Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996	)	CC Docket No. 96-146
	)	
Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-Free Number Usage	)	CG Docket No. 04-244
	)	
Truth-in-Billing Format and Billing Format	)	CC Docket No. 98-170
	)	
Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Florida Public Service Commission Petition to Initiate Rulemaking to Adopt Additional Safeguards	)	RM-8783
	)	
Application for Review of Advisory Ruling Regarding Directly Dialed Calls to International Information Services	)	ENF-95-20

REPLY COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC.

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REPLY COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC.

Metro One Telecommunications, Inc. ("Metro One"), by its attorney, hereby submits its Reply Comments in response to the Commission's Notice of Proposed Rulemaking and Memorandum Opinion and Order ("Further 800 NPRM"), FCC 04-162, released July 16, 2004.

A. The Directory Services Exemption Under Section 228(i)(2) Of The Act Should Not Be Limited by Archaic Definitions

Only NASUCA has filed comments in this proceeding (including the earlier round of this and related proceedings), seeking to limit the exemption afforded common carriers (and their affiliates) providing directory services under Section 228(i)(2) of the Communications Act of 1934, as amended (the "Act"). NASUCA's spare comments in this regard suggest limiting the definition of directory services to what NASUCA calls "traditional" directory services, such as operator provision of local telephone numbers or services using a 411 code." NASUCA Comments at 21. NASUCA's concerns are somewhat cryptic, but apparently center around a belief that unspecified audiotext providers will seek to evade Section 228 regulation by offering audiotext information in some unspecified way through a directory services number. Id. at 20.

Whatever the merits of NASUCA's fears about rogue audiotext providers, this concern should not drive a policy determination or adoption of a regulation that, instead of affecting audiotext providers, quells nascent competition and innovation in the directory services market provided by bonafide directory services common carriers and their affiliates. Eroding or limiting the definition of "directory services" entitled to certain exemptions under Section 228 of the Act, as proposed by NASUCA, would do just that because it is in the enhanced directory services market where third party directory services common carriers such as Infone, that have no access to 411 because they are not the subscriber's local exchange carrier, can attempt to compete with the incumbent facilities-based wireline and wireless carriers.

The Commission has already made clear in its 2002 inquiry concerning retail competition in the directory services market that it is seeking to promote choice and

competition in the directory services market.[1] The effect of the NASUCA proposal would be directly contrary to policy measures previously adopted in that docket or under consideration and would, instead, freeze competitive directory services common carriers in a time warp circa the 1960–80's, where the ILECs and dominant wireless carriers would face no competition or incentive to innovate.

In the DLI NPRM, the Commission has recognized that retail competition in the provision of directory services should be promoted via alternative dialing patterns for access to directory services providers because wireline local exchange and wireless carriers have monopoly control over their presubscribed customers for 411 directory services. Thus, when NASUCA states that it wants to limit the definition of directory services to traditional provision of 411 service, this means that NASUCA is, perhaps unwittingly, advocating the stagnation of innovative enhanced directory services by eliminating their offering by competitive carriers such as Infone via 800 numbers, while ILECs continue to raise rates for traditional directory services to as much as $2.00/call.[2]

Infone, in contrast, charges $.89 for as many nationwide calls or enhanced services information requests that a subscriber makes during an initial 15 minute session and only $0.05/minute thereafter for further requests. This disparity in charges arises because the incumbent facilities-based carriers – both wireline and wireless -- completely

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[1] In the Matter of the Provision of Directory Listing Information Under the Communications Act of 1934, as amended; The Use of N11 Codes and Other Abbreviated Dialing Arrangements; Administration of the North American Numbering Plan, ("DLI NPRM") FCC 01-384, released January 9, 2002 at para. 1.

[2] SBC charges as much as $1.99 for nationwide wireline directory services and wireless carriers do the same. See SBC California Advice Letter 25723 and associated tariff sheets, filed with the California Public Utilities Commission on October 28, 2004; Facilities-based wireless carrier DA rates showing rates are as high as $1.50 for enhanced directory services.

control access to the directory services provided to their subscribed customers through their monopoly control over the 411 dialing pattern. Thus, adopting the NASUCA position would essentially thwart the Commission's policy determinations, since the advent of the 1996 Act, to promote competition in the directory services market.

B. The Enhanced Directory Services Market Is Growing Rapidly And Innovative 800 Number Direct Service Carriers, Such As Infone, Should Not Be Penalized Or Foreclosed From This Market By Unnecessary Regulations Adopted In This Proceeding.

