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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	CC Docket No. 96-115
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Provision of Directory Listing Information under the Communications Act of 1934, as Amended	)	CC Docket No. 99-273

ORDER ON RECONSIDERATION

Adopted: April 29, 2005 **Released: May 3, 2005**

Before the Commission:

I. INTRODUCTION

1. In this Order, we address petitions seeking reconsideration or clarification of certain conclusions made by the Commission in the *SLI/DA First Report and Order*.[1] For the reasons discussed below, we deny the petition filed by BellSouth Corporation (BellSouth) and SBC Communications Inc. (SBC)[2] seeking reconsideration of the Commission's conclusion that local

[1] *See Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736 (2001) (*SLI/DA First Report and Order*). We note that the caption for CC Docket No. 99-273 previously referred incorrectly to the "Telecommunications Act of 1934." Pursuant to this Order, we correct on a going-forward basis the caption of this docket to read "Provision of Directory Listing Information under the Communications Act of 1934, as Amended."

[2] *See* Petition for Clarification or, in the Alternative, Reconsideration, SBC/BellSouth, CC Docket No. 99-273 (filed Mar. 23, 2001). SBC/BellSouth filed a joint petition, which we will refer to hereinafter as the SBC/BellSouth (continued....)

exchange carriers (LECs) may not impose specific contractual restrictions on competing directory assistance (DA) providers' use of DA data[3] obtained pursuant to section 251(b)(3) of the Communications Act of 1934, as amended.[4] We clarify, however, that competing DA data providers may not use data obtained pursuant to section 251(b)(3) of the Act for purposes not permitted by the Act, the Commission's rules, or state regulations, and that the use of similar data for directory publishing is governed separately under section 222(e) of the Act.[5] We also deny BellSouth and SBC's joint request that we reconsider our conclusion that LECs are required to provide nondiscriminatory access to local DA data acquired from third parties. Finally, we resolve the petition for reconsideration of the *SLI/DA Order on Reconsideration and Notice* filed by SBC.[6]

II. BACKGROUND

2. Section 251(b)(3) of the Act imposes on LECs the "duty to permit all [competing] providers [of telephone exchange service and telephone toll service] to have nondiscriminatory access to...directory assistance"[7] In the *Local Competition Second Report and Order*, the Commission concluded that section 251(b)(3) requires LECs to provide such competing providers with access to DA equal to that which the LECs provide to themselves, and that LECs treat all such competitors equally.[8] The Commission affirmed this conclusion in the subsequent

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Petition. We note that Qwest filed a request to withdraw its petition for reconsideration in February 2004. We grant this request. *See* Petition for Reconsideration of Qwest Corporation, CC Docket No. 99-273 (filed Mar. 23, 2001) (Qwest Petition); Qwest Corporation's Request to Withdraw its Pending Petition for Reconsideration (filed Feb. 13, 2004). *See also Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings*, Public Notice, 66 FR 19164 (2001).

[3] LECs gather local directory assistance data as part of the service order process and then compile it in local DA databases that contain the names, addresses, and telephone numbers of the telephone exchange service subscribers within particular geographic areas that do not elect to have unpublished numbers. *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, 15640, para. 170 (1999) (*SLI/DA Order on Reconsideration and Notice*).

[4] We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and other statutes, as the Communications Act or the Act. *See* 47 U.S.C. §§ 151 *et seq.*

[5] 47 U.S.C. § 222(e).

[6] *See* Petition for Clarification or Reconsideration Regarding Directory Assistance and Operator Services, SBC Communications Inc., CC Docket Nos. 96-115, 96-98, 99-273 (filed Oct. 27, 1999) (SBC Petition).

[7] 47 U.S.C. § 251(b)(3).

[8] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19402, 19444, paras. 12, 101 (1996) (*Local Competition Second Report and Order*), *vacated in part, California v. FCC*, 124 F.3d (continued....)

SLI/DA Order on Reconsideration and Notice and determined that the nondiscriminatory access portions of section 251(b)(3) of the Act require that all LECs provide competing providers of telephone exchange service and toll service with nondiscriminatory access to the LECs' directory assistance databases.[9] In the *Notice*, the Commission also solicited comment on whether, and under what circumstances, non-LEC competing DA providers could qualify for nondiscriminatory access to DA under section 251(b)(3).[10] SBC filed a petition for clarification or reconsideration of some of the Commission's conclusions in the *SLI/DA Order on Reconsideration and Notice*.[11]

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934 (8th Cir. 1997), rev'd *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). According to the Commission, this required LECs to share DA data with their competitors in "readily accessible" tape or electronic formats and in a timely fashion. *See Local Competition Second Report and Order*, 11 FCC Rcd at 19459-63, paras. 138-148. The Commission further determined that operator services and directory assistance services must be made available to competing providers in their entirety, including access to any adjunct features (*e.g.*, rating tables or customer information databases) necessary to allow competing providers full use of these services. *Local Competition Second Report and Order*, 11 FCC Rcd at 19445-46, para. 105.

