

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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CC Docket No. 98-115

In the Matter 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)

CC Docket No. 96-98

CC Docket No. 99-273

**OPPOSITION OF
LISTING SERVICES SOLUTIONS, INC.**

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For Listing Services Solutions, Inc.

Dated: February 7, 2000

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**OPPOSITION OF
LISTING SERVICES SOLUTIONS, INC.**

Listing Services Solutions, Inc. ("LSSi") submits this opposition in response to the Public Notice in the Federal Register¹ seeking comment on SBC's Petition for Clarification and Reconsideration ("SBC")² on directory assistance matters. SBC filed this Petition in response to an order released by the Federal Communications Commission ("FCC" or "Commission") on September 9, 1999, which set rules to ensure competition in the directory assistance ("DA")

¹ 65 Fed. Reg. 14 (Jan. 21, 2000)

² Petition For Clarification or Reconsideration Regarding Directory Assistance and Operator Services, *In the Matter of Implementation of the Telecommunications Act of 1996*, et al., CC Docket Nos. 96-115, 96-98, 99-273 (filed Oct. 27, 1999) ("SBC Petition").

market.³ The requests in SBC's Petition, if granted, would undermine the letter and spirit of the 1996 Act,⁴ would unravel the Commission's pro-competitive rules encouraging innovation in the directory assistance market, and would severely limit DA access that LSSi depends on for its service offerings. Accordingly, LSSi opposes SBC's Petition.

INTRODUCTION

SBC makes three requests in its Petition. SBC asks the Commission to prohibit competitors from obtaining access to adjunct features portion of directory assistance unless competitors are also purchasing SBC's operator services.⁵ In addition, SBC asks the Commission to deny competitors the right to download DA listings.⁶ Finally, SBC asks the Commission for permission to deny competitors immediate delivery of DA listings, instead providing those listings on SBC's own delivery schedule.⁷

The unifying message in all of SBC's claims that the Commission's application of the general requirement to provide nondiscriminatory access to DA under the §251(b)(3) of the Act somehow reimposes a DA unbundling requirement, which the Commission removed in the *UNE Remand Order*.⁸ First, SBC argues that the Commission's current rules on access to the adjunct features of directory assistance "could be construed" as requiring unbundled access to adjunct features, unless the Commission explicitly limits competitors' access only to the instances where

³ *In the Matters of Implementation of the Telecommunications Act of 1996, et al.*, Third Report and Order, CC Docket No. 96-115, Second Order on Reconsideration, CC Docket No. 96-98 (rel. Sept. 9, 1999) ("*Second Report and Order on Reconsideration*").

⁴ Telecommunications Act of 1996, Pub L. 104-104, 110 Stat. 56 codified as 47 U.S.C. § 151 *et seq.* (Feb. 8, 1996).

⁵ SBC Petition at 2, 4-6.

⁶ *Id.* at 2.

⁷ *Id.* at 1, 3-4.

⁸ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98 (Nov. 5, 1998) ("*UNE Remand Order*").

competitors purchase operator services and DA from SBC.⁹ Second, SBC implies that the Commission's requirement that LECs must allow requesting carriers to download listings is an unbundling obligation inconsistent with the Commission's *UNE Remand Order* relieving unbundling obligations for DA.¹⁰ SBC also argues that competitors' requests for directory assistance listings may "overburden" its ability to provide these listings, and therefore, SBC should have the ability to determine independently when such overburdening has occurred and schedule provisioning of listings on its own timing.¹¹

SBC's efforts to dilute competitors rights of access to directory assistance is transparent. Contrary to SBC's claims, there is no confusion regarding §251(c)(3) unbundling of directory assistance services. The Commission has made it plain that directory assistance services are not unbundled network elements under §251(c)(3),¹² as long as incumbent LECs accommodate the customized routing technologies utilized by competitors to access alternative DA services.¹³ However, the Commission has also made it plain that there is an independent statutory basis for requiring access to DA listings under of §251(b)(3) of the Act.¹⁴ SBC has failed to present any persuasive rationale for the Commission to reverse its rule that competitors should have unfettered, nondiscriminatory access to directory assistance. SBC's specific requests, if granted, would reverse the DA access rights that have increased competition in the DA market. Accordingly, the Commission should not countenance SBC's request for a "do-over" of

⁹ SBC Petition 4-6.

¹⁰ *Id.* at 2, 6-9.

¹¹ *Id.* at 3-4.

¹² *UNE Remand Order* ¶¶ 443-464.

¹³ *Id.* ¶ 464.

