

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

Petition of

QWEST CORPORATION DBA
CENTURYLINK QC, FRONTIER
COMMUNICATIONS NORTHWEST INC.,
AND DEX MEDIA, INC.,

For Waiver from Customer Rights and
Responsibilities Written Notice Requirements
(OAR 860-021-0010(6))

Docket No. UM-_____

PETITION FOR PARTIAL WAIVER FROM
OAR 860-021-0010(6), 860-021-0610, 860-
021-0620

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I. INTRODUCTION AND BASIS FOR PETITION.

A. Petitioners.

Petitioners are Qwest Corporation, d/b/a CenturyLink QC and United Telephone Company of the Northwest d/b/a CenturyLink (collectively “CenturyLink”); Frontier Communications Northwest Inc. and Citizens Telecommunications Company of Oregon (“Frontier”), and Dex Media, Inc. (“Dex Media”) (collectively “Petitioners”). CenturyLink and Frontier are local exchange companies (“LECs”) regulated by this Commission as telecommunications utilities. Dex Media is the “official” publisher of directories for certain CenturyLink and Frontier telephone operating companies in Oregon pursuant to publishing contracts and must publish in accordance with the Commission’s regulations applicable to CenturyLink and Frontier. Petitioners’ addresses are provided below.

B. Executive Summary.

CenturyLink, Frontier, and Dex Media respectfully file this petition (“Petition”) seeking a partial waiver of OAR 860-021-0010(6) pertaining to satisfying annual notice requirements, as well as OAR 860-021-0610 and 860-021-0620, to permit compliance with digitally published directories, including online. These regulations, which originated decades ago at a time when consumers had few options to obtain phone numbers or service information, either already do not require that directories be published with paper and ink or should be waived as may be necessary to expressly allow Petitioners to meet their annual notice requirements online. Briefly, the grounds for this petition are:

1. Both nationally and in Oregon, the markets for telecommunications, information, and directories have undergone revolutionary changes since this Commission first adopted directory and listing regulations. Application of those regulations to require printed publication in today's environment would not be in the public interest.
2. Because of the proliferation of alternative sources for information and telephone numbers, and extensive competition in telecommunications and information/directory services, the legacy regulations, if interpreted or enforced to block or slow the transition to digital publication, would result in more harm than benefit to the public interest.
3. The directory regulations, if applied to require LEC directories to continue to be printed while competitors' directories can take full advantage of digital and online technologies, would create distortions in what otherwise would be fully competitive directory markets, and unfairly disadvantage LECs and their directory publishers relative to other publishers.

By providing that the regulations can be satisfied either digitally or in print, this Commission can quickly and simply retain the benefits of its regulations while minimizing their potential harms to the public interest in Oregon.

C. Basis for Petition Under Oregon Laws and Rules.

Oregon law provides that for “good cause” on written request or its own motion, the Commission may waive its rules. *E.g.*, OAR § 860-021-0005; *see also*, ORS § 756.040. For the reasons discussed at length below, the Petitioners believe there is unquestionably “good cause” for a waiver.

II. DESCRIPTION OF CONTEMPLATED DIRECTORY CHANGES, IDENTIFICATION OF POTENTIALLY RELEVANT RULES, AND CONDITIONS OF WAIVER.

A. Directory Changes Contemplated by Petitioners.

As discussed in more detail below, Dex Media has steadily been transitioning from paper to online and digital directories in dozens of states, in order to keep up with consumer demand and its digital competitors. In this state, Dex Media began to provide residential white pages online to customers in some CenturyLink markets in 2012, with print provided upon request. Dex Media continued to publish the information and content required by the rules discussed in the next section and other “front of book information” both on its websites and in the paper directories, which it continued to deliver on a “saturation” basis. Thus, all homes and businesses within the market, regardless of their serving phone company, continued to receive paper copies of the required information. As technology advances and customer usage and tastes continue to change, Dex Media must now begin to move away from paper directories and move towards digital directories.

Going forward, assuming this petition is granted, Dex Media will begin to reduce saturation delivery of paper directories to some households and businesses in some geographic markets in the state, including some customers of CenturyLink and Frontier. All subscribers will

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have access to the digital directory and those who request a print directory will receive one at no charge. The changes described here would be implemented only on a market-by-market basis as Dex Media determines the print directory needs in a particular market. No market will be fully digital; some quantities of paper directories will continue to be distributed. CenturyLink or Frontier will include a bill message advising its customers of the digital directory web address and that paper copies of that market's directories are available upon request. The notice would include a toll free number to make a request.

Importantly, Dex Media will include in the digital directories the information required by the Commission's rules for as long as Oregon maintains related regulatory requirements. And it will continue to include that information in the paper versions of the directories that will be provided to customers who request them. Further, Dex Media will continue to provide paper copies to customers on request as a transition, until the number of requests becomes so miniscule as to make the costs per book prohibitive.

