

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 464

In the Matter of a Proposed)
Rulemaking to Adopt Rules for the) ORDER
Inclusion of Government Human)
Services Information in Telephone)
Directories.)

DISPOSITION: RULE NOT ADOPTED; DOCKET CLOSED

At its December 7, 2004, Public Meeting, the Commission opened a rulemaking docket to consider a proposed rule regarding the inclusion of government and non-profit human services information in directories published by telecommunications utilities. On December 14, 2004, the Commission filed a Notice of Proposed Rulemaking Hearing with the Archives Division, Secretary of State, and on December 29, 2004, served it on persons interested in such matters. The notice set out the amendments proposed by Commission Staff and included a Statement of Need, Statutory Authority, Principal Documents Relied Upon, and Fiscal and Economic Impact. The final date for filing comments was Tuesday, February 8, 2005.¹

Comments were filed by Jim Long; the Office of Neighborhood Involvement of the City of Portland; the City of Portland; Washington County; the City of Beaverton; Metro; Qwest Corporation (Qwest); Sprint Corporation (Sprint); 211info; the Oregon Telecommunications Association (OTA); Verizon Northwest Inc. (Verizon); Oregon Association of Area Agencies on Aging and Disabilities (AAAAD); Dex Media, Inc. (Dex); Josette Hugo; Julie Mikalson; State Representative Deborah Boone and the Commission Staff (Staff).

A public hearing was held at the Commission’s offices in Salem, Oregon, on February 8, 2005. At the hearing, the following individuals and organizations’ representatives spoke: Mr. Long, Staff, City of Portland, 211info, Noreen Gibbons, AAAAD, Qwest, Verizon, OTA, Sprint and Dex. Qwest filed Supplemental Comments on that date.

¹ Supplemental Comments were filed by the City of Portland on February 16, 2005; a copy of a letter from the Mayor of the City of Beaverton to the Director of the Office of Cable Communications and Franchise Management of the City of Portland relating to the substance of this docket was filed on February 4, 2005, and Comments were filed by Jim Long on February 23, 2005. The Commission could not consider these late-filed submissions, and they have been excluded from the record in this proceeding.

Background. Mr. Long is generally acknowledged to be the author and advocate of the concept to incorporate “Blue, Green and Community Pages,” a separate section for listing governmental and non-profit human services organizations within telephone directories provided by local exchange carriers to their residential and business customers.² Between 26 and 29 years ago, Mr. Long worked on a federal research project in conjunction with telecommunications utilities to encourage the inclusion of these separate directory listings. The resulting recommendations were widely adopted by both the telephone operating companies of the former Bell System and independent telephone companies.³ We must therefore take into account the state of the telecommunications market and regulatory environment at that time and the changes that have taken place in the intervening years.

In the late 1970s, local exchange service was provided solely by regulated utilities on a rate-of-return basis, each with an exclusive territory; i.e., a 100 percent monopoly within that territory. There were no competitive local exchange carriers (CLECs). The few competitive providers of telephone directories that existed had to acquire their white pages listing from sources other than the local exchange carriers, who maintained copyrights to their listings. Telecommunications utilities’ revenues from the directory business were used to reduce the revenue requirement from the provision of exchange service and helped to keep rates low.⁴ The directories published by the telecommunications utilities earned supra-competitive profits because of the lack of competition.⁵

In the period that followed, the changes in the economic, legal and regulatory landscape were profound.⁶ Copyright protection for directory listings was lost and telephone companies had to sell their customer lists and updates to competitors

² See Petition for Rulemaking of Jim Long, *In the Matter of Rule Making Procedure Initiated by Jim Long for the Inclusion of “Community Blue Pages” for Human Services Listings in Telephone Directories* (“Petition”), filed August 20, 2003.

³ *Id.*

⁴ “Revenues derived from directory advertising are an extremely important ingredient in maintaining universal telephone service in Oregon.... That contribution totaled \$40.20 per customer per year in 1985.... The evidence in the record establishes that the right to publish directories on behalf of the monopoly telephone provider is a valuable intangible asset and that directory advertising itself is integral to the provision of adequate telephone service.” *In the Matter of the Investigation into the Revenue Requirement and Rate Structure of Pacific Northwest Bell Telephone Company, dba U S WEST Communications*, Order No. 89-1807, December 29, 1989, p. 14.