[9] *See SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd at 15618, 15630, paras. 128, 152; *see also SLI/DA First Report and Order*, 16 FCC Rcd at 2740, para. 7. In the *SLI/DA Order on Reconsideration and Notice*, the Commission also determined that even though a providing LEC may enter into agreements to otherwise protect any intellectual property interest it may have in adjunct features (*e.g.*, appropriate license and nondisclosure agreements to ensure that the requesting LEC may use the features in the same manner as the providing LEC uses the features itself), a providing LEC should not in any way inhibit competing carriers from accessing the adjunct features necessary to provide operator services and directory assistance. *SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd at 15624, para. 139.

[10] *See SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd at 15645-15648, paras. 182-188.

[11] *See* SBC Petition (generally requesting that the Commission find (1) that the procedures that apply to "multiple or conflicting requests" for subscriber lists data equally apply to DA listing data requests, and (2) that LECs are not required, pursuant to section 251(b)(3), to unbundle all of the facilities used to provide DA services (adjunct features and software in particular)). *See also* Opposition of AT&T Corp., AT&T Corp., CC Docket Nos. 96-115, 96-98, 99-273 (filed Jan. 11, 2000) (AT&T Opposition); Opposition to Petition of SBC Communications Inc. for Clarification or Reconsideration Regarding Directory Assistance and Operator Services, InfoNXX, CC Docket Nos. 96-115, 96-98, 99-273 (filed Jan. 11, 2000) (InfoNXX Opposition); Reply Comments of SBC Communications Inc., SBC Communications Inc., CC Docket Nos. 96-115, 96-98, 99-273 (filed Jan. 24, 2000) (SBC Reply to AT&T & InfoNXX); Letter from Gerard J. Waldron, Covington & Burling, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket Nos. 96-115, 96-98, 99-273 (filed Feb. 2, 2000) (InfoNXX Feb. 2, 2000 *Ex Parte* Letter); Opposition of Listing Services Solutions, Inc., Listing Services Solutions, Inc., CC Docket Nos. 96-115, 96-98, 99-273 (filed Feb. 7, 2000) (LSSi Opposition); Reply Comments of SBC Communications Inc., SBC Communications Inc., CC Docket Nos. 96-115, 96-98, 99-273 (filed Feb. 23, 2000) (SBC Reply to LSSi); Letter from Gerard J. Waldron, Covington & Burling, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket Nos. 96-115, 96-98, 99-273 (filed Mar. 7, 2000) (InfoNXX Mar. 7, 2000 *Ex Parte* Letter). On July 8, 2004, SBC filed a request to withdraw the first issue in its pending petition for reconsideration. We grant this request. *See* SBC Communications Inc.'s Request to Withdraw Issue in Its Pending Petition for Reconsideration (filed July 8, 2004). We note that the Commission also recently addressed separate petitions for reconsideration of the *SLI/DA Order on Reconsideration and Notice* relating to subscriber list information obtained pursuant to section 222 of the Act. *See In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-
(continued....)

3. In the *SLI/DA First Report and Order*, released on January 23, 2001, the Commission concluded that section 251(b)(3) requires LECs to provide nondiscriminatory access to their local DA databases to competing DA providers that are certified by a state public utility commission as competitive LECs, that are agents of competitive LECs, or that offer call completion services.[12] The Commission further explained that section 251(b)(3) provides these competing DA providers with the same rights and obligations regarding DA data as it does to the providing LECs and concluded that "section 251(b)(3)'s requirement of nondiscriminatory access to a LEC's DA database thus does not contemplate continuing veto power by the providing LEC over the uses to which DA information is put."[13] The Commission also clarified, however, that states are not precluded from regulating, in a manner consistent with section 251(b)(3), providing LEC and competing DA provider use of accessed DA information (*e.g.*, by prohibiting the sale of customer information to telemarketers).[14]

4. The Commission further concluded in the *SLI/DA First Report and Order* that there are statutory distinctions in the Act that warrant different regulatory treatment of directory assistance and directory publishing.[15] Specifically, the Commission found that even though certain elements of directory assistance and directory publishing occasionally resemble one another, any seeming convergence between directory assistance and directory publishing did not obviate the statutory distinctions drawn by Congress concerning these two services.[16]

5. The Commission also found that LECs should not be required to provide nondiscriminatory access to nonlocal directory listings since third parties have the same opportunity to secure such information directly.[17] The Commission indicated that its finding was

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115, Memorandum Opinion and Order on Reconsideration, 19 FCC Rcd 18439 (rel. Sept. 13, 2004) (*SLI Reconsideration Order*).

[12] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2744-50, paras. 15-29. Except where otherwise specified, we refer to these entities collectively as "competing DA providers" for purposes of this Order. We refer to those LECs that provide access to DA pursuant to section 251(b)(3) as "providing LECs."

[13] *See id.* at 2749-51, paras. 28-29; *see also Local Competition Second Report and Order*, 11 FCC Rcd at 19461, para. 144; *SLI/DA First Report and Order*, 16 FCC Rcd at 2749, para. 28 ("Once carriers or their agents obtain access to the DA database, they may use the information as they wish, as long as they comply with applicable provisions of the Act and our rules. This latitude in the use of DA information includes permitting a carrier's DA agent to use information as it sees fit.").

