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November 9, 1999

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BY HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, D.C. 20554

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

Dear Ms. Salas:

Pursuant to Section 1.1206(b) of the Commission's Rules, this letter is to inform the Commission of a meeting which took place on November 8, 1999, among Kelly Cameron of this office, Brett Haan of Telegate AG, and Yog Varma, Charles Keller, Jared Carlson and William Bailey of the Commission staff. The purpose of this meeting was to discuss issues addressed in Telegate's comments and reply comments submitted on October 13, 1999, and October 28, 1999, respectively, in the above-captioned rulemaking proceeding. A copy of those comments is attached hereto for reference.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,

Robert L. Galbreath

For Powell, Goldstein, Frazer & Murphy LLP

RLG/gm
Attachment
Cc: Yog Varma
Charles Keller
Jared Carlson
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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20554

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

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OCT 13 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF TELEGATE AG

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Its Attorney

October 13, 1999

I. SUMMARY

The public interest requires the opening of the directory assistance market more fully to competition. This should be a fully competitive market, but there are two obstacles: limited access to directory assistance databases and the fact that there is a single standard directory assistance dialing code — 411 — that allows the serving telephone company to provide this service non-competitively. The Commission should carry out Congress's intent to make all telecommunications markets competitive by countering these obstacles. This can be accomplished by (1) giving non-carriers nondiscriminatory access to directory assistance databases and (2) either ending the use of 411 for directory assistance or opening 411 up to competition and allowing customers to choose their provider of directory assistance service, just as they can choose their primary interexchange carrier.

Since its founding in Germany in 1996, Telegate AG has grown into a leading competitive directory assistance provider in Europe. Telegate has created over 2000 new jobs, mostly in Eastern Germany, an area with chronic high unemployment. Telegate provides new directory assistance products that respond to consumer demand. This was made possible by the European Union's determination to facilitate the provision of directory assistance as a competitive service, instead of leaving it to be dominated by the PTTs. Telegate plans to become a competitive U.S. directory assistance provider, provide new services to consumers, and create jobs, but it faces the daunting obstacle that directory assistance is not yet a competitive service in the United States.

First, there needs to be nondiscriminatory access to up-to-date, accurate directory assistance databases. Section 251 only requires telephone companies to give other telecommunications carriers access to these databases, but non-carrier directory assistance providers need access as well. The Commission should make clear in this rulemaking that the procompetitive, market-opening objectives of the Telecommunications Act would be served by finding that the public interest — and in particular the interest of consumers — would be served by opening access to these databases further. The Commission's ancillary jurisdiction, its general rulemaking powers, and its Title II jurisdiction over common carriers give the Commission ample authority to adopt such a requirement.

The next obstacle is the numbering system used by consumers to reach local directory assistance. Unlike Europe, the United States uses a single number for local directory assistance — 411. This number is, as a practical matter, only available to the incumbent telephone company serving a given customer. As a result, the continued use of 411 for directory assistance serves to perpetuate the non-competitive delivery of this service, which the European example shows can flourish as a competitive service.

One way to address this is to end the use of 411 as a standardized directory assistance number. This would provide a clean break with the non-competitive provision

of directory assistance service and foster a fully competitive industry. This is the way Europe brought competitive directory assistance to consumers.

However, the FCC has noted that the 411 number serves the public interest, while also acknowledging the anticompetitive aspect of allowing that number to be used by the incumbent telephone company for competitive services. A procompetitive solution that would be consistent with prior FCC policies, would be to follow the example of competitive long-distance service. Customers have the ability to choose their primary long-distance carrier in a balloting process and need not memorize any special codes to use their chosen carrier by default. The extension of this system to directory assistance service would give customers the ability to choose the company they use for 411 directory assistance calls. Such a policy for directory assistance is consistent with how the FCC has treated long distance service. This will clearly benefit consumers and fulfill the policy objectives of the Telecommunications Act.

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Provision of Directory Listing	)	CC Docket No. 99-273
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As Amended	)	

To: The Commission

COMMENTS OF TELEGATE AG

Telegate AG,[1] by its attorney, hereby submits these comments in response to the Commission's *Notice of Proposed Rulemaking*, CC Docket No. 99-273, FCC 99-227 (Sept. 9, 1999).

The *Notice* tentatively concludes that non-carrier providers of directory assistance "play an increasingly important role in ensuring that consumers receive the benefits of competition in all telecommunications related services" and that "the presence of these directory assistance providers benefits competition, and that [the Commission] should encourage such competition in the provision of directory assistance." *Notice* at ¶183. Based on these tentative conclusions, the Commission seeks comment on whether non-

[1]Telegate AG was founded in Germany in August 1996. Since the opening of directory assistance in the EU to competition, Telegate has become a leading provider of directory assistance service in Germany, and is expanding its services to other European nations as well. Telegate hopes to enter the U.S. directory assistance service market, also, but is concerned about the barriers to true competition that still exist here.

carrier providers of directory assistance ("DA") should be entitled to non-discriminatory assess to the directory assistance databases of incumbent local exchange carriers ("ILECs"). *Id.* at ¶¶184, 190-91.

As discussed below, Telegate believes that unquestionably the answer is yes. Telegate also urges the Commission to continue building a procompetitive framework for the provision of services to telephone customers by facilitating the provision of DA on a competitive basis. Specifically, the Commission should adopt rules that would require balloting by local exchange carriers ("LECs") with regard to DA. By doing so, the Commission will fulfill the procompetitive, market-oriented objectives of the Telecommunications Act.

I. THE COMMISSION SHOULD ADOPT RULES REQUIRING LECS TO PROVIDE NON-DISCRIMINATORY ACCESS TO THEIR DIRECTORY ASSISTANCE DATABASES FOR ALL COMPETITIVE PROVIDERS OF DIRECTORY ASSISTANCE, REGARDLESS OF CARRIER STATUS

Telegate concurs with the Commission's tentative conclusion that non-carrier DA providers serve the public interest by ensuring that DA is provided on a competitive basis. *Id.* at ¶183. In addition to competing with ILECs in the provision of DA, non-carrier DA providers serve the public interest by providing new and innovative services. *Id.* at ¶190. These public interest benefits will disappear, however, if ILECs are not required to provide non-carrier DA providers with non-discriminatory access to ILEC DA databases.

