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## I. INTRODUCTION

1. In this Report and Order, we adopt some of the tentative conclusions contained in the *Subscriber List Information/Directory Assistance Order and Notice of Proposed Rulemaking (SLI/DA Order and Notice)*.<sup>1</sup> We conclude today that local exchange carriers (LECs) must provide competing directory assistance (DA) providers<sup>2</sup> that qualify under section 251(b)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“the Act”)<sup>3</sup> with nondiscriminatory access to the LECs’ local directory assistance databases, and must do so at nondiscriminatory and reasonable rates.<sup>4</sup> To the extent that such DA providers qualify

<sup>1</sup> *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 (1999) (*SLI/DA Order and Notice*).

<sup>2</sup> Competing DA providers provide an alternative to LEC-provided directory assistance. These entities provide directory assistance to IXC, CLECs, and end users.

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act) (codified at 47 U.S.C. §§ 151 *et seq.*). Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934, as amended, as “the Communications Act” or “the Act.”

<sup>4</sup> Access to LEC DA databases is the focus of this order, and this access is based on section 251(b)(3)’s more general requirement concerning nondiscriminatory access to directory assistance. As the Commission concluded in the *Local Competition Second Report and Order* and in the *SLI/DA Order and Notice*, provision of (continued....)

under section 251(b)(3), we find that LEC failure to provide such access may also violate section 201(b).<sup>5</sup> In the notice we also sought comment on whether DA providers falling outside of 251(b)(3) would nevertheless qualify for protection under sections 201(b) and 202(a). We do not address these issues here, but may address them in a separate proceeding.

2. As we stated in the *SLI/DA Order and Notice*, not all competing local exchange carriers (CLECs) have the economies of scale to support their own directory assistance platforms, and many rely on competing DA providers as an alternative to the directory assistance service offered by the incumbent LEC.<sup>6</sup> Further, many large end-users of telecommunications services may wish to, and some do, contract directly for directory assistance services and thus select a provider other than the incumbent LEC.<sup>7</sup> We therefore believe that competitive provision of directory assistance is a necessary element of a competitive local telecommunications market, and note that Congress recognized it as such in section 251.

3. Essential to a competitor's ability to provide directory assistance is access to an accurate local directory assistance database.<sup>8</sup> Because incumbent LECs derive their local directory assistance database through their service order processes, they continue to maintain a near total control over the vast majority of local directory listings that form a necessary input to the competitive provision of directory assistance. Without nondiscriminatory access to the incumbents' directory assistance databases, competing DA providers may be unable to offer a competitive directory assistance product. This, in turn, may affect the ability of both the DA providers and the CLECs that rely on them to compete in the local exchange marketplace. The directory assistance market will not be fully competitive as long as incumbent LECs have the ability to leverage their monopoly control of their DA databases into market dominance. On the other hand, because LECs do not enjoy such control over national (non-local) directory assistance

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nondiscriminatory access to directory assistance includes access to the LEC's directory assistance database as well. *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, 19538 (1996) (*Local Competition Second Report and Order*), vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8<sup>th</sup> Cir. 1997), rev. *AT&T Corp. v. Iowa Util. Bd.*, 119 S.Ct. 721 (Jan. 25, 1999). *SLI/DA Order and Notice*, 14 FCC Rcd at 15630.

<sup>5</sup> See 47 U.S.C. §§ 201(b), 251(b)(3).

<sup>6</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15645.

<sup>7</sup> *Id.*

<sup>8</sup> There are two types of directory assistance available to customers throughout the United States: local directory assistance and nonlocal (national) directory assistance. Directory assistance 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 and "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 of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Order, 14 FCC Rcd 16252, 16254-55 (1999).

databases, we conclude that LECs are not required to grant competing directory assistance providers nondiscriminatory access to non-local directory assistance databases.

4. In this report and order, we also resolve other issues relating to directory publishing. Specifically, we conclude that the language concerning directory publishing “in any format” in section 222(e)<sup>9</sup> applies to telephone directories on the Internet; however, we find that section 222(e) does not apply to orally provided directory listing information.

## II. BACKGROUND

5. The Telecommunications Act of 1996 (the 1996 Act) establishes a “procompetitive, deregulatory national policy framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”<sup>10</sup> On August 8, 1996, as part of its implementation of this policy, the Commission adopted and released the *Local Competition Second Report and Order*,<sup>11</sup> which, *inter alia*, promulgated rules and policies to require LECs to provide competitors with access to the LECs’ networks sufficient to create a competitively neutral playing field.<sup>12</sup> Among these rules, the Commission required LECs to provide competitors with nondiscriminatory access to directory assistance.<sup>13</sup>

6. The Commission acknowledged that many LECs offered directory assistance for purchase or resale to competitors, but concluded that under the general definition of “nondiscriminatory access,” CLECs must be able to obtain at least the same quality of access to these services that a LEC itself enjoys, and that merely offering directory assistance and directory listing services for resale or purchase would not, in and of itself, satisfy this requirement.<sup>14</sup> Rather, the Commission concluded that section 251(b)(3) required LECs to share their directory assistance databases with their competitors, in “readily accessible” tape or electronic formats, and that such data had to be provided in a timely fashion upon request.<sup>15</sup> The purpose of requiring “readily accessible” formats was to ensure that no LEC, either inadvertently or intentionally, provided subscriber listings in formats that would require the receiving carrier to expend significant resources to enter the information into its systems.<sup>16</sup> The Commission concluded that a

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<sup>9</sup> 47 U.S.C. § 222(e).

<sup>10</sup> S. Conf. Rep. No. 104-230, 104<sup>th</sup> Cong., 2d Sess. 1 (1996).

<sup>11</sup> *Local Competition Second Report and Order*, 11 FCC Rcd 19392. *See* n.3, *supra*.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 19457-19459.

<sup>14</sup> *Id.* at 19445-19446.

<sup>15</sup> *Id.* at 19460.

<sup>16</sup> *Id.*

highly effective way to accomplish nondiscriminatory access to directory assistance, apart from resale, would be to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing such access.<sup>17</sup> The Commission believed that access to such databases would promote seamless access to directory assistance in a competitive local exchange market.<sup>18</sup>

7. On September 9, 1999, we released *the SLI/DA Order and Notice*<sup>19</sup> resolving certain petitions for reconsideration of the *Local Competition Second Report and Order*. This order affirmed the Commission's conclusion that section 251(b)(3) requires all LECs to provide competing providers of telephone exchange service and toll service with nondiscriminatory access to their directory assistance databases and revised the Commission's rules to remove any ambiguity in this area.<sup>20</sup> This order also adopted rules implementing section 222(e) of the Communications Act, which requires LECs to provide subscriber list information to requesting directory publishers "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions."<sup>21</sup> Finally, the order noted that Listing Service Solutions, Inc. (LSSi), a provider of directory assistance service, had filed an *ex parte* letter stating that it supplied CLECs with directory assistance, and thus contributed to local competition, and that it should therefore be granted nondiscriminatory access to LEC directory assistance databases as well.<sup>22</sup>

8. The Commission did not have a sufficient record definitively to resolve this issue in the reconsideration order but tentatively concluded that the presence of competing directory assistance providers benefits competition and that such providers are unable fully to compete without nondiscriminatory access to the incumbent LECs' directory assistance databases.<sup>23</sup> The Commission invited comment on whether certain competing directory assistance providers qualify as providers of telephone exchange service or telephone toll service for the purposes of section 251(b)(3),<sup>24</sup> and on whether those that do not so qualify are nevertheless entitled to nondiscriminatory access to directory assistance databases pursuant to sections 201(b) and 202(a).<sup>25</sup> The Commission also sought comment on whether section 251(b)(3) requires LECs

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *SLI/DA Order and Notice*, 14 FCC Rcd 15550 (1999).