[14] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2749-51, paras. 28-30; *see also Local Competition Second Report and Order*, 11 FCC Rcd at 19461, para. 144.

[15] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2758, para. 49.

[16] *See id.*

[17] *See id.* at para. 32. In the *U S WEST Forbearance Order*, the Commission indicated that "directory assistance service is considered 'nonlocal' whenever a customer requests the telephone number of a subscriber located outside his or her home LATA or area code." *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of Directory Assistance, Petition of U S WEST Communications, Inc. for Forbearance,* (continued....)

consistent with its holding in the *U S WEST Forbearance Order*, where it declined to require U S WEST to provide nonlocal, nationwide, directory assistance data to others because "U S WEST [did] not exercise monopoly power with respect to obtaining the telephone numbers of subscribers outside its region. . . ."[18]

6. SBC/BellSouth (Petitioners) filed a petition for reconsideration and/or clarification of the above-mentioned conclusions from the *SLI/DA First Report and Order*.[19] In their petition, they request that the Commission reconsider its decision by holding that LECs may place contractual restrictions on competing DA providers' use of DA information including limits on resale and a prohibition on use for purposes other than DA and DA-like services, such as sales solicitation and telemarketing.[20] The petitioners complain that competing DA providers have interpreted the statement that DA providers "may use the information as they wish" in an overly broad fashion that was not contemplated by the *SLI/DA First Report and Order*.[21] The petitioners argue that, as a result, certain DA providers are selling and otherwise using the data in ways not even permitted to the LECs.[22]

7. Section 51.217(c)(3) of the Commission's rules requires that "[a] LEC shall permit competing providers to have access to its directory assistance services, including directory

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The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Order, 14 FCC Rcd 16252, 16255, para. 6 (1999) (*U S WEST Forbearance Order*).

[18] *Id.* at para. 32 (citing *U S WEST Forbearance Order*, 14 FCC Rcd at 16271, para. 33).

[19] *See generally* SBC/BellSouth Petition. *See also* InfoNXX, Inc. (InfoNXX) Comments, LSSi Corp. (LSSi) Comments, and MCI Comments (the company formerly known as WorldCom is referred to throughout as MCI) (filed in opposition to the petition); Verizon Comments (filed in support of the petition); LSSi Reply Comments, SBC/BellSouth Reply Comments, Verizon Reply Comments. *See also supra* n.2 (regarding Qwest's withdrawal of its petition for reconsideration).

[20] *See* SBC/BellSouth Petition for Clarification or Reconsideration at 2-7; *see also* Verizon Comments at 1 (supporting the Qwest and SBC/BellSouth Petitions and asking that the Commission confirm that LECs may restrict competing DA providers' use of DA listing information); Verizon Reply at 2; SBC/BellSouth Reply at 1-7; Letter from Toni R. Acton, Associate Director – Federal Regulatory, SBC, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-273 at 1-3 (filed May 9, 2003) (SBC May 9, 2003 *Ex Parte* Letter); Letter from Mary L. Henze, Executive Director – Federal Regulatory Affairs, BellSouth, to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 99-273 at Attach. (filed August 1, 2001) (BellSouth Aug. 1, 2001 *Ex Parte* Letter). *But see* Letter from Karen Reidy, Associate Counsel, MCI, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-273 at Attach. (filed Apr. 22, 2003) (MCI April 23, 2003 *Ex Parte* Letter).

[21] *See* SBC/BellSouth Comments at 6-7; Letter from Angela Brown, Regulatory Counsel, BellSouth, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-273 at 2 (filed Feb. 13, 2004) (BellSouth Feb. 13, 2004 *Ex Parte* Letter).

[22] *See* SBC/BellSouth Petition at 5-7 (contending that SBC/BellSouth have numerous contractual agreements to provide DA service on the behalf of independent telephone companies and CLECs that have expressly prohibited the resale of their data for uses other than those related to DA); BellSouth Aug. 1, 2001 *Ex Parte* Letter at Attach p. 4.

assistance databases, so that any customer of a competing provider can obtain directory listings, except as provided in paragraph (c)(3)(iv) of this section, on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested."[23] SBC/BellSouth contend that a LEC should not be required to provide nondiscriminatory access to any local DA listings that the LEC has purchased for use in its own DA database from another facilities-based LEC serving that local area.[24] The directory assistance service provided to customers is generally classified as "local" whenever a customer requests the telephone number of a subscriber located within his or her local access and transport area (LATA) or area code.[25] SBC/BellSouth argue that since such listings are purchased in a competitive market, the purchasing LEC cannot exercise market power over this data.[26]

III. DISCUSSION

A. Contractual Restrictions on the Use of DA Information.

8. We deny SBC/BellSouth's petition for reconsideration of our determination regarding the scope of competing DA providers' access to DA databases.[27] Petitioners do not rely on facts or arguments that have not been presented previously to the Commission.[28] As the Commission already concluded, section 251(b)(3) expressly mandates nondiscriminatory access to directory assistance and, in this context, "nondiscriminatory access" means that providing LECs must offer access equal to that which they provide themselves.[29] We therefore agree with the commenters that argue that the Commission should not provide LECs with the authority to impose their own restrictions on the purposes for which competing DA providers may use DA information.[30] As the Commission previously concluded, the imposition of such contractual restrictions by the

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[23] 47 C.F.R. § 51.217(c)(3).