¹⁴ *Second Order on Reconsideration* ¶¶ 124-130, 149-156.

established, long-standing principles that serve well the public's interest in a competitive market for DA services. The Commission should reject SBC's petition in its entirety.

DISCUSSION

I. SECTION 251(B)(3) PROVIDES COMPETITORS WITH INDEPENDENT PRO-COMPETITIVE ACCESS TO DIRECTORY ASSISTANCE.

The first problem with SBC's Petition is that the central theme that it relies on to support its requests is unsupportable. SBC's claims are premised on the false notion that the Commission's current DA rules impose an unbundling requirement that is in conflict with the Commission's determinations in the *UNE Remand Order* that incumbent LECs do not have to unbundle DA. As LSSi demonstrates below, this is simply not the case.

The Commission's current DA rules require all LECs to provide requesting carriers with access to directory assistance listings in a downloadable format under terms, prices and conditions that are equal to the access that LECs provide to themselves and other requesting LECs.¹⁵ These rules are based on the Commission's plain reading of §251(b)(3) of the Act, which requires all LECs to provide nondiscriminatory access to their DA services.¹⁶ This section of the 1996 Act is distinct from the §251(c)(3) unbundling requirements which have in the past also impacted directory assistance. Specifically, it is under this later provision, §251(c)(3), that the Commission has addressed whether there should be unbundled access to DA services. Most recently, in interpreting this unbundling provision, the Commission concluded that unbundling rules would no longer apply to directory assistance as the DA market was competitive. Interestingly, in reaching this conclusion on DA unbundling, the Commission recognized that removing the unbundling requirement would not damage the competitive nature of the DA

¹⁵ *Id.* ¶¶ 128-130.

¹⁶ 47 U.S.C. §251(b)(3).

market in significant part because the Act in §251(b)(23) granted all competitors a statutory right to DA access independent of the unbundling rules.¹⁷

While it is plain that these abovementioned provisions of the Act are distinct, carrying their own mandates for nondiscriminatory access, SBC would have this Commission conclude that only one of these provisions—the §251(c)(3) unbundling provision—can be used by the Commission to allow competitors access to DA listings. In SBC’s view, the §251(b)(3) provision, in contrast, is a much less powerful provision granting a significantly lower form of access to DA listings than is available under the unbundling provisions in §251(c)(3). This SBC notion is a false dichotomy. The Act does not envision such extremes.

As the Commission has properly found, §251(b)(3) (including its requirement for nondiscriminatory access) is a separate statutory requirement to promote competitors ability to access and offer DA independent of §251(c)(3).¹⁸ Section 251(b)(3) expressly provides that *all* LECs have a “duty to permit [providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings.”¹⁹ This is by no means an anemic provision. The requirement for nondiscriminatory access to DA is a fundamental keystone of the 1996 Act, which requires LECs to provide DA to competing providers independent of any unbundling obligation. The Commission’s current rules requiring access to DA listings are firmly grounded in this nondiscriminatory access obligation.²⁰

¹⁷ “[W]e find that the ability to obtain nondiscriminatory access to operator services and directory assistance under section 251(b)(3) significantly mitigates any potential impairment a requesting carrier may experience if denied access to the incumbent’ OS/DA services as an unbundled network element.” *UNE Remand Order* ¶ 464.

¹⁸ *UNE Remand Order* ¶ 464; *Second Order on Reconsideration* ¶ 42.

¹⁹ 47 U.S.C. §251(b)(3).

²⁰ *Second Order on Reconsideration* ¶¶ 124-135.

Moreover, as a practical matter SBC's false dichotomy does not stand scrutiny. Under SBC's reading of §251, all exchange of DA listing downloads would cease upon the Commission's conclusion that incumbent LECs are not independently bound under the unbundling provisions of the Act to unbundle DA services. However, regardless of whether the Commission's implementation of §251(c)(3) triggers unbundling of DA, all LECs, including the incumbents, need to be able to access the directory information of customers of other carriers. Indeed, the telephony market would be in utter chaos if competing providers could not access listing information. This is especially true as more competitors enter the local markets. The more participants in the local market, the greater the need to ensure that they all have access to the listing information controlled by other competitors so that the telecommunication system does not become fractionalized. As such, there is an important public policy rationale for the §251(b)(3) requirement for nondiscriminatory access to DA listings independent of the unbundling rules. Accordingly, the Commission should reject SBC's use of a false dichotomy to pigeon-hole the Commission's choices to ensure DA access.