Without access to ILEC DA databases, non-carrier DA providers must rely on information obtained from other commercial sources such as credit companies, U.S. Postal Service, and magazine subscription companies. The sources are inherently unreliable, however, because the information is updated very infrequently. Moreover, these commercial sources do not generally indicate whether a particular telephone number is otherwise unlisted. Thus, a competitive DA provider relying on these commercial sources may distribute an otherwise unlisted number. These problems

associated with commercial databases undermines the ability of non-carrier DA providers to become effective competitors to ILEC DA.[2]

At least two state commissions have adopted rules requiring ILECs to provide non-discriminatory access to their DA databases by non-carrier DA providers.[3] In both instances, the commissions recognized the importance of non-carriers providing DA. According to the New York Public Service Commission, competition in the provision of DA is necessary to "promote adequate telephone service at just and reasonable rates."[4] To ensure the continued development of such competition, the New York PUC required each ILEC "to provide access to its directory databases to *any entity* that requests it for the purpose of . . . providing directory assistance service."[5] Similarly, the California Public Utilities Commission required ILECs to "provide nondiscriminatory access to their DA database listings to all competitors, *including third-party database vendors* and shall provide access by readily accessible tape or electronic format."[6]

Given the FCC's determination that non-carrier DA providers serve the public interest by ensuring the availability of competitive DA services, Telegate submits that the FCC should adopt rules requiring ILECs to provide non-discriminatory access to their DA databases by non-carriers. As the record to date in this proceeding has established, ILECs have generally refused to provide non-discriminatory access to their DA databases by non-carriers absent a regulatory requirement.

Section 251(b)(3) requires all LECs to provide other telecommunications carriers with access to their DA databases, but it is silent with respect to providing such access to

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[2]*See generally* Letter from Richard Thayer, Excell, to William F. Caton, Secretary, FCC (Sept. 18, 1997) ("*Excell Ex Parte*").

[3]California Public Utilities Commission, *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, R.95-04-043 (Jan. 23, 1997); New York Public Service Commission, *Order Regarding Directory Database Issues*, Case 94-C-0095 *et al.* (July 19, 1998).

[4]New York Public Service Commission, *Order Regarding Directory Database Issues*, Case 94-C-0095 *et al.* (July 19, 1998).

[5]*Id.* (emphasis added).

[6]California Public Utilities Commission, *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, R.95-04-043 (Jan. 23, 1997)(emphasis added).

non-carrier DA providers. Accordingly, the Commission appears to be correct when it claims that Section 251(b)(3) does not guarantee such access to non-carrier DA providers, except insofar as they are acting as agents for carriers.[7] That does not end the inquiry, however.

The Commission has in the past sought to further the procompetitive objectives underlying the provisions of Section 251 by extending their protections beyond the limits of that section, pursuant to its ancillary jurisdiction and general rulemaking authority.[8] The Commission followed this approach, for example, when it subjected commercial mobile radio service ("CMRS") providers to its number portability requirements.[9] Only LECs are subject to the statutory number portability requirements, as set forth in Section 251(b)(2), and CMRS providers are not classified as LECs. Nevertheless, the Commission found that extending the number portability requirement to these providers would "serve the public interest by promoting competition between and among local wireless and wireline carriers, as well as among providers of interstate access service."[10]

Following this example, the Commission clearly has jurisdiction to require all LECs to provide non-discriminatory access to non-carrier DA providers pursuant to its ancillary jurisdiction and general rulemaking powers.[11] At the same time, the

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[7]The fact that the only way non-carriers can require LECs to provide them with access to the DA database is by acting as an agent for a telecommunications carrier has artificially skewed the DA market. As the Commission notes, some non-carrier DA providers enter into agency relationships with carriers. *Notice* at ¶184. Under Section 217, 47 U.S.C. § 217, a non-carrier DA provider in such circumstances stands in the shoes of the carrier principal. Thus, Section 251 would require a LEC to provide access to its DA database to such "non-carriers" when they are acting as an agents for telecommunications carriers.

The fact that non-carrier DA providers can currently obtain mandatory access to the DA database only by acting as agents for carriers artificially shapes the DA marketplace. It forces companies that would be full-fledged competitors, if the game were not limited to carriers, to act only as agents on behalf of those holding seats at the table because of their carrier status. As a result, the number of competitors is artificially constrained and consumers are denied the benefits of fully competitive delivery of this service.

[8]*See* 47 U.S.C. §§ 151, 152(a), 154(i), (j), 201, 202, 303(r).

[9]*See, e.g., Telephone Number Portability,* CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking,* 11 FCC Rcd. 8352, 8434-36 (1996), *recon. denied, First Memorandum Opinion and Order on Reconsideration,* 12 FCC Rcd. 7236, ¶¶ 140-42 (1997); *Third Report and Order,* 13 FCC Rcd. 11,701 (1998).

[10]*Third Report and Order,* 13 FCC Rcd. at ___ [¶ 18]; *accord First Memorandum Opinion and Order,* 12 FCC Rcd. at ___ [¶ 141]; *First Report and Order,* 11 FCC Rcd. at ___ [¶ 153].

[11]*See* Sections 1, 2(a), 4(i), 303(r), 47 U.S.C. § 151, 152(a), 154(i), 303(r).

Commission has full authority to regulate common carrier practices, such as LECs' provision of access to DA databases, pursuant to Sections 201 and 202. Under Section 201(b), the practice of providing non-discriminatory access to DA databases for some DA providers, but not all, constitutes an unjust and unreasonable practice. Similarly, such a practice constitutes unjust and unreasonable discrimination pursuant to Section 202(a). It is unreasonable to exclude one class of DA providers from obtaining nondiscriminatory access to DA databases. As explained below, it also is unreasonable because non-carrier DA providers can obtain the information (in essence) contained in an ILEC's DA database if the DA provider publishes the directories. If the information is available for directory publication, it also should be available for the provision of DA.