[24] *See* SBC/BellSouth Petition at 7-8.

[25] *SLI/DA First Report and Order*, 16 FCC Rcd at 2738, para. 3 n.8 (citing *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of Directory Assistance, Petition of U S WEST Communications, Inc. for Forbearance, The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Order, 14 FCC Rcd 16252, 16254-55, para. 5 (1999) (*U S WEST Forbearance Order*)).

[26] *See* SBC/BellSouth Petition at 8.

[27] *See* SBC/BellSouth Petition at 2-7.

[28] 47 C.F.R. § 1.429.

[29] *SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd 15550, 15618, para. 128.

[30] *See* InfoNXX Comments at 2; LSSi Comments at 5-7; MCI April 23, 2003 *Ex Parte* Letter at Attach p. 2.

providing LEC is inconsistent with the nondiscriminatory access requirements of section 251(b)(3).[31]

9. Similarly, to the extent provided below, we deny in part Petitioners' requests that the Commission impose additional limitations to prohibit certain uses of DA data obtained pursuant to section 251(b)(3). Specifically, SBC/BellSouth request that the Commission prohibit the use of DA databases for bulk resale to other DA providers; for subsequent use by a DA provider serving as an agent to serve multiple carrier principals; and for so called "non-DA purposes" such as direct marketing, telemarketing, and sales solicitation.[32] In the *SLI/DA First Report and Order*, the Commission specifically considered and rejected arguments that a competing DA provider should be restricted from reselling DA information to third parties, finding that commenters "offered no basis in the Act or our rules for imposing [a DA only use] restriction on competing DA providers."[33] The Commission also found that restrictions on the use of DA data would substantially increase the costs of providing competitive DA services, thereby reducing the benefits to consumers arising from the presence in the market of competitive DA providers.[34] In addition, as the Commission has previously noted, "[s]ection 251(b)(3) does not, by its terms, limit the use of directory assistance data solely to the provision of directory assistance."[35] We find that if Congress intended to restrict the use of DA data pursuant to section 251(b)(3) in the manner petitioners argue, it could have done so. Section 222(e) provides for access to subscriber list information, which is substantially similar to that information contained in DA databases, only "for the purpose of publishing directories."[36] In contrast, there is no such limitation expressed for DA information in section 251(b)(3), and the Commission has reasonably

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[31] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2748-2751, paras. 28-29; *see also* MCI Comments at 2; *Local Competition Second Report and Order*, 11 FCC Rcd at 19402, 19444, 19459-63, paras. 12, 101, 138-48.

[32] *See, e.g.*, SBC/BellSouth Petition at 4-5; BellSouth Feb. 13, 2004 *Ex Parte* Letter at 4-7 (submitting that BellSouth has experienced a revenue decline in its DA listings market as a result of the resale of its listings by competitors, and contending that LECs should be allowed to address consumer privacy concerns by imposing contractual restrictions on the use of DA listings for "non-DA purposes," such as telemarketing).

[33] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2748-49, paras. 28-29.

[34] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2748-49, para. 28.

[35] *SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd 15550, 15646, para. 186.

[36] 47 U.S.C. § 222(e); *see SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd 15550, 15610-12, paras. 112-115 (concluding that carriers may take certain reasonable steps to ensure that a person requesting subscriber list information pursuant to section 222(e) intends to use it only for directory publishing purposes, such as requiring directory publishers to certify that they will use the information only for directory publishing purposes). In the *SLI Reconsideration Order*, the Commission affirmed that a carrier must comply with a directory publisher's request for subscriber list information once the directory publisher has certified that it will be used only for directory publishing purposes. *See SLI Reconsideration Order*, 19 FCC Rcd at 18447, para. 15. The Commission also noted that carriers may bring a civil action for breach of contract if directory publishers misuse subscriber list information, but declined to address more specifically on the record before it whether carriers may use any particular contractual provisions to protect against such misuse. *Id.* at 18448, para. 18, n.65.

concluded that the statutory differences between directory assistance and directory publishing should continue to be observed.[37] We therefore agree with LSSi and MCI that petitioners have not demonstrated the existence of any new facts or changed circumstances since we adopted the *SLI/DA First Report and Order* that would justify reconsidering our prior decision, but instead recycle legal arguments that the Commission has already rejected.[38]

10. We clarify, however, that no language in the *SLI/DA First Report and Order* was ever intended to grant competing DA providers greater latitude in their use of DA data than that permitted to providing LECs, or to permit competing DA providers to use that data in a manner inconsistent with Federal or state law or regulation. The *SLI/DA First Report and Order* explicitly stated that, although the providing LECs could not impose additional contractual restrictions on competing DA providers, recipients of LEC DA data were obligated to observe pertinent Federal or state laws and regulations.[39] As we stated in the *Local Competition Second Report and Order* and affirmed in the *SLI/DA First Report and Order*, all qualified DA providers, both providing LECs and competing DA providers, are subject to state limitations regarding use of accessed directory information (*e.g.*, by prohibiting the sale of customer information to telemarketers), as long as those state regulations are consistent with the nondiscrimination requirements of section 251(b)(3) of the Act.[40] LSSi submits that, consistent with this approach, numerous states have already taken steps to protect certain consumer privacy interests by enacting regulations restricting the sale of customer information.[41]

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[37] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2758, para. 49.

