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August 14, 2003

## VIA ELECTRONIC FILING

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

Re: *Ex Parte Communication, CC Docket No. 99-273*

Dear Ms. Dortch:

During our discussions with Commission staff concerning the benefits and potential challenges of implementing competition in the wireline retail directory assistance (DA) market, questions have arisen concerning whether and how retail DA competition will affect states and state regulatory regimes. In an attempt to identify and address any issues affecting state regulation of wireline DA, representatives of InfoNXX, Inc. (InfoNXX) recently attended the summer meeting of the National Association of Regulatory Utility Commissioners (NARUC) in Denver, Colorado and met with commissioners and/or staff from over thirty state regulatory commissions. As we explain below, NARUC has decided to analyze retail DA competition and how states should respond to possible policy changes in the DA arena. The purpose of this filing is to outline state regulatory issues that could be affected by DA competition in order to inform Commission consideration of measures to promote retail DA competition.

These issues are clearly soluble and can be addressed effectively at either the state or federal level, and should not prevent the Commission from taking action to bring much-needed competition to the \$5-6 billion wireline DA market. In the current market, consumers are facing increasing prices for DA services without commensurate improvements in service quality or features. Retail competition will change that, and FCC action to enable such competition is long overdue.

1. *State Universal Service Funds.* In addition to the federal Universal Service Fund (USF), twenty-six (26) states (as of 2001) have state USFs promoting universal consumer access to basic local telephone service at reasonable prices. According to a 2001 report by an affiliate of the National Exchange Carrier Association (NECA), states usually require all telecom service providers offering service in the state to contribute to the state USF; service providers required to

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contribute include ILECs, CLECs, IXCs, resellers, payphone providers, wireless and cell phone providers and operator service providers. States usually assess contributions based on a percentage of billed revenue from end-user (not wholesale) retail and business customers. Charges for operator services, including DA, have been among the assessable revenues.<sup>1</sup>

While it is up to the individual states to determine who will contribute to the state USF, it appears that in a number of states competitive DA providers offering their services to retail customers likely would be subject to state USF assessments on their retail revenues. However, as long as these obligations apply fairly, neutrally and proportionately to all retail DA providers, and thus do not affect any particular provider's competitive position, compliance with these obligations should not be a problem. Adding an additional category of contributors (competitive DA providers) will not be a problem since the additional USF revenues are likely to come from increased use of new DA services.

2. State Taxes. The applicability of state excise and other taxes to competitive retail DA services, like the obligation of retail DA providers to contribute to state USFs, is an issue for state legislators and regulators to decide. Of course, retail DA providers will have to comply with applicable state laws dictating whether retail DA services are subject to state taxes. It is worth noting that compliance with and enforcement of such laws would likely be easier if LECs were required to bill and collect for competitive retail DA services.

3. Free calls. According to our research, approximately thirty states currently require at least some regulated incumbent DA providers to offer some specified number of free (usually local) DA calls each month. Most states also require ILECs to provide unlimited free (usually local) DA calls to the visually impaired and/or other customers who can demonstrate that they are unable to use a print directory.

Whether or not to apply free call requirements to new entrants is an issue that will need to be addressed as competitive retail DA services are rolled out. Factors that will need to be taken into account include: (1) the rationale for imposing free call requirements on a regulated monopoly provider versus the need (or lack thereof) for free calls in a competitive environment in which prices for DA services are considerably lower; (2) the effect of free call obligations on the ability of new entrants to offer competitively- and uniformly-priced DA services on a national basis (particularly given that competitive DA providers may not have non-DA revenue sources from which to recover the costs of providing free DA calls); and (3) the administrative problem of tracking consumers' free call usage to ensure that they cannot "game" the system by

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<sup>1</sup> Steven W. Haas, NECA Services Inc., *An Overview of State and Federal Universal Service/Access Support Mechanisms and Administration in the United States*, available at [http://www.wallman.com/pdfs\\_etc/ptc\\_2002.pdf](http://www.wallman.com/pdfs_etc/ptc_2002.pdf) (last visited Aug. 14, 2003).

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switching between providers and receiving the maximum free calls from each. We look forward to working through these issues with the Commission and state regulators as this proceeding progresses toward a decision that we hope will finally bring to consumers the benefits of genuine competition in the market for wireline retail DA services.

4. Rate-of-Return Regulation. As of June 2003, six states (New Hampshire, Arizona, Washington, Montana, Alaska, and Hawaii) subject the dominant ILEC to rate-of-return regulation (although the ILECs have the option of petitioning for alternative regulation in New Hampshire, Washington and Montana).

Under rate-of-return regulation, the rates for various telecommunications service elements are set based on the ILEC's pre-determined revenue requirements. Accordingly, it is theoretically possible that a decline in DA revenues resulting from new competitive entrants' taking market share from the ILEC could affect the ILEC's ability to recover the expected revenue requirements from DA. However, it is our expectation that the revenue losses, if any, that may result from retail DA competition will not be large enough to affect pricing of other telecommunications services. Indeed, in the United Kingdom, where the transition to full retail DA competition will end on August 24, 2003, the incumbent has indicated that it expects its overall DA revenues to *increase* with the introduction of competition because of the advent of enhanced DA services and the increased consumer awareness engendered by new DA marketing initiatives by the incumbent and new entrants alike.

In the unlikely event that declines in DA revenues affect an ILEC's ability to meet its revenue requirements under rate-of-return regulation, state regulators are well-equipped to address the issue. Indeed, the FCC's grant of Section 271 authority to the Bell Operating Companies serving New Hampshire, Washington and Montana expressly contemplates the existence of competition in regulated local telecommunications services. Thus, state regulatory commissions are already in a position of having to deal with the effect of competition on rate regulation. The existence of rate-of-return regulation need not serve as a barrier to competition in wireline retail DA services.

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We have already begun working with NARUC to more fully address the retail-DA-related issues of interest to state regulators. At the NARUC summer meeting in Denver, NARUC established a staff Working Group to examine comprehensively the issue of wireline retail DA competition and its effect on state regulation of wireline DA services. The Working Group expects to issue a report in time for NARUC's annual convention, currently scheduled for November 16-19, 2003. We have offered our assistance to the Working Group as it conducts its investigation.

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The foregoing demonstrates that there are a few discrete issues related to retail DA competition that may affect state regulation of wireline DA services, and these issues can readily be resolved by the Commission and state regulators. NARUC has already begun the process of examining and addressing the issues, and we look forward to seeing the Working Group's report. In any event, state issues certainly should not preclude the FCC from pursuing measures to promote retail competition – and the attendant consumer benefits – in the wireline DA market.

Respectfully submitted,

*/s/ Gerard J. Waldron*

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