Section 222(e) of the Communications Act requires all telecommunications carriers, including ILECs, to "provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." 47 U.S.C. § 222(e). Thus, a non-carrier can obtain all the information necessary for DA if it intends to publish directories. These directories could be electronic and used by non-carrier operators to provide DA. It would be unreasonable to require non-carriers to create and use public, electronic telephone directories simply to provide competitive directory assistance. Thus, DA providers should be entitled to obtain the information solely for the provision of DA.

II. THE U.S. NUMBERING PLAN SHOULD BE ALTERED TO PROMOTE COMPETITION IN THE PROVISION OF DIRECTORY ASSISTANCE

In addition to requiring ILECs to provide nondiscriminatory access to their DA databases by non-carrier DA providers, the Commission should take further steps to facilitate the provision of DA on a competitive basis. As the Commission has acknowledged, the use of the 411 dialing code affords ILECs with an inherent competitive advantage in the provision of DA services — which "stem[s] from [their]

dominant position in the local exchange and exchange access markets."[12] Moreover, the Commission has recognized that ILECS "will retain [their] advantageous use of the 411 dialing code until [their] local markets are open to competition."[13] To foster increased competition, Telegate urges the Commission to eliminate the use of 411 and instead, adopt a system similar to one used by the European Union ("EU").

Telegate has extensive experience in providing DA in Europe, where EU authorities concluded that incumbent PTTs' dominant position in the DA market stifled competition. To promote competition, the EU made DA a competitive market and gave national regulatory authorities legal grounds for changing the numbering system to promote competitive delivery.[14] As a result, where EU decisions have been implemented, no single dialing code, such as 411 in the United States, automatically provides a customer with DA. Instead, DA providers each possess a unique dialing code by which customers can access the DA service of their choosing. This system has proved to foster competition in Europe and improve the quality of service. Moreover, because customers must consciously choose a DA provider, there is a stronger incentive for providers to educate consumers of the available DA plans, thereby facilitating informed, rational consumer choice. This also gives DA providers incentives to search aggressively for new ways to meet consumer demand.

Telegate is an example of how this procompetitive policy has succeeded. Since it was established in 1996, Telegate has taken advantage of the European demonopolization of DA by providing a variety of DA-related services. In Germany, it provides up-to-date telephone number information for subscribers on the landline telephone network as well

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[12] *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance,* CC Docket No. 97-172, *Memorandum Opinion and Order,* FCC 99-133, at ¶ 35 (Sept. 27, 1999) ("*U S WEST Order*").

[13] *Id.,* at ¶ 44.

[14] *See* Status Report on European Union Telecommunications Policy – Update: March 1999, Brussels, March 22, 1999 at 24-25 *citing* Commission Directive of 13 March 1996 amending Commission Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets (96/19/EC; OJ L 74/13, 22.03.1996). The Status Report may also be viewed on the Internet at www.ispo.cec.be/infosoc/telecompolicy/en/tcstatus.doc

as all wireless networks. In addition, it provides specialized information services, such as DA for calls to other nations, Turkish-language DA service, as well as cinema listings, weather, and other services. In three short years, Telegate has created over 2000 new jobs, mostly in the former East Germany, where there is chronically high unemployment. Telegate puts all of its DA operators through an extensive training program, producing highly trained professionals who provide efficient service that earns high customer satisfaction ratings.

Accordingly, Telegate urges the Commission to capitalize on the experiences of the European Union and level the DA playing field by altering the numbering plan in the United States, starting with the elimination of the single-provider 411 dialing code.

III. IF THE U.S. NUMBERING PLAN IS NOT ALTERED, THEN LECS SHOULD BE REQUIRED TO BALLOT ALL CUSTOMERS REGARDING THE PROVISION OF DIRECTORY ASSISTANCE

Telegate understands the Commission's view that customers "benefit from the convenience of using the 411 or 1-411 dialing code" because the public has become accustomed to obtaining DA via the 411 dialing code.[15] Indeed, the Commission decided in its *N11 Order* that retaining the 411 code for directory assistance was "justified by public convenience and necessity."[16] However, the Commission there also recognized that this code should not give ILECs a competitive advantage over information service providers competing with them.[17] If the Commission continues to believe that the benefits of using 411 for directory assistance warrant retention of that standard number over changing to a dialing plan that is truly procompetitive, it can nevertheless promote a competitive environment by no longer limiting this code to a single carrier's exclusive use.

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[15] *Id.*, at ¶ 51.

[16] *Use of N11 Codes and other Abbreviated Dialing Arrangements,* CC Docket No. 92-105, *First Report and Order and Further Notice of Proposed Rulemaking,* 12 FCC Rcd. 5572, ¶ 47 (1997).

[17] *Id.* at ¶ 48.

The Commission clearly has jurisdiction to accomplish this. Under Section 251(e)(1),[18] the Commission has exclusive and plenary jurisdiction over the North American Numbering Plan in this country. Indeed, the *N11 Order*, in which the Commission retained the 411 dialing code, was adopted under authority of Section 251(e)(1), as well as other provisions of the Communications Act.[19] The Commission therein ordered, pursuant to this authority, that "a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services."[20] Now that Europe has shown that DA can flourish as a competitive business, the Commission should take the further step of opening up the 411 code to all providers of DA pursuant to its exclusive authority over the NANP in the United States.

The optimal method for eliminating the competitive advantage associated with use of the 411 code by the ILEC is to eliminate its exclusivity. As at least one ILEC has conceded that there is no technical reason this cannot be accomplished by having customers pre-select their DA provider just as they do their long distance carriers.[21] By requiring a balloting and allocation system, the Commission would ensure that no one company would enjoy the benefit of being assigned the 411 dialing code. Moreover, through a process of allocating unpresubscribed customers fairly among DA providers, the Commission would be able to guarantee all DA providers equal treatment, and in turn, help to level the playing field among providers. At the same time, consumers benefit because they can access their DA provider of choice simply by dialing the traditional 411 DA number.

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[18] 47 U.S.C. § 251(e)(1).

[19] *N11 Order* at ¶ 13.

[20] *N11 Order* at ¶ 86.

[21] *U S WEST Order* at n.103. While U S WEST acknowledged that opening up the 411 code was technically feasible, it also claimed that per-customer revenues from DA do not justify the substantial costs of implementing such a system. There is little evidence to support this claim. Ironically, similar arguments were raised and rejected by the Commission when it proposed to require BOCs to assign IXCs pursuant to a balloting and allocation plan. *See Allocation Order* at ¶ 24.

