id.* at ¶¶189-190.

[14] LSSI 16-17; INFONXX at 21-22.

Communications Act do not confer such authority on the Commission.

Section 201(b)'s requirement of just and reasonable practices apply to "such communication service" – a reference to the "interstate or foreign communications by wire or radio" included in section 201(a). Similarly, section 202(a)'s prohibition against unjust or unreasonable discrimination "for or in connection with like communication service" applies to interstate activity because of section 152(a), which specifies that the provisions of the Act apply to "all interstate and foreign communication by wire or radio".

The provision of directory assistance by a local exchange carrier, on the other hand, as noted above, is an intrastate activity. Because of this, also as noted above, the Commission's authority to promulgate regulations dealing with that activity is coextensive only with the specific provisions of the Communications Act on point.[15] Since section 251(b)(3) limits a LEC's obligations to provide access to directory assistance only to competing carriers, the Commission has no authority to expand this obligation on its own. Contrary to the arguments of Telegate regarding the Commission's ancillary jurisdiction,[16] as the Supreme Court noted in *AT&T,* the Commission has no authority to legislate on an intrastate matter simply because it would further an interstate purpose.[17]

Further, however, in what appears to be an effort to facilitate national directory assistance services, the Commission asks whether a directory assistance provider becomes a

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[15] *See AT&T*, 119 S. Ct. at 730-731, 142 L.Ed. 2d at 849-851.

[16] Telegate at 4.

[17] See note *5, supra.*

provider of telephone exchange or telephone toll service entitled to access to directory assistance under section 251(b)(3) if it offers call completion services.[18] SBC would submit that such a directory assistance service provider would not be a "competing" provider of telephone service. To the extent that these calls are simply handed off to a separate carrier, the directory assistance provider would not be providing competing telephone service and would not be entitled to the benefits of section 251(b)(3). Even if the directory assistance service provider furnished "carriage" to the end user, contrary to the assertions of parties such as LSSI and INFONXX,[19] that carriage would not compete with the service of the local exchange carrier because it would not be offered separately to the public, as are the services of the LEC, but rather only as an adjunct to the directory assistance service. This is especially true if the directory assistance provider is a national provider. In that case, the person asking the directory assistance provider for a listing for one of Carrier A's customers, for example, may not be placing the query from Carrier A's service area. Thus, if the directory assistance provider provided call completion service for that call, it would not be doing so in connection with its provision of telephone exchange or toll service in competition with Carrier A since Carrier A could not even carry the call.

The purpose of section 251(b)(3) is to facilitate the competitive provision of telephone service by making it easier for a competitor to provide full service to its customers by also providing directory assistance. It was not intended to facilitate the provision of stand-alone

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[18] NPRM at ¶ 185.

[19] LSSI at 11-12; INFONXX at 11-12.

directory assistance service no matter how laudable a goal the Commission might believe that to be. If that were the case, the beneficiaries of section 252(b)(3) would not be specifically limited to competing providers of telephone service.[20]

B. Permitted Use of Directory Assistance Information.

The Commission notes that section 251(b)(3) does not, by its terms, appear to limit the use of directory assistance data obtained pursuant to that section solely to the provision of directory assistance.[21] SBC suggests that there is no express use limitation in the section because Congress intended that competing providers only have access to directory assistance, not directory assistance information unbundled from directory assistance. The fact that the section is entitled *Dialing Parity* and that the section ends with the words "with no unreasonable dialing delays" is strong evidence that Congress contemplated only that competitors and their customers could have dialing access to the directory assistance service of the LEC. In that case, there would be no need to specify a use limitation. The nature of the access itself would limit the

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[20] The Commission also inquires as to whether a non-carrier provider of directory assistance is entitled to access to directory assistance under 251(b)(3) when that provider is an agent of another carrier that qualifies under that section. (NPRM at ¶184.) The Commission need not address that issue because the answer lies in the general principles of agency law. Obviously, an agent acts for its principal and is subject to limitations applicable to the principal. The situation, however, could probably best be viewed from a different perspective. It is clear that, under the Commission's rulings, a competing provider of telephone service would be entitled to access directory assistance information and to transfer that information to a third-party contractor (not an agent) for use in the provision of directory assistance to the competing carrier and its customers. However, the third party's use of the information must be restricted solely to the provision of directory assistance service to a customers of the competing carrier in connection with that carrier's provision of telephone service in competition with the LEC from whom the information was obtained. Despite the comments of Teltrust (at 8), Excel (at 8-9), Time Warner (at 4), and INFONXX (at 14-20), this "agency" arrangement cannot be used as a vehicle to leverage a stand-alone national directory assistance operation which, as noted above, was clearly not contemplated by Congress when it drafted and adopted the statute.