B. Rules Potentially Implicated.

Petitioners respectfully seek an order partially waiving Oregon Administrative Rule ("OAR") Section 860-021-0010(6), which states, in relevant part:

(6) When service is initiated and not less than once each year thereafter, every energy or large telecommunications utility shall give its residential customers a written summary of their rights and responsibilities, as they relate to the utility providing service. If service is initiated without a personal visit between the energy or large telecommunications utility and the customer, the utility shall mail the summary to the customer no later than when the first bill statement is mailed. Large telecommunications utilities satisfy the annual notification requirement by prominent publication of the information in a telephone directory distributed to their customers annually. The summary shall include the text of a summary

reviewed and approved by the Commission's Consumer Services Division and describe: [balance of subsection omitted].

Id. (emphasis added). To the extent the intent of this OAR is that print and paper directories are required, that requirement should be waived for the Petitioners, so that the rule may be met by digital and online publication. Further, the Commission should, if and to the extent necessary, interpret or waive OAR §§ 860-021-0610 and 860-021-0620, as well as other possible rules relating directly or indirectly to directories or listings, to not require print and paper directories, but rather to allow digital publication.

To the extent directory and listing regulations retain some measure of public benefit, it readily and more efficiently can be provided by digital and online publication. Accordingly, the statutes and rules should be interpreted—and to the extent necessary, waived—to expressly allow digital publication, the means by which nearly all consumers access listing and other information today.

C. Conditions for a Partial Waiver of OAR 860-021-0010(6), 860-021-0610, and 860-021-0610.

Commission Staff has suggested the following conditions if waivers are to be granted, which are acceptable to the Petitioners:

- (1) The large telecommunications utilities will provide a directory including white pages free of charge to their customers when requested by a customer.
- (2) The large telecommunications utilities will provide a notice to their current customers and new customers to inform them of the following:
 - A. that the large telecommunications utilities will no longer deliver directories to customers unless the directories are requested by the customer;
 - B. that customers may request a directory, including white pages, free of charge as well as the process for doing so;

- C. that customers can access directory information on-line and provide the website(s) address;
- D. that both the printed directories delivered to customers and the on-line directories will include (a) a statement summarizing the Customers' Rights and Responsibilities, (b) a statement that complies with the requirements of OAR 860-021-0610 pertaining to Telephone Solicitation Notices, and (c) a statement that complies with the requirements of OAR 860-021-0620 pertaining to Customer Notification and Information Delivery Services.

III. BACKGROUND AND RELEVANT HISTORY.

A. Description of Petitioners.

Petitioners are CenturyLink and Frontier, the two largest incumbent LECs (ILECs) in the state, and Dex Media, the largest directory publisher in the state. In Oregon, Dex Media acquired the publishing business of CenturyLink's predecessor companies, including Qwest, pursuant to agreements executed in 2002 and Embarq, pursuant to agreements executed in 2003.¹ In 2006, Verizon spun off its directory business into Idearc, one of Dex Media's predecessors. Later, Verizon sold its telephone business in Oregon to Frontier Communications Corporation ("Frontier"). Neither CenturyLink nor Frontier have any financial interest in Dex Media.

Pursuant to its publishing agreements with CenturyLink and Frontier, Dex Media publishes the "official" telephone directories for the cities and communities that CenturyLink's Qwest and Embarq affiliates² and Frontier serve in the state. CenturyLink and Frontier do not pay Dex Media for publishing telephone directories on their behalf. Rather, Dex Media bears the

¹ The directory publishing function for CenturyLink's other Oregon operating companies, CenturyTel of Oregon, Inc. and CenturyTel of Eastern Oregon, Inc. are not performed by Dex Media.

² But not the CenturyTel of Oregon or CenturyTel of Eastern Oregon affiliates. See note 1, *supra*.

entire cost of publishing and distributing the residential white pages, which generates almost no revenue for Dex Media.

Dex Media and its predecessors and affiliates have been in the business of publishing telephone directories since 1886. In addition to Oregon, Dex Media publishes directories for incumbent LECs in over 40 other states and the District of Columbia, serving over 500 markets nationwide. As consumers have come to rely more on the Internet and less on print media for name and business searches, Dex Media has satisfied evolving consumer needs by offering digital platforms such as DexKnows.com and Dex Mobile.

Dex Media also publishes its print directories in a digital format at www.DexPages.com, using the traditional layout of its printed white and yellow pages. All the notifications and information required by the OARs are also contained in the digital directory for each and every community Dex Media serves in Oregon, on DexPages.com.