This approach mirrors that taken by the MFJ court to promote unfettered competition for the provision of interexchange services. Specifically, the court required the Bell Operating Companies ("BOCs") to permit their customers to "presubscribe" to an interexchange carrier ("IXC") of their choice, rather than the provider chosen by the BOCs.[22] Thus, for the first time, a customer could access the services of the IXC of its choice by simply dialing a "1." Among the plans developed to implement the MFJ court's presubscription requirement, Northwestern Bell ("NWB") implemented a *pro rata* balloting and allocation plan. The Commission recognized the success of this plan in fostering competition, noting that the NWB plan enjoyed nearly double the amount of customer participation in presubscribing an IXC than other BOCs (60-70% participation versus 30%). Based on the experience of NWB, the Commission decided to require all BOCs to assign IXCs pursuant to a balloting and allocation plan.[23] According to the Commission, such a balloting and allocation plan would foster "rational, informed choices" by customers and in turn, "promote" efficient functioning of the market."[24] Indeed, five years after mandating equal access by balloting and allocation, the Commission recognized that the divestiture of AT&T combined with the implementation of equal access effectively "removed the principal structural barriers, thereby paving the way for heightened long-distance competition."[25] Today, AT&T is confronted with a number of rivals in the long-distance industry, and thus, customers are able to choose from a variety of providers whose services can be accessed both by presubscription and by specific dialing codes.

Based on the foregoing, DA presubscription is not a unique concept. As in the interexchange context, consumers will benefit because they will be able to access the

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[22]*United States v. AT&T,* 552 F. Supp. 131, 196 (D.D.C. 1982), *aff'd sub nom Maryland v. United States,* 460 U.S. 1001 (1983) ("MFJ").

[23]*Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145 Phase I, 101 FCC 2d 911, ¶ 21 (1985).

[24]*Id.*

[25]*See Competition in the Interstate Interexchange Marketplace,* CC Docket 90-332, *Notice of Proposed Rulemaking*, FCC 90-90 (1990).

services of the DA provider of their choice simply by dialing 411. Accordingly, LEC customers should be entitled to choose their DA providers pursuant to a balloting and allocation plan similar to the one used for assigning IXCs.

CONCLUSION

Telegate supports the Commission's efforts to foster competition in the provision of competitive DA services. To ensure effective competition, however, two steps must be taken. First, *all* DA providers must be entitled to nondiscriminatory access to ILEC DA databases. Second, LECs should be required to assign DA providers to their subscribers pursuant to a balloting and allocation plan similar to that associated with the assignment of IXCs.

Respectfully submitted,

TELEGATE AG

By: _____

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October 13, 1999

CERTIFICATE OF SERVICE

I, Carla Littlejohn, hereby certify that copies of the attached Comments of Telegate AG, were served on October 13, 1999, via hand delivery, on the following parties:

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Washington, D.C. 20554

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OCT 28 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS OF TELEGATE AG

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Its Attorneys

October 28, 1999

SUMMARY

The public interest requires the opening of the directory assistance market to robust competition. This should be a fully competitive market, but there are two obstacles: limited access to directory assistance databases and the fact that there is a single standard directory assistance dialing code — 411 — that allows the serving telephone company to provide this service non-competitively. The Commission should carry out Congress's intent to make all telecommunications markets competitive by eliminating these barriers to competition. This can be accomplished by (1) giving non-carriers nondiscriminatory access to directory assistance databases and (2) either ending the use of 411 for directory assistance or opening 411 up to competition and allowing customers to choose their provider of directory assistance service, just as they can choose their primary interexchange carrier.

First, there needs to be nondiscriminatory access to up-to-date, accurate directory assistance databases. Section 251 only requires telephone companies to give other telecommunications carriers access to these databases, but non-carrier directory assistance providers need access as well. The Commission should make clear in this rulemaking that the pro-competitive, market-opening objectives of the Telecommunications Act would be served by finding that the public interest — and in particular the interest of consumers — would be served by opening access to these databases further. The Commission's ancillary jurisdiction, its general rulemaking powers, and its Title II jurisdiction over common carriers give the Commission ample authority to adopt such a requirement.

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The comments submitted in this proceeding plainly demonstrate the need for Commission action. Providers of new and innovative service offerings provide ample evidence of the limitations placed on their services by the current practices of the incumbent local exchange carriers. These incumbent carriers seek to maintain the status quo and protect their favored position in the market. Despite the carriers' claims to the contrary, Telegate and other similar parties have demonstrated overwhelmingly that the Commission has both the statutory authority and public policy mandate to take steps to open the market for competitive directory services.

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To: The Commission

REPLY COMMENTS OF TELEGATE AG

I. Introduction

Telegate AG, by its attorneys, hereby submits these reply comments in response to the Commission's *Notice of Proposed Rulemaking*, CC Docket No. 99-273, FCC 99-227 (Sept. 9, 1999)("NPRM"). The record before the Commission clearly demonstrates that the Commission must eliminate two bottlenecks that impede competition in directory publishing and directory assistance. The first bottleneck is unreasonable and discriminatory control over access to directory assistance databases and subscriber list information. Other commenters rightly emphasize the critical importance of nondiscriminatory access to this information for competitive providers of directory services. The second bottleneck, which Telegate identified in its initial comments, is the incumbent local exchange carrier ("ILEC") control of the nationally-established directory assistance number, 411.

The incumbents, who continue to enjoy a monopoly position in this market, predictably argue that the Commission cannot, or should not, act to open the directory assistance market to full competition.

On balance, however, the comments demonstrate that the Commission has ample authority to require ILECs to give all competitors fair and nondiscriminatory access to

directory assistance databases and subscriber list information. Moreover, the fundamental purpose of the 1996 Telecommunications Act – opening all telecommunications markets to competition – requires that the Commission eliminate these bottlenecks.

Consumers of a wide range of telecommunications services are enjoying the benefits of the Commission's pro-competitive policy framework. These benefits include technical innovation, better customer service, and cost-based pricing. The comments in this proceeding attest that competitive providers of directory assistance services are already providing these benefits.