⁵ *Id.* at p. 29.

⁶ “The advent of competition and opportunities for bypass impose limits on the ability of regulatory agencies to adhere to traditional methods of pricing of telecommunications service. Unlike utilities that supply a single commodity, telecommunications firms supply an array of monopoly and non-monopoly services. Where telephone services are subject to competition from other suppliers, it will be increasingly difficult to maintain policies which overprice certain services to perpetuate high levels of contribution to residential exchange service. A utility that charges an overly high price for a competitive service risks losing all revenue associated with that service, including any contribution that might otherwise have been extracted from charging a reduced price. The economic reality is that utilities must be able to respond to competition if they are to obtain any contribution at all.” *In the Matter of the Investigation into the Revenue Requirement and Rate Structure of Pacific Northwest Bell Telephone Company, dba U S WEST Communications*, Order No. 90-920, June 27, 1990, p. 12.

for a reasonable price. Rate-of-return regulation was replaced by price regulation, and telephone companies spun off or sold their directory publishing divisions. Even the name “Yellow Pages” and the “Walking Fingers” logo were never trademarked. No carrier, including the directory publishing companies of the former Bell System, seriously considered the likelihood of competition, and thus the name and logo fell into the public domain. Competitive providers of directories proliferated wildly. Today, directory publishers affiliated with Telecommunications Utilities (TUs) compete with each other for advertisers whose businesses are located in the local exchange territory of the other carriers.⁷

In the current marketplace, Government Services Information sections (Blue Pages) are being provided in all TU-published telephone directories (TU Directories) without any requirement to do so by either federal or Oregon statute or rule.⁸ Although commenters’ opinions varied as to the *effect* of competition among directory publishers on the future of Blue Pages, all acknowledged the existence of robust competition in the directory marketplace. It is in this context that we consider Staff’s proposed rule.

Staff’s Proposed Rule. Staff proposes the adoption of a rule that would ensure that Blue Pages meeting certain minimal standards will continue to be included in TU Directories, regardless of the desire of any TU to discontinue the inclusion of Blue Pages in its directory. The proposed rule, which does not apply to telecommunications cooperative corporations, has the following specific requirements:

1. Every TU that publishes an annual telephone directory, either directly or through an affiliate or third party, must publish a specialized directory of government human services telephone numbers and must be placed after the customer guide and before the white pages listings.
2. At a minimum, the directory must contain alphabetical listings of city, county, state, regional and federal government offices and public school and school district offices. TUs must make a good faith effort to identify all such entities for inclusion in the directory. TUs are encouraged to include private non-profit corporations that provide human services in the directory.
3. Compliance with the rule does not relieve the TU from its obligation to provide all of the directory listings required by its tariff.
4. The pages of the specialized directory must have blue or green borders unless they have previously used other identifying border colors.
5. A TU may petition the Commission for a waiver of the rule.

⁷Public Comment Hearing, February 8, 2005. Responses to ALJ question directed to Dex executive Tim Bauer.

⁸ The Portland telephone directory published by Dex Media, Inc., pursuant to an agreement with LEC Qwest Corporation, consists of two volumes. The Blue Pages section is associated with the white pages volume. *Comments of Mr. Long on Proposed Blue Pages Rule*, p. 8, filed February 8, 2005.

Written Public Comments. Mr. Long supported adoption of the proposed rule as being better than no rule at all, but felt that it could be improved by adding more specific requirements. He noted that the public uses and relies upon the Blue Pages. He noted that provision of Blue Pages is voluntary. Mr. Long was, therefore, concerned that TUs would not shoulder the costs of providing the Blue Pages in the absence of a rule. He further noted that in the “split” Portland directory published by Dex Media, business listings appear in both white and yellow pages volumes, while Blue Pages listings now only appear in the white pages volume.⁹ Mr. Long proposed that the rule require: (1) more than a “good faith effort” to include listings; (2) inclusion of N-1-1 services, URLs and toll-free calling numbers; (3) working with local advisory groups to continually improve the format; (4) in the case of two-volume directories, inclusion of Blue Pages in both volumes; (5) colored borders on all three unbound edges; and (6) clarification of tariffs to enable easier yellow pages access to community listings.¹⁰