B. Brief Background of the Telephone and Telephone Directories

In 1878, just two years after Alexander Graham Bell invented his telephone, the first telephone directory in North America was published in New Haven, Connecticut. Over 100 years later, in 1996, Congress took the bold step of fully opening all telecommunications markets—including local service—in the U.S. to competition. Public Law 104-104; 110 Stat. 143 (“1996 Act”). Additionally, the 1996 Act sought to promote competition in the publishing of directories, by requiring phone companies to provide “subscriber list information” to any directory publisher, “on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions.” 47 U.S.C. § 222(e). The 1996 Act reserved to the states the ability

to, “protect the public safety and welfare,” but only “on a competitively neutral basis.” 47 U.S.C. § 253(b).

Today, both the telephone and directory industries are vibrantly competitive, but have evolved and developed in ways that few could have predicted in 1996. Competition today is robust, but it is not provided solely by traditional technologies like time division multiplexing (TDM) circuit-switched landlines, as the 1996 Act contemplated. Instead, competition for voice communications comes primarily from the Internet (using voice over Internet protocol or “VoIP”) and from Commercial Mobile Radio Service (CMRS).³ Technology-driven market change has also hit directory publishing, as online sources for both basic listings and classified advertising have proliferated, for computers as well as tablets and other mobile substitutes for the traditional land line.

C. Background of This Commission’s Regulation of Telephone Directories.

This Commission’s regulation of telephone service goes back about 100 years, to the early part of the last century, and decades longer if predecessors are included. Oregon’s regulations today do not require that directories be in a paper format.⁴ Nor do they explicitly

³ Indeed, late last year, the FCC granted ILECs full or partial forbearance from the majority of categories of requirements covered by the petition of the United States Telecom Association for forbearance from numerous federal regulatory requirements based. The FCC granted the extensive regulatory relief despite not finding that narrowband voice communications services are fully competitive, noting that many of its regulations had become “outmoded” given the large percentages of the population that have switched to VoIP or cellular service only and the minority of households that still subscribe to traditional ILEC service. As the FCC summed up, many of the “outdated legacy regulations” for which it granted forbearance “were based on technological and market conditions that differ from today.” See Memorandum Opinion and Order, *In the Matter of Petition of USTelecom for Forbearance from Enforcement of Obsolete ILEC Legacy Regulations*, ¶ 2 (WC Dkt. 14-192, rel. Dec. 28, 2015)(“USTelecom Order”).

⁴ This includes OAR § 860-021-0010(6), requiring at “written” summary of customer rights. It has been decades since a “writing” has been commonly understood to require paper and ink. In common usage today, a writing can be physical or virtual (electronic). See, e.g., ORS § 192.410(6) (defining “writing” to encompass “every means of

require directories to be published in any particular format of any kind. While the current rules allow some flexibility, they still require ILECs to include certain legal and customer rights information in telephone directories that are “distributed annually.” Including this information in a directory is much more cost effective and efficient than sending a separate written notice of rights and responsibilities annually to each customer. Petitioners seek a Commission ruling that allows online distribution of directories, by waiving the rules to the extent necessary.

recording” for purposes of the Public Records Act); *see also*, ORS § 192.715 et seq. (Uniform Electronic Legal Material Act).

IV. DESCRIPTION OF RELEVANT MARKETS TODAY.

The staid, simple, and limited environment for telephonic communications and information services that existed when the Commission's directory rules were initially adopted, bears little resemblance to the world of today. Universal service now can be met by the ILECs, by CLECs in some areas, by CMRS companies serving close to 100% of the U.S. population, by VoIP providers over cable or wireless ISP networks, and by several satellite options. And the options for obtaining telephone numbers and other directory information are, if anything, even more numerous and more ubiquitous than for voice communications.

A. The State of Telephone Competition, Technologies, Competitive Alternatives for Voice Communications, and Consumer Adoption.

