

April 7, 2003

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Re: Provision of Directory Listing Information Under the
Communications Act of 1934, As Amended, CC Docket No. 99-273
The Use of N11 Codes and Other Abbreviated Dialing Arrangements,
CC Docket No. 92-105
Administration of the North American Numbering Plan, CC Docket No. 92-237
Ex Parte Presentation by InfoNXX and Telegate*

Dear Ms. Dortch:

The record in the above-referenced proceeding already contains specific steps the Commission should take to promote competition in the billion-dollar-a-year retail directory assistance (DA) services market. In addition to steps already outlined, InfoNXX and Telegate, two leading competing DA providers in the U.S. and Europe, file this letter to underscore another area that needs Commission attention to ensure that retail competition moves from theory to reality: billing and collection.

The Commission Has Jurisdiction and Authority to Require ILECs to Bill-and-Collect

The circumstances surrounding retail DA justify the Commission's exercising the authority it expressly reserved under Title I, and relied upon recently in the payphone context,¹ to require ILECs to provide billing and collection services to competitors. In ruling in 1986 that billing and collection was not a common carrier service subject to Title II regulation, the Commission made clear that it retained the power to exercise Title I jurisdiction whenever such exercise would protect competition and was in the public interest.² In 1999, the Commission set

¹ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-128, 11 FCC Rcd 20541 (1996) (Payphone Order) (requiring LECs to provide billing and collection services, comparable to those provided to their own payphone operations, to independent payphone providers on a nondiscriminatory basis).

² *In re Detariffing of Billing and Collection Services*, Report and Order, CC Docket No. 85-88, 102 F.C.C.2d 1150, 1169-70 (1986).

forth a useful framework for analyzing its jurisdiction to require billing and collection and determining whether the exercise of such jurisdiction is warranted.

In considering the regulatory treatment of billing and collection services, we observe that we have generally declined to regulate the provision of billing and collection services unless regulation is needed to protect competition. In 1983, shortly after the Modified Final Judgment, the Commission regulated billing and collection services by establishing a separate access charge for billing and collection provided to IXCs and requiring exchange carriers that provided billing and collection services to one IXC to provide such services to all IXCs. In 1986, however, the Commission detariffed billing and collection services provided by LECs and found regulation for such services to be unnecessary.³

The Commission then explained how its definition of the appropriate regulatory status of billing and collection had been refined:

In 1992, the Commission clarified that billing and collection service was a communications service within the meaning of Section 3(a) of the Act, but that it was not subject to regulation under Title II because it was not a “common carrier” service (*although it could be regulated under the Commission’s ancillary jurisdiction under Title I of the Act*). In 1993, the Commission refused to require IXCs to provide billing and collection services to providers of 900 services.⁴

The Commission further explained that it has a range of choices under Title I with respect to billing and collection — including requiring the service to be offered by a carrier or imposing a nondiscrimination requirement such that if the incumbent carrier offers the service to an affiliate it must offer it to others. The Commission stated:

In some instances where the provision of billing and collection services has not been required, there have been nondiscrimination requirements. For instance, . . . [i]n implementing [Section 272],

³ *In re Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, Declaratory Ruling and Notice of Proposed Rulemaking, WT Docket No. 97-207, 14 FCC Rcd 10861, 10892-10893 (1999) (*Calling Party Pays Order*).

⁴ *Id.* (emphasis added).

we held that to the extent a BOC provides billing and collection services to an affiliate, such services were subject to the non-discrimination requirements of Section 272(c)(1). We also defined the term “entity” as including “telecommunications carriers, ISPs, and manufacturers.”⁵

Finally, the Commission identified the factors deemed critical to determining whether, as a policy matter, LEC billing-and-collection should be required:

[1] “[W]hether such billing and collection is needed for the regional or nationwide offering . . .”;

[2] “[W]hether that need reflects market failure or some anticompetitive conduct.”;

[3] “[W]hether the offering would be cost-prohibitive in the absence of incumbent LEC billing and collection services.”;

[4] “[T]he availability of alternatives, such as third party billing through credit card companies or clearinghouse.”⁶

This recent formulation by the Commission establishes the framework for analyzing billing and collection in the context of retail DA.

The Facts and Circumstances Surrounding Retail DA Compel Adoption of a Billing-and-Collection Requirement

Applying the factors identified by the Commission to retail DA compels the conclusion that the Commission should exercise its Title I jurisdiction and impose a billing-and-collection requirement in connection with retail DA competition.

First, billing-and-collection is needed for a regional or national retail DA offering comparable to the services offered by incumbent carriers. Independent competitive DA providers, such as InfoNXX and Telegate, do not currently have a billing relationship with end users. Although it might be economically practicable for a competing DA provider to establish that kind of billing relationship with a large business customer, to do so with millions of

⁵ *Id.*

⁶ The Commission also asked whether technological developments had reduced the costs of billing and collection for CMRS carriers, *see id.* at 10894, but that line of inquiry is inapposite in the retail DA market.

individual consumers, whose monthly DA charges ordinarily would be very small, would be cost prohibitive.⁷ Individual consumers should not be deprived of the innovations and cost savings of competitive DA service because of a lack of effective billing and collection for such services.

Second, the necessity of requiring billing and collection is a direct result of market failure. Put simply, because a competing DA provider will take revenue directly from the ILEC with the established customer billing relationship, the incumbent carrier has no incentive to agree to billing arrangements. This differs markedly from the long distance, information services, and pay-per-call markets, in which the ILECs agreed to offer billing and collection to providers whose services did not compete with (and thus would not pull revenue away from) those offered by the ILECs.