[21] NPRM at ¶186.

functionality to that appropriate to the provision directory assistance in connection with competing telephone service – i.e., the competing telephone service provider could offer its customers directory assistance by routing their calls to the directory assistance service of the LEC.

That being said, even if the statute is read as entitling competing telephone service providers to unbundled directory assistance information, the fact that the class of beneficiaries of this section is limited necessarily implies that the permitted purpose for which the information may be used is also limited. In other words, the fact that only competing providers of telephone service are entitled to the information necessarily implies that the information may only be used in connection with the provision of that competing telephone service. Otherwise, the limitation on the entities entitled to the information would have no meaning. If, for example, the competing telephone service provider could sell the information to a mailing list broker, there would have been no reason for Congress to limit the entities entitled to the information in the first place. It would have required LECs to make the information available to anyone, including mailing list brokers. Similarly, if the competing telephone service provider used the information to provide directory assistance service in connection with long distance service that did not compete with the LEC,[22] the provider would have an advantage over an interexchange carrier that did not provide originating service in competition with the LEC and who was not entitled to access to the LEC's directory assistance. If Congress had wanted the information to be used in connection with any telephone service, it would have avoided this inequitable situation by not

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[22] E.g., by providing directory assistance information about the LEC's subscribers to potential calling parties in other states.

limiting the beneficiaries of the section to competing providers of telephone service. The Commission must, therefore, give meaning to the statutory provision by limiting the permitted use of directory assistance information obtained under section 251(b)(3) only to the provision of directory assistance service in connection with the provision of competing telephone service.

V. SECTION 252(b)(3) DOES NOT ENTITLE COMPETITIVE PROVIDERS TO ACCESS TO NON-LOCAL OR THIRD-PARTY DIRECTORY ASSISTANCE INFORMATION.

The Commission has asked whether LECs providing national directory assistance must provide nondiscriminatory access to non-local directory assistance data under section 251(b)(3) and also whether that section requires LECs to provide nondiscriminatory access to any non-local directory assistance data that they use to provide directory assistance to customers within their service areas.[23] In addition, the Commission asks for general comments on whether that section would authorize the Commission to require a LEC to provide access to directory assistance data that it has obtained from third parties.[24] The answer to each of these questions is no.

In ruling on the requirements of section 222(e) concerning SLI, the Commission properly concluded that a provider of telephone exchange service is not obligated to act as a

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[23] NPRM at ¶193.

[24] *Id.* at ¶194.

"clearinghouse" for SLI in its possession that relates to the subscribers of other carriers.[25] While the Commission based its decision on specific limiting language contained in section 222(e), the Commission should read section 251(b)(3) in parallel, especially to the extent that it interprets that latter section as obligating LECs to provide access to directory assistance information unbundled from directory assistance service. In the case of section 222(e), the interests of competitive directory publication are furthered if each provider of telephone exchange service is required to provide SLI pertaining to its own customers. There is no need to require any local carrier to act as a clearinghouse when each local carrier has an obligation to provide SLI concerning its own customers to any potential directory publisher on request. Similarly, to the extent that 251(b)(3) is interpreted as requiring LECs to provide directory assistance information, to competing carriers so that those competing carriers can provide directory assistance to their own customers, that interest is satisfied if each LEC is required to provide such information about its own customers to competitors. There is no need to require any LEC to act as an clearinghouse for information concerning other carriers' customers since any competing carrier can obtain such information to which is entitled by contacting those other carriers directly.

Moreover, in many cases, LECs such as certain SBC affiliates are contractually prohibited from making the directory assistance information of other carriers available separately from rendering directory assistance service. The reasons for these contractual restrictions should be apparent. Other local exchange carriers want to retain a modicum of

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[25] *Id.* at ¶54.

control over information about their customers.