<sup>20</sup> *Id.* at 15630; 47 C.F.R. § 51.217(c)(3).

<sup>21</sup> *Id.* at 15567-68.

<sup>22</sup> *Id.* at 15631-32.

<sup>23</sup> *Id.* at 15645-46.

<sup>24</sup> *Id.* at 15646.

<sup>25</sup> *Id.* at 15648-49.

providing national directory assistance to offer nondiscriminatory access to their national, *i.e.*, nonlocal, directory assistance databases.<sup>26</sup> In the notice, the Commission also invited comment on issues arising out of the development of telephone directories on the Internet and the convergence of directory assistance and directory publishing.<sup>27</sup> Specifically, the Commission asked whether telephone directories published on the Internet and oral provision of listing information fall within the scope of section 222(e).<sup>28</sup>

9. During the comment period in this proceeding, we released the *UNE Remand Order*,<sup>29</sup> in which we relieved the ILECs of the obligation to offer DA as an unbundled network element because a competitive DA market was developing, and that lack of access to the incumbent LECs' directory assistance service as an unbundled network element did not materially diminish a requesting carrier's ability to offer telecommunications service.<sup>30</sup> That decision was based on competitors' being able to provide DA, and essential to this ability is access to accurate database information. Accordingly, in the *UNE Remand Order*, we acknowledged that issues remained concerning the quality and accessibility of alternative directory assistance sources (such as compiled directory assistance databases), and reiterated that requesting carriers had to have the ability, under section 251(b)(3), to obtain nondiscriminatory access to any other LEC's directory assistance databases.<sup>31</sup> The Commission left to this proceeding the question of whether LECs must also offer nondiscriminatory database access to competing DA providers.<sup>32</sup>

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<sup>26</sup> *Id.* at 15650.

<sup>27</sup> *Id.* at 15641-44.

<sup>28</sup> *Id.* at 15641-42, 15645-46. Parties filing comments and replies in response to the Notice are listed in Appendix A. One of the commenters, Telegate AG (Telegate) requests that the Commission require that customers be able to presubscribe to the directory assistance provider of their choice, or in the alternative, eliminate the use of 411 and instead, adopt a system similar to one used by the European Union. Telegate Comments at 7-10. Telegate states that, unlike 411 in the United States, European Union decisions have not implemented a single dialing code for providing customers with directory assistance. Instead, each directory assistance provider possesses a unique dialing code by which customers can access the directory assistance service of their choosing. *Id.* On April 7, 2000, the Common Carrier Bureau (Bureau) released a Public Notice requesting comment on the technical feasibility and economic viability of Telegate's Proposal and presubscription to 711 access to telecommunication relay services (TRS). See Public Notice, *Common Carrier Bureau Seeks Further Comment on Telegate's Proposal for Presubscription to "411" Directory Assistance Services*, DA 00-930 (rel. April 7, 2000). Comments in response to this public notice were filed on May 30, 2000 and replies were filed on June 14, 2000. Because we find that the issues addressed in this Order merit prompt resolution and that substantial issues of fact and law must be considered to properly address Telegate's proposal; Telegate's proposal will be addressed in a separate proceeding in this docket.

<sup>29</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3891-92 (1999) (*UNE Remand Order*).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 3899-3900.

<sup>32</sup> *Id.*, n.913.

### III. NONDISCRIMINATORY ACCESS TO DIRECTORY ASSISTANCE FOR COMPETING DIRECTORY ASSISTANCE PROVIDERS

#### A. Background

10. Two principal goals established by the provisions of the 1996 Act are opening the local exchange and exchange access markets to competitive entry and promoting increased competition in telecommunications markets that are already open to competition.<sup>33</sup> To further this goal, the 1996 Act directs us to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well.<sup>34</sup> In enacting section 251, Congress intended to help competition grow in the market for local exchange, exchange access and related telecommunications services.<sup>35</sup> The purpose of section 251(b), which applies to all local exchange carriers, including the new entrants into the local exchange market,<sup>36</sup> is to allow all market participants to compete by creating a level playing field.<sup>37</sup> Specifically, section 251(b)(3) requires LECs to “permit all [competing] providers [of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . directory assistance, and directory listing, with no unreasonable dialing delays.”<sup>38</sup> In this section Congress recognized that nondiscriminatory access to directory assistance, like the other section 251(b)(3) elements, is critical for the development of local competition. As we discuss above, the Commission has ruled – and subsequently clarified its rules to emphasize – that, under section 251(b)(3), LECs, including new entrants, must provide nondiscriminatory access to their directory assistance databases.<sup>39</sup>

11. The comments received in the reconsideration portion of the *SLI/DA Order and Notice* indicate that competition in the DA market is frustrated by the refusal of certain incumbent

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<sup>33</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15505-06 (1996) (*Local Competition First Report and Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8<sup>th</sup> Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *petition for cert. granted*, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. Jan. 26, 1998) (collectively *Iowa Utils. Bd v. FCC*), *aff'd in part and remanded*, *AT&T Corp. et al. v. Iowa Utils. Bd. et al.*, 119 S.Ct 721 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (1997), *further recons. pending*.

<sup>34</sup> *See, e.g.*, 47 U.S.C. § 251.

<sup>35</sup> *Id.*

<sup>36</sup> House Conf. Rep. No. 104-458, 104<sup>th</sup> Cong., 2d Sess., 142 Cong. Rec. H1078-03 (1996).

<sup>37</sup> *See Local Competition Second Report and Order*, 11 FCC Rcd at 19401.

<sup>38</sup> 47 U.S.C. § 251(b)(3).

<sup>39</sup> *See supra* ¶¶ 6-7; *Local Competition Second Report and Order*, 11 FCC Rcd at 19444-45; *SLI/DA Order and Notice*, 14 FCC Rcd at 15630.

LECs to provide competing directory assistance providers with nondiscriminatory access to their local, in-region databases.<sup>40</sup> While this issue was outside the scope of the reconsideration proceeding, we believed it sufficiently important to the continued development of competition to seek further comment whether competing directory assistance providers would qualify for nondiscriminatory access to directory assistance databases pursuant to section 251(b)(3) if they do not provide telephone exchange service within the meaning of that section.<sup>41</sup> The Commission also sought comment on whether, under certain circumstances, competing directory assistance providers, nevertheless, would qualify for nondiscriminatory access to directory assistance databases pursuant to section 251(b)(3).<sup>42</sup> Such circumstances included those where competing directory assistance providers furnish call completion services or where a competing directory assistance provider acts as an agent for a CLEC.<sup>43</sup>

## **B. Discussion**

### **1. Section 251(b)(3)**

12. Section 251(b)(3) of the Act expressly requires LECs “to permit all [competing] providers [of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . directory assistance, and directory listing.”<sup>44</sup> Thus, if a DA provider also provides telephone exchange service or telephone toll service, the LECs must allow that provider nondiscriminatory access to directory assistance databases.

#### **a. Certified Competing LECs**

13. The record indicates that some competing directory assistance providers have sought and received certification, pursuant to section 251, as competing LECs from the relevant state commission.<sup>45</sup> However, commenting DA providers assert that, notwithstanding such certifications, they continue to have difficulty obtaining access to incumbent LEC DA databases.<sup>46</sup>

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<sup>40</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15631-32.