Third, given the small amount of retail DA charges likely to be incurred each month, it would be cost-prohibitive for a consumer or business to justify the expense and inconvenience of creating separate billing arrangements with a competing DA provider. The average household makes 2.2 DA calls per month. If the average charge per call is one dollar, then the cost of a stamp alone would account for a significant percentage of the amount billed. In this regard, a retail DA offering is distinguishable from IXC charges, with an average monthly bill above \$20,⁸ and where the Commission found that competing providers such as credit cards or service bureaus provided adequate alternatives.⁹ For the monthly expense of a typical long distance bill, a credit card arrangement may be efficient, but those arrangements would be cost-prohibitive in the retail DA setting.¹⁰

⁷ An independent consultant analyzing competition in the directory assistance market throughout Europe acknowledged this concern: “[T]he German regulator has decided to make directory enquiry providers responsible for two elements of the billing process: reminders and warning letters, and collection of bad debt. This puts directory enquiry providers at a disadvantage: as the amount per invoice for directory enquiries is very small, providers experience difficulties in reaching economies of scale for the collection of debt, or presenting a credible threat to non-paying customers.” *Regulatory Framework and Market Developments Concerning Directory Services in EU and EEA Member States*, Analysys Final Report No. 02-226, at 97 (Sept. 27, 2002) (*Analysys Report on EU Directory Services Market*).

⁸ See *Statistics of the Long Distance Telecommunications Industry*, Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, at 2 (January 2001).

⁹ See *In re Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Report and Order, CC Docket No. 91-115, 7 FCC Rcd 3528 (1992) (*Joint Use Calling Card Order*).

¹⁰ See *In re Policies and Rules Concerning Interstate 900 Telecommunications Services*, Report and Order, CC Docket No. 91-65, 6 FCC Rcd 6166 (1991); *Joint Use Calling Card Order*.

Fourth, absent an efficient and cost-effective billing and collection mechanism, retail DA competition may never develop. As noted above, credit cards and service bureaus do not provide an economically rational alternative. That was Oftel's conclusion in the U.K., which is why it required BT to bill and collect for competing carriers. Other European countries, including Germany, Ireland, Spain, France and Italy, have similarly determined that competition in the retail DA market cannot develop unless incumbent carriers are required to provide billing and collection services on a cost-oriented basis.¹¹ Because of the low dollar amounts involved and the disincentives for ILECs to cooperate, significant retail DA competition is doubtful absent an efficient and cost-effective billing and collection mechanism.

Analysis of the factors identified by the Commission establishes that the Commission should exercise its Title I jurisdiction to impose billing and collection requirements. We think the record is clear that a billing and collection requirement is necessary to promote retail DA competition. The Commission has regulated billing and collection pursuant to its ancillary jurisdiction since the 1996 Act, when it adopted a nondiscrimination requirement in the payphone context.¹² The facts and circumstances here are even more compelling and support billing and collection requirements in the context of retail DA. Consequently, the Commission should require incumbent LECs to offer billing and collection services (comparable to the billing and collection the LECs provide in connection with their own DA services) to competing DA providers at reasonable, cost-based, nondiscriminatory prices.

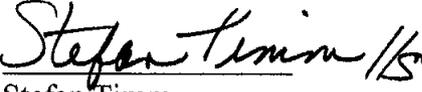
* * *

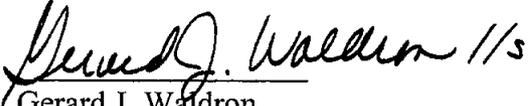
¹¹ See *Analysys Report on EU Directory Services Market*, at 97; see also *id.* at 31 (“[T]he incumbent has to provide [billing services] to service providers in order for them to be able to offer a directory enquiry service.”). Although the scope of the incumbent's billing and collection obligations is still developing in Germany, the German regulator apparently requires DA (or DQ) service providers to self-provision some aspects of bad debt collection. Nonetheless, the incumbent is required to provide initial collection services. To the extent that competitors are required to pursue unpaid charges on their own, an independent consultant has acknowledged that “directory enquiry providers [are] at a disadvantage: as the amount per invoice for directory enquiries is very small, providers experience difficulties in reaching economies of scale for the collection of debt, or presenting a credible threat to non-paying customers.” *Analysys Report on EU Directory Services Market*, at 97.

¹² See *Payphone Order*, at 20616 (“Regarding billing and collection services, we conclude that if a LEC provides basic, tariffed payphone services that will only function in conjunction with billing and collection services from the LEC, the LEC must provide the billing and collection services it provides to its own payphone operations for these services to independent payphone providers on a nondiscriminatory basis.”).

Ms. Marlene H. Dortch
April 7, 2003
Page 6

For the reasons set forth above, we urge the Commission, in addition to the steps already outlined in the record, to adopt a billing and collection requirement to enable retail DA competition.


Stefan Timm
Senior Vice President and
Chief Operating Officer
Telegate, Inc.
4949 Hedgecove Road, Suite 230
Plano, TX 75024


Gerard J. Waldron
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004

Attorneys for InfoNXX

cc: Mr. William Maher
Ms. Michelle Carey
Mr. Greg Cooke
Mr. Chris Libertelli
Mr. Don Gonzales
Mr. Jordan Goldstein
Ms. Lisa Zaina
Mr. Matthew Brill