In addition, Telegate's experience in Germany shows that competition in the directory services market will also provide increased service to unserved or underserved populations, such as the large Turkish-speaking population in Germany. The special needs of minority communities in the United States are often ignored by the entrenched incumbent providers of directory services. Robust competition in the directory services market will ensure that all Americans have access to the advanced services offered by competitive providers.

The comments in this proceeding make clear that consumers will enjoy these benefits only if the Commission opens the directory services market to full and fair competition by eliminating the remaining bottlenecks that now impede competition.

II. The Commission Should Give All Competitors Access To Directory Assistance Databases Pursuant To Section 251(b)(3)

A review of the comments makes it clear that the companies that presently dominate the directory assistance market are attempting here to manipulate the explicit language of section 251(b)(3) of the Communications Act of 1934, as amended (the

"Act")[1] and to undermine the underlying pro-competitive purpose of the Telecommunications Act in order to limit competition as much as possible. The Commission must interpret section 251(b)(3) broadly for several reasons. First, the Telecommunications Act was intended to open all segments of the telecommunications market to competition – including the market for directory services. A broad interpretation of section 251(b)(3) will serve this goal. Second, as numerous commenters observed, the Commission has already interpreted section 251(b)(3) to apply to entities that are not providers of telephone exchange or telephone toll service where such an interpretation is necessary in the public interest. In any event, as the NPRM suggested, the Commission should interpret the class of entities eligible to receive access broadly so as to include both directory assistance providers that offer call completion services and entities that operate as the agents of carriers. It would be irrational, however, to then allow ILECs to discriminate against directory assistance providers that do not provide call completion services or act as agents of carriers.

A. Call Completion Service Constitutes The Provision Of Telephone Exchange Service Or Telephone Toll Service Under Section 251(b)(3).

Section 251(b)(3) applies to "competing providers of telephone exchange service and telephone toll service." As demonstrated by the initial comments, it is clear that call completion falls into these categories. For instance, INFONXX's comments provide a comprehensive explanation of the actual functioning of call completion services.[2] This confirms that call completion qualifies as "telephone exchange service" and "telephone toll service." In addition, the Commission's own analysis in the *US West Forbearance Order* is especially persuasive. In that proceeding, the Commission found that the

[1] 47 USC §251(b)(3).

provision of directory assistance constituted an interLATA service since the dialing of 411 or 1-411 triggered a transmission across telephone exchanges.[3] Additionally, the Commission also found that traditional directory assistance services are adjunct-to-basic services because they facilitate the use of the basic network.[4]

The comments of Excell Agent Services, L.L.C.[5] ("Excell") and Listing Services Solutions, Inc.[6] ("LSSi") also provide further explanations of the specific functioning of call completion which confirm that this service is within the scope of section 251(b)(3). Excell demonstrates that a directory assistance provider can provide both the incoming circuits from the carrier's distant switches and then the terminating transport from the directory assistance provider's switches to the desired listing. This service constitutes telephone toll service.[7] LSSi further explains that call completion constitutes telephone exchange service when it allows a caller to connect to another telephone subscriber by means of the workstation or switching facilities of the directory assistance provider.[8]

On the other hand, the commenters that claim that call completion does not constitute telephone exchange or telephone toll service provide essentially no support for this erroneous proposition. Cincinnati Bell simply contends that call completion "does not actually transmit a call over the network."[9] As noted above, however, this claim is

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[2] Comments of INFONXX at 7-12.
[3] *See* Comments of INFONXX at 10-11, citing *In re Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of Directory Assistance, Petition of US WEST Communications, Inc. for Forbearance*, CC Docket No. 97-172, FCC 99-133 (September 27, 1999) ("*US West Forbearance Order*"), ¶¶18-20.
[4] Comments of INFONXX at 11, citing *US West Forbearance Order*, ¶¶60-61.
[5] Comments of Excell at 10-11.
[6] Comments of LSSi at 11-12.
[7] Comments of Excell at 10.
[8] Comments of LSSi at 12.
[9] Comments of Cincinnati Bell at 12.

simply wrong. The United States Telephone Association ("USTA") agrees with Cincinnati Bell, stating that a non-carrier does not become a telephone exchange carrier unless it also provides call origination services.[10] Taken to its logical conclusion, this would suggest that 800 service and similar services do not constitute telephone toll service because they do not allow call origination service. Obviously, the Commission has never embraced such a proposition and should not do so now. Bell Atlantic concedes, at least, that call completion by a directory assistance provider may fit into the definition of section 251(b)(3) "depend[ing] on how it provides those services."[11]

As several commenters explained, call completion service involves connecting one telephone subscriber to another, generally using a combination of the directory assistance provider's own facilities and facilities of another carrier. Call completion service may therefore be analogized to resale of either local exchange service or of interexchange service. Hence, it is clear that the provision of call completion by a directory assistance provider constitutes telephone exchange service and/or telephone toll service within the terms of section 251(b)(3). The virtually baseless contentions to the contrary can be seen as nothing more than another attempt to limit competition in the directory assistance market.

B. Agents Of Carriers Are Entitled To Benefits Of Section 251(b)(3) Pursuant To Section 217.

The comments also demonstrate that non-carrier directory assistance providers are entitled to nondiscriminatory access to directory assistance when such providers are acting as agents of a carrier. For example, Excell, Metro One Telecommunications, Inc. ("Metro One"), and INFONXX cite several cases in which the FCC has allowed agents to

[10] Comments of USTA at 7, n. 9.

assume the benefits of their principals.[12] In particular, the Commission has found no basis for the "assertion that section 217 reflects a congressional intent to restrict the activities of carriers' agents."[13] Teltrust., Inc. ("Teltrust") cites a joint statement of the House and Senate which explained that "the duties imposed under section 251(b) make sense in the context of a specific request from another telecommunications carrier or *any other person* who actually seeks to connect with or provide services using the LEC network."[14] Clearly an agent of a carrier that intends to offer directory assistance for the carrier qualifies as "any other person who seeks to . . . provide services using the LEC's network."