[38] *See* LSSi Comments at 2; MCI Comments at 3.

[39] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2749, para. 28.

[40] *See Local Competition Second Report and Order*, 11 FCC Rcd at 19461, para. 144; *SLI/DA First Report and Order*, 16 FCC Rcd at 2749, para. 29. *See also* LSSi Reply at 2 ("The Commission's [SLI/DA] First Report and Order clearly requires that ILECs and competitors be held to the same *legal* standard on the use of DA information, such that state-imposed restrictions apply to all providers"); *see also* LSSi Comments at 2-3. *But see* SBC/BellSouth Petition at 2.

[41] For example, state commissions in Illinois and Ohio place limitations on the use of directory assistance information due to concerns about the dissemination of non-published numbers. LSSi Comments at 6 (citing Ill. Admin Code tit. 83 § 735.180(h)(2000): Ohio Admin Code § 4901:1-5-10(B)(2000)); *see also* LSSi September 10, 2004 *Ex Parte* Letter at Attach. (also citing to Ohio Admin Code § 4901:1-5-11). The New York State Public Service Commission's "privacy principles" require recognition by carriers of privacy concerns, education of customers concerning privacy rights and informed consent by customers for carriers to use subscriber-specific information for non-billing purposes. LSSi Comments at 6 n.29. In this regard, in New York, all LECs must notify customers of the privacy implications of their DA information. LSSi Comments at 6-7 (citing New York State Public Service Commission, *Proceeding on Motion of the Commission to Examine Issues Relating to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, Case 94-C-0095, Order Resolving Petitions for Rehearing and Clarification of July 22, 1998 Order Regarding Directory Database Issues and Directing Refiling of Tariffs (Jan. 7, 1999) at 15); *see also* LSSi September 10, 2004 *Ex Parte* Letter at Attach. Additionally, the California Public Utilities Commission concluded that "a CLEC may not refuse to consent to release of its listings from the ILEC's DA database to third party DA providers," "subject only to exclusions for unpublished listings and related customer privacy rights." LSSi (continued....)

11. We also note that the Commission has adequately balanced its interests in ensuring nondiscriminatory access to DA, and in protecting customer privacy, through its rules that restrict the unwanted dissemination of a customer's unlisted number and other customer information. Specifically, section 51.217(c)(3)(iv) of the Commission's rules specifically states that a "LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available, with the exception of customer name and address."[42] The rule further states that even though the LEC shall not provide access to the unlisted number of its customers, it must "ensure that access is permitted to the same directory information, including customer name and address, that is available to its own directory assistance customers."[43] In the *SLI/DA Order on Reconsideration and Notice*, the Commission determined that the *names and addresses* of customers with unlisted numbers would be essential to enabling a competing DA provider to inform customers that a requested number is unlisted.[44] The Commission, however, specifically declined to require the sharing of customers' unlisted numbers, finding that this was "not necessary to create a level playing field for the provision of directory assistance."[45]

12. BellSouth argues that LECs must be allowed to impose their own contractual restrictions on the use of a customer's DA information in order to avoid the release of unlisted numbers and the use of this information by competing providers for "non-DA" purposes such as direct marketing, telemarketing, and sales solicitation.[46] With respect to the release of a

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Comments at 7 (citing *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, Rulemaking 95-04-043, *Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, Investigation 95-04-044, Decision 00-10-026, California Public Utilities Commission Order (Oct. 5, 2000) at 6-7). Similarly, the Texas Public Utility Commission found that telecommunications providers purchasing DA listings could not resell or transfer them to other entities, but that there were otherwise no other general restrictions on use. *See* LSSi Comments at 7 (citing Texas Public Utilities Commission, Order, 194 P.U.R. 4th 307 (April 8, 1999). Texas regulations, however, do allow customers to request that their DA information remain unpublished, and require that telecommunications companies not divulge such non-published telephone numbers or addresses. *See* 16 Texas Admin Code § 26.272(e)(1)(D)(vii)). LSSi indicates that in addition to those states, Alaska, Colorado, Connecticut, Maryland, Nebraska, Pennsylvania, Vermont, and Washington also have statutes that protect non-published listing information. LSSi May 9, 2003 *Ex Parte* Letter at Attach.; LSSi September 10, 2004 *Ex Parte* Letter at Attach. *See also* LSSi Comments at 4-5 (stating that "other than the incumbents seeking to protect their monopoly control, the record was remarkably silent on the 'serious privacy concerns' that form the basis of the call for reconsideration").

[42] 47 C.F.R. § 51.217(c)(3)(iv).

[43] *Id.*

[44] *SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd 15550 at 15638-39, para. 167.