<sup>41</sup> *Id.* at 15646.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> 47 U.S.C. § 251(b)(3).

<sup>45</sup> *See, e.g.*, Metro One Comments at 1.

<sup>46</sup> Metro One, for example, states that, although it has been certified as a CLEC by the Public Utility Commission of Oregon, it “continues to face an arduous uphill battle to obtain [directory listings] and subscriber list information from LECs, who refuse to provide the listings to [directory assistance] providers.” Metro One Comments at 1-3, 15. Similarly, INFONXX asserts that, despite its certification as a CLEC in New York, Bell Atlantic-New York has refused to enter into an interconnection agreement with it as Bell Atlantic does with other



14. Section 251(b)(3) plainly requires that incumbent LECs provide competing LECs with access to DA databases. Any entity that is certified as a competing LEC by the appropriate state commission is presumptively a competing provider of telephone exchange service. An incumbent LEC may not unilaterally circumvent the framework of the statute and our rules by denying any certified competing LEC access to its local directory assistance database. If an incumbent LEC believes a particular certified CLEC is not actually providing or planning to provide telephone exchange service to consumers, the incumbent may challenge the certification before the appropriate state commission. However, as long as the state certification remains in effect, the incumbent must provide the CLEC with nondiscriminatory database access and the other resources to which a CLEC is entitled under section 251. Naturally, if an ILEC fails to comply with these 251 obligations, the affected CLEC may seek redress through the Commission's or the relevant state agency's enforcement processes.

#### **b. Call Completion**

15. Several commenters argue that competing directory assistance providers' provision of "call completion" makes them providers of telephone exchange service within the meaning of the 1996 Act and, as such, entitles them to receive nondiscriminatory DA database access pursuant to section 251(b)(3), whether or not they are certified by the state as CLECs.<sup>47</sup> As we discuss below, where a DA provider completes the call, and does not merely hand off the call to another entity to complete the call and charge the customer, this service comes within the meaning of section 251(b)(3).

16. As noted above, section 251(b)(3) confers certain rights on providers of "telephone exchange service." This term is defined in section 3(47) of the Act as:

(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunication service ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through the system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."<sup>48</sup>

As we explain below, depending on how the DA service is implemented, both subparts of this definition can support our conclusion that certain DA providers fall within the term.

17. Section 3(47)(A). To come within the definition of "telephone exchange service" in section 3(47)(A), a service must permit "intercommunication" among subscribers within the equivalent of a local exchange area provided the service is covered by the exchange service

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CLECs. Letter of Gerard J. Waldron, Counsel, INFONXX to Magalie Roman Salas, FCC (dated July 26, 2000) (INFONXX July 26, 2000 Ex Parte).

<sup>47</sup> See, e.g., INFONXX Comments at 7-12; Excell Comments at 10; Metro One Comments at 19;

<sup>48</sup> 47 U.S.C. § 153(47)

charge.<sup>49</sup> We believe that the call-completion service offered by many competing DA providers constitutes intercommunication because it permits a community of interconnected customers to make calls to one another in the manner prescribed by the statute.

18. In addition to the basic number-lookup function, many competing directory assistance providers offer to complete the call to the party once the number is located. Typically, competing DA providers complete calls by either: (i) completing the call through their own switching and transmission equipment or (ii) by acting as a reseller and sending the call to another carrier (such as the LEC) for delivery through the local exchange network, with the DA provider receiving some payment from the customer for call completion.<sup>50</sup> This service, while not the traditional provision of telephone exchange service through the provision of dial tone by a local exchange carrier, nonetheless permits “intercommunication” within the meaning of section 3(47)(A).

19. Section 3(47)(A) also requires that the service in question be “covered by the exchange service charge.”<sup>51</sup> The Commission has determined that this requirement is relevant only for the purpose of determining whether the service is local in nature “by virtue of being part of a connected system of exchanges, and not a toll service.”<sup>52</sup> The phrase implies that an end-user obtains the ability to communicate within the equivalent of an exchange area as a result of entering into a service and payment agreement with a provider of a telephone exchange service.<sup>53</sup> The call completion service of competitive DA providers for intra-exchange traffic is unquestionably local in nature, and the charge for it, generally imposed on an end user, qualifies as an “exchange service charge.”<sup>54</sup> We therefore conclude that this service meets the requirements of section 3(47)(A).

20. Section 3(47)(B). We agree with the commenters that argue call completion is also a “comparable service” that qualifies as a telephone exchange service under section 3(47)(B). To be a “comparable service,” a provider must allow a calling party the ability, “through the system of switches, transmission equipment, or other facilities (or combination thereof)” to “originate and terminate a telecommunications service.”<sup>55</sup> Engaging in call completion allows a

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<sup>49</sup> *Id.* See also *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, Order on Remand, 15 FCC Rcd 385, 394 (1999) (*Advanced Services Order*).

<sup>50</sup> See LSSi Comments at 12; INFONXX Comments at 8-10.

<sup>51</sup> 47 U.S.C. § 153(47)(A).

<sup>52</sup> See, e.g., *Advanced Services Order*, 15 FCC Rcd at 398 (internal quotation omitted).

<sup>53</sup> *Id.*

<sup>54</sup> Competing DA providers may also provide exchange access by completing long distance calls for one of its customers. This ability does not cancel or otherwise nullify the telephone exchange service that the DA provider has the ability provide.

<sup>55</sup> 47 U.S.C. § 153(47).

(continued....)

local caller to connect to another local telephone subscriber and, in that process, through a system of either owned or resold switches, enables the caller to originate and terminate a call.<sup>56</sup>

21. Section 3(47)(B) was added to ensure that the definition of telephone exchange service was not limited to traditional voice telephony, but included non-traditional means of communication within a local calling area.<sup>57</sup> Call completion offered by a DA provider, while it may not take the form of an ordinary telephone call (*i.e.*, one initiated by LEC provision of dial tone), nonetheless “allows a local caller at his or her request to connect to another local telephone subscriber”<sup>58</sup> thereby permitting a community of interconnected customers to make calls to one another.<sup>59</sup> We therefore find that not only does call completion satisfy section 3(47)(A), it also can satisfy section 3(47)(B).

22. While we generally conclude that the offering of call completion service by competing DA providers constitutes telephone exchange service, we also agree with Bell Atlantic that not all DA providers’ service may satisfy the statutory requirements. Bell Atlantic acknowledges that call completion satisfies the definition of a telephone exchange service,<sup>60</sup> but contends that certain competing directory assistance providers may not actually provide call completion, but rather may merely hand the call off to another carrier to complete the call and charge the calling party.<sup>61</sup> In those instances, Bell Atlantic argues, the competing directory assistance provider is not actually completing a call, is not a provider of telephone exchange, and should not obtain access to the incumbent LECs’ directory assistance databases under section 251(b)(3).<sup>62</sup> We agree. If a competing directory assistance provider does not complete the call either through its own facilities or through resale and impose a separate charge for such service, but rather simply passes a call to another entity that provides all elements of call completion (*i.e.* that completes that call and charges the customer for the service), the competing directory assistance provider is not providing telephone exchange service within the meaning of section 3(47).

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<sup>56</sup> INFONXX Comments at 12 (pointing out that call completion services involves the provision of telecommunications). *See also* Metro One Comments at 19.

<sup>57</sup> *See, e.g., Advanced Services Order*, 15 FCC Rcd at 400.

<sup>58</sup> *See* LSSI Comments at 12.