Several carriers read a peculiar limitation into sections 217 and 251 which would serve no apparent purpose other than to limit competition. While Cincinnati Bell Telephone and MCI WorldCom agree that under section 251(b)(3), an agent for a carrier could possess and use the directory data for the carrier, they contend that it is only the carrier that has the right to acquire the directory assistance information.[15] They would require a carrier to acquire the directory assistance information first and then pass it on to the agent, even if the carrier itself wanted to contract with an agent to provide all services related to directory assistance, including the directory data acquisition. Thus, these commenters essentially demand that the FCC limit the freedom of carriers to create

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[11] Comments of Bell Atlantic at 5.

[12] Comments of Excell at 6; Comments of Metro One at 17-18; Comments of INFONXX at 17-18. Excell and Metro One both note that the FCC permits the National Exchange Carrier Association to file tariffs on behalf of, and provide billing and collection services for certain incumbent LECs. *Communique Telecommunications, Inc. d/b/a/ LOGICALL, 10* FCC Rcd. 10399 (1995)(*"Communique"*). In another case referred to by Excell, the Commission, citing the goal of increased competition, allowed the RBOC customer premises equipment subsidiaries to act as agents in jointly marketing their basic services with their enhanced services. *American Information Technologies Corp.*, 98 FCC 2d 943, 945, 951-52 (1984), recon. denied, 59 RR 2d 309 (1985).

[13] *Communique*, 10 FCC Rcd. at 10403, ¶23.

[14] Comments of Teltrust at 5, citing H.R. Conf. Rep. No. 104-458, at 121 (emphasis added).

[15] Comments of Cincinnati Bell Telephone at 11; Comments of MCI WorldCom at 4-5.

comprehensive agency relationships with directory assistance providers. It is obvious from the brevity of the surrounding discussion that there are no policy reasons to support this artificial limitation of agency relationships, other than the desire to minimize competition.

Furthermore, the comments show that it would be nonsensical and impractical to prevent independent directory assistance providers from providing to their own customer base those directory assistance listings already obtained by them as agents pursuant to section 251(b)(3).[16] It would be wasteful and unreasonable to require the same provider to request and pay for the same information multiple times. This would serve only to decrease competition in the directory assistance market.

C. Sections 201(b) And 202(a) Of The Act Require That Non-Carrier Providers Receive Reasonable, Nondiscriminatory Access to ILEC Databases.

The clear language of sections 201(b) and 202(a) and Commission precedent require that non-carrier directory assistance providers, as well as those agents of carriers or providers of call completion services, must be given reasonable, nondiscriminatory access to ILEC directory assistance databases. Section 201(b) provides that any "charge, practice, classification, or regulation [in connection with communication service] that is unjust or unreasonable is hereby declared to be unlawful." Section 202(a) states further that:

> It is unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

[16] Comments of Excell at 7-8.

As the comments of a number of parties demonstrate, ILEC practices that deny non-carrier directory assistance providers access to directory assistance databases violate both section 201(b) and section 202(a).

1. There Is No Rational Reason To Discriminate Against Independent Non-Carrier Providers.

The comments demonstrate the obvious point that non-carrier directory assistance providers are being treated differently from carrier directory assistance providers in a way which constitutes unjust or unreasonable discrimination in charges, practices, classifications and regulations.[17] For example, Excell explained that Southwestern Bell charges directory assistance providers a rate that is more than 53 times the approved cost-based rate for telecommunications providers.[18] There is no rational way to justify this dramatically discriminatory treatment which prevents independent directory assistance from fully competing with the carrier providers.

As we have stated above, providing call completion service should certainly make a directory assistance provider eligible for access to ILEC directory assistance databases as providers of telephone exchange service or telephone toll service under any reasonable reading of section 251(b)(3). At the same time, however, ILEC practices that differentiate among customers on the basis of whether they are carriers or whether they offer call completion services are unreasonably discriminatory on their face. These practices constitute both an unjust and unreasonable practice in violation of section 201(b) and an unjust and unreasonable discrimination in violation of section 202(a). There is no valid reason for denying non-carrier providers of directory assistance access

[17] Comments of Excell at 12-16; Comments of Metro One at 20-21; Comments of INFONXX at 20-26; Comments of LSSi at 16-19.

to directory assistance databases on reasonable, nondiscriminatory terms. Ordinarily, the Commission will allow carriers to discriminate among customers only if they can demonstrate that there is a cost justification for such discrimination.[19] Here, there can be no such justification.

Moreover, if the Commission allows ILECs to maintain such discriminatory practices, the market for directory assistance services is likely to be skewed, as Telegate noted in its initial comments.[20] This is because non-carrier providers of directory assistance may elect to provide call completion services or to become agents of established carriers solely in order to obtain access to the ILECs' databases. While many non-carrier providers of directory assistance may elect to provide call completion service, or to serve as carriers' agents, these decisions should be driven by the marketplace, not by unreasonable distinctions among the customers for the ILECs' databases.

2. The Commission Has Ample Jurisdiction To Ensure That All Competitors Obtain Reasonable, Nondiscriminatory Access to ILEC Directory Assistance Databases.

As the Commission noted in the NPRM[21] and as numerous comments confirm,[22] the Commission has already adopted an expansive reading of section 251(b)(3) in the *Local Competition Second Report and Order* in order to prevent unreasonable discrimination against paging carriers.[23] In that decision, the Commission first

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[18] Comments of Excell at 13.
[19] *See, e.g., In The Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, FCC 94-190, 9 FCC Rcd. 5154, at ¶126 (1994) ("LECs may reasonably charge different rates to different customers if they incur different costs to serve those customers.").
[20] Comments of Telegate at 5.
[21] NPRM, ¶189.
[22] Comments of Excell at 12; Comments of INFONXX at 22; Comments of LSSi at 18; Comments of Teltrust at 11-12.
[23] *Second Report and Order in the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (Second Report and Order)*, CC Docket 96-98, 11 FCC Rcd. 19392, 19538 at ¶¶332-334.

determined that paging carriers are not providers of telephone exchange service or telephone toll service, and therefore, are not covered by section 251(b)(3).[24] Next, noting that paging carriers compete with other CMRS providers and need the protection of section 251(b)(3) to be competitive, the Commission extended the reach of section 251(b)(3) to paging carriers.[25] It did so after determining that discriminatory treatment of paging carriers violates sections 201(b) and 202(a).[26] It is clear that this same precedent must also apply here, as competitive providers of directory assistance must have fair and reasonable (i.e., cost-based) access to directory assistance directory data to promote competition in telecommunications.