[45] *Id.* at 15639, para 168. The Commission further noted that even though emergency contact with customers with unlisted numbers was important, parties should still be able to arrange, in their interconnection agreements, to have the providing LEC contact unlisted customers in such situations without requiring the disclosure of the unlisted number. *Id.*

[46] BellSouth Feb. 13, 2004 *Ex Parte* Letter at 6-7. *But see* Letter from Karen Reidy, Attorney, Federal Advocacy, MCI, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-273, Attach. at 4 (filed Jan. 13, 2004) (MCI January 13, 2004 *Ex Parte* Letter); *see also* Letter from Karen Reidy, Attorney, (continued....)

customer's unlisted number, section 51.217(c)(3), as discussed above, already specifically restricts a LEC from providing access to such numbers. With respect to the use of customer information, including telephone numbers, we clarify that all competing DA providers must adhere to the disclosed privacy requests of LEC customers for all DA information obtained pursuant to section 251(b)(3). This means that, to the extent competing DA providers have received notice of a LEC customer's privacy requests, they must comply with such requests, and may not use or disclose any DA information that a LEC's customer has requested that the LEC not use or make available.[47] A LEC, therefore, may not contractually (or otherwise) restrict access to the customer's number, or other DA information in this situation. We find that this rule best balances the right of competing providers to nondiscriminatory access under section 251(b)(3) with customers' privacy concerns. Moreover, it ensures that LECs and competing DA providers have equal latitude with respect to their use of the DA information. We also note that the national Do-Not-Call list, established by the Commission's Telephone Consumer Protection Act Order and the Federal Trade Commission's Telemarketing Sales Rule Order, provides further protection against unwanted telemarketing.[48]

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Federal Advocacy, MCI, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-273 at 5-6 (filed Mar. 30, 2004) (MCI March 30, 2004 *Ex Parte* Letter).

[47] For example, Qwest states that it includes privacy indicators with its listings that indicate whether the customer has requested that his/her number not be listed in published directories or through directory assistance, or that his/her number be listed through directory assistance but without information regarding the customer's address (to help prevent direct mail marketing). Letter from Cronan O'Connell, Vice President - Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-273 at 1 (filed May 10, 2004) (Qwest May 10, 2004 *Ex Parte* Letter). Verizon suggests that privacy indicators for caller ID with name (CNAM) are not included in DA databases, and that LECs should therefore be permitted to impose contractual restrictions on the use of DA listings to protect against the dissemination of CNAM information that is subject to a customer's privacy request. Letter from Ann D. Berkowitz, Associate Director, Federal Regulatory Advocacy, Verizon, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-273 at 3-4 (filed April 7, 2004) (Verizon April 7, 2004 *Ex Parte* Letter). We find, however, that the restrictions on disclosure of DA information adopted here should also provide sufficient protection for customers that have made specific privacy requests with respect to CNAM information. *See* Letter from Larry A. Blosser, Attorney for LSSi, Gray Cary Ware & Freidenrich, LLP, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-273 at 2-3 (filed April 23, 2004) (LSSi April 23, 2004 *Ex Parte* Letter)(indicating that none of the tariff or contractual restrictions that LECs seek to impose on the use of DA listings is necessary to protect the public from unwanted disclosure of customer information including CNAM information).

[48] *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, CC Docket No. 02-278, 18 FCC Rcd 14014 (2003)(*TCPA Order*) and *Telemarketing Sales Rule, Final Rule,* Federal Trade Commission, 68 Fed. Reg. 4580 (2003)(*TSR Order*); *see also* 47 C.F.R. § 64.1200. We note that in the context of a directory publisher's access to subscriber list information, the Commission similarly concluded, in the *Subscriber List Information Order on Reconsideration*, that the national do-not-call rules provide consumers with extensive protection against unwanted commercial solicitation calls. *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Memorandum Opinion and Order, FCC 04-206 (rel. Sept. 13, 2004) (*Subscriber List Information Order on Reconsideration*).

13. We agree with SBC/BellSouth that there also is no statutory basis under the Act for allowing DA providers to use DA listings obtained pursuant to section 251(b)(3) to publish directories.[49] SBC/BellSouth submit that permitting such use would allow competing DA providers to avoid the statutory distinctions between directory assistance and directory publishing indicated by the separate treatment of these services under section 251(b)(3) and section 222(e) of the Act.[50] As we found in the *SLI/DA Order on Reconsideration and Notice*, neither the statutory language nor our implementing rules allow requesting LECs to use listing information obtained pursuant to section 251(b)(3) to publish telephone directories.[51] In the *SLI/DA First Report and Order*, we again found that although the underlying databases for the two services are similar, they are not identical, and any seeming convergence between DA and directory publishing is not strong enough at this time to obviate the distinctions drawn by Congress in the Act.[52]

B. Nondiscriminatory Access to Local DA Listings Acquired from Third Parties.

14. We are not persuaded by SBC/BellSouth's assertion that in instances where more than one facilities-based LEC serves a local area, LECs should not be required to provide nondiscriminatory access to local DA listings purchased from third parties.[53] Rather, we agree with MCI that competitive DA providers are entitled to receive nondiscriminatory access to a LEC's entire local DA database pursuant to section 251(b)(3) of the Act.[54] In the *SLI/DA Order on Reconsideration and Notice*, the Commission recognized that "the language of section 222(e) makes clear that a carrier need not provide subscriber list information to requesting directory publishers pursuant to that section unless the carrier 'gathered' that information 'in its capacity as a provider of [telephone exchange] service.'" We note, however, that the nondiscriminatory access provisions of section 251(b)(3) do not contain any similar language limiting access to the directory assistance listings provided to competing providers. The Commission found in the *SLI/DA First Report and Order* that incumbent LECs "continue to maintain a near total control

