

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Implementation of the Telecommunications )  
Act of 1996: )  
 )  
Telecommunications Carriers' Use of ) CC Docket No. 96-115  
Customer Proprietary Network Information )  
and Other Customer Information )

**SUPPORT/OPPOSITION OF U S WEST COMMUNICATIONS, INC.**  
**TO FILED PETITIONS FOR RECONSIDERATION**

U S WEST Communications, Inc. ("U S WEST") supports the Petitions of Bell Atlantic in total and supports in part the Petition of ALLTEL Corporate Services, Inc. ("ALLTEL"). We agree with these filing parties that the Federal Communications Commission ("Commission") should reconsider its position with respect to a "change of status" list or report. We also agree with Bell Atlantic that providers of Subscriber List Information ("SLI") should be free to terminate the provision of such information when the other party to the contract commits a material breach of the agreement. No sound legal or policy reason counsels otherwise. Finally, we support Bell Atlantic's positions around the need for clarity on SLI unbundling. Directory publishers should not be permitted to request granular lists and refuse to pay for a more general -- but still unbundled -- list that incorporates the desired information. Publishers should pay for the list that incorporates the information they desire, assuming the list provided meets basic "unbundling" requirements.

We oppose in substantial part the Petition of The Association of Directory Publishers (“ADP”). Specifically we oppose its positions asking that the Commission (1) reduce the time available to an incumbent local exchange carrier (“ILEC”) to determine if a particular SLI request can be met and to communicate that information; (2) reverse its position and mandate ILECs to act as clearinghouses for the distribution of SLI owned and generated by other carriers, and (3) permit independent directory publishers to pay only the presumptively reasonable rates pending the resolution of a complaint where the complaint might not be limited to the provision of the “basic” SLI offering.

I. SUPPORT

A. Change of Status Information

U S WEST supports the requests of Bell Atlantic and ALLTEL that the Commission reconsider its requirement that ILECs provide “change of status” information to independent directory publishers when a customer changes from a published to a nonpublished status.<sup>1</sup> As argued, the establishment of the requirement is based on narrow commentary. Indeed, U S WEST’s Petition makes clear that the MCI advocacy that the Commission cited to in paragraph 70 of its SLI

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<sup>1</sup> See Bell Atlantic’s Petition for Reconsideration and Confirmation, filed herein Nov. 4, 1999 (“Bell Atlantic Petition”) at 1, 2-4 (noting, as did U S WEST, that the Commission’s mandate in this area stemmed from the comments of a single party and was imposed without a full appreciation of its implications on the industry); ALLTEL Petition for Reconsideration and Clarification filed herein Nov. 4, 1999 (“ALLTEL Petition”) at 2, 4 (arguing that the regular purchasing of update information would provide the necessary data).

Order<sup>2</sup> did not require the “relief” the Commission ultimately devised upon. MCI’s reference to “notice of all changes” was general in nature and could fully be met through the provision of exchange carrier updates.<sup>3</sup>

Furthermore, as the filed Petitions make clear, there is no demonstrated demand for such an offering.<sup>4</sup> Moreover, as Bell Atlantic points out, there would probably not be much information to include in such a “change status” list, since most customers are not likely to take a listed number and change it to nonpublished.<sup>5</sup> Such could well defeat the purpose of changing the telephone number status in the first instance.

To the extent, however, that the Commission determines not to reconsider the fundamental obligation which it imposed in the SLI Order, U S WEST agrees with ALLTEL that the obligation should be contingent on two factors: (a) the ability of the ILECs’ systems to produce such a list/report and (b) the ability to recover the costs of creating such a list/report even if such cost recovery exceeds the

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<sup>2</sup> In the Matters of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended, Third Report and Order in CC Docket No. 96-115; Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, FCC 99-227, rel. Sep. 9, 1999 (“SLI Order”).

