COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

WASHINGTON
NEW YORK
SAN FRANCISCO
LONDON
BRUSSELS

April 22, 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
Notice of *Ex Parte* Communication

Dear Ms. Dortch:

This letter is being filed pursuant to Section 1.1206(b) of the Commission's rules to inform you that on April 21, 2003, Lois Pines of InfoNXX, Inc. and the undersigned, its counsel, met with Gregory Cooke, Rodney McDonald, and Marcy Greene of the Wireline Competition Bureau to discuss the pending petitions for reconsideration and Notice of Proposed Rulemaking in the above-referenced proceedings. The attached presentation was distributed during the meeting.

Petitions for Reconsideration

InfoNXX urged the Commission to reject the petitions for reconsideration filed by SBC/BellSouth and Qwest requesting that the Commission modify its decision granting competitive directory assistance (DA) providers access to local exchange carriers' (LECs') DA listing information to allow LECs unilaterally to impose discriminatory restrictions on competitors' use of the LECs' DA information. The Commission correctly decided in the *Directory Listing Order* that DA providers (whether carriers or their agents) obtaining access to DA listings under Section 251(b)(3) should be able to "use the information as they wish" without

being subject to use restrictions imposed unilaterally by the disclosing LEC.[1] To the extent that a state regulatory body determines that a particular restriction on use of DA information is necessary to protect the public interest, the Commission should make clear that any such restriction (1) must apply equally to incumbents' and competitors' use of DA information and (2) must not restrict the ability of competitive DA providers to use DA listing information for all DA-related information services, including enhanced DA and call completion. The Commission should further clarify that no state or LEC may require competitive DA providers to pay an additional fee to use DA listings for enhanced DA services.

The proposed Qwest DA listings contract submitted with WorldCom's December 18, 2002, *ex parte* filing illustrates the consumer harm that will result if the Commission does not prohibit LECs from imposing discriminatory restrictions on (or charging discriminatory pricing for) use of their DA information. The Qwest contract proposes to charge *twice* as much for DA update listings that will be used for "multiple services, including Directory Assistance," than for update listings to be used for "DA use only". Under the contract's narrow definition of "Directory Assistance Service," a competitive DA provider planning to provide value-added, pro-consumer DA services such as driving directions, Yellow Pages look-ups and call completion service could be asked to pay the higher price. This kind of discriminatory, use-based pricing for DA listings was not contemplated in the *Directory Listing Order* and threatens to undermine competition in the DA market. Competitive DA providers facing such discriminatory prices would be forced to raise the prices they charge for the value-added services they have developed specifically to distinguish themselves from the dominant incumbents. Without the ability to offer competitively-priced, uniquely-valuable DA services, competitive DA providers likely could not survive in the market and consumers would be deprived of the innovation and other benefits competition would otherwise bring.

The parties also discussed the need to clarify that LECs may not prohibit the resale of DA listings they provide pursuant to Section 251(b)(3). In an earlier *ex parte* filing in this proceeding, BellSouth asked for the right to prohibit the resale of its DA information, arguing that reselling DA listing information to other DA service providers is inconsistent with the Commission's "vision" for the use of LECs' DA information.[2] The Commission should reject this request consistent with its long history of disfavoring restrictions on the resale of

---

[1] *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, First Report and Order, CC Docket No. 99-273, 16 FCC Rcd 2736, 2749 (2001) (*Directory Listing Order*).

[2] *Ex Parte* Letter to Ms. Marlene Dortch from Ms. Angela N. Brown, Regulatory Counsel, BellSouth Corp. (Sept. 19, 2002).

telecommunications services.[3] As the Commission has recognized, resale can offer important competitive benefits in the market; it decreases transaction costs and provides a market-based solution that allows competitive DA providers efficiently to acquire consolidated DA listings information from multiple LECs.[4] This in turn allows the competing DA providers to offer more reliable, more affordable service to consumers. Moreover, nothing in Section 251(b)(3) prohibits carriers from reselling the DA information provided by the LEC. Accordingly, there is no basis for the Commission to prohibit resale of LECs' DA information here when it has rejected LECs' proposals to prohibit resale of telecommunications services in other contexts.

With respect to restrictions on the use of unpublished or unlisted numbers, InfoNXX indicated that it does not object to an obligation to respect the privacy designations of subscribers with such numbers. However, InfoNXX needs to have access to the subscriber information for such users to ensure the accuracy of InfoNXX's database. Moreover, in order to ensure a level competitive playing field between incumbents and competitive DA providers, InfoNXX must receive the subscribers' unpublished or unlisted telephone numbers in addition to their names and addresses. Incumbents offer emergency notification and, increasingly, voice messaging services to subscribers with unpublished or unlisted numbers, but InfoNXX cannot offer comparable services if it does not have the subscribers' numbers. We understand that some LECs have alleged that some recipients of their DA information have engaged in inappropriate use of unpublished and unlisted numbers. The Commission should require the LECs to provide concrete evidence of such activity. To the extent the LECs can document such abuses of unpublished or unlisted numbers, the issue is of serious concern but can be addressed narrowly without imposing a blanket prohibition on the disclosure of unpublished and unlisted numbers to legitimate DA providers who have agreed to respect those designations.

