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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

July 26, 2000

**BY HAND DELIVERY**

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 provide for access to directory listing information pursuant to the Communications Act of 1934 (the "Act"), as amended by the Telecommunications Act of 1996 (the "1996 Act"). This letter addresses matters that have been raised in our discussions with the staff of the Common Carrier Bureau and its Network Services Division earlier this month.

**"Reasonable" Rates for Directory Listings**

It is clear that § 201(b) of the Act, which requires just and reasonable rates for all charges in connection with communications services, applies to rates charged by local exchange carriers ("LECs") for directory listings under § 251(b)(3).<sup>1</sup> Not only must rates be

<sup>1</sup> See Ex Parte Letter to Ms. Magalie Roman Salas, Secretary, FCC from InfoNXX, Inc., CC Docket Nos. 96-115, 96-98 & 99-273, June 27, 2000, at 2 n.3.

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nondiscriminatory under § 251(b)(3) – that is, the same that LECs charge competing carriers and that LECs impute to themselves – but also rates should be "reasonable." Rather than have the Commission undertake time-consuming cost studies in order to determine reasonable rates for directory listings, the Commission may look to the marketplace and state regulatory decisions for benchmarks of reasonableness to guide enforcement of a requirement that access to directory listing information be reasonable and nondiscriminatory.

### Marketplace Rates

Because the best sources of directory listing information – the incumbent LECs ("ILECs") – have an unequal bargaining position, the ILEC-to-competitive-directory-assistance-provider market does not offer a useful benchmark. The Commission also should be careful about looking at other potential sources for benchmarks to make certain that it makes an apt comparison. For example, Nortel Networks' national directory assistance ("NDA") platform does not provide a proper marketplace indication of reasonable rates for directory listings because Nortel's offering includes not only the listings in its database, but also hardware, software, telecommunications functions, and profit.<sup>2</sup> Nortel provides a turn-key NDA service, not just the listings that competitive directory assistance ("DA") providers require. Competitive DA providers have no need for hardware, software, and telecommunications functions that Nortel provides, and that is why they do not utilize this platform.

A much more accurate marketplace indication of reasonable rates is the average rate that InfoNXX pays alternative providers of directory listing information, such as list brokers. This market is fairly mature and robust and characterized by a healthy balance of supply and demand. Currently, InfoNXX pays list brokers on average a **royalty rate of \$0.015 per listing**. InfoNXX loads all of a broker's listings into its central database, thereby populating its database with the listings of the third party provider, and then pays the broker for each listing actually accessed by InfoNXX operators. InfoNXX generally does not pay for every listing downloaded; rather, it pays only for the listings that it uses – at an average of \$0.015 per listing.

The ILECs no doubt will argue that their lists are "better" than the lists provided by list brokers and therefore they should charge more. But that is really an argument for "value" pricing of directory listings, a proposition that we have argued against

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<sup>2</sup> See, e.g., *SBC Communications Inc.'s Clarification and Supplement to its Petition for Forbearance Filed on November 2, 1999*, CC Docket 97-172, at 2 (Nov. 19, 1999) (describing Nortel facilities purchased by SBC companies).

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in other contexts<sup>3</sup> and that the Commission has rejected on more than one occasion.<sup>4</sup> The ILECs also may argue that their cost structure is different than a list broker's. But that argument actually works against the ILECs: the ILECs generate a perfect database list as a by-product of being the dominant provider of local telephone service. In fact, one could argue that the costs properly attributable to building a directory listing database should be miniscule because much of the work is done for billing and collection purposes.

In addition, InfoNXX asserts that there certainly is no cost-based reason to support what ILECs currently charge per listing. Perhaps, the only costs fully allocable to a directory listing database are an ILEC's costs of transferring listings from magnetic tapes used to keep track of subscribers and shifting that information to a mainframe computer used to provide DA then transferring the information to competitive DA providers. If ILECs truly find the data transfer process too costly, InfoNXX would be willing to act as a central clearing house for ILEC directory listings and believes that it can perform the mechanical transfer functions for much less than what ILECs charge.