<sup>3</sup> See Petition for Reconsideration of U S WEST Communications, Inc., filed herein Nov. 4, 1999 (“U S WEST Petition”) at 2-5. Attached to this filing is U S WEST’s Petition for Reconsideration which is, by this reference and attachment, herein incorporated in its entirety into this filing.

<sup>4</sup> See Bell Atlantic Petition at 2 (“there are no publishers that Bell Atlantic is aware of that require this narrow type of update information”).

“presumptively reasonable” rates otherwise established in the SLI Order.<sup>6</sup>

B. Termination of SLI Provisioning

U S WEST supports the position of Bell Atlantic that ILECs must have a mechanism of terminating the provision of SLI to independent directory publishers who breach the terms of the license agreement.<sup>7</sup> It seems most inappropriate for the Commission to insinuate itself into the law of private negotiations and contracts. To the best of U S WEST’s knowledge, the Commission’s action is unprecedented.

When a party to a contract commits a material breach (or one party to the contract is willing to take the risk that a material breach can be proven), the non-breaching party has a right to terminate the relationship and any ongoing transactional contacts. Why such legal right should be prohibited in the context of SLI licensing, especially when the Commission cannot necessarily accommodate a full range of legal “remedies,”<sup>8</sup> is not made clear.

The Commission should not mandate that parties continue to remain in a

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<sup>5</sup> See Bell Atlantic Petition at 3.

<sup>6</sup> See ALLTEL Petition at 3-4. Compare Bell Atlantic Petition at 3-4 (noting that current systems would not support such a list/report and that changes would have to be made).

<sup>7</sup> See Bell Atlantic Petition at 4.

<sup>8</sup> As Bell Atlantic has pointed out, carriers providing SLI to independent publishers under Section 222 would not even have the benefit of the Commission’s Section 208 complaint fora since the defendant would not be subject to the Commission’s complaint jurisdiction.

relationship until a court (after some lengthy period of time)<sup>9</sup> determines that a breach has occurred. And, where the complaining party is a directory publisher pursuing its rights under Section 208, that publisher should be entitled to no greater “protection of the status quo” than any other complaining party. As with any other contractual relationship, the contracting parties should manage this relationship, with the risk of “damages” attending the wrong choice.

C. The Unbundling of SLI

U S WEST supports the position of Bell Atlantic that, beyond the parameters of unbundling outlined in the SLI Order, an ILEC cannot be forced to unbundle SLI or, alternatively, suffer the consequences of being unable to unbundle it by not being able to charge for the provided information.<sup>10</sup> As Bell Atlantic persuasively argues, a directory publisher should not be able to demand SLI only for homes within one block of the beach and then refuse to pay for listings associated with a zip code that might contain more beach homes than it desires. An ILEC should be able to (a) outright refuse to provide the information in such an unbundled format; (b) offer to provide the information only if the publisher pays all costs associated with formatting and extraction of the data; or (c) should be able to provide more data than is necessary, charge for all the data provided, and leave to the publisher the job of extracting that which is necessary to completing the publisher’s task.

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<sup>9</sup> See Bell Atlantic Petition at 6 and n.13 (noting that the median length of time for disposition of civil cases to go to trial is 18 months and that ten percent take as long as 39 months).

## II. OPPOSITION

### A. Processing Time Regarding SLI Requests

ADP requests that the Commission reconsider its grant of 30 days for local exchange carriers (“LEC”) to advise independent directory publishers that they cannot comply with a specific request for SLI<sup>11</sup> (generally because the existing systems will not accommodate the processing of the information in the format desired). ADP proposes that LECs have only seven days to respond.

A seven-day turn-around time for any activity that is not life-threatening should not be imposed on LECs.<sup>12</sup> Especially larger LECs have difficulty responding to requests in a time-frame as constrained as seven days. This is particularly true if the information comes in through a channel not generally utilized for the processing of the request.