Some parties may argue that requiring a LEC to act as a clearinghouse for this information does not compromise the interests of independent telephone companies or competitive LECs whose information is listed in the LEC's directory assistance database because the independent telephone companies and competitive LECs would have to provide the information anyway. That, however, is not always the case. An example will illustrate the point.

If Carrier A provides local exchange service in competition with Carrier B in Carrier B's service area, Carrier A would be entitled under section 251(b)(3) as interpreted by the Commission to the directory assistance information concerning Carrier B's local exchange customers in that service area. Assume that Carrier B had negotiated an agreement with Carrier C, a local exchange carrier providing service in a neighboring area in which Carrier A does not offer service, to include Carrier C's listings in Carrier B's directory assistance database. The Commission should not require that Carrier B turn over Carrier C's listings, especially over the objections of Carrier C, because Carrier A would not be entitled to obtain those listings directly from Carrier C since Carrier A is not offering local exchange service in competition with Carrier C. It makes sense, therefore, simply to require those entities who seek directory assistance information under the auspices of section 251(b)(3) to obtain that information directly from the carrier whose listings are involved.

While some parties claim that LECs[26] have "bottleneck" or "leverage" capability with

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[26] It must be remembered that Congress applied the provisions of section 251(b)(3) to all LECs, not just incumbents.

respect the acquisition and use of directory assistance information, the same argument could be said with respect to directory publication and Congress specifically chose to afford that claim no weight when it directed that providers of telephone exchange service need not act as clearinghouses for SLI.

The Commission must remember that the 1996 Act was intended by Congress to be primarily de-regulatory in nature. The Joint House-Senate Conference Committee referred to its report of the Telecommunications Act of 1996 to both Houses of Congress as being "to provide for a pro-competitive, de-regulatory national policy framework..." Given this, the Commission should not impose additional requirements not specifically called for by the statutory language. In this case, the purposes of section 251(b)(3) in promoting local competition are fulfilled by simply requiring LECs to provide directory assistance information concerning their own customers – just as the statutory interest in furthering competition in directory publication was satisfied by requiring providers of local exchange service to provide SLI only with respect to their own customers.

Finally, in its National Directory Assistance Order,[27] the Commission addressed the issue of potentially inappropriate leverage of BOC "bottleneck" position with respect to third-party directory listings. In that case, the Commission determined that a national directory assistance service constituted an interLATA information service subject to the requirements of section 272. As a condition for forbearance from the separate subsidiary the requirements of section 272, the

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[27] *In the Matters of Petition of US West Communications, Inc. for Declaratory Ruling Regarding the Provision of National Directory Assistance, et al.*, CC Docket Nos. 97-172, 92-105, Memorandum Opinion and Order, FCC 99-133 (rel. September 27, 1999) ("National Directory Assistance Order").

Commission considered whether a BOC should be required to make directory list information available to others, essentially retaining the nondiscrimination requirement of section 272(c)(1) with respect to that information. The Commission found no reason to retain such an obligation with respect to the telephone numbers of customers outside the BOC's region.[28] For in-region listings, including telephone numbers of customers of independent LECs and competitive CLECs operating in the BOC's region, the Commission decided to leave the non-discrimination requirement of section 272(c)(1) in place.[29] Given this and the explicit "safeguard" that section 272 provides with respect to out-of-region (national) and other third-party listings, the Commission should not infer an essentially parallel requirement in the context of section 251(b)(3) – especially in light of the de-regulatory nature of the 1996 Act.

VI THE PRICING OF DIRECTORY ASSISTANCE INFORMATION CONSISTENT WITH THE COMMISSION'S SECTION 222(e) STANDARDS SHOULD BE DEEMED REASONABLE.

The Commission has asked 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).[30] The Commission, at a minimum, should find that, if a LEC that prices directory assistance information under section 251(b)(3) consistent with the standards the Commission articulated for pricing SLI under section 222(e), then such rates should be

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[28] *Id.* at ¶33.

[29] *Id.* at ¶34.

[30] NPRM at ¶188.

deemed presumptively reasonable.