The NASUCA proposal would destroy the one avenue available for retail enhanced directory services competition, the use of 800 numbers, as pioneered by Infone in 2003. In effect, the proposal ignores the burgeoning, innovative market for enhanced directory services which the Commission has already recognized as falling within the directory services definition in the DLI NPRM.[3] Studies submitted to the Commission in the DLI NPRM have shown that call volumes in that market will increase by 150% between 1997 and 2006.[4] In today's marketplace, directory services consumers, particularly wireless consumers, have come to expect that when they call for directory assistance that the service provider will not only be capable of completing a call in addition to providing requested numbers, but that other services will be available such as concierge services, driving directions and instructions, as well as other personal assistance services, including access to personal calendars. See Opening Comments of Metro One. Proper use of 800 numbers by alternative directory service common carriers, such as Infone, provides competition in this market. In turn, competition tends to lower rates and spur further innovative services as described in Metro One's Opening

[3] DLI NPRM at fn. 79 & para. 21.

[4] Id. at para. 21.

Comments. Moreover, using 800 numbers for directory services obviates the immediate need for messy 411 alternatives to promote directory services competition such as 411XY and 555 number schemes.

As described in its Opening Comments, Metro One has designed its Infone directory services product to meet the needs of any caller age group, providing access to a live operator via any form of phone (wireline, wireless, VoIP) fitting the needs of a mobile society. Attached hereto is a recent Infone e-mail to its subscribers noting customer stories in which Infone has, among other things, helped subscribers locate family members at the airport and even aided police officers. Further, from a security vantage point, Infone's enhanced directory services are delivered only on a presubscribed basis in accordance with the requirements of Section 228 of the Act with safeguards including voice prints and pin numbers so as to avoid any chance of consumers encountering the abuses that have characterized audiotext or other services that, in fact, are dissimilar to enhanced directory services.

The instant NPRM notes certain safeguards that it wishes to preserve for consumers when accessing audiotext information services: (a) providing appropriate information to consumer such as pricing so that they can make informed decisions; (b) the ability to block unwanted access to pay-per-call services and (c) protection from disconnection of local and long distance service for failure to pay for pay-per-call services. NPRM at para. 10. All of these issues are solved by 800 number enhanced directory services, provided by entities such as Infone using credit card billing. First, all subscribers must presubscribe and at that time are provided pricing and other information as to the Infone service. Second, all subscribers control access to the Infone service quite

simply because the service is volitional. There is no requirement to use the service and charges are only assessed if the service is used, and only for the information provided, not the call itself. Third, access is only allowed to authorized presubscribed customers who, in turn, provide the Infone operator a voice print or pin number when calling to prevent unauthorized use. Finally, because it is a presubscribed enhanced service, as is the case for all directory services, the subscriber is billed via its credit card, there is no chance that the subscriber's failure to pay for the enhanced directory service will cause its long distance or local exchange service to be disconnected. In other words, the provision of long distance service or local exchange service is not tied in any way to the provision of enhanced directory services.

C. Limiting The Definition Of Directory Services Common Carriers Will Not Serve Consumers or Competition.

The Commission has already determined that the provision of enhanced services should not be regulated and thereby stifle competition and innovation.[5] Adopting the NASUCA proposal would be a questionably legal step backward in this regard. Indeed, the Commission had already previously declined to limit the definition of directory services that Congress wisely used in the Act, itself.[6] Instead the Commission prudently determined that the use of subscription agreements would guard against any possible

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[5] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 F.C.C 2d 384 para, 114 (1980) ("Insofar as enhanced services are concerned, there are two options – subject all enhanced services to regulation, or refrain from regulating them in toto. We believe that consistent with our overall statutory mandate, enhanced services should not be regulated under the Act.").

[6] The Use of 411 and Other Abbreviated Dialing Arrangements, CC Docket No. 92-103, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5572 (1993) at para. 8-13.

abuses.[7] Clearly, the Commission was aware then, and is now, that one does not inhibit consumer choice of innovative services allowed by Congress such as directory services by regulating possible abuses of it by other service providers e.g. audiotext. The proper function of a regulatory body in that instance is to entertain a complaint brought against the malefactor, not unduly regulate the provider of bonafide directory services.

Conclusion

Given that 800 number directory services competition can be achieved under the existing consumer safeguards of the Act and bring benefits to consumers, there is no reason to adopt the NASUCA proposal. The Commission should merely confirm that enhanced directory services common carriers are covered by the exemptions in Section 228 of the Act.

Respectfully submitted,

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[7] Id. at para. 13.

CERTIFICATE OF SERVICE

I, Peter A. Casciato, hereby certify that on this 29th day of November 2004, the foregoing Reply Comments of Metro One Telecommunications, Inc. were filed electronically on the FCC's Electronic Comment Filing System and electronic copies were served via electronic mail to the following:

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