ADP has simply presented no persuasive evidence why the Commission should change its position that 30 days represents a reasonable amount of time to respond to an entity requesting SLI. ADP’s fears that ILECs will routinely respond

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<sup>10</sup> See Bell Atlantic Petition at 8 (“The Commission should also make clear that if a carrier has no obligation to unbundle in the way that the publisher requests, it is entitled to charge for all the listings it provides.”).

<sup>11</sup> See ADP Petition at 2, 11-12.

<sup>12</sup> Even in the proceeding dealing with implementation of Section 255, the Commission extended the “response time” from its tentatively proposed seven days to 30 days. See In the Matter of Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, FCC 99-181, rel. Sep. 29, 1999.

only at the thirtieth day might well never materialize.<sup>13</sup> Independent publishers might well be advised in advance of that time-frame should a decision be obvious to the ILEC.

B. ILECs as Clearinghouses

ADP argues that ILECs should be obligated to provide to independent directory publishers those competitive local exchange carrier (“CLEC”) listings that are made available to the ILEC’s directory affiliate.<sup>14</sup> The Commission should decline to make any such ruling.

The obligations imposed on carriers in Section 222(e)<sup>15</sup> run directly to the affected carriers (i.e., those carriers that provided telephone exchange service). Independent directory publishers interested in securing SLI from telecommunications carriers fitting the status description are free, and should be expected, to secure the desired information directly from the source. There is no sound legal or policy reason for a contrary holding.<sup>16</sup> It is bad legal and public policy

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<sup>13</sup> See ADP Petition at 11.

<sup>14</sup> See id. at 5-6 (ADP’s arguments are somewhat confusing as it seems to mix and match the notions of access to CLEC information with that of access to nonpublished information).

<sup>15</sup> 47 U.S.C. § 222(e).

<sup>16</sup> While it may be true that requiring independent directory publishers to contact source-SLI CLECs directly means that such publishers “must identify and contact each CLEC with subscribers in a given geographic area” and that such “process [may be] both costly and time consuming” (ADP Petition at 8-9), it is not a legal or policy basis for mandating ILECs to become “clearinghouses” for the collection and release of the information. Competition generally means a proliferation of competitors with whom others must deal. ILECs certainly should not be penalized for the “incapacity” of their competitors. (See id. at 9 that “many CLECs are

for the Commission to create “supplemental” ILEC obligations under Sections 201 and 202 of the Communications Act when the specific statutory provision in the Telecommunications Act of 1996 contains no Congressionally-mandated obligation.<sup>17</sup>

C. Payment of “Presumptively Reasonable” Rates Pending Dispute Resolution

ADP argues that it would be most efficient for the Commission to promulgate a rule of general applicability to the effect that independent directory publishers should be permitted to pay benchmark rates during the pendency of a Section 208 proceeding.<sup>18</sup> ADP proposes this “general rule” in place of what the Commission currently proposes, which is an assessment as to whether interim relief should be granted based on generally-articulated “stay” standards.<sup>19</sup>

U S WEST opposes ADP’s requested reconsideration because it is far from clear -- at this time -- that the fundamental positions that will be raised in complaint proceedings will be confined to price. For example, while U S WEST intends to charge the “presumptively reasonable” rates for a “basic SLI offering” consisting of an electronic data feed, U S WEST will be charging more for an

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incapable of providing complete, accurate and reliable SLI to independent publishers in a timely or usable format.”).

<sup>17</sup> ADP argues that the Commission should impose SLI access obligations on the ILECs under these provisions. See id. at 10. In other contexts, U S WEST has also argued against the propriety of using these general Communications Act sections to bootstrap obligations on the ILECs where the genesis of the specific obligation is in the 1996 Act. See Comments of U S WEST Communications, Inc. filed Oct. 13, 1999, CC Docket No. 99-273 at 4-5.

<sup>18</sup> See ADP Petition at 15-16. As described above, this would necessarily mean that the directory publisher was the complainant against a LEC.

enhanced offering where the SLI is alphabetized. An independent directory publisher should not claim benefit to a Commission rule that allows it to only pay the presumptively reasonable rates when it wants to litigate issues associated with the enhanced product or its pricing.