The City of Portland¹¹ supported the proposed rule’s requirement for a specialized directory with colored borders. The City also noted the significant public interest component of publication of Blue Pages and the reliance citizens have upon it. The City noted its concern about the future of the Blue Pages in a voluntary environment in light of their unilateral deletion from the “QwestDex” yellow pages due to the split directory in Portland. The result is that the blue-bordered pages in the yellow pages volume contain listings for attorneys rather than government services.¹² The City of Portland proposed the following changes to the proposed rule: (1) require more than a “good faith effort” (i.e., at a minimum, the TU should be required to consult with stakeholders to ensure accurate and up-to-date information); (2) require inclusion of URLs, 211 *info* and accurate toll-free calling numbers; (3) improve display and format; and (4) include Blue Pages in both volumes where split directories are published.¹³

⁹ Petition, pp. 1-2.

¹⁰ *Id.*, pp. 3-4.

¹¹ An official of the City of Portland also filed separate comments. City of Portland/Multnomah County Information and Referral Supervisor, John R. Dutt of the Office of Neighborhood Involvement of the City of Portland submitted written comments. At the hearing, the representative of the City of Portland indicated that Mr. Dutt’s comments were not the official comments of the City. Mr. Dutt recommended that Blue Pages be reorganized by service rather than by the office or agency that provides the service and gave several specific listing change recommendations. He also recommended that the directory publisher coordinate with local service providers.

¹² City of Portland Comments, pp. 1-3, filed February 7, 2005. The Comments were authorized by Resolution No. 36288, adopted by the City Council on February 2, 2005.

¹³ *Id.*, pp. 3-5.

The Mayor of the City of Beaverton sent a letter from the Office of Cable Communications and Franchise Management of the City of Portland dated February 4, 2005, fully supporting the City of Portland's position. The letter, filed by the City of Portland on February 7, 2005, concluded by stating that "[a]ny effort to improve the accuracy, quality and availability of phone directory listings and other contact information is welcome."

Washington County commented in a letter from Mary Lou Ritter, Director of Disability, Aging and Veteran Services filed February 4, 2005, that the local QwestDex directory's 2002 edition included red-trimmed "Community Service Numbers" and blue-trimmed "Government Pages." However, the 2005 edition replaced the "Community Service Numbers" with "Frequently Used Numbers" that did not include previously featured non-profits. The letter made the following recommendations to the Commission: (1) telephone directory white pages should have a section that includes government and non-profit community service organizations, including tribal governments, ports, special service districts and elected officials (Blue Pages) and a green-trimmed section for "community information"; (2) the directories should have a typeface conforming with the Federal Americans with Disabilities Act type font standards and easy-to-find emergency numbers, including 911, 511, child abuse, elder abuse, rape crisis, poison control and power outage numbers; and (3) the directories should have a listing of toll free numbers, Internet home pages and URLs for the public and non-profit agencies.

Metro Council President David Bragdon filed a letter on February 7, 2005, in support of the proposed rule. Metro recommends that the Blue Pages appear in both the yellow and white page volumes and that Metro be listed as a separate and distinct governmental entity therein. He also noted that Metro employees have had to spend considerable time correcting listing errors and that the public relies on the telephone directory as a primary source of information. Metro supports efforts to improve access and ease of directory use. The letter included appendices with recommendations as to the Metro listings in the directory and records of contacts by Metro staff to correct listing errors.

211info submitted comments and a Blue Pages/Phone Book Survey report dated January 19, 2005. 211info conducted a survey of 535 participating callers to 2-1-1 to determine their experience in using the directory prior to contacting 211info. The results of the survey indicated that 2-1-1 was called by 62 users (11.6 percent) only after the users had tried the directory. 211info concluded by stating that, if the rule is adopted, "we would strongly encourage an established partnership be developed with the local 2-1-1 provider that would keep the information in the book current and reliable, and that would adequately compensate the 2-1-1 provider for that work."

AAAAD supports the proposed Blue Pages rule. It notes that 211 was not always helpful in finding the correct social services agency. Furthermore, newly arrived residents need a Blue Pages. More than "good faith" is required.