<sup>59</sup> *See General Telephone Company of California*, 13 FCC 2d 448, 460, *recon. denied*, 14 FCC 2d 693 (1968), *aff’d.*, 413 F.2d 390, *cert. denied*, 396 U.S. 888 (1969) (“Manifestly, the phrase [telephone exchange service] is intended primarily to apply to a telephone or comparable service involving ‘intercommunication,’ *i.e.*, a two-way communication . . .”).

<sup>60</sup> *See* Bell Atlantic Reply Comments at 6.

<sup>61</sup> *Id.* at 6-7.

<sup>62</sup> *Id.* at 6.

23. On the other hand, we reject Cincinnati Bell's extension of this argument that call completion only qualifies as telephone exchange service when the DA provider uses its own switches (*i.e.*, is "facilities based,") rather than reselling service on an incumbent LEC's switches.<sup>63</sup> The Act speaks only of a "system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."<sup>64</sup> The Commission has always considered resellers to be telecommunications carriers, and no requirement exists that the provider own the system of switches.

24. Additionally, we agree with LSSi that, regardless of the nature of the underlying services, competitors that offer quality directory assistance and call completion services enhance the marketplace for local exchange service.<sup>65</sup> Drawing a distinction based on the actual ownership of the switch used to provide call completion would undermine the benefits that competing DA providers bring to the emerging directory assistance market.<sup>66</sup> Moreover, the Act envisions three legitimate competitive strategies: 1) resale, 2) unbundled network elements (UNEs), and 3) interconnected facilities.<sup>67</sup> Directory assistance providers may use any or all of these strategies.<sup>68</sup>

25. A competitive DA provider may also offer to complete a toll call for a requesting customer via a toll provider whose service the DA provider offers, either through its own facilities or through resale. Where a competing DA provider does so, and imposes a charge for this service, we conclude that the DA provider is providing toll service as defined in section 3(48) of the Act, and thus qualifies for nondiscriminatory access to LEC DA under section 251(b)(3).<sup>69</sup>

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<sup>63</sup> Cincinnati Bell Telephone (CBT) Comments at 12.

<sup>64</sup> 47 U.S.C. § 3(47)(A).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> 47 U.S.C. §§ 251(C)(2)-C(4). *See also UNE Remand Order*, 15 FCC Rcd at 3727.

<sup>68</sup> In *INFONXX, Inc. v. NYNEX*, Memorandum Opinion and Order, 13 FCC Rcd 10288 (1998), the Common Carrier Bureau found, on the record before it, that competing DA providers did not provide telephone exchange service. The Bureau did not consider -- apparently because the parties did not raise -- the questions of whether INFONXX qualified under section 251(b)(3) because it had been certified as a CLEC by any state commission, acted as the agent for a CLEC, or provided telephone exchange service by virtue of its engaging in call completion.

<sup>69</sup> To the extent that our decision regarding call completion results in a state requiring DA providers to obtain some type of state certification, we encourage state commissions to allow affected DA providers to

continue to offer DA services in the interim while they apply for the necessary certification, and to provide any necessary certificates as expeditiously as possible.

**c. Agency**

26. In the *SLI/DA Order and Notice*, we recognized that interexchange carriers (IXCs) and competing LECs may not have the economies of scale to construct and maintain directory assistance platforms of their own.<sup>70</sup> We noted that, in many instances, competing directory assistance providers contract with IXCs and competing LECs that have entered interconnection agreements with the relevant incumbent LEC to serve as the IXCs' or CLECs' agents for the provision of directory assistance service.<sup>71</sup> Nevertheless, it appears that, despite such agency relationships and the underlying CLEC/ILEC interconnection agreements, DA providers are experiencing difficulty obtaining access to LECs' DA databases.<sup>72</sup>

27. We have noted above that the presence of such DA providers allows many carriers to offer a competitive directory assistance product without being forced either to go to the substantial expense of maintaining their own database or to purchase the service from the incumbent LECs that maintain near bottleneck control over the bulk of the DA database information. Thus, competing DA providers, acting as agents (or independent contractors) of entities that otherwise qualify under section 251(b)(3), significantly aid the development of competition in the local exchange market by offering services not always available from the incumbent LECs.<sup>73</sup> We therefore conclude that, when a CLEC or an IXC (having entered an interconnection agreement with the relevant LEC) designates a DA provider to act as their agent, that competing DA provider is entitled to nondiscriminatory access to the providing LECs' local DA database. Naturally, the DA provider's database access will be consistent with the terms of the relevant interconnection agreement and with the terms of the DA providers' separate agreements with its carrier principal. We expect that a DA provider's request for access will be accompanied by a letter or other documentation from the CLEC or IXC evidencing its intent that the DA provider receive database access so that it may fulfill its obligations to the CLEC or IXC.

28. Several LECs argue that, even where a competing DA provider is entitled to nondiscriminatory database access as an agent, the providing LEC should be allowed to restrict the use of subscriber information to the specific carrier-principal for which the purchase was

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<sup>70</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15645-15646.

<sup>71</sup> *Id.*

<sup>72</sup> *See, e.g.*, Metro One Reply Comments at 11-12, INFONXX Reply Comments at 6.

<sup>73</sup> Where a DA provider is not under the supervision and control of the carrier-principal, the applicable state law may deem it to be an independent contractor rather than agent. But for purposes of our analysis, the agency/independent contractor distinction is not relevant and we use the term "agent" to encompass both types of relationships. In both circumstances, the rights of the DA provider are derivative of the rights of its carrier-principal, and the DA provider, as we explain below, may use the information it obtains subject to the limitations set forth in its agreements with its principal, *see infra* ¶ 28, and to applicable state law limitations. *See infra* ¶ 29.

made.<sup>74</sup> We decline to adopt the rule that the LECs suggest. First, we are persuaded that the LECs' suggested rule would, as the DA providers assert,<sup>75</sup> substantially increase the costs of providing a competitive directory assistance product, thereby reducing the salutary effects arising from the presence in the market of competitive DA providers. Furthermore, we conclude that section 251(b)(3)'s requirement of nondiscriminatory access to a LEC's DA database does not contemplate continuing veto power by the providing LEC over the uses to which DA information is put. 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 the information as it sees fit. Our conclusion in this regard does not mean that a DA provider is effectively without limitation in its use of the database information it has obtained in its agency capacity. Such providers continue to be governed by their agreements with their carrier-principal and by the state-law principles that govern the construction of those agreements. Here, we decline only to place additional restrictions on the use of the information that are without basis in the statute.

29. We disagree with commenters such as Bell Atlantic that maintain that a competing DA provider may not use the DA database for purposes other than providing directory assistance.<sup>76</sup> Section 251(b)(3) imposes no such limitation on LECs, their affiliated DA providers, or CLECs, and the commenters have offered no basis in the Act or our rules for imposing such a restriction on competing DA providers. Rather, in the *Local Competition Second Report and Order*, we concluded that competitors receiving LEC directory assistance information would be held to the same standards as the providing LEC in terms of the types of information that they could legally release to third parties.<sup>77</sup> Competing DA providers operate under the same standards. As we noted in the *Local Competition Second Report and Order*, this holding does not preclude states from continuing to limit how LECs or competing DA providers can use accessed directory information, *e.g.*, by prohibiting the sale of customer information to telemarketers. Rather, section 251(b)(3) merely precludes states from discriminating among LECs by imposing different access restrictions on competing providers, thereby allowing certain LECs to enjoy greater access to information than others. This analysis applies to all DA providers, including competing DA providers. We thus decline to limit the manner in which DA

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<sup>74</sup> U S WEST Comments at 5; CBT Comments at 10-11. Bell Atlantic argues that a LEC license agreement to permit multiple uses of the data would not be subject to sections 251(b)(3) and 222(e). *See* Bell Atlantic Reply Comments at 5; U S WEST Reply Comments at 6.