---

[3] *See. e.g., In re Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Report and Order, Docket No. 20097, 60 FCC 2d 261 (1976), *amended on recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom.*, American Telephone and Telegraph Co. v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978) [hereinafter *Resale Report and Order*]; *In re U.S. West Tariff F.C.C. Nos. 3 and 5 Transmittal No. 629*, Order, 10 FCC Rcd 13708 (1995); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, 15966 (1996) (declaring resale restrictions presumptively unreasonable).

[4] *See Resale Report and Order.* BellSouth implicitly recognizes these benefits; it accepts DA listing information from CLECs and nearby ILECs (in order to create a more comprehensive DA database) and "resells" that information to competing DA providers requesting access to BellSouth's DA listing information.

Retail DA NPRM

Finally, InfoNXX urged the Commission to issue a decision promptly on the pending NPRM proposing measures to facilitate competition in the retail DA market. InfoNXX noted that BellSouth has recently announced its entry into the wholesale enhanced directory assistance market[5] and, we believe, is offering its wholesale DA services at well below cost in an effort to drive out competitors in the wholesale market. If the Commission does not act soon to encourage competition in the retail DA market, the potential participants in that market could well be driven out of business by BellSouth's anticompetitive conduct and thus unavailable to offer consumers competitive alternatives in the retail DA market.

Please do not hesitate to contact me if you have any questions concerning this matter.

Sincerely,

Gerard J. Waldron /s

Gerard J. Waldron
Attorney for InfoNXX, Inc.

Attachment

cc: Mr. Gregory Cooke
Mr. Rodney McDonald
Ms. Marcy Greene

[5] Press Release, *BellSouth to Offer 'Enhanced' Directory Assistance to Wireless Carriers* (Mar. 17, 2003).

INFONXX, INC.

- Leading provider of Enhanced Directory Assistance to wireless carriers, CLECs, large business
  - Call completion, movie listings & showtimes, restaurant listings & reviews, driving directions
- 4 U.S. call centers
- 5,000+ employees
  30 million enhanced DA calls per month
- Retail DA service in newly-opened UK market

Pending Petitions for Reconsideration

- **SBC/BellSouth** seek right to impose "reasonable restrictions" on competitive DA providers' use of DA listings.

- **Qwest** seeks right to restrict use of DA information, especially to prevent use of DA listings for marketing purposes.

INFONXX Opposition to Petitions for Reconsideration

- Statute/rules contain no restrictions on how competitive DA providers can use DA information obtained under § 251(b)(3).
- Any use restrictions must be applied to all DA providers, including LECs.
- LECs should not be allowed unilaterally to impose use restrictions on competitive DA providers that they do not apply to themselves.
- Competitive DA providers should have access to subscriber information for subscribers with non-listed or non-published numbers and should have the ability to deliver messages to such subscribers

Qwest DA List Agreement

- WorldCom *ex parte*, Dec. 18, 2002
- Daily Updates:
  - $.025/update "for DA use only"
  - $.050/update "for DA and additional uses"
- DA service defined as:

  "the provision, via a live operator or a mechanized system, of telephone numbers and address information for an identified telephone service end user or the name and/or address of the telephone service end user for an identified telephone number."

Qwest DA List Agreement

Qwest's narrow DA definition could be relied on to require InfoNXX to pay twice the price for DA updates in order to provide value-added DA services such as:

- Driving directions
- Yellow Pages look-ups
- Restaurant reviews & reservations
- Movie listings, showtimes & reviews
- Call completion

Under this scenario, consumer-friendly, enhanced DA services could not be offered at a competitive price

Decision on Petitions for Reconsideration

- Any restrictions on use of DA information should be established by states.
- Any use restrictions must preserve the right of DA providers to use DA listing information for DA-related information services.
- Competitive providers and incumbents should be subject to same use restrictions.

Retail DA NPRM

- MCI/WorldCom, InfoNXX and Telegate recently filed joint *ex parte* urging key steps to Competitive Retail DA:
  - Require carriers to activate and route 555 numbers
    - Dial-around alternatives are unfamiliar to consumers and insufficient to enable genuine competition
  - Ensure all DA providers have a 555 number
  - Require all DA providers to use a 555 number for DA
  - Phase out 411 and 555-1212 default codes
- In addition, InfoNXX and Telegate filed *ex parte* distinguishing DA from 900, IXC, and other services and urging FCC to require LECs to provide billing and collection.

Summary

- The Commission should promptly resolve the pending petitions for reconsideration of the DA listing decision and issue a decision on the Retail DA NPRM that enables the introduction of competition in the retail DA market.
- Consumers should not have to wait any longer to reap the rewards of competition in the provision of DA services.