II. THE COMMISSION PROPERLY DETERMINED THAT COMPETITORS HAVE A RIGHT OF ACCESS TO ADJUNCT FEATURES.

The Commission determined in its *Second Report and Order on Reconsideration* that nondiscriminatory access to directory assistance under §251(b)(3) also included access to adjunct features.²¹ Adjunct features include rating tables²² or customer information databases.²³ The Commission made this determination on the basis that these features are critical for competitors

²¹ *Id.* ¶ 136.

²² Ratings tables are databases that "cross-reference areas codes, numbers called, and time of day to determine the price to be charged for telephone calls." *Second Report and Order* ¶ 105 n.252; *Second Report and Order on Reconsideration* ¶ 136.

²³ *Second Report and Order* ¶ 105; *Second Order On Reconsideration* 136.

to “make full use of” access to directory assistance.²⁴ As the Commission indicated, “it would be impossible for a competing carrier to get nondiscriminatory access to a providing LEC’s directory assistance platform without access to ratings tables and customer information databases.”²⁵

SBC has asked the Commission to clarify its rule that nondiscriminatory access to directory assistance includes access to adjunct features.²⁶ As a rationale for this request, SBC cites back to its claimed concern regarding an unbundling requirement and states that “there is other language in the Order that could be misconstrued as imposing an unbundling obligation.”²⁷ In its efforts to help the Commission “resolve this ambiguity,” SBC argues that no such confusion would exist if the Commission made explicit that nondiscriminatory access to “adjunct features” means that “LECs must utilize OS/DA adjunct features on a nondiscriminatory basis only in conjunction with their provision of the service in its ‘entirety.’”²⁸ Plainly stated, SBC has asked the Commission to determine that unless competitors are also purchasing SBC’s operator services, they should not have access to adjunct features.²⁹

There are several problems with SBC’s claims that the Commission should revisit its rules on adjunct services. First, as discussed above, there is no ambiguity as to the statutory foundation for the Commission’s rules on DA listing access. The Commission has made its determinations based on §251(b)(3), which is separate from the Commission’s unbundling rules.

²⁴ *Second Report and Order* ¶ 49; *see also Second Order on Reconsideration* ¶ 136.

²⁵ *Second Order on Reconsideration* ¶ 136.

²⁶ SBC Petition at 4-6.

²⁷ *Id.* at 5.

²⁸ *Id.* at 5.

²⁹ *Id.* at 5.

Although SBC claims that “other language” could be “misconstrued,” SBC fails to provide any citation or explanation to support any claimed ambiguity or possible misconstruction.

Second, SBC’s request regarding adjunct features, if granted, would anticompetitively and unduly limit competitors’ ability to offer the types of services that they now offer. Under the access parameters that SBC advocates for adjunct services, LSSi, for example, could only access ratings tables if LSSi also used SBC’s OS services in conjunction with those rating tables. However, this outcome would mean that LSSi would lose the flexibility to use OS from a variety of sources, which LSSi currently does. Moreover, adjunct features includes customer information databases and ratings tables, which contain information that LSSi relies on to offer its services. The Commission should therefore reject SBC’s request to limit adjunct features access because it would unduly and anticompetitively limit access to alternative DA offerings.

III. THE COMMISSION CORRECTLY DETERMINED THAT COMPETITORS HAVE A RIGHT OF ACCESS TO DA LISTING DOWNLOADS AND ARE NOT LIMITED TO READ-ONLY ACCESS.

SBC has asked for clarification that §251(b)(3) only requires it to provide competitors with “connectivity” to directory assistance listings, rather than the ability to download those listings.³⁰ Again, returning to its argument that there is purported confusion between the Commission’s unbundling rules and its DA rules under §251(b)(3), SBC argues that the Commission must limit DA access under §251(b)(3) to connectivity in order to maintain a distinction between §251(c)(3) and §251(b)(3).³¹

As LSSi explained above, there is no ambiguity or confusion between §251(b)(3) and §251(c)(3). Further, the Commission correctly determined that the nondiscriminatory access requirement of §251(b)(3) requires LECs to provide listings in download form. It would be

³⁰ *Id.* at 8.

inconsistent with the nondiscriminatory requirement of §251(b)(3) to allow LECs to access listings in download form that they can configure to meet their service offering needs, but at the same time to limit competitors, like LSSi, from accessing the same listings downloads for their own service offering configurations. LSSi's services offerings are inextricably tied to its ability to access directory assistance data in downloadable listing format. For example, an important part of LSSi's offerings is to combine and enhance the listing downloads from a variety of LECs in order to offer a more attractive national directory assistance service. If a LEC escapes the §251(b)(3) requirement to provide access to DA listings, the ability of LSSi and other providers to offer this and other innovative services will be significantly hampered. This cannot be the intent of the Act.