<sup>75</sup> Teltrust and other competing DA providers assert that it would be prohibitively expensive to require a directory assistance provider to obtain the same subscriber information repetitively and separately for each carrier-principal for which it provides directory assistance services. *See* Teletrust Reply Comments at 10-11.

<sup>76</sup> Bell Atlantic Reply Comments at 4-5; Sprint Reply Comments at 2; U S WEST Comments at 5-6. Commenting DA providers take a contrary position. *See, e.g.*, LSSi Comments at 3-4 ("it is inconsistent with the nondiscriminatory requirements of the Act to allow LECs to use this information in anyway they choose, while limiting competing DA providers to finite uses").

<sup>77</sup> *Local Competition Second Report and Order*, 11 FCC Rcd at 19461-62.

providers use the information beyond the limitation announced in the *Local Competition Second Report and Order*.

## 2. Contribution Obligations of DA Providers

30. Additionally, we agree with the claims of some commenters that directory assistance providers that qualify for nondiscriminatory access under section 251(b)(3) are subject to obligations such as contributing for universal service, Telecommunications Relay Service (TRS), paying appropriate assessments for Local Number Portability (LNP) administration, and North American Numbering Plan (NANP) Administration.<sup>78</sup> The Commission has determined that telecommunications carriers are required to contribute to LNP, NANP administration, TRS, and universal service.<sup>79</sup> Competing LECs certified by state public utility commissions clearly are telecommunications carriers and therefore must contribute, consistent with our rules, to these programs.<sup>80</sup> Moreover, above, we determine that competing directory assistance providers that provide call completion are also telephone exchange service providers and thus are required to fulfill these obligations.<sup>81</sup>

## 3. Sections 201 and 202

31. The Commission also sought comment on whether sections 201(b) and 202(a) require LECs to offer nondiscriminatory database access to all competing DA providers.<sup>82</sup> We conclude that resolution of that question on this record would be premature. In particular, we find that whether LECs must offer such access to those DA providers that do not provide telephone exchange or telephone toll service is a question that raises complex issues that have not been fully developed to date in this docket. Accordingly, we do not address these issues here, but may address them in a separate proceeding.

## 4. Access to Nonlocal Listings

32. In the *Notice*, we sought comment on whether all LECs providing nationwide directory assistance should be required also to provide nondiscriminatory access to nonlocal directory assistance databases pursuant to section 251(b)(3).<sup>83</sup> The vast majority of commenters suggest that the requirement of nondiscriminatory access to directory assistance databases should

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<sup>78</sup> See U S WEST Reply Comments at 14-15; see also Bell Atlantic Comments at 5; Sprint Reply Comments at 4 (asserting that these carriers should be required to pay state and federal regulatory fees). See also INFONXX Comments at 12.

<sup>79</sup> 47 C.F.R. §§ 54.703, 64.604, 52.17, 52.32.

<sup>80</sup> See generally 47 U.S.C. § 251.

<sup>81</sup> See supra ¶¶ 15-25.

<sup>82</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15648-15649.

<sup>83</sup> *Id.* at 15650.

extend only to a LEC's own local databases, not to information from databases under the control of others. In the *U S WEST Forbearance Order*, the Commission 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," so the Commission found "no reason to require U S WEST to provide these numbers to unaffiliated providers of nonlocal directory assistance service."<sup>84</sup> Consistent with that holding, we conclude that LECs should not be required to provide nondiscriminatory access to nonlocal directory listings since third parties have the same opportunity to secure the information directly. However, to the extent that a carrier provides access to national DA information any other DA provider, including another LEC, it must make that same information available to competing DA providers under nondiscriminatory rates, terms, and conditions as required by this order.

#### IV. RATES FOR ACCESS TO DIRECTORY ASSISTANCE

33. In the Notice, we sought comment on whether section 251(b)(3) obligates LECs to provide database access to competing directory assistance providers on the same rates, terms, and conditions that the LECs provide it to themselves.<sup>85</sup> We also sought comment as to whether sections 201 and 202 impose obligations that are similar or identical to those of 251(b)(3).<sup>86</sup> Finally, we invited comment on whether a reasonable rate should be determined by the method that we adopted for directory publishing.<sup>87</sup> As we discuss in paragraph 9 above, during the comment period for this proceeding, we concluded in the *UNE Remand Order*, that UNE pricing was no longer required for directory assistance and therefore removed the service from the list of UNEs.<sup>88</sup>

34. In responding to the Notice, many commenters asserted that LECs are charging competing DA providers discriminatory and unreasonable rates for access to their directory assistance databases.<sup>89</sup> For example, Teltrust contends that some LECs charge an initial access fee of \$25,000.<sup>90</sup> LSSI maintains that LECs are manipulating prices for directory assistance databases in order to limit or even exclude competitors.<sup>91</sup> Similarly, Excell claims that

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<sup>84</sup> *U S WEST Forbearance Order*, 14 FCC Rcd at 16271.

<sup>85</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15650.

<sup>86</sup> *Id.* at 15649.

<sup>87</sup> *Id.* at 15644-15645.

<sup>88</sup> *UNE Remand Order*, 15 FCC Rcd at 3892.

<sup>89</sup> See Letter dated January 18, 2000, from Gerard J. Waldron, counsel, INFONXX to Magalie Roman Salas, FCC at 2-3 (INFONXX January 18, 2000 Ex Parte); See also Letter dated December 9, 1999, from Arthur H. Hardiz, Excell Agent Services, L.L.C. to Magalie Roman Salas, FCC (Excell December 9, 1999 Ex Parte).

<sup>90</sup> Teltrust Comments at 12.

<sup>91</sup> LSSI Comments at 15.



Southwestern Bell Telephone Company charges it 53 times the approved cost-based rate that it may charge telecommunications providers.<sup>92</sup>

35. Section 251(b)(3) of the Act and the Commission's rules prohibit LECs from charging discriminatory rates, for access to DA databases, to competing directory assistance providers that fall within the protection of that section (i.e., those that provide telephone exchange service or telephone toll service).<sup>93</sup> Thus, LECs must offer access to their DA database at rates that do not discriminate among the entities to which it provides access.<sup>94</sup> Further, failure to provide directory assistance at nondiscriminatory and reasonable rates to DA providers within the protection of section 251(b)(3) may also constitute an unjust charge under section 201(b).<sup>95</sup>

36. Some parties contend that carriers are entering into side agreements to interconnection agreements with CLECs that include the rates, terms and conditions for access to DA databases. These parties argue that the carriers are not making these agreements available to competing DA providers and other parties. We note that for our requirement that LECs charge nondiscriminatory rates for DA to have any effect, competing DA providers must have access to the pertinent terms, conditions, and pricing data. Carriers have an obligation to provide nondiscriminatory access to that data, and that, to carry out that obligation, section 252 creates a mechanism for public disclosure of the rates, terms, and conditions contained in interconnection agreements. Carriers and competitive DA providers should then be able to opt into those rates and terms. Thus, in order to make this nondiscrimination requirement meaningful, we would expect carriers to comply with section 252 and make rates, terms, and conditions data available to requesting parties in a timely manner

37. We also decline to adopt, for DA purposes, the rate methodology for subscriber list information under section 222(e) of the Act.<sup>96</sup> We agree with the majority of commenters that the pricing structure for directory assistance and access to associated databases should remain distinct from that of subscriber list information.<sup>97</sup> We conclude that, because of the statutory

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<sup>92</sup> Excell Comments at 13.

