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

GERARD J. WALDRON
TEL 202.662.5360
FAX 202.778.5360
GWALDRON@COV.COM

May 21, 2004

Filed Electronically

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Notice - CC Docket No. 99-273

Dear Ms. Dortch:

On Thursday, May 20, 2004, Lois Pines, regulatory counsel to InfoNXX, and the undersigned met with William Maher, Jeffrey Carlisle, Michelle Carey, William Dever, Robert Tanner, Rodney McDonald, Kimberly Jackson, and Marilyn Jones to discuss issues surrounding competitive retail directory assistance and the attached outline.

Please contact the undersigned with any questions.

Sincerely,

Gerard J. Waldron

Gerard J. Waldron
*Counsel for InfoNXX*

Attachment

Retail DA Competition Outline

**I. Need for Action.**

- Retail DA is a $6 billion market but there is no competition.
  - Competition can bring better price and service differentiation.
  - Prices across the telecommunications marketplace have been going down since the 1996 Act – except in retail DA, which has seen large price jumps (see PPI data).
- Market innovators (e.g., "00-INFO") have shown that consumers want enhanced DA services, but market conditions (the "411" monopoly) have prevented these services from succeeding.
  - Enhanced services can bring a variety of benefits to consumers – movie listings, driving directions, weather and sports reports, etc.
- Despite the growth of alternatives for DA (Internet, dial-around providers), there is no competition in 411 because the ILECs have a monopoly on the number.
  - Some alternatives (e.g., Internet) are not effective substitutes because they are not updated as frequently and do not offer live assistance.
  - Dial around is not competitive. Experience in LD competition shows that robust competition only comes with dialing parity.
- Competitive DA providers have been successful in the wholesale market and they are ready to bring competition to the retail market as soon as regulatory barriers to competition are lifted.
- Foreign country experience has shown that competition can succeed under the right market and regulatory conditions.
- Consumers will benefit through lower price, more service offerings, and higher quality service.
  - Increase in average call price in the U.K. is the result of consumers *choosing* enhanced services. Basic services (on par with what is the only available service presently in the U.S.) have fallen 30% to 50% below the incumbent's pre-competition price. Moreover, the ability of a consumer to choose an enhanced service is exactly what U.S. consumers are missing out on; it is not a reason to resist retail DA competition in the U.S.
  - ILEC filings say they regularly fulfill 90% of requests. Competition in the U.K. has resulted in quality increases above that available in the U.S. The Number UK has success rates consistently above 95%. Most recent numbers show upwards of 98% success rates.

**II. Authority for Action.**

- The FCC has authority over numbering.
- The '96 Act sought to promote competition in all telecommunications markets.
- An NPRM was issued in this docket long ago. There is an extensive, highly developed record in this proceeding.
- Title II requirement that all carriers route calls to valid numbers.

## III. Achieving Retail DA Competition.

- Numbering parity is the key to effective competition.
  - The experience in deregulating the U.S. long distance shows that true competition does not emerge until dialing parity is achieved.
  - The experiences of other countries eliminating DA short codes shows that the same is true for retail DA.
- Some proposed methods of introducing DA competition are burdensome or thwart the benefits offered by retail DA competition
  - Presubscription will not work for DA as it did for LD. Aside from being burdensome, it thwarts one of the benefits of retail DA competition – the ability to choose difference services at different times (e.g., enhanced or basic services, depending on the level of services desired).
  - Presubscription precludes dialing parity for consumers' use of another service provider – it requires dial-around.
- Industry, states, and consumer groups have coalesced around using "555" numbers as a means of providing retail DA competition.
  - People already associate "555" with DA because of the NPA-555-1212 system for out-of-area DA.
  - Moving to "555" numbers provides for dialing parity for all providers – but only if the incumbent's advantage in 411 is eliminated.
- "411" short code can be eliminated with minimal disruptions.
  - Experience in Europe show best (and worst) ways to achieve short code elimination.
  - Best to include a parallel running period in which new codes and "411" coexist for a period of time.
  - Competitors, as part of their campaigns to attract new customers, will educate consumers on the changes to the dialing strings.
- Billing and Collection Services
  - The FCC has the authority to require billing services, but it has declined where there is a competitive market. The FCC "generally declines to regulate the provision of billing and collection services unless regulation is needed to protect competition." Factors the FCC established in the pay phone context show that a billing and collection requirement is necessary for retail DA – there is both risk of "anticompetitive conduct" and "the offering would be cost-prohibitive in the absence of incumbent LEC billing and collection services."
  - New retail DA competitors do not have billing relationships with end users, and alternatives (e.g., credit card billing) are not viable for retail DA.
  - Unlike the implementation of long distance competition, the retail DA competitors will be taking revenue directly from the ILECs, raising the risk of anticompetitive conduct in the provision of billing and collection services.

- Because of the small amount billed each month in retail DA, it is cost-prohibitive and inefficient for retail DA competitors to bill separately for their DA calls.
- A given consumer may use several different DA providers over the course of a year (e.g., sometimes choosing enhanced services, foreign language providers, or specialized services, and sometimes a basic service like those offered today). Without ILEC billing and collection, competitive retail DA billing will be exceptionally inefficient, as numerous provider send multiple separate bills to consumers – all for very small amounts.

**IV. States Have an Important Role in Retail DA.**

- Retail DA has historically been a state-regulated service.
- Retail DA prices and requirements vary from state to state, and it is important that FCC actions do not upset state programs, services, and practices.
- NARUC has asked that the FCC implement a national system for DA competition that ensures that states are given an opportunity to "concur in" or "not object to" the introduction of retail DA competition in an given state.
- The FCC can adopt a national structure – with timing guidelines and implementation requirements – while preserving the role that NARUC has requested.

**V. Implementation of Retail DA Competition.**

- Period for state action in the elimination of 411.
  - Window for action to eliminate 411.
  - Presumption in favor of elimination of 411.
- A period of parallel running is important.
  - Time in which to educate consumers.
  - Time in which to upgrade switches.
  - Time necessary for the negation of necessary contracts (e.g., access to data).
  - Time is needed for competitors to raise necessary capital, train staff, develop advertising campaigns, and launch their services.
  - Information that consumers hear on "411" recordings (during parallel running) must be free of anticompetitive self-promotion by ILECs. ILECs must not self-promote on billing inserts and telephone books.
- Tariffing and intercarrier compensation.
  - ILECs will be compensated for completing calls to "555" numbers.
  - ILECs required to tariff routing and handling of "555" calls.
  - All carriers (including wireless) required to complete "555" calls.
- Number Allocation
  - Numbering ranges must be consistent. Certain ranges must be excepted (e.g., movie/entertainment reserved numbers).
  - It is necessary to prohibit "golden" numbers (e.g., 555-1212).
  - The FCC should establish a procedure for new competitors wishing to participate in the number allocation process.