In its Local Competition Second Report and Order, the Commission specified:

> In the absence of an agreement between the parties, unbundled element rates for operator services and directory assistance are governed by section 252(d)(1) and our rules thereunder.[31]

That, of course, was predicated on the Commission's initial finding that directory assistance is an unbundled element under section 251(c)(3).[32] However, the Commission recently issued a news release[33] announcing its adoption of new rules concerning the unbundling obligations of incumbent LECs under section 251(c)(3) after consideration of the Supreme Court's opinion on the application of the "necessary" and "impair" tests embodied in section 251(d)(2).[34] That announcement states, in relevant part:

> Incumbent LECs are not required to unbundled their OS/DA services pursuant to section 251(c)(3), except in the limited circumstance where an incumbent LEC does not provide customized routing to a requesting carrier to allow it to route traffic to alternative OS/DA providers.

Given the fact that, under normal circumstances, access to directory assistance is no longer required to be provided on an unbundled basis under section 251(c)(3), the TELRIC pricing standards adopted by the Commission pursuant to section 252(d)(1) do not apply since that

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[31] *In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al;* CC Docket Nos. 96-98 et al; Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd. 19392 (rel. August 8, 1996) ("Local Competition Second Report and Order") at ¶118.

[32] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al;* CC Docket Nos. 96-98, 95-185, First Report and Order, FCC 96-325, 11 FCC Rcd. 15499 (rel. August 8, 1996) ("Local Competition First Report and Order") at ¶534.

[33] "FCC Promotes Local Telecommunications Competition – Adopts Rules on Unbundling of Network Elements", Report No. CC 99-41 (rel. September 15, 1999).

[34] See *AT&T,* 119 S. Ct. at 734-736, 142 L.Ed. 2d at 854-857.

section only applies to interconnection and network elements provided under sections 251(c)(2) and (3).

In deciding an appropriate pricing standard for the provision of SLI under section 222(e), the Commission rejected arguments that the 1996 Act requires that subscriber list information rates be based on incremental cost.[35] Moreover, the Commission found that, in the past, it had set rates based on incremental cost plus a reasonable contribution to common costs and overheads. It then adopted this as the appropriate pricing standard for SLI.[36] In addition, the Commission took a look at the evidence before it and concluded that a rate of $0.04 per listing for base file information and $0.06 per listing for update information should be deemed presumptively reasonable.[37]

For the same reasons that the Commission came to these conclusions in the context of SLI under section 222(e), the Commission should similarly conclude that a LEC's rates for directory assistance information are reasonable if they are based on incremental cost plus a reasonable allocation of common costs and overheads, and also that rates of $0.04 per listing for base file information and $0.06 per listing for update are presumptively reasonable. Adoption of the same standard will facilitate ease of administration of the Commission's requirements, both for carriers and their customers and for the Commission in case disputes should arise. To further this goal, the Commission should also clarify that states are precluded from imposing different

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[35] NPRM at ¶83.

[36] *Id.* at ¶¶85, 92.

[37] *Id.* at ¶¶94, 99, 103.

pricing standards. Otherwise, the Commission would be put in a position of having to review LEC compliance with potentially numerous and conflicting state standards if it were presented with section 208 complaints on the issue.

VII. CONCLUSION

In the light of the foregoing, the Commission should conclude:

First, neither an Internet directory search service nor an oral directory assistance service constitutes directory publication for the purposes of section 222(e).

Second, section 251(b)(3) obligates LECs to provide directory assistance only to "competing providers of telephone exchange service and telephone toll service" and only for use in connection with their provision of competing telephone exchange or telephone toll service. Thus, stand-alone, third-party directory assistance service providers are not entitled to the benefits of that section.

Third, to the extent that the Commission interprets section 251(b)(3) as obligating LECs to provide directory assistance information unbundled from directory assistance service, the LEC is not obligated to provide access to national or other third-party directory listing information contained in its directory assistance database.

Fourth, the Commission's TELRIC pricing rules do not apply to the provision of directory assistance or directory assistance information under section 251(b)(3). Further, pricing consistent with the standard applicable to SLI under section 222(e) is presumptively reasonable.

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CERTIFICATE OF SERVICE

I, Grace Germain, do hereby certify that a copy of the Reply Comments of SBC Communications Inc. has been hand delivered to the parties listed below on this 28th day of October, 1999.

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