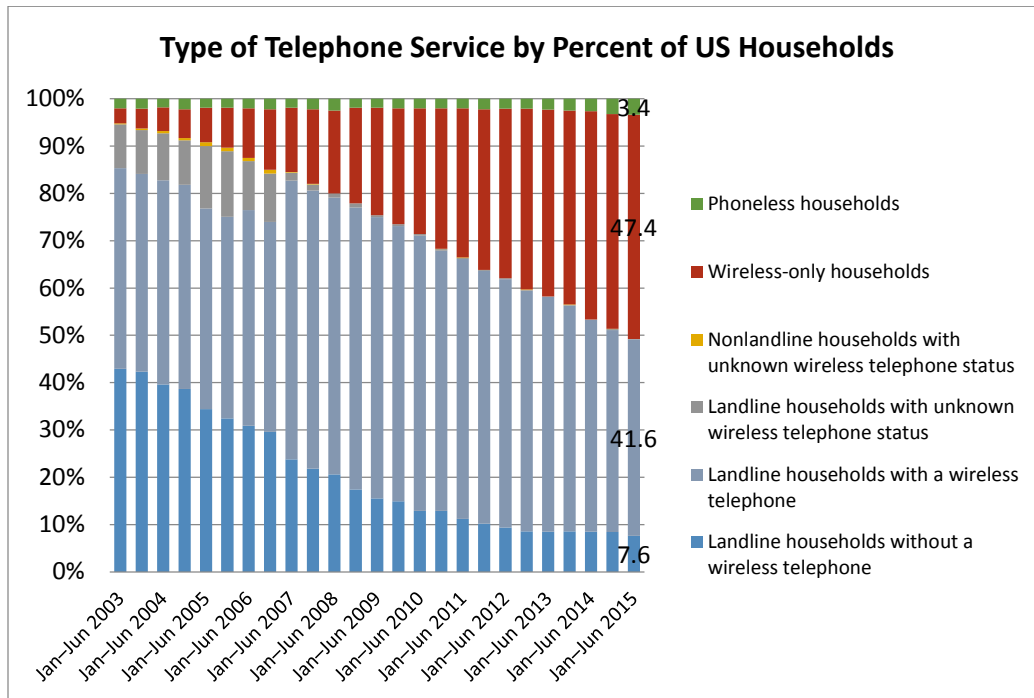
In 2013, there were roughly 122.5 million households in the U.S., *less than a third* of which (37.5 million) still had a traditionally regulated residential landline from a LEC.⁵ But, while less than 30% of *households* had a LEC service, there was an average of nearly one wireless phone in service for *every person* (0.98) in the United States.⁶ Of course, this Commission's rules govern only the 30%, not the VoIP or CMRS.

The United States Department of Health and Human Services Centers for Disease Control and Prevention (CDC) publishes regular reports on Wireless Substitution as part of the National Health Interview Survey (NHIS) Early Release Program. Twice each year, the CDC

⁵ Compare, <http://www.census.gov/hhes/families/data/cps2013H.html> with http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0219/DOC-329975A1.pdf (Figure 4).

⁶ Compare, http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0219/DOC-329975A1.pdf (Fig. 1) and <https://www.census.gov/popest/data/national/totals/2013/index.html>.

National Center for Health Statistics releases selected estimates of telephone coverage for the civilian non-institutionalized U.S. population based on data from NHIS. The following chart graphs telephone coverage shown in the CDC reports.⁷



The CDC’s telephone coverage data show that during the first half of 2015, the percentage of wireless only households nationwide had grown to 47.4% and the percentage of households with both wireless and landline service stood at 41.6%. Only 7.6% of households had landline service but no wireless service. The data also show a clear, consistent, long-term trend away from landline service and towards wireless service nationally.

⁷ The wireless substitution reports are available at the CDC’s website at the following URL: <http://www.cdc.gov/nchs/nhis/releases.htm#wireless>.

The national trends are echoed in Oregon. The most recent CDC state report showed that at the time of the report, Oregon residents were almost as likely as U.S. residents nationally to have only a wireless phone and no landline.⁸

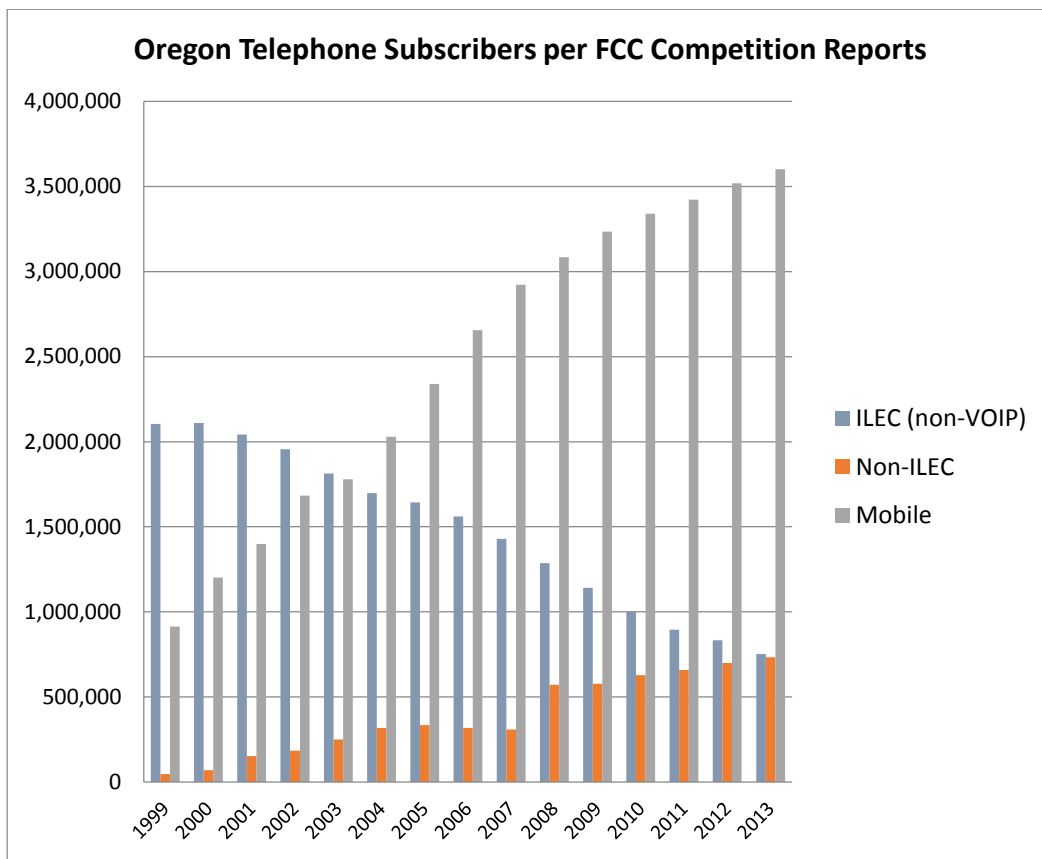
FCC subscribership data clearly reflects Oregonians' embrace of CMRS and abandonment of traditional wireline service. The following table shows Oregon voice telephony subscribership information that the FCC publishes periodically in Local Telephone Competition Reports.⁹

