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March 7, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Re: CC Docket No. 96-115, Telecommunications Carriers' Use of Customer Proprietary Network and Other Customer Information; CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 99-273, Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended - Ex Parte Communication

Dear Ms. Salas:

We write on behalf of INFONXX, Inc. ("INFONXX"), a competitive directory assistance ("DA") provider, in connection with the Commission's consideration of rules to implement Section 251(b)(3) of the Communications Act and specifically in connection with SBC Communications Inc.'s Petition for Clarification or Reconsideration Regarding Directory Assistance and Operator Services ("*SBC Petition*").¹ For the reasons stated below, the Commission should reject this *Petition*.

On October 27, 1999, SBC petitioned the Commission to clarify or reconsider several aspects of its 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 ("*SLI Order*").² In both the *Petition* and comments thereon, SBC continually has made arguments that are contrary to established Commission policy and precedent, most recently in its reply comments to the comments of

¹ SBC Communications Inc., Petition for Clarification or Reconsideration Regarding Directory Assistance and Operator Services, *In re Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket Nos. 96-115, 96-98, 99-273 (filed Oct. 27, 1999) ("*SBC Petition*").

² Third Report and Order, *In re Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order, *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, and Notice of Proposed Rulemaking, *In re Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 99-227 (rel. Sept. 9, 1999) ("*SLI Order*").

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INFONXX and AT&T opposing SBC's original petition.³ Consequently, INFONXX would like to clarify the issues that SBC obfuscates.

First, we are pleased that SBC accepts its responsibility to provide competing carriers nondiscriminatory access to DA data or DA databases under § 251(b)(3).⁴ As SBC recognizes, competing carriers have the right "to obtain nondiscriminatory access to DA data or DA databases."⁵ In the *SLI Order*, the Commission affirmed "that under section 251(b)(3), 'nondiscriminatory access' means that providing LECs must offer access equal to that which they provide to themselves."⁶ Thus, a LEC generally is obligated to provide an initial download and daily updates of the listings that it uses to provide DA services. It is noteworthy that SBC recognizes this obligation to provide listings in electronic format, including daily updates.⁷

Second, SBC, however, still argues that the Commission should not "require all LECs to provide competing carriers unbundled access to all of the facilities (including ancillary services and software) used to provide DA services."⁸ These "ancillary" or "adjunct" services include such information features as rating tables and customer information databases.⁹ In the *SLI Order*, the Commission recognized that in the *Local Competition Second Report and Order* it had required access to adjunct services on a nondiscriminatory basis, even though these services are not "telecommunications services."¹⁰ The Commission's rationale was that "without access to such information features, competing providers cannot make full use of [operator and directory assistance] services."¹¹ As the Commission concluded, "to ensure that competing providers can obtain nondiscriminatory access to operator services and directory assistance, the

³ SBC Communications Inc., Reply Comments of SBC Communications Inc., *In re Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket Nos. 96-115, 96-98, 99-273 (filed Jan. 24, 2000) ("SBC Reply Comments")

⁴ SBC Reply Comments at 2.

⁵ *Id.* at n.2.

⁶ *SLI Order* at ¶ 128 (citing Second Report and Order, *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-333, 11 FCC Rcd. 19392, 19444 (rel. Aug. 8, 1996) ("*Local Competition Second Report and Order*").

⁷ SBC Reply Comments at 2. Clearly, the obligation to provide nondiscriminatory access is not satisfied simply because a competing provider has access to a LEC's electronic White Pages as do all consumers. Access to listings on a per query basis certainly is not access equal to the access a LEC provides itself.

⁸ *Id.*

⁹ "'Rating tables' are databases that cross-reference areas codes, numbers called, and time of day to determine the price to be charged for telephone calls. Directory assistance may use databases that contain customer names, numbers and addresses, and operator services may use databases that contain customer billing information (e.g., whether a customer will accept collect calls or third party billing)." *Local Competition Second Report and Order*, 11 FCC Rcd. at 19446 n.252. In its *Petition*, SBC referred to "adjunct features," but in its *Reply Comments*, SBC refers to "ancillary services." We assume that both terms refer to services such as rating tables and customer information databases that are used in connection with DA databases.

¹⁰ *SLI Order* at ¶¶ 136, 138.

¹¹ *Local Competition Second Report and Order*, 11 FCC Rcd. at 19445.

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Commission required LECs to make these services in their entirety available to competing providers."¹²

The original *SBC Petition* asked the Commission not to require LECs to "unbundle" adjunct services but provide them only in the course of providing access to DA information in its entirety (*i.e.*, SBC does not want to have to provide separate access to ratings tables when not providing access to DA services).¹³ However, SBC's reply comments urge "the Commission to clarify that LECs are not required to provide access to ancillary OS/DA services and software that are separate from their OS/DA databases and which they use to facilitate their utilization of those databases."¹⁴ SBC apparently wants to refuse to provide the Commission-mandated access to ancillary/adjunct services in connection with providing access to DA information, even when SBC itself uses those services to provide directory assistance. The Commission should not allow SBC to deny access to these features if they are essential to a competing provider's ability to utilize the DA database as the statute intends.

Third, to justify its refusal to provide nondiscriminatory access to adjunct services, SBC persists in trying to conflate Sections 251(b)(3) and 251(c)(3). In its *Petition*, SBC argued that the Commission should "reconcile" its requirements under Section 251(b)(3) and its *UNE Remand Order* regarding Section 251(c)(3) obligations.¹⁵ Both AT&T and INFONXX answered this contention by pointing out that Section 251(b)(3) is distinct from Section 251(c)(3) and imposes distinct obligations on LECs.¹⁶ In its *Reply Comments*, SBC still fights an "unbundling" obligation under Section 251(b)(3) by referring to the Commission's decisions implementing Section 251(c)(3). SBC states that, because the *UNE Remand Order* found that competition exists in the OS/DA market even though third-party providers have never had access to LEC ancillary services, "no credible claim can be made that competing carriers require access to ancillary proprietary OS/DA services and software to offer OS/DA service, or that competing carriers would be denied dialing parity without access."¹⁷ Thus, SBC again attacks the Commission's conclusion that adjunct services, such as rating tables, must be provided under Section 251(b)(3) to satisfy the statutory requirement that LECs afford nondiscriminatory access to directory assistance. SBC's continued reference to an "unbundling" obligation under Section 251(b)(3) is mere wordplay designed to distract the Commission from the section's actual requirements, and SBC's continued attempt to conflate Sections 251(b)(3) and 251(c)(3) should be rejected. It is axiomatic that each provision of a statute must be given its full weight.

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¹² *SLI Order* at ¶ 138.

¹³ *SBC Petition* at 5.

¹⁴ *SBC Reply Comments* at 4.

¹⁵ *SBC Petition* at 6-9.

¹⁶ AT&T *Opposition* at 4-5; INFONXX *Opposition* at 4-5.

¹⁷ *SBC Reply Comments* at 3-4.

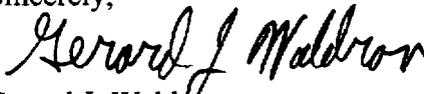
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Accordingly, INFONXX requests that the Commission reject the *Petition* and recognize that LECs have the obligation to provide nondiscriminatory access to not only directory listings but adjunct services such as rating tables and consumer information databases in connection with providing access to DA information, and that Section 251(b)(3), which stands on its own and imposes separate obligations, does not have to be "reconciled" with Section 251(c)(3).

Please address any questions to the undersigned.

Sincerely,



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Russell Jessee*

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