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[49] *See* SBC/BellSouth Petition at 4, 6; BellSouth Feb. 13, 2004 *Ex Parte* Letter at 3-4. *But see* Letter from Patrick J. Connor, Counsel to LSSi Corp., to Ms. Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, CC Docket No. 99-273 at 1 (filed Apr. 23, 2003) (arguing that directory listings obtained under section 222(e) of the Act may be used only for "directory publishing purposes," but the use of directory listings obtained under section 251(b)(3) is unlimited, except by applicable state and Federal law).

[50] *See* SBC/BellSouth Petition at 4. In addition, SBC/BellSouth state that this argument is consistent with the Commission's conclusion in the *SLI/DA First Report and Order* that directory publishing and directory assistance are mutually exclusive services accorded separate statutory treatment. SBC/BellSouth Petition at 4 (citing *SLI/DA First Report and Order*, 16 FCC Rcd at 2752-2753, para. 37).

[51] *See SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd 15550 at 15615, para. 124.

[52] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2758, para. 49.

[53] *See* SBC/BellSouth Petition at 7-8.

[54] *See* MCI Comments at 8-9.

over the vast majority of local directory listings that form a necessary input to the competitive provision of directory assistance."[55] MCI argues that, consistent with this finding, section 251(b)(3) of the Act requires nondiscriminatory access to all of a LEC's local listings.[56] Neither SBC nor BellSouth have offered evidence to contradict our earlier conclusion, and we thus reaffirm that conclusion here.

15. Moreover, we note that in the *BellSouth Louisiana I Order*, the Commission emphasized that an incumbent LEC must provide the subscriber listing information in its local DA database in a way that allows competing carriers to incorporate that information into their own local databases.[57] In order to comply with this requirement, the Commission stated that a LEC, including a BOC, must provide a requesting carrier with all the subscriber listings in its local DA databases except listings for unlisted numbers.[58] As the Commission stated in the *SLI/DA First Report and Order*, the ability of both DA providers and the competitive LECs that rely on them to compete in the local exchange market may be adversely affected where they are unable to obtain nondiscriminatory access to an incumbent's DA databases.[59] Based on the record before us, we find that allowing LECs to provide access to only portions of their local DA database, for example by excluding DA listings obtained from other carriers, would frustrate the purpose of section 251(b)(3). Accordingly, we decline to limit nondiscriminatory access for instances where a LEC maintains in its database additional local listings from another LEC. Our conclusion here, however, does not preclude a LEC from recovering any costs it may incur for providing third party local DA data to a qualified requesting party.

16. Finally, we reject SBC/BellSouth's argument that we should apply to local directory assistance listings the same analysis the Commission used in the *U S WEST Forbearance Order* for nonlocal directory listings. In that order, the Commission declined to find that section 251(b)(3) required U S WEST to provide nonlocal, nationwide, directory assistance data to others because "U S WEST [did] not exercise monopoly power with respect to obtaining the

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[55] MCI Comments at 8-9 (quoting *SLI/DA First Report and Order*, 16 FCC Rcd at 2738, para. 3).

[56] *See* MCI Comments at 9.

[57] *See Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20745, para. 249 (1998) (*BellSouth Louisiana I Order*).

[58] *See BellSouth Louisiana I Order*, 13 FCC Rcd 20599, 20745, para. 249 (citing 47 C.F.R. 51.217(c)(3)). The Commission requires that a LEC share the names and addresses of subscribers with unpublished numbers if the LEC provides those names to its own directory assistance operators. A LEC is prohibited, however, from providing access to those customers' unlisted telephone numbers, or any other information that the LEC's customers have asked the LEC not to make available. If no customer information is available to the operator, no access need be given to the competitor. *See SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd 15550 at 15638, para. 167.

[59] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2738, para. 3.

telephone numbers of subscribers outside its region..."[60] Similarly, in the *SLI/DA First Report and Order*, the Commission declined to require LECs to provide nondiscriminatory access to nonlocal directory listings, finding that third parties have the same opportunity to secure such nonlocal information directly.[61] The Commission, however, has not seen fit to adopt this approach where nondiscriminatory access to local directory listings is concerned and, we decline to do so today. In the *U S WEST Forbearance Order*, the Commission found that U S WEST had a competitive advantage with respect to local DA information because of its dominant position in the local exchange and exchange access markets, and therefore, that U S WEST had access to a more complete, accurate, and reliable DA database than its competitors.[62] Accordingly, the Commission required U S WEST to make available to unaffiliated entities all of the in-region directory listing information it used to provide regionwide directory assistance on a nondiscriminatory basis.[63] Our holding in the instant Order, that providing LECs must make all of their local DA database listings available to qualified competing DA providers, is fully consistent with the Commission's holding in the *U S WEST Forbearance Order*.