End of year	ILEC (non-VOIP)	Non-ILEC	Mobile
1999	2,104,982	47,239	914,848
2000	2,109,510	70,221	1,201,207
2001	2,043,164	153,084	1,399,279
2002	1,955,544	183,319	1,682,343
2003	1,813,627	249,701	1,778,936
2004	1,697,357	317,675	2,029,224
2005	1,643,476	335,162	2,339,414
2006	1,561,802	317,921	2,655,905
2007	1,429,395	308,306	2,922,609
2008	1,286,000	571,000	3,083,836
2009	1,142,000	577,000	3,235,006
2010	1,003,000	629,000	3,340,029
2011	895,000	659,000	3,422,858
2012	833,000	699,000	3,519,078
2013	752,000	734,000	3,600,897

⁸ CDC Report No. 70, Wireless Substitution: State-level Estimates From the National Health Interview Survey, 2012 at 9 (Dec. 18, 2013)(<http://www.cdc.gov/nchs/data/nhsr/nhsr070.pdf>). See also, 2014 Oregon Utility Statistics, at 63 (Ore. PUC, 2015) (total ILEC lines declined from 1.8 million to just 750 thousand from 2005 to 2014).

⁹ The FCC's Local Telephone Competition Reports are available at the FCC's website at: <https://www.fcc.gov/encyclopedia/local-telephone-competition-reports>

The FCC data show that Oregonians’ subscription to voice service provided by ILECs—such as CenturyLink and Frontier—declined 64% over a fourteen year period from 2,105,000 at the end of calendar year 1999 to 752,000 at the end of 2013. The FCC data also show that during the same 14-year period, Oregonians’ purchase of voice service from non-ILECs—including traditional Competitive Local Exchange Carriers (CLECs) and cable TV providers—increased 1554%, from 47,000 subscribers at end-of-year 1999 to 734,000 at end-of-year 2013 and subscribership of mobile voice service increased 394% from 915,000 at end-of-year 1999 to 3,601,000 at end-of-year 2013. The chart below graphs the FCC’s Oregon subscribership data.



By the end of calendar year 2013, ILECs provided less than 15% of the voice subscriptions in Oregon.

Besides Oregonian's shift away from ILEC voice service toward CLECs, cable and mobile voice service, Oregonians have access to and use numerous alternatives to ILECs and their directory publishers for communications and access to information. The most recent Census Bureau data show that even two years ago about 92% of Oregon households had a computer and over 82% used high-speed Internet access.¹⁰ Both of these figures are substantially above the national averages for the same period. *Id.* As explained more fully below, any household with a device that can connect to the Internet has the ability to obtain directory information from a wide variety of sources other than print directories.