As INFONXX notes, the Commission has often used sections 201 and 202 to promote local and long distance telephone competition.[27] In the *Third Computer Inquiry*, the Commission explained that it had jurisdiction under sections 201 through 205 to control discrimination in the provision of ONA elements to competing providers of advanced services.[28] As early as 1970, the Commission established that even when there "is no specific provision which bars a common carrier from providing non-regulated services...," sections 201, 202, and other provisions of the Act grant "a broad range of powers to the Commission with respect to carriers subject to its jurisdiction in order to effectuate the policies and objectives of the Act."[29] The Commission should again

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[24] *Id.* at ¶333.
[25] *Id.*
[26] *Id.* at ¶¶332-334.
[27] Comments of INFONXX at 21.
[28] *Id.*, citing Memorandum Opinion and Order on Reconsideration, *In re Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, CC Docket No. 85-229, 2 FCC Rcd. 3035, 3051 (1987).
[29] *Id.*, citing Tentative Decision, *Regulatory and Policy Problems Presented by the Independence of Computer and Communication Services and Facilities*, Docket No. 16979, 28 FCC 2d. 291, 299-301 (1970).

exercise its broad jurisdiction in order to effectuate the objective of the Telecommunications Act, which is to promote competition.

Moreover, the Commission in the *US West Order* has already ordered at least one carrier to make available to "unaffiliated entities" directory assistance information "at the same rates, terms, and conditions it imputes to itself."[30] While this action was ordered in the context of a forbearance analysis, the Commission nonetheless determined that there would be an intolerable anti-competitive effect if such information were not made available to unaffiliated entities. The Commission should follow this analysis and similarly conclude that ILECs must make the same information available to all competitive providers of directory assistance at reasonable and non-discriminatory rates, terms and conditions.

Taken together, these precedents amply demonstrate that GTE and others are mistaken when they state that no previous precedent supports the use of sections 201 and 202 to require ILECs to provide reasonable and non-discriminatory access to directory assistance databases.[31]

Despite the plain language and Commission precedent to the contrary, several commenters also contend that sections 201 and 202 cannot apply here because the rates, terms, and conditions related to directory assistance are not in connection with "interstate communication by wire or radio" or "communication service."[32] These parties are mistaken. Directory assistance is a necessary element of "communication service" since it allows a party to make use of the telecommunications network to access another party who, without directory assistance, the party would not be able to access. As noted by

[30] *US West Forbearance Order* at ¶¶3, 37.
[31] Comments of GTE at 10.

INFONXX , the Commission already has recognized that directory assistance "facilitate[s] the use of the basic network" and is properly classified as adjunct to basic.[33] There is no doubt, then, that such a service is provided in connection with communications services.

In summary, a fair reading of Section 251(b)(3) compels the conclusion that agents of carriers and directory assistance providers that offer call completion services are entitled to the benefits of that section. Further, the Commission must apply sections 201(b) and 202(a) so as to prevent the unjust and unreasonable discrimination that the ILECs now engage in by denying non-carrier directory assistance providers reasonable access to their directory assistance directory databases.

III. Directory Assistance Is Oral Publication Under Section 222(e).

Telegate also reiterates its position, supported by many parties, that the Commission has the flexibility under section 222(e) of the Act[34] to recognize directory assistance as a form of oral publication, thereby providing an independent basis for access to subscriber list information by non-affiliated directory assistance providers. As virtually all of the comments make clear, the various methods by which directory information are packaged and provided to the public are rapidly evolving as new service providers seek to develop innovative offerings to attract customers.[35] Where once consumers could choose only between the phone book and a Ma Bell operator, now there

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[32] Comments of Cincinnati Bell at 12-13; Comments of Bell Atlantic at 7-8.
[33] Comments of INFONXX at 23, citing *US West Forbearance Order* at ¶61.
[34] 47 USC §222(e).
[35] *See, e.g.*, Comments of LSSi at 30 (regarding provision of new internet-based services); Teltrust at 9 *et seq.* (noting presentation of information in paper, magnetic tape, optical disk, CD-ROM and oral formats); Comments of GTE at 4 ("One clear policy goal of Section 222(e) is to promote competition among

is an increasing variety of different services employing different content and delivery vehicles. Clearly, however, these different directory information sources compete against one another and should have equal access to ILEC directory information.

The Commission must read each of the relevant sections of the Act so as to promote competition and encourage the development of new and innovative service offerings to consumers. A number of incumbent carriers admit or, in some cases, even praise the rapid expansion of innovative subscriber information services.[36] At the same time, however, they either deny that any regulatory change is needed, or else assert that the Commission does not have the statutory authority to promote such services in a non-discriminatory manner under section 222. Telegate opposes the arguments set forth by these parties.

First, several incumbents claim that healthy competition in the directory services market is developing rapidly and that the Commission need not make any regulatory changes in order to maintain this growth.[37] This is hardly a surprising contention from carriers that currently enjoy a dominant position in the market and hope to retain it. Some parties, however, make the extraordinary and unsupported claim that providing competitors reasonable and non-discriminatory access to subscriber list information would actually *hinder* the growth of such competition.[38]

It is not difficult to refute those comments that claim competition would be promoted by maintaining the status quo. Indeed, the Commission need only note the

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directory publishers, and to promote the availability of directory offerings *in whatever format customers may use*.")(emphasis added).

[36] *See, e.g.*, Comments of USTA at 4 *et seq.*

[37] Comments of GTE at 6; Comments of US West at 3.

[38] Comments of USTA at 6 ("To the extent that there is convergence occurring with respect to directory publishing and directory assistance, the FCC must exercise restraint in visiting existing regulations upon

identities of the parties making such claims (and of those parties challenging it) to understand the true dynamic involved. Thus, while US West, Bell Atlantic and GTE all urge the Commission to maintain the current discriminatory regime, competitors and potential competitors such as INFONXX, Metro One, Time Warner and LSSi unanimously agree that the Commission should require incumbents to give all competitors non-discriminatory access to subscriber list information under section 222.