The Commission should proceed as it currently envisions: based on the content of the complaint, and the meeting of certain legal criteria, it should issue “interim relief” as appropriate in any particular circumstance. ADP’s request for relief should be rejected.

Respectfully submitted,

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Its Attorney

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January 11, 2000

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<sup>19</sup> See id. at 15 and n.36 (referencing Virginia Petroleum Jobbers Assoc. as the source of the standard).

## **ATTACHMENT**

[Originally filed in CC Docket No. 99-273 on November 4, 1999;  
refiled in CC Docket No. 96-115 on November 8, 1999]

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Customer Proprietary Network Information )  
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**PETITION FOR RECONSIDERATION OF**  
**U S WEST COMMUNICATIONS, INC.**

In accordance with 47 C.F.R. Section 1.429(a), U S WEST Communications, Inc. ("U S WEST") requests reconsideration of a mandate in the SLI Order,<sup>1</sup> where the Federal Communications Commission ("FCC" or "Commission") imposed certain mandates on carriers subject to 47 U.S.C. Section 222(e). The Commission held that carriers were required "to provide requesting directory publishers with notice of changes in subscriber list information [SLI] in [the] limited circumstance" where customers decide "to cease having particular telephone numbers listed."<sup>2</sup> The

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

<sup>2</sup> SLI Order ¶ 70.

Commission determined that such mandate was necessary “to enable directory publishers to avoid listing those numbers.”<sup>3</sup>

Section 222(e), of course, requires exchange carriers to provide “listed” information to directory publishers -- not unlisted or nonpublished information, as the Commission itself acknowledged. Just paragraphs before the Commission mandates exchange carriers to provide “notice of changes” regarding the status of telephone numbers, the Commission stated: “Because the statutory definition of [SLI] specifically excludes unpublished and unlisted information, we conclude that section 222(e) does not require carriers to provide the names or addresses of subscribers with unlisted or unpublished numbers to independent publishers.”<sup>4</sup>

For this reason, as well as because we do not read the MCI advocacy cited by the Commission as supporting the requirement imposed in paragraph 70, we ask the Commission to reconsider its position and eliminate the requirement. A review of MCI’s filings demonstrates both a generality of reference with respect to the term “notice of all changes” (that is, it does not focus on or target telephone number status changes) and an advocacy around the need for “notice” that could be fully met through exchange carrier updates.<sup>5</sup>

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<sup>3</sup> Id.

<sup>4</sup> Id. ¶ 41.

<sup>5</sup> MCI’s overall advocacy was that the SLI offering itself should be reconfigured to include not only published information, but also nonlisted and nonpublished information. Comments of MCI Telecommunications Corporation, CC Docket No. 96-115, filed June 11, 1996 at Attachment A (“Information shall be identified and provided as Listed; Non-Listed; and Non-Published.”) (“MCI Comments”). And see Reply Comments of MCI Telecommunications Corporation, CC Docket No. 96-115,

MCI's advocacy on the issue of "notice of all changes" consisted of a single sentence. When taken in context, it is clear that MCI was arguing that daily updates were needed in order for directory publishers to be able to produce accurate directories. (As the Commission itself acknowledged, some carriers were opposing reading Section 222(e) as requiring the production of updates, let alone daily updates.)<sup>6</sup> MCI stated: "Briefly summarized, SLI must be made available in electronic format, with daily updates . . . The Commission should require exchange carriers to provide immediate notice of all changes, additions, and deletions of SLI as they accept that information."<sup>7</sup>

MCI's requirements can be met without the creation of a "new" type of non-SLI list, such as that mandated by paragraph 70. The daily updates produced by U S WEST, for example, do provide "all changes, additions, and deletions" of SLI, just as MCI wanted. In the "out" category of the updates are included those customers "who request that previously listed numbers cease to be listed,"<sup>8</sup> whether

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filed June 26, 1996 at 15, responding to a NYNEX position that lists provided to directory publishers should not include nonpublished or nonlisted information, and arguing that "such information must be provided" and that "**directory service providers** need the information" because they need to be able to compare the SLI received from exchange carriers against the lists they purchased from third parties in order "to know what not to publish in order to be able to honor consumer privacy needs." (emphases added.) Some reading the MCI comments might claim that a Freudian slip occurred in the filing with respect to who might be utilizing the SLI purchased under Section 222(e) (*i.e.*, "directory service providers" rather than "directory publishers") and who needed to know the published/nonpublished status.