B. The State of Competition in Directories.

Today Dex Media and other directory publishers that were formerly owned by the Baby Bells face competition both from independent directory publishers and from increased consumer reliance on the Internet and mobile devices and applications. In Oregon, Dex Media faces competition for print directories from companies such as Yellowbook. Hundreds of mobile "smartphone" applications ("apps") perform various types of searches or directory lookup. Many of them use location information to make the search results more relevant. For example, all of the following apps can be downloaded for free to iPhones and/or Android phones and then be used to make free searches: Avantar White & Yellow Pages (avantar.com) for iPhone, iPad,

¹⁰ U.S. Census Bureau, Computer and Internet Use in the United States: 2013, American Community Survey Reports at 10 (Nov 2014 (2013 data))(<http://www.census.gov/history/pdf/2013computeruse.pdf>). (<http://www.census.gov/history/pdf/2013computeruse.pdf>).

and Android; Dexknows and YP (yellowpages.com) for all smartphones. As with traditional yellow pages directories, these applications are advertiser-supported, so that consumers do not pay for searches or lookups. Even households without Internet access have alternative, competitive options to print directories, using their telephones. They can call traditional directory assistance for a small charge per listing. And they can also call one of the toll-free information services. The current market leader, which reportedly handles millions of calls every month, is 1-800-FREE-411. (<http://en.wikipedia.org/wiki/800-The-Info>). Any home with a telephone can call toll-free and get a listing for free, after listening to a short advertisement.

Thus, today, there is not a single home or business in America that does not have access to a competitive and free means to look up telephone numbers and other information provided in traditional regulated print directories. And for all but a small percentage—10% or less—there are hundreds of free alternatives online and on mobile app stores.

V. STATES' REGULATORY RESPONSE TO DIRECTORY USAGE TRENDS TO DATE.

In response to the powerful technological changes and usage trends noted above, many states that formerly required a printed white pages directory to every telephone subscriber annually (“saturation delivery”) modified or eliminated those requirements by rule change or waivers. Today, the majority of states that once required saturation delivery of printed white pages have modified or eliminated their requirements.¹¹ Further, because the vast majority of

¹¹ Including: Wisconsin (Docket No. 6720-GF-108), Missouri (Docket No. IE-2009-0357), Ohio (Docket No. 09-0042-TP-WVR), New Mexico (NMPRC Case No. 12-00237-UT), Washington (WUTC Dkt. UT-120451), Kentucky (Docket No. 2009-00480), Florida (Docket No. 090082-TL), North Carolina (Docket No. P-55, Sub 1767), Kansas (Docket No. 11-SWBT-270-MIS), Colorado (CPUC Docket No. 12M-817T), Alabama (Docket No. 15957), and most recently Minnesota (MPUC Docket No. P-999/R-13-459). Likewise, Verizon has pursued waiver requests in

consumers no longer want a printed residential directory, the widespread practice in the directory publishing industry is to deliver printed residential white pages only upon request of the consumer. Since 2012, Dex Media has delivered residential white pages directories only upon request in about 40 states, including Oregon.¹²

What has been particularly remarkable about discontinuing the 100-year old practice of saturation delivery of residential white pages in so many markets is the scant consumer attention it has generated. It seems hardly anybody noticed. In not one of the dozens of states and hundreds of markets where saturation delivery ended did consumers raise any significant complaint. In 2014 in Oregon, a minute 0.06% of Dex Media's customer base requested a printed white pages directory.¹³ The easy transition from saturation delivery to upon-request delivery of white pages directories in Oregon and elsewhere demonstrates that relaxation or elimination of directory regulations serves the public interest by allowing publishers to satisfy consumer needs and expectations at a lower cost and with less environmental degradation.

several states, including California (Resolution T-17302), New York (Case No. 10-C-0215), Virginia (Case No. PUC 2010-00046), and New Jersey (Docket No. TO10040255). Louisiana modified its rule to permit upon request delivery of white pages. Order No. R-31825, In re: Possible Amendment to Section 501 A (c) and (e) of the White Page Directory Distribution Requirement, (LA PSC, rel. June 20, 2012).

¹² Including: Arizona, California, Colorado, Connecticut, the District of Columbia, Delaware, Florida, Idaho, Indiana, Massachusetts, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, and Washington.

¹³ Dex Media currently offers upon-request delivery for residential white pages in two Frontier markets and one CenturyLink market in Oregon.

VI. LEGAL AND POLICY GROUNDS FOR THE PETITION.

A. Brief Review of the Historic Legal and Policy Bases for State Regulation of Directory Publishing.

Telephone service itself became regulated when it came to be viewed as an essential public service, for which subscribers then had no competitive alternatives. *See generally, The Economics of Regulation: Principles and Institutions*, Kahn, Alfred E. (reprinted by Mass. Institute of Technology, 1988). As for telephone directories, until recently they were considered an essential adjunct to the telephone service. And, until about the last 20 years, directories also faced little or no competition, like the utility service itself. Thus, regulation of directory publishing was a byproduct of regulation of the telephone industry. But, standing alone, the telephone directory business is not a utility business. With minor exceptions, states do not regulate and have not regulated any other kind of publishers.

B. State Law Does Not Require the Commission to Maintain Regulation Over Telephone Directories.

The Commission has great leeway as to the scope and specifics of regulation of telephone directories. For example, while ORS § 646.565 and 578 require “publication” of certain notices in the “telephone directory,” nothing in the statutes prohibit digital publication, require paper and ink format or require that technological advances be ignored. Thus, as industry and consumer behaviors change over time, this Commission has the authority to modernize their interpretation of directories and listings regulations (or waive them) so as to best serve the public interest. The Oregon legislature has not unduly tied the hands of the PUC with regard to making its regulations governing directories or listings sufficiently flexible to meet the needs and practices of today’s customers.

C. Given the Revolutionary Changes in Both Telecommunications and Directory Publishing Markets, Not Waiving the Commission's Legacy Directory and Listings Regulations to Allow Digital Publication Would Not Be in the Public Interest.

Consumers today have several alternatives to traditional wireline telephone service that did not exist just a few decades ago. Indeed, well over a third of the households in Oregon have switched from any form of wired telephone service to CMRS only. To the extent consumers need or demand listings, consumer rights information, or directories of some sort, competition and telecommunications market forces are more than adequate today to ensure their needs are met without the need for traditional printed directories supplied by the phone company. Digital media will not only suffice, it is already serving the public widely and well.

The Internet, used by 90% of all adults, provides a rich and diverse source of resources to look up the telephone numbers, competitive options for service, and consumer rights information under state laws and regulations—all free of charge. Even the first purpose of white pages directories—subscriber and number lookup—is no longer essential. At first blush, this may seem surprising. But when looking at the recent history, data, and structure of the market today, it is plain to see that for number lookups, traditional phone books are not only unnecessary, they are no longer used or even particularly useful. Only the advertising function of directories (yellow pages) continues to be widely used, and even there, usage has declined; advertising revenues have dropped over 40% in the last 15 years,¹⁴ with further declines forecast for the next

¹⁴ See, e.g., <http://www.bloomberg.com/bw/articles/2012-03-22/the-golden-allure-of-the-yellow-pages#p1>.

five years as digital advertising grows.¹⁵ As usage of paper and print directories declines, the likelihood that consumers will use them to look up customer rights and responsibilities also declines. Moreover, in today's market the information required by the Commission's regulations aren't pertinent to more than two-thirds of Oregon households.¹⁶

Conclusive evidence that printed name and number directories are no longer needed to use telephone networks comes from the experience of the cellular industry. From the very beginning and continuing to today, wireless phone numbers have not been listed or published in any directory. Nor do CMRS companies ever distribute printed information—in directories or in any publication—similar to what LECs are required to distribute annually by the OARs at issue here. If paper directories and printed customer rights notices were still considered essential to use of telephone networks, then CMRS would not have been widely adopted, and traditional landlines would not have been largely abandoned. But exactly the opposite has occurred; wireless phones now serve over 90% of the market, while switched access lines serve only about 30%.

The decline of printed white pages directory use and usefulness is easy to understand in the context of the broader trends in the telecommunication industry. To a great extent, the loss of usefulness of traditional white pages is an unavoidable consequence of the massive shift of subscribers from regulated LEC service to largely unregulated VoIP and CMRS, which do not

¹⁵ See, e.g., BIA/Kelsey, U.S. Local Media Forecast 2015 Spring Update (summary at: <http://www.localmedia.org/wp-content/uploads/2014/04/Ducey-BIAKelsey-2015-U.S.-Local-Media-Forecast-LMA.pptx>).

¹⁶ As discussed below, in Oregon, where Dex Media has switched residential white pages to upon request, it has continued to publish the notices required by Commission regulations in the yellow pages, which are currently still delivered on a saturation basis—to all households, not just customers of CenturyLink and Frontier. The print yellow pages are still widely used, but usage is nevertheless declining.

provide listings to white pages publishers. Similarly, with over two-thirds of households having dropped LEC service for CMRS or some form of VoIP there is little or no interest in those households in receiving an enumeration of the rights and responsibilities of LEC customers. Unfortunately for publishers, white pages directories are no longer viewed as a useful resource, let alone an essential one.

D. The Legacy Regulations Impose Significant and Needless Costs and Threaten More Harm to the Public Interest than Any Ongoing Benefit.

The continued existence of directory regulations that require distribution of paper and ink copies of unwanted or unused directories is not just a benign, if unnecessary, anachronism. Regulation always comes at some cost to society, including the environmental cost of requiring printed residential listings directories unwanted by most homes and businesses. In the absence of any continuing benefit of significance, the Commission's directory rules should be modernized through waiver to reduce ongoing regulatory costs and the risks of broader harms to the public interest in Oregon. *See, e.g., USTelecom Order.*

Even though Dex Media is only contractually required to deliver directories, which are used to meet the current Commission regulations, to about 30% of homes and businesses in the CenturyLink and Frontier territories served, the significant benefits of receiving yellow pages directories are extended to nearly all homes and business.¹⁷ Thus, not just CenturyLink's and Frontier's customers, but VoIP subscribers and "cord cutters" receive directories and the business listings and other information they continue to use and value. Because as many as 70%

¹⁷ *See In the Matter of Protecting and Promoting the Open Internet*, Appendix A, FCC 15-24 (rel. March 12, 2015). A few households, under 5% in most areas, have affirmatively requested not to receive any directories pursuant to the yellow pages industry's "opt-out" program.

of households still use the yellow pages to find local businesses, this is a substantial benefit to consumers and to the local businesses who need to reach customers in their area. In fact, it is estimated that yellow pages still generate hundreds of billions of dollars of revenues for local businesses in the U.S.¹⁸

The yellow pages are an important resource for people and advertising, but outmoded regulation is strangling them in many states. Declining revenues from yellow pages advertising, force all directory publishers to cut costs. Because regulatory requirements impose significant costs, Dex Media may be forced to curtail distribution of directories to non-subscribers of CenturyLink or Frontier. In this way, the costs of regulatory compliance could be limited to just 30% of homes and businesses. But the broad public interest would suffer in the state. Absent ongoing and significant benefits, regulation interpreted to require printed residential directories is unwise and contrary to the public interest. Flexibility to publish white pages efficiently and economically is needed.

¹⁸ While printed directories are shrinking, as electronic searches proliferate, the industry still prints 422 million directories a year, and businesses still pay almost \$7 billion to advertise in them, as *Bloomberg Businessweek* reported in 2012. <http://www.bloomberg.com/bw/articles/2012-03-22/the-golden-allure-of-the-yellow-pages#p1>.

Finally, Dex Media and other LEC publishers need greater flexibility to satisfy environmental concerns. Oregonians are justifiably proud of their efforts on behalf of the environment. Dex Media wants to continue to deliver print products to customers that value and use them. That is “utility,” not “waste.” But delivery of millions pounds of content that likely will never be used is inherently wasteful of both scarce dollars and natural resources. To avoid this undue waste in rapidly changing markets, Dex Media needs the regulatory flexibility to switch to digital products, as and when it is prudent.

The information world is going online. Directories cannot buck this trend. Rather, they should be allowed to embrace it and thrive in it. Reduced or flexible regulation will serve the public better and avoid the potential harms that flow from the distortion that outdated interpretation of regulations could inject into what should be a freely competitive directory market.

E. The Legacy Directory Regulations Distort What are Otherwise Competitive Markets, and Unfairly Disadvantage Certain Telephone Providers and Their Contracted Directory Publishers.

As discussed above, there are hundreds of potential sources for the information that is contained in directories, including other print directory publishers. But in any given locality in Oregon, only **one** of those sources is subject to the Commission’s regulations. That is the directory affiliate or contractor of the serving ILEC—Dex Media in the case of CenturyLink and Frontier. Thus, apart from distorting and inhibiting a competitive market, the legacy regulations hinder fair competition in telecommunications markets, because the providers that now serve the

majority of homes and business are not subject to the regulations, which consequently have become outmoded. *See, e.g., USTelecom Order.*

While Section 253 of the 1996 Act reserves to the states the power to “protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers,” they must do so “on a competitively neutral basis.” *Id.* (emphasis added). The Commission’s directory rules, especially if interpreted or applied to mandate print rather than allow digital formats, are no longer needed for the salutary purposes permitted and, more importantly, they are not competitively neutral.

VII. CONCLUSION.

For the foregoing reasons, the Petition should be granted and the Commission should grant a waiver of the requirements of OAR Sections 860-021-0010, 860-021-0610 and

860-021-0620, to the extent necessary to permit the Petitioners to comply with them via digital publication and subject to the conditions set forth above.

Respectfully submitted this 19th day of February, 2016.

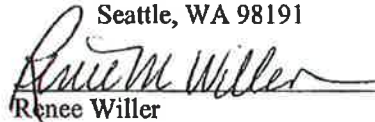


Brooks E. Harlow, OSB 030420
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive
Suite 1200
McLean, VA 22102
Tel: (703) 584-8680
Fax (703) 584-8696

Attorneys for Dex Media, Inc.



Phil Grate
CenturyLink
Director - State Regulatory Affairs
Phil.Grate@CenturyLink.com
(206) 345-6224
1600 7th Avenue
Seattle, WA 98191



Renee Willer
Government & External Affairs Manager
Frontier Communications
20575 N.W. Von Neumann Drive Suite 150
Beaverton, OR 97006
Tel: 503.645.7909
Fax: 503.629.0592