<sup>93</sup> 47 U.S.C. § 251(b)(3).

<sup>94</sup> See 47 C.F.R. § 51.217(a)(2)(I).

<sup>95</sup> *Local Competition Second Report and Order*, 11 FCC Rcd at 19537-19538.

<sup>96</sup> See *SLI/DA Order and Notice*, 14 FCC Rcd at 15604. On September 9, 1999, the Commission released the *Third Report and Order* in this docket, adopting reasonable and nondiscriminatory pricing rules for subscriber list information pursuant to section 222(e). The Commission concluded that LECs should be able to recover their incremental costs plus a reasonable allocation of common costs and overheads. The Commission then went on to find that \$0.04 per listing is a presumptively reasonable rate for base file subscriber list information. The Commission also determined that \$0.06 per listing is a presumptively reasonable rate for updated subscriber list information. *Id.*

<sup>97</sup> See, e.g., INFONXX Comments at 31, Teltrust Comments at 16; LSSI Comments at 3 (arguing that the ability to impose use-based – as opposed to cost based – pricing provides the LEC with an incentive to impose

differences between directory assistance and directory publishing, the Commission can not at this time justify setting a rate that would apply to both access to directory assistance databases and directory publishing.<sup>98</sup>

38. Finally, our decision not to impose a specific pricing structure on directory assistance notwithstanding our jurisdiction over DA does not preclude a state commission from doing so.<sup>99</sup> In such cases, the Commission would adopt the state rate as its own, subject to the Title II requirements of reasonableness and nondiscrimination as set forth in this order. Parties that wished to challenge such rates on the basis of non-compliance with Title II could do so before the Commission in an enforcement proceeding.

## V. RELATIONSHIP BETWEEN DIRECTORY PUBLISHING AND DIRECTORY ASSISTANCE

### A. Background

39. In the *Notice* we sought comment on whether the language of section 222(e) compels us to conclude that the publishing of a directory “in any format” includes the publishing of a telephone directory on the Internet.<sup>100</sup> If so, we further inquired whether interpreting the statutory language to include the use of subscriber list information in Internet databases would be consistent with overall policy objectives of the Act.<sup>101</sup> In the *Notice* we also sought comment on whether the oral provision of listing information by a directory assistance operator also constitutes the publishing of a directory “in any format” for purposes of section 222(e).<sup>102</sup>

(Continued from previous page) \_\_\_\_\_

unreasonable prices on innovative services offered by competing DA providers); Metro One Comments at 12 (referring to the Congressional Record for the proposition that in determining a reasonable rate, the most significant factor should be incremental cost of delivering the listing to the requesting party).

<sup>98</sup> See *infra* ¶¶ 39-42 (discussing differing statutory treatment for directory assistance and directory publishing and finding that the two services have not sufficiently converged to obviate Congress’s distinctions between them). See also Bell Atlantic Comments at 3-4, CBT Comments at 8-11.

<sup>99</sup> For example, in a February 8, 2000, order (submitted in the record in this proceeding by INFONXX), the State of New York Public Service Commission (NYPSC) set the standard for prices that Bell Atlantic and other LECs may charge, for certain directory information database services, to other carriers and to non-carrier directory assistance providers. See Letter dated March 8, 2000, from Gerard J. Waldron, counsel, INFONXX to Magalie Roman Salas, FCC; submitting Opinion and Order in Module 1 (Directory Database Services), Case 98-C-1375, Opinion No. 00-02, State of New York Public Service Commission (Feb. 8, 2000) (INFONXX March 8, 2000 Ex Parte). In this order, the NYPSC analyzed cost studies provided by Bell Atlantic, INFONXX, and Frontier to arrive at a cost-based price model for the nondiscriminatory provision of directory assistance. *Id*

<sup>100</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15641.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 15644.

40. As we discussed in the *SLI/DA Order and Notice*, directory publishing and directory assistance traditionally have been treated as separate and distinct products or services.<sup>103</sup> In directory publishing, the traditional products consist of two types of paper directories: white pages directories and yellow pages directories.<sup>104</sup> White pages directories provide the names, addresses, and telephone numbers of telephone exchange service subscribers within particular geographic areas that did not elect to have unlisted or unpublished numbers.<sup>105</sup> Yellow pages directories provide the names, addresses and telephone numbers of businesses receiving telephone exchange service within particular geographic areas.<sup>106</sup> Yellow pages directories also provide headings that direct users to categories of listings and advertising for businesses providing similar products or services.<sup>107</sup>

41. Directory assistance, in contrast, traditionally has been a service in which live operators, (sometimes in tandem with synthesized voice generating devices), orally provide users with telephone numbers and, in some instances, addresses of individual telephone exchange service subscribers.<sup>108</sup> Directory assistance operators obtain the information from databases that contain the names, addresses, and telephone numbers of telephone exchange service subscribers within particular geographic areas that do not elect to have unpublished numbers.<sup>109</sup> The growth of the Internet has opened the door for a growing number of Internet services that rely on subscriber list information.<sup>110</sup> These services include databases that provide users with the names, addresses and telephone numbers of telephone subscribers, as well as a bounty of information relating to listed businesses.<sup>111</sup> In some of these databases, a user may search electronically from among millions of listings by numerous criteria such as business name, business category, location, zip code, brands carried, operating hours, and methods of payment accepted.<sup>112</sup> More advanced applications provide hyperlinks to company web sites, where the user can obtain additional information, or make purchases directly over the Internet.<sup>113</sup>

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<sup>103</sup> *Id.* at 15640.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

## B. Discussion

### 1. Whether Telephone Directories on the Internet Are Directory Publishing In Any Format

42. Section 222(e) states, “[A] telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.”<sup>114</sup> We conclude that the phrase “in any format” brings within the protections of section 222(e) those entities that seek subscriber list information to publish directories on the Internet. That phrase “in any format” makes clear Congress’s intent not to restrict the kinds of directories that could be published using subscriber list information obtained pursuant to section 222(e). Internet databases that contain subscriber list information clearly fall within the very broad category of “directories in any format.” In addition, because an Internet directory is published when Internet users are able to access it,<sup>115</sup> a directory publisher that requests subscriber list information for purposes of placing it on the Internet is seeking that information “for the purpose of publishing a directory” within the meaning of section 222(e). Finally, interpreting section 222(e) as entitling directory publishers to obtain subscriber list information for use in Internet directories will further Congress’s goal of promoting competition in directory publishings.<sup>116</sup> In order for directory publishers to provide accurate directory listings, it is essential that publishers have access to the subscriber list information LECs acquire from their customers.<sup>117</sup> We find that extending the guarantees of section 222(e) to publishers of telephone directories on the Internet will further enhance competition in the market for directory publishing.<sup>118</sup>

### 2. Carrier Control Over Publishers of Competing Telephone Directories on the Internet

43. In the *Notice*, we also sought comment on whether carriers that provide subscriber list information pursuant to section 222(e) should be allowed to restrict the manner in which

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<sup>114</sup> 47 U.S.C. § 222(e).

<sup>115</sup> See, e.g., *Reno v. ACLU*, 521 U.S. 844, 852 (1997).

<sup>116</sup> See *SLI/DA Order*, 15 FCC Rcd at 15554-55. See also Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., 205 (1996) (*Joint Explanatory Statement*) (subscriber list information provision guarantees independent publishers access to subscriber list information at reasonable and nondiscriminatory rates, terms and conditions from any provider of local telephone service); H. Rep. No. 104-204(1), 104th Cong., 1st Sess., 89 (1995) (*1995 House Report*) (subscriber list information provision “meets the needs of independent publishers for access to subscriber data”); see also H. Rep. No. 103-559(1), 103d Cong., 2d Sess., 60 (1994) (*1994 House Report*) (stating, in relation to a provision that was basis for what ultimately became section 222(e), that LECs have total control over subscriber list information).

<sup>117</sup> Telegate Comments at 2; Teltrust Comments at 9.

<sup>118</sup> NetDQ, Inc. Reply Comments at 3.

requesting directory publishers of telephone directories display or allow access to that information on the Internet.<sup>119</sup> For example, we asked whether carriers should be allowed to require directory publishers to format their Internet telephone directories so that they are incapable of permitting an end user to download or view more than 15 listings with a single command.<sup>120</sup> We agree with ADP's argument that, if LECs are permitted to exert control over the format of directory publishers' Internet offerings, the LECs may attempt to impose anticompetitive restrictions, particularly if the publisher and the LEC are offering competing directory services.<sup>121</sup> For example, LECs could impose strict limitations on how many listings a provider may display per search request.<sup>122</sup> Such limitations might render the competing providers' services less valuable than a LEC's or LEC affiliate's service that is free of such limitations, because consumers may find them to be less efficient or user-friendly. Even if the LECs or LEC affiliate's services were subject to identical limitations, the limitations would allow the LEC to restrict innovation in Internet directories.

44. Certain LECs argue that we should allow them to place stricter access limitations on subscriber lists for Internet telephone directories than we permit on print directories because Internet telephone directories can be easily downloaded and resold by anyone with access to the Internet, preventing LECs from receiving fair compensation for their subscriber list information.<sup>123</sup> We disagree. As we stated in the *SLI/DA Order and Notice*, "a directory publisher . . . may use subscriber list information from published directories without infringing any copyrights for those directories."<sup>124</sup> We are not convinced that carriers may impose any restriction on SLI supplied for publication in an Internet directory that they are not entitled to impose on SLI provided for the purpose of publication in any other directory (including paper directories) pursuant to section 222(e). In addition, the carrier that has provided SLI at a "reasonable rate" meeting the standard of section 222(e) and our implementing rules has been fully compensated, and is no more entitled to further compensation for material copied off the Internet than it would be for material copied from a paper directory. In the event that a listing is copied or downloaded, the publisher of an Internet telephone directory may face lost revenues or more competition from entities that copy the listings. Therefore, it is also in the best interest of competing publishers to ensure that their

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<sup>119</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15643.

<sup>120</sup> *Id.*

<sup>121</sup> *See ADP Comments* at 7-8; *Metro One Comments* at 9; *MCI WORLDCOM Comments* at 7.

<sup>122</sup> *See, e.g., ADP Comments* at 8.

<sup>123</sup> *U S WEST Comments* at 2-3; *CBT Comments* at 4-5; *Bell Atlantic Comments* at 2-3; *GTE Comments* at 2, 3.

<sup>124</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15562. *See also Feist Publications v. Rural Telephone Service Company, Inc.*, 499 U.S. 340, 342-43 (1991) (area-wide directory); *Great Western Directories, Inc. v. Southwestern Bell Tel. Co.*, 63 F.3d 1378, 1383 (5th Cir. 1995) (*Great Western v. Southwestern Bell*), *superseded in part on other grounds*, 74 F.3d 613 (5th Cir. 1996), *cert. dismissed*, 117 S.Ct. 26 (1996) (niche directory); Letter from David R. Goodfriend, Counsel for ADP, to Magalie Roman Salas, Secretary, FCC, at 1 (filed June 2, 1998) (*ADP June 2, 1998 Letter*) at 1 (ethnic directories).

listings are not copied. Thus, we find that specific, LEC-mandated use restrictions are not necessary to ensure that the interests of LECs are protected.

45. We conclude that publishers of telephone directories on the Internet should be permitted to use the data for the purpose for which it was purchased and should not be restricted in the manner in which they display or allow customers to access the data. The publishing entity shall determine which methods, if any, of preventing their listings from being copied or downloaded by third parties shall be implemented.

### 3. Oral Provision of Listing Information

46. In the *Notice*, we sought comment on whether the oral provision of listing information by a directory assistance operator also constitutes the publishing of a directory “in any format” for the purposes of section 222(e).<sup>125</sup> Teltrust and other competing directory assistance providers argue that the language “publishing directories in any format” is broad enough to include the oral provisioning of directory assistance for the purposes of section 222(e) and thus would bring the regulation of DA within the ambit of the rate structure that the Commission has adopted for subscriber list information under section 222(e).<sup>126</sup> We disagree. We find that the oral provisioning of directory assistance does not constitute “publication” for the purposes of section 222(e), and thus conclude that DA should not be regulated under that section.

47. As indicated previously section 222(e) entitles directory publishers to obtain SLI “for the purpose of publishing directories in any format.” We find that Congress intended to exclude the oral provisioning of directory assistance from the definition of “publishing directories in any format” for the purposes of section 222(e). Section 251(b)(3) explicitly refers to “telephone numbers, operator services, directory assistance, and directory listing.” On the other hand, section 222(e) narrowly confers rights to those requesting access “for the purpose of publishing directories.” We agree with GTE that the omission of directory assistance in section 222(e), compared to the broader listing of services in section 251(b)(3), persuasively demonstrates that Congress intentionally omitted the oral dissemination of information from the language of section 222(e).<sup>127</sup>

48. Some commenters argue, based on libel law, that the oral dissemination of information makes that information public and therefore constitutes ‘publication’ for the purposes of section 222(e).<sup>128</sup> We find this interpretation to be unpersuasive. Entities providing oral directory assistance services are not engaging in the publication of a directory, regardless of

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<sup>125</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15644.

<sup>126</sup> Metro One Reply at 3; INFONXX Comments at 28-29; Teltrust Comments at 9-10.

<sup>127</sup> GTE Comments at 5-6.

<sup>128</sup> *See e.g.*, INFONXX Comments at 29.

whether they are engaged in “publishing” or “disseminating information.”<sup>129</sup> In this regard, we note that the most common meaning of the term ‘publication’ is “the act of publishing a book, periodical, map, piece of music, engraving, or the like.”<sup>130</sup> We conclude, therefore, that Congress intentionally excluded the provision of directory assistance from the definition of publishing directories for the purposes of section 222(e). In the future, if directory assistance and directory publishing evolve to resemble one another more closely, we may revisit this issue.

49. In the *Notice*, we also sought comment on whether the convergence between directory publishing and directory assistance had matured to the extent that it should influence our implementation of section 222(e).<sup>131</sup> Today, services are available to consumers in many different formats. As a result of these advances in technology, certain elements of directory assistance and directory publishing occasionally resemble one another.<sup>132</sup> We conclude, however, that any seeming convergence between directory publishing and directory assistance does not obviate the statutory distinctions drawn by Congress concerning these two services. In addition to the technical distinctions between the two types of services,<sup>133</sup> we agree that directory publishing has been a competitive business for years, while directory assistance is just now becoming a competitive service.<sup>134</sup> These differences are significant because they explain the differing regulatory classifications drawn by Congress for directory assistance and directory publications. We thus conclude that the statutory differences between directory assistance and directory publishing should continue to be observed.

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<sup>129</sup> See U S WEST Reply Comments at 17-18. See also Bell Atlantic Reply Comments at 3-4 (claim that orally transmitting one listing constitutes publication of a directory stretches definition of “publication” beyond

parameters of reasonable interpretation). CBT distinguishes the definition of ‘publication’ as it pertains to other areas of the law by pointing out that directory publications have the quality of making something “known or announced to the public,” whereas the oral publication of subscriber list information lacks this quality, instead providing information to an individual caller. GTE Reply Comments at 3-4. See also YPPA Comments at 2.

<sup>130</sup> See e.g., Random House Dictionary of the English Language at 376 (College ed. 1968). See also Black’s Law Dictionary at 239 (Abridged 5<sup>th</sup> ed. 1983) (defining “directory” as “[b]ook containing names, addresses, and occupations of inhabitants of city. Also any list or compilation, usually in book or pamphlet form, of persons, professional organizations, firms or corporations forming some separate and distinct from others.”). See also *Reno v ACLU* 521 U.S. at 852.

<sup>131</sup> *SLI/DA Order and Notice*, 14 FCC Rcd at 15640.

<sup>132</sup> Several commenters argue that convergence has completely mooted the need for differing regulatory framework for directory assistance and subscriber list information. See Metro One Reply Comments at 3, 6; Metro One Comments at 6; ADP Comments at 9; NetDQ Reply Comments at 2; LSSi Reply Comments at 20-22.

<sup>133</sup> YPA Comments at 3-4.

<sup>134</sup> *Id.* at 5

## VI. CONCLUSION

50. As discussed above, we conclude that, under section 251(b)(3) of the Act competing directory assistance providers that provide telephone exchange or telephone toll service are entitled to nondiscriminatory access to all directory assistance, including access to local directory-assistance databases compiled by LECs. We also find that LEC failure to provide nondiscriminatory access to competing directory assistance providers not only violates section 251(b)(3),<sup>135</sup> but also may violate section 201(b).<sup>136</sup>

51. In this Report and Order, we also resolve other issues relating to directory publishing. Specifically, we conclude that the language concerning directory publishing “in any format” in section 222(e) encompasses telephone directories on the Internet.<sup>137</sup> We find, however, that the phrase “publishing directories in any format” in section 222(e) does not encompass orally-provided directory listing information.

## VII. PROCEDURAL MATTERS

### A. Final Regulatory Flexibility Certification

52. As required by the Regulatory Flexibility Act (RFA),<sup>138</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* in this docket, CC Docket No. 99-273.<sup>139</sup> The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA.<sup>140</sup> No comments on the IRFA were received. This present Final Regulatory Flexibility Certification (Final Certification) conforms to the RFA.<sup>141</sup>

53. The RFA requires an analysis of any notice-and-comment type rule making if the rule will result in a “significant economic impact” on “a substantial number of small entities.”<sup>142</sup> There are four categories of entities that might be affected by the requirements contained in this *First Report and Order*. None of these categories reaches the threshold of a significant economic impact on a substantial number of small entities. First, the requirements adopted herein are expected to have a significant positive economic impact on a substantial number of small competitive directory assistance providers and small directory publishers. Although, the

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<sup>135</sup> 47 U.S.C. § 251(b)(3).

<sup>136</sup> 47 U.S.C. §§ 201(b), 202(a).

<sup>137</sup> 47 U.S.C. § 222(e).

<sup>138</sup> 5 U.S.C. § 603.

<sup>139</sup> See generally *SLI/DA Order and Notice* at Appendix C.

<sup>140</sup> *Id.*, 14 FCC Rcd at 5653.

<sup>141</sup> 5 U.S.C. § 605.

<sup>142</sup> 5 U.S.C. § 603.



requirements included in this *First Report and Order* do not directly affect these entities, the requirements, once in place, should ensure the ability of these entities to provide services on a competitively neutral basis. Second, we expect these requirements to have a positive economic impact on some competitive local exchange carriers (CLECs). Many CLECs, both small and large, rely upon small competitive directory assistance providers to outsource their directory assistance services; the requirements contained herein should result in more competition in the directory assistance arena and therefore a savings to these CLECs. Third, these requirements may have an adverse economic impact on incumbent local exchange carriers (LECs) that are Bell Operating Companies (BOCs). Each BOC is a large, national company, affiliated with a Regional Holding Company (RHC). All BOCs and their RHCs have more than 1,500 employees, placing these entities above the small business size standard established by the Small Business Administration.<sup>143</sup> Therefore, although the effect of these requirements may result in a “significant economic impact” to a BOC it will not result in a “significant economic impact” to a small entity. Fourth, we anticipate that any cost incurred as a result of the requirement that small incumbent LECs electronically transfer their directory assistance data will be nominal and will not result in a “significant economic impact” on these small entities. We therefore certify, pursuant to the RFA, that the requirements adopted in the present *First Report and Order* will not have a significant economic impact on a substantial number of small entities.

54. The Commission will send a copy of this *First Report and Order*, including a copy of this Final Certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>144</sup> In addition, the *First Report and Order* and this Final Certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.<sup>145</sup>

## **B. Final Paperwork Reduction Act Analysis**

55. The *Notice* from which the *Report and Order* issues proposed changes to the Commission’s information collection requirements. As required by the Paperwork Reduction Act of 1995, the Commission sought comment from the public and from the Office of Management and Budget (OMB) on the proposed changes. This *Report and Order* contains several new or modified information collections, which will be submitted to OMB for approval, as prescribed by the Paperwork Reduction Act.

## **C. Effective Date of Order**

56. We conclude that the requirements adopted herein shall be effective immediately upon publication of a summary of this order in the Federal Register. In this order, we make no changes to the Commission’s rules concerning nondiscriminatory access to directory assistance

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<sup>143</sup> SBA regulation, 13 C.F.R. § 121.201, defines small telecommunications entities in SIC Code 4813 (Telecommunications Communications, Except Radiotelephone) as entities with no more than 1,500 employees.

<sup>144</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>145</sup> See 5 U.S.C. § 605(b).

pursuant to section 251(b)(3) of the Act, but rather find that certain competing directory assistance providers qualify for nondiscriminatory access to LEC local DA databases under that section. Because we also find that these competing DA providers contribute to competition in the DA market, we believe that they should be able to access these databases as soon as possible. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the Federal Register.

### VIII. ORDERING CLAUSES

57. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 3, 4, 201, 222, 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201, 222, and 251, this REPORT AND ORDER is hereby ADOPTED, and the requirements contained herein will become effective immediately upon publication of a summary in the Federal Register. The collections of information contained herein are contingent upon approval by the Office of Management and Budget.

58. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *First Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

**APPENDIX A - LIST OF COMMENTERS**

Association of Directory Publishers (ADP)  
Bell Atlantic  
Cincinnati Bell Telephone Company (CBT)  
DirectoryNET  
Excell Agent Services (Excell)  
GTE Service Corporation (GTE)  
INFONXX  
LSSi  
MCI Worldcom  
Metro One Telecommunications (Metro One)  
NET DQ  
Sprint Corporation (Sprint)  
Telegate AG (Telegate)  
Teltrust  
Time Warner Telecom (Time Warner)  
United States Telephone Association (USTA)  
U S WEST Communications (U S WEST)  
Yellow Pages Publishers Association (YPPA)