<sup>6</sup> SLI Order ¶¶ 42-48.

<sup>7</sup> MCI Comments at 22.

<sup>8</sup> See SLI Order ¶ 70.

the request is due to a disconnection or a change in status from published to nonpublished or nonlisted. This “update,” then, accomplishes exactly the goal the Commission and MCI had in mind: “to enable directory publishers to avoid listing . . . numbers [no longer warranting publication].”

Not only do the updates now required to be provided under the terms of the SLI Order provide the information the Commission desires to get into the hands of directory publishers, it does so in the context of existing systems and technology. Creating the kind of “number change status list” functionality the Commission mandates would involve new systems work, since such functionality does not currently exist. Given that U S WEST has never had a request for such a list in this format gives us grave concern over product development costs and their ultimate recovery.<sup>10</sup>

While the Commission clearly confines the obligation to provide such a list to a context in which there are “requesting directory publishers,” neither the comments filed nor the SLI Order itself actually reflect demand for such a “notice of change” list. For that reason, the Commission should make clear that exchange carriers have no obligation to create this sorting functionality or list prior to the time such a request from a directory publisher is actually made.

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<sup>9</sup> Id.; MCI Reply at 15 (“to know what not to publish in order to be able to honor consumer privacy needs”).

<sup>10</sup> In U S WEST’s experience, it appears all too common a phenomenon that carriers, especially those in potential competition with us, demand access or services regarding which there is no real purchase intention. Such actions merely drive up U S WEST’s provisioning costs, but provide us with no concomitant revenue stream.

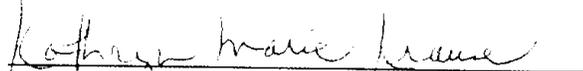
Once such a request is received, the Commission should acknowledge that exchange carriers will need sufficient time (especially as we approach the upcoming Year 2000) to create the functionality. Finally, the Commission should make clear that exchange carriers have no obligation to create such a list unless cost recovery is assured. This might include a requirement for deposits or down payments. And, it might require that the cost of the listings on the "notice of change" list be higher than the presumptively reasonable four to six cents per listing charge the Commission has currently found within a presumed zone of reasonableness.<sup>11</sup>

For all the above reasons, U S WEST asks the Commission to reconsider the obligations it imposed on exchange carriers in paragraph 70 of the SLI Order.

Respectfully submitted,

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<sup>11</sup> SLI Order ¶ 72.

## CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 4<sup>th</sup> day of November, 1999, I have caused a copy of the foregoing **PETITION FOR RECONSIDERATION OF U S WEST COMMUNICATIONS, INC.** to be served, via hand delivery, upon the persons listed on the attached service list.

  
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## CERTIFICATE OF SERVICE

I, Kristi Jones, do hereby certify that I have caused 1) the foregoing **SUPPORT/OPPOSITION OF U S WEST COMMUNICATIONS, INC. TO FILED PETITIONS FOR RECONSIDERATION** to be filed electronically with the FCC by using its Electronic Comment Filing System, 2) a courtesy copy of the **SUPPORT/OPPOSITION** to be served, via hand delivery, upon the persons/entity listed on the attached service list (those marked with an asterisk), and 3) a copy of the **SUPPORT/OPPOSITION** to be served, via first class United States mail, postage prepaid, upon all other persons listed on the attached service list:

Kristi Jones

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January 11, 2000

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