#### State Regulatory Decisions

For over two years, InfoNXX has been involved in a New York Public Service Commission ("NYPSC") proceeding regarding Bell Atlantic-New York's prices for directory information database services provided to other carriers and to competitive DA providers.<sup>5</sup> In that proceeding, concluded in February 2000, the NYPSC fully examined Bell Atlantic-New York's costs of providing its directory listings database services. Following the resolution of the proceeding, InfoNXX pays \$3,866 per month for daily updates, which equals a rate of approximately **\$0.0083 per listing for updates**.

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<sup>3</sup> See, e.g., Ex Parte Letter to Ms. Magalie Roman Salas, Secretary, FCC from InfoNXX, Inc., CC Docket Nos. 96-115, 96-98 & 99-273, Jan. 18, 2000, at 2-3.

<sup>4</sup> See, e.g., 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, FCC 99-227, ¶¶ 83-90 (rel. Sept. 9, 1999) (refusing to adopt value-based pricing methodology for subscriber list information).

<sup>5</sup> Earlier, InfoNXX submitted for inclusion in the record of this proceeding the Opinion and Order of the New York Public Service Commission regarding rates for directory listings. See Ex Parte Letter to Ms. Magalie Roman Salas, Secretary, FCC from InfoNXX, Inc., CC Docket Nos. 96-115, 96-98 & 99-273, March 8, 2000 (submitting Opinion and Order in Module 1 (Directory Database Services), Case 98-C-1375, Opinion No. 00-02, State of New York Public Service Commission (Feb. 8, 2000)).

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In Texas, the state Public Utility Commission, in connection with an application by Southwestern Bell Telephone Company ("SWBT") to provide NDA, determined that SWBT's cost-based rate for an initial electronic listing is \$0.0011.<sup>6</sup> However, SWBT charges competitors \$0.0585 per listing, over 53 times more than its costs. Clearly, when states examine ILEC costs for providing directory listings, they arrive at per listing rates that are much lower than the extortionate rates ILECs currently force competitive DA providers to pay.

### **InfoNXX's Experience as a CLEC in New York**

InfoNXX's experience as a competitive LEC ("CLEC") in New York emphasizes the need for the Commission to firmly establish that competitive DA providers are entitled to nondiscriminatory access to LEC directory listings pursuant to § 251(b)(3). Despite our obtaining state certification as a CLEC, Bell Atlantic-New York has refused to enter into an interconnection agreement with InfoNXX as it does with other CLECs.

InfoNXX's request for certification as a CLEC in New York was approved on December 16, 1997. However, Bell Atlantic-New York refused to acknowledge InfoNXX's CLEC status, and it would not accord InfoNXX the same treatment as other CLECs and enter into an interconnection agreement. For that reason, the company has pursued a separate action at the NYPSC, and the February 2000 NYPSC decision regarding Bell Atlantic-New York's DA database rates resolved the matter. The effect of the NYPSC decision is that CLECs and non-CLECs pay virtually the same rates for directory listings and the only difference in service is that non-CLECs do not have access to non-published listings. Still, the decision contains a defect: though it establishes rates that are nondiscriminatory, its rates are still inflated because they include costs for the ILEC's mainframe that competitors should not be subsidizing.

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<sup>6</sup> See Order, *Application of Southwestern Bell Telephone Company to Introduce a New Optional Service, Nationwide Listing Service, Pursuant to Subst. R. § 23.25, Texas P.U.C.*, at 13 (signed April 8, 1999); see also WorldCom, Inc., Application for Review, CC Docket No. 97-172 at 6 (May 11, 2000); Comments of MCI WorldCom, Inc., CC Docket 97-172 at 6 (Nov. 29, 1999); Comments of Excell Agent Service, L.L.C., CC Docket No. 99-273, at 13 n.20 (Oct. 13, 1999); Arbitration Award, *Petition of MCI Telecommunications Corp. for Arbitration of Directory Assistance Listings Issues Under Federal Telecommunications Act of 1996, Texas P.U.C. Docket No. 19075* at 13 (signed Aug. 13, 1998).

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Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office. Please direct any questions regarding this notice to the undersigned.

Sincerely,

*Gerard J. Waldron* /s/ RJJ

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Russell Jessee\*

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