IV. THE COMMISSION SHOULD REJECT SBC'S REQUEST FOR INDEPENDENT AUTHORITY TO DELAY DELIVERY OF LISTINGS.

Almost as a fail-safe argument in the event that the Commission rejects SBC's efforts to limit access to DA listings and adjunct features, SBC asks for the right to independently control the delivery times of listing information. Under the guise of concern that competitors may "overburden" its systems,³² SBC asks the Commission to find that LECs face the "potential for multiple and conflicting requests" for access to DA listings, and with such a finding, allow LECs the leeway to delay access to listing information in such instances, as determined by the LECs.

In making this request, SBC relies on the Commission's recognition that because carriers providing subscriber list information to directory publishers may face multiple and conflicting requests, these carriers should have the ability to adjust their delivery times in response to

³¹ *Id.* at 8.

³² *Id.* at 4.

conflicting requests.³³ SBC argues that the demand on its DA services is just like the demand on its services for provisioning subscriber list information, and thus rationalizes that the Commission should develop a similar rule for provisioning directory assistance listings, as the Commission set for subscriber list information.³⁴

This SBC request appears to be yet another attempt to dilute competitors' access rights at all cost, if only inch by inch. The Commission's rules for the delivery of subscriber list information, and the rationales for those provisions, are not germane to the provisioning of directory assistance listing. Implicit in the Commission's requirement with respect to subscriber listing information is the concern that the demand for subscriber listing information is unpredictable.³⁵ Certainly, the demand for subscriber listing information, which is accessed by directory publishers, is more unpredictable than the demand for access to directory assistance listings. In order to access directory assistance listings, under current rules, a requesting carrier must be a telephone exchange or telephone toll service provider, which sets a finite customer pool for the LEC. This is in contrast to the subscriber list information, accessed by any directory publisher, which is a much more expansive category of customers.

Moreover, competitors do not purchase directory assistance listings on a sporadic basis. Rather, in order to have an effective directory assistance service that meet customers expectations, competitors must contract for daily downloads to keep DA information very current. Thus, the demand on the LECs directory assistance services is rather constant. Accordingly, SBC should have systems in place to accommodate this continuous need.

³³ *Third Report and Order* ¶ 68.

³⁴ SBC Petition at 4.

³⁵ *Third Report and Order* ¶¶ 66-69.

Further, delays in delivery of DA information is far more anticompetitive than delays in delivery of information for directory publishing. Directory assistance customers expect real-time, up-to-the-minute, corrected data. In the case of directory publishing, however, there is not a similar need for immediately corrected data simply because directories are generally not published on a daily basis.³⁶

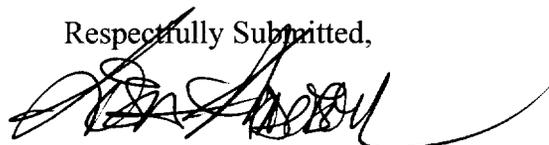
In addition, given the anticompetitive opportunity that any leeway to impose delays would create, coupled with SBC's intent to limit access to mere "connectivity," the Commission should be especially leery of granting LECs the right to unilaterally impose delays on claims of an "overburden[ed]" system. Finally, to the extent that SBC is permitted to delay competitors access to listing information due to "overburden[ing]," then SBC's own retail operations should be subject to similar delays and "wait-in-line" like any other competitor.

³⁶ However, in the future, consumer expectations may necessitate more frequently updated directory publishing information and LEC's may accelerate their directory publishing schedule for their own retail operations. In such an instance, competitive directory publishers should receive subscriber list information in a timeframe that is on par with the schedule that the LEC provides to its own retail operations.

CONCLUSION

For all of these reasons, the Commission should reject SBC's proposals. Specifically, the Commission should reject SBC's request to limit access to listings downloads in a timely manner. The Commission should also reject SBC's request to deny competitors nondiscriminatory access to adjunct features.

Respectfully Submitted,

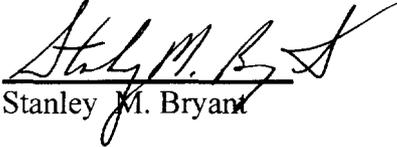


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For Listing Services Solutions, Inc.

Dated: February 7, 2000

I, Stanley M. Bryant, do hereby certify that on this 7th day of February, 2000, that I have served a copy of the foregoing document via U.S. Mail, postage pre-paid, to the following:


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