C. Nondiscriminatory Access to Operator Services, Directory Assistance and Features Adjunct to These Services.

17. We also deny SBC's petition for reconsideration of our determination regarding the scope of competing DA providers' access to operator services (OS), DA and the features adjunct to these services.[64] SBC requests that the Commission find that section 251(b)(3) does not require that LECs provide "unbundled" access to all of the facilities used to provide OS/DA services including adjunct features and software.[65] SBC contends that "unbundled" access is the exclusive province of section 251(c)(3) of the Act, and submits that the Commission already determined, in the *UNE Remand Order*, that competing carriers are not impaired without unbundled access to ILEC OS/DA.[66]

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[60] *See* SBC/BellSouth Petition at 7-8 (citing *U S WEST Forbearance Order*, 14 FCC Rcd at 16271, para. 33); *see also SLI/DA First Report and Order*, 16 FCC Rcd at 2750-51, para. 32.

[61] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2750-51, para. 32; SBC/BellSouth Petition at 7.

[62] *See U S WEST Forbearance Order*, 14 FCC Rcd at 16272, para. 35.

[63] *See U S WEST Forbearance Order*, 14 FCC Rcd at 16273, para. 37.

[64] As indicated above, SBC filed a request to withdraw the first issue in its pending petition for reconsideration of the *SLI/DA Order on Reconsideration and Notice* (regarding the procedures that apply to multiple or conflicting requests for DA listing data). *See supra* n.11. SBC's request to withdraw that issue is granted.

[65] *See* SBC Petition at 2, 4-6; SBC Reply to AT&T & InfoNXX at 2; SBC Reply to LSSi at 2, 4.

[66] SBC Petition at 6-9; SBC Reply to AT&T & InfoNXX at 2-4; SBC Reply to LSSi at 3-4. *See also* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, 3891-94 (1999) (*UNE Remand Order*).

18. We acknowledge that carriers are no longer required to provide OS/DA services as unbundled network elements under section 251(c)(3).[67] However, we note that in coming to the conclusion that UNE access would no longer be necessary under that section, the Commission specifically recognized the continued obligation to provide nondiscriminatory access to OS/DA under section 251(b)(3). As indicated above, the Commission has determined that "nondiscriminatory access" under section 251(b)(3) of the Act means that providing LECs must offer access equal to that which they provide themselves.[68] The Commission determined, in the *Local Competition Second Report and Order*, and further acknowledged in the *SLI/DA Order on Reconsideration and Notice*, that "requesting carriers would not have nondiscriminatory access to operator services and directory assistance under section 251(b)(3) unless those carriers have access to adjunct features such as rating tables and customer information databases."[69] Consistent with this finding, SBC concedes that LECs use these OS/DA services and software that are separate from their databases, "to facilitate their utilization of those databases."[70] We find that SBC thus demonstrates that allowing competing providers access to these adjunct features pursuant to section 251(b)(3) of the Act will help ensure access equal to that which SBC provides itself. Therefore, we reaffirm the Commission's finding that pursuant to section 251(b)(3), "[o]perator services and directory assistance services must be made available to competing providers in their entirety, including access to any adjunct features (*e.g.*, rating tables or customer information databases) necessary to allow competing providers full use of these services."[71]

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4, 201, 222, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201, 222, and 251, this Order on Reconsideration IS ADOPTED.

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[67] *See UNE Remand Order*, 15 FCC Rcd 3696, 3891-94; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17333-34, para. 560 (2003) (*Triennial Review Order*), *corrected by* Errata, 18 FCC Rcd 19020 (2003), *aff'd in part, remanded in part, vacated in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied sub nom. Nat'l Ass'n Regulatory. Util. Comm'rs v. United States Telecom Ass'n*, 125 S. Ct. 313, 316, 345 (2004).

[68] *See supra* para. 8 n.29 (citing to *SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd 15550, 15618, para. 128).

[69] *See SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd at 15623, para. 138 (referring to the *Local Competition Second Report and Order*, 11 FCC Rcd at 19445-46, para. 105).

[70] SBC Reply to LSSi at 4; *see also* InfoNXX Mar. 7, 2000 *Ex Parte* Letter at 3.

[71] *See Local Competition Second Report and Order*, 11 FCC Rcd at 19445-46, para. 105; *SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd at 15622, para. 136. *See also* AT&T Opposition at 4-6; InfoNXX Opposition at 3-6; LSSi Opposition at 6-8; InfoNXX Mar. 7, 2000 *Ex Parte* Letter at 2-3.

20. IT IS FURTHER ORDERED that Qwest Corporation's Request to Withdraw its Pending Petition for Reconsideration IS GRANTED.

21. IT IS FURTHER ORDERED that the above mentioned Petition for Clarification or, in the Alternative, Reconsideration filed by SBC/BellSouth IS GRANTED IN PART AND DENIED IN PART, to the extent discussed herein.

22. IT IS FURTHER ORDERED that SBC Communications Inc.'s Request to Withdraw Issue in Its Pending Petition for Reconsideration IS GRANTED.

23. IT IS FURTHER ORDERED that the Petition for Clarification or, in the Alternative, Reconsideration filed by SBC IS DENIED, to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary