

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition and complaint) DOCKET NO. 931138-TL
of Florida Independent Directory) ORDER NO. PSC-97-0051-PHO-TL
Publishers to amend Directory) ISSUED: January 13, 1997
Publishers Database Service)
Tariff of BellSouth)
Telecommunications, Inc. d/b/a)
Southern Bell Telephone and)
Telegraph Company.)
_____)

Pursuant to Notice, a Prehearing Conference was held on January 3, 1997, in Tallahassee, Florida, before Commissioner Diane K. Kiesling, as Prehearing Officer.

APPEARANCES:

Norman H. Horton, Jr., Esquire, Floyd R. Self, Esquire, Messer, Caparello, Metz, Maida & Self, P.A., Suite 701 215 South Monroe Street, Tallahassee, Florida 32302-1876 On behalf of Florida Independent Directory Publishers.

J. Phillip Carver, Esquire, Robert G. Beatty, Esquire, BellSouth Telecommunications, Inc., Suite 400, 150 South Monroe Street, Tallahassee, Florida 32301; and William J. Ellenberg II, Esquire, A. Langley Kitchings, Esquire, BellSouth Telecommunications, Inc., Room 4300, 675 W. Peachtree Street N.E., Atlanta, Georgia 30375. On behalf of BellSouth Telecommunications, Inc..

Charles J. Pellegrini, Esquire, Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On April 1, 1993, in Docket No. 921317-TL, the Commission issued Order No. PSC-93-0485-FOF-TL, approving the tariff filing of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (BellSouth), which introduced Directory Assistance Database Service (DADS) and Directory Publishers

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FPSC-RECORDS/REPORTING

Database Service (DPDS). On November 24, 1993, Florida Independent Directory Publishers (FIDP) filed a Petition and Complaint to Amend BellSouth's Directory Publishers Database Service Tariff. BellSouth filed a motion to dismiss the petition on December 20, 1993. On May 25, 1994, in Order No. PSC-94-0641-FOF-TL, the Commission denied BellSouth's motion to dismiss. On March 29, 1996, following the breakdown of negotiations between the parties, the Commission issued Proposed Agency Action Order No. PSC-96-0446-FOF-TL, requiring certain amendments to BellSouth's DPDS tariff. On April 11, 1996, the Commission issued Amendatory Order No. PSC-96-0446A-FOF-TL, deleting as unnecessary the specific requirement that BellSouth amend its Weekly Business Activity Reports (WBARs) to include residential listings. The Commission determined that it was sufficient to have required BellSouth to provide an appropriate update service. FIDP filed a Petition on Proposed Agency Action on April 19, 1996, protesting the amendatory order. Thereupon, the matter was scheduled for hearing on January 13, 1997, pursuant to Section 120.57(1), Florida Statutes. On June 7, 1996, BellSouth filed revised section A38 of its General Subscriber Service Tariff to be effective July 7, 1996.

On July 24, 1996, FIDP filed a Petition for Enforcement of Order and Modification of Tariff in this docket. FIDP contended that BellSouth's tariff filing was at variance with Order No. PSC-96-0446-FOF-TL. BellSouth filed its answer on August 13, 1996. FIDP's petition expands the scope of its protest of the Commission's amendatory order. Technically, it should have been docketed separately. However, since the issues contained in the petition are essentially the same as the issues set for hearing, it is appropriate to permit the parties to address both matters in this proceeding.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the

information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into

evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

III. POST HEARING PROCEDURES

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the pre-hearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

V. ORDER OF WITNESSES

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>ISSUES NO.</u>
<u>DIRECT AND REBUTTAL</u>		
Gerry Screven	FIDP	1-4
M. Lynn Juneau	BellSouth	1-4

VI. BASIC POSITIONS

FIDP: FIDP has requested that BellSouth be required to amend its DPDS tariff to:

- 1) allow directory publishers to provide directories in any format including electronic format;
- 2) offer information on new connects; and
- 3) provide an update service in a reasonable format, unbundled and at a reasonable nondiscriminatory rates.

The independent directory publishers acquire information for inclusion in their directories from BellSouth and the changes which directory publishers seek are necessary in order for the independent publishers to have current information and access to customers. BellSouth provides this information to its publishing affiliate and should provide the same information in usable format to independent publishers. BellSouth's current offerings are insufficient to provide the necessary information and are bundled and priced in such manner that the information is of little or no use to independent publishers. This is a necessary service for independent publishers and the tariffs in place do not provide the information needed by the independent publishers.

BELLSOUTH:

The central issue in this docket is whether BellSouth should be forced to offer a listing service of new connections of residential and business customers. All

other issues in this docket flow from that central inquiry. The answer to the basic issue is clear: BellSouth should not be required to offer a listing service consisting solely of new connections of residential and business subscribers.

BellSouth has two primary tariffs regarding directory-type services: (1) Directory Assistance Database Service ("DADS"), and (2) Directory Publishers Database Service ("DPDS"). This Commission has thoroughly reviewed those tariffs, and has approved both DADS and DPDS. In fact, this Commission has required BellSouth to amend its DPDS tariff in order to satisfy an earlier complaint by the Florida Independent Directory Publishers ("FIDP").

The tariff language now complained of by FIDP was agreed to by a regional consortium of independent publishers and BellSouth during workshops, discussions and negotiations conducted from 1992 through 1994. At least two members of FIDP were present and active participants in these regional meetings. Additionally, during a workshop in Tallahassee conducted by the Florida Commission Staff, the directory publishers agreed that tariff language mirroring that made effective in Louisiana was appropriate for the Florida DPDS tariff.

BellSouth believes that the Commission's Order of March 29, 1996, is a fair resolution to the earlier complaint of FIDP. No further change to BellSouth's tariff is warranted. The FIDP's petition and request for further changes to the tariff should be denied.

STAFF: None at this time.

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VII. ISSUES AND POSITIONS

ISSUE 1: Should BellSouth be required to offer a listing service consisting of new connections of residential and business subscribers? If so, what are the appropriate rates, terms, and conditions?

POSITIONS:

FIDP: Yes. BellSouth should be required to offer a listing service of new residential and business connections to independent publishers. A new connect offering should be offered on a timely basis, on an unbundled basis and at a reasonable rate based on incremental costs. A new connect listing provides information on new residential and business customers and provides independent publishers with information necessary to contact new customers for distributing directories and establishing business arrangements. BellSouth provides this information to its publishing affiliate and the inability to have comparable access denies independent publishers from essential, necessary information.

BELLSOUTH:

BellSouth should not be required to offer a listing service consisting solely of new connections of residential and business subscribers. This position is supported by several facts: 1) Lists consisting solely of new connects are not required to publish directories; 2) There is no demand from publishers for this service; 3) The Commission has previously addressed this issue in its Order No. PSC-96-0446-FOF-TL.

STAFF: No position at this time.

ISSUE 2: Is BellSouth's newly effective update service appropriate? If not, what changes should be made?

POSITIONS:

FIDP: No. BellSouth's update tariffs are not appropriate and should be changed so that update information is provided on an unbundled basis, at reasonable rates. An update service should provide supplemental information on existing customers with respect to changes or deletions

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so that independent publishers can maintain an accurate database of subscriber listings.

BELLSOUTH:

BellSouth's update service is appropriate. The Monthly Refresh option was implemented based on negotiations with independent publishers.

STAFF: No position at this time.

ISSUE 3a: Does Section A38.2.1A of BellSouth's tariff limiting directory publication to printed booklet or CD ROM comply with Order No. PSC-96-0446-FOF-TL?

POSITIONS:

FIDP: No. FIDP proposed that section A38.2.1 be modified to provide DPDS to a customer for use in "compiling . . . producing [and] distributing . . . directories whether in printed or electronic format." The PSC agreed stating:

We believe that BellSouth should amend its intrastate DPDS tariff to incorporate the changes.

* * *

In addition, we believe that directory publishers should be allowed to produce any type of directory they are capable of, whether specialty, white or yellow pages or electronic. BellSouth should not unduly restrict its DPDS tariff to limit the type of directory or the frequency of its production.

BellSouth's limitation on directories to a printed booklet or CD ROM is inconsistent with the Order of the Commission.

BELLSOUTH:

Yes, Section A38.2.1A complies with the Commission's Order. This is best demonstrated by comparing this section's prior language with what the currently effective tariff states. Prior to being changed pursuant to the Commission's Order, the section read as follows:

At the request of a customer, the Company will provide Directory Publishers Database Service (DPDS) to a customer solely for the compilation, production, publication and distribution of directories in printed booklet form as an alphabetical and/or classified telephone directory for general telephone number service.

The portion of the Commission's Order No. PSC-96-0446-FOF-TL that speaks to the printed booklet/CD ROM limitation is found beginning in the second paragraph on page 6 of the Order. This portion of the Order reads as follows:

In addition, we believe that directory publishers should be allowed to produce any type of directory that they are capable of, whether specialty, white or yellow pages, or electronic. BellSouth should not unduly restrict its DPDS tariff to limit the type of directory or the frequency of its production. The restrictions currently existing in the tariff, which are designed to protect consumer privacy, should remain effective.

At the February 6, 1996, Agenda Conference, BellSouth expressed concern that "electronic directories" could be a form of directory assistance. According to FIDP, directory publishers do not wish to use the DPDS tariff to offer directory assistance. They only want to be allowed to offer directories on diskette or CD ROM.

STAFF: Section A38.2.1A, to the extent that it limits directories to printed booklet or CD ROM format, does not appear to comply with Order No. PSC-96-0446-FOF-TL, in which the Commission ruled that BellSouth should not limit the type of directory publishers may produce.

ISSUE 3b: For purposes of BellSouth's Directory Publishers Database Service (DPDS), how should "directory" be defined?

POSITIONS:

FIDP: A directory is a compilation of listings without regard to the manner, format or method it is published, distributed or displayed. The Commission has not limited "directory" to any specific type, format, manner or method but in fact, as cited in issue 3(a) above, the Commission has stated that BellSouth should not restrict the DPDS tariff so as to limit the type of directory or its frequency.

BELLSOUTH:

Directory: A dated, tangible alphabetically or numerically sequenced list containing all the names, addresses and telephone numbers of a specific group of persons and/or businesses and/or organizations included in the set of listings provided by BellSouth to its subscribing DPDS customer.

STAFF: An appropriate definition of "directory" would allow one to distinguish between what is a directory and what is directory assistance.

ISSUE 4: What should be the effective date of tariffs filed pursuant to the Commission's Order in this case?

POSITIONS:

FIDP: Tariffs filed pursuant to the Commission's Order should be approved and effective on an expedited basis.

BELLSOUTH:

BellSouth does not believe any tariff changes are necessary. The current tariffs, already in effect, are adequate and appropriate.

STAFF: No position at this time.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Gerry Screven	FIDP	<u> </u> (GS-1)	(1) Bay County Area Telephone Directory, 1996 - 1997, published by Info America Phone Books/Florida, Inc.; (2) Amelia Island, 1996 - 1997, Telephone Directory published by DirectMedia Corp.
Gerry Screven	FIDP	<u> </u> (GS - 1 Supplement)	The Talking Phonebook, 1996 - 97, Pensacola Area, published by White Directory of Florida, Inc.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. STIPULATIONS

There are no stipulations.

X. PENDING MOTIONS

There are no pending motions.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.