Those parties who support the status quo also claim that the Commission lacks authority to permit fair access to subscriber list information. For instance, several parties claim that the word "publish" has a narrow meaning pursuant to both common usage and legislative intent confining it to publication either in paper or electronic form and not including oral publication.[39] This argument is unpersuasive. As several other commenters demonstrate, the definition of "publish" is broad enough to encompass oral publication not only under common usage, but in legal parlance as well.[40] Indeed, as these commenters note, the Supreme Court has held that the oral transmission of information is a form of publication.[41] Moreover, as Teltrust notes, the legislative history of section 222(e) indicates that Congress plainly contemplated a pro-competitive and expansive reading of the statute regarding the manner in which directory information could be distributed.[42] Thus, both the language and the legislative history of section 222 support the conclusion that oral publication of directory information fits within the term "any format" of publication. To hold otherwise would risk freezing technology in this

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such a converging market, or it risks stifling innovation and investment by both incumbents and new entrants.").

[39] GTE at 3; Cincinnati Bell at 7; Bell Atlantic at 4.

[40] Comments of Metro One at 5; INFONXX at 29 (noting that both Webster's and Black's Law Dictionaries define publication broadly to mean dissemination of information in any form).

[41] Metro One at 5, citing *Gertz v. Welch*, 418 U.S. 323, 332 (1974).

segment of the telecommunications industry by excluding innovative providers from the market. Similarly, the Yellow Pages Publishers Association ("YPPA") seeks protection from new competitors by asserting that "Congress clearly segmented the services, and the Commission should not attempt to mingle them."[43] In fact, however, it is technology that is blurring old distinctions and neither Congress nor the Commission should permit entrenched incumbents to stifle market-driven innovation.

Some incumbents also attempt to raise fears that directory assistance providers could misuse information they obtain under section 222(e).[44] These parties claim that if directory assistance providers have access to subscriber list information, they will publish unpublished numbers. In fact, precisely the opposite is true. As Telegate stated in its comments, directory assistance providers sometimes disclose unpublished numbers today simply because they do not have access to the information controlled by the ILEC and must therefore use less reliable sources of information.[45] As Time Warner notes, local exchange carriers maintain bottleneck control over the provision of directory assistance information.[46] This prevents independent directory assistance providers from maintaining complete, up-to-date, and accurate directory databases, thereby seriously detracting from the value of their product. It also has allowed the incumbents to charge exorbitant amounts of money for the information that they do provide.[47]

In its initial comments, Telegate urged the Commission to invoke its broad powers under sections 201 and 202 of the Act and to give full meaning to section 222(e)

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[42] Comments of Teltrust at 9 (purpose of Section 222 is to "thwart the LECs' total control over subscriber list information").
[43] Comments of YPPA at 5.
[44] Comments of GTE at 6; MCI WorldCom at 9.
[45] Comments of Telegate at 2.
[46] Comments of Time Warner at 2 *et seq.*
[47] *See, e.g.,* Comments of Excell cited in footnote 18 above.

in order to end the ILECs' unjust and unreasonable practices of discrimination in their provision of subscriber list information to directory service providers. The comments submitted in this proceeding amply support Telegate's position.

IV. The Public Interest Requires A Level Playing Field For All Competitors.

The comments make clear that the lack of reasonable, nondiscriminatory access to the ILECs directory assistance databases and subscriber list information is seriously impeding competition in the directory services market. As Telegate also established in its initial comments, the continued monopoly over the national directory assistance number, 411, also impedes the development of robust competition in this market.[48] Moreover, as both the NPRM and many commenters observe, several states have established rules that seek to promote competition in this market. These state regulations, however, are necessarily only piecemeal efforts to permit competition in what is rapidly becoming a national market. Under these circumstances, the Commission must establish a national policy framework to promote fair competition in the directory services market.

First, as the NPRM recognized and as the comments confirm, advances in technology and innovation in service provision are rapidly blurring the line between directory publication and directory assistance. As a result, it is probably more accurate to speak of "directory services" generically. Congress could not have foreseen these developments, just as neither Congress nor anyone else could have foreseen the explosive growth of the Internet since the Telecommunications Act was adopted. Nevertheless, Congress gave the Commission broad enough powers in the Telecommunications Act, in

[48] Comments of Telegate at 5 *et seq.*

conjunction with the authority contained in the 1934 Act, to ensure the development of competition in this sector as in others.

There is ample legal justification for rules that would allow all competitors in this market to have reasonable, nondiscriminatory access to the ILECs' directory assistance databases and subscriber list information. In addition, there are compelling policy reasons to take this step. As the Commission is aware, the state commissions in both California and New York have required ILECs in those states to give non-carrier providers of directory assistance nondiscriminatory access to their DA databases. There is no reason why ILECs serving those states – including SBC and Bell Atlantic – should not provide nondiscriminatory access to their databases in all of the states in which they operate. Indeed, it would seem to be more complicated to implement one set of access requirements in one state and a different set of access requirements in other states. This is especially true because, as the Commission observed in the *US West Forbearance Order*, ILEC provision of directory assistance service typically involves interLATA access to a database.[49] These actions already form the basis of an emerging national policy framework that would promote robust competition in directory services. The Commission now can complete this policy framework.

For these reasons, the Commission should establish uniform requirements for database access nationally. At the same time, the Commission should adopt the proposals contained in Telegate's initial comments and ensure that no single provider will enjoy a monopoly over the provision of nationally- recognized DA number, 411.

CONCLUSION

Telegate continues to support the Commission's efforts to foster competition in the provision of competitive directory assistance services. To ensure effective competition, however, two steps must be taken. First, *all* directory assistance providers must be entitled to nondiscriminatory access to ILEC directory assistance databases and subscriber list information. Second, the Commission should ensure that customers have equal access to all competitors in the directory assistance market as proposed in Telegate's initial comments.

Respectfully submitted,

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[49] *US West Forbearance Order* at ¶¶ 8-9, 14-15. *See also* Comments of INFONXX at 10-11.

CERTIFICATE OF SERVICE

I, Eric M. Solovy, hereby certify that copies of the attached Reply Comments of Telegate AG were served on October 28, 1999, on the following parties:

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