State Representative Deborah Boone, District 32, filed a letter on February 8, 2005, asking the Commission to consider the fact that tourists visiting local communities within Oregon rely on the telephone book to provide special listings to assist them in cases of emergency or need for government services. Thus, a uniform approach to Blue Pages and Yellow Pages is needed. Representative Boone supports the proposed rule and notes that Mr. Long is a constituent.

Josette Hugo of Scappoose commented: “For many years, telephone directories provided ‘blue pages’ which contained listings for government entities and schools. It was a consumer friendly provision that disappeared once Qwest took over the Bell System. As someone who deals with government entities on a regular basis, I can tell you that it is frustrating and time consuming to search the white pages for listings for public agencies that are called different things by different telephone companies.”

Qwest commented that there was no need for the rule because directories have included government listings with a distinctive border for many years without the need for the Commission to resort to regulation. There is no indication that directory publishers intend to limit the provision of government listings in the future; market forces support their inclusion and potential expansion. No complaints from customers have been received in the preceding 17 years. Moreover, directory publishers compete with each other and other information providers, such as wireless carriers, cable companies, VoIP providers and direct competitors. TU-affiliated directories must be innovative to stay competitive. A rule would stifle innovation, freezing the status quo for TU-affiliated directories and put them at a competitive disadvantage. Qwest also raised the possibility that the proposed rule binding utilities might have legal infirmities. Qwest also offered a number of modifications to address inconsistencies and remove ambiguities from the proposed rule’s language.¹⁴

OTA said it did not believe the rule was necessary. There are independent directory providers not subject to Commission jurisdiction, and they would not be encompassed by the new rule. There has been little or no public complaint to the Commission about this issue. OTA members publish directories that meet their customers’ needs. There are many other avenues for customers to obtain Blue Pages information. The rule would put the compliance cost burden unequally on only some information providers.

Dex opposes the proposed rule for five reasons. First, it asserts the current format already contains the desired listings searchable by a user friendly index. It has been Dex’s goal to refine the layout and design of its directories to serve the interests of all of the public. Mandated formats will reduce the value of the directories over time by preventing responsiveness to public need. The 211*info* survey was neither scientific nor objective and is therefore not credible.

¹⁴ Qwest also submitted Supplemental Comments noting that the City of Portland operates a CLEC and asserting that one of the City’s motivations is to have Dex provide a specialized directory to the City’s customers.

Second, Dex notes that other sources also provide Blue Pages-type information, such as reference librarians, Internet, local networks, community organizations, churches and word of mouth as well as competitors' Blue Pages.

Third, Dex asserts that a Blue Pages rule would increase confusion among the majority of users because it raises the threshold question of what constitutes "human services" that must be listed. Furthermore, questions of compliance will arise regarding the proper category, the responsible parties for compilation and organization, consistency of identification and self-selection of listing location.

Fourth, Dex asserts that a Blue Pages rule would unnecessarily increase costs for carriers and publishers affected by the rule because it might require an additional 30 pages to accommodate all non-profit human services listings for a total cost of \$396,000 annually. In addition Dex might also incur a one-time \$1,000,000 or greater cost to reprogram its systems to accommodate just one state's requirements.

Finally, Dex believes that the Commission lacks the authority to promulgate a Blue Pages rule, and that even the Attorney General's Office acknowledges that the issue is a close one. Dex believes that the 1996 Telecommunications Act has preempted the field and provides legal authority to support its position.

Staff continues to endorse the proposed rule, stating that it is intended "to ensure the continued publication of Blue Pages without placing unreasonable requirements on...telecommunications utilities. The proposed rule also makes clear that government and non-profit entities that pay business rates must be given two listings, in keeping with the tariffs of the telecommunications utilities." Staff sees the proposed rule as a "middle ground between Mr. Long and the telecommunications industry."

Sprint preferred the Staff rule to Mr. Long's proposal, but "we remain unconvinced that any new rule is necessary." Sprint notes that it has long provided special sections with easily found listings for government and social agencies and notes that "We have not heard from our customers that they are dissatisfied with the organization of these listings." Sprint notes that the survey done by 211*info* supports its view that 211 is an often used alternative and is not turned to because of directory failings. Sprint further argues that the proposed rule is excessively bureaucratic and costly; would not apply to all competitors in the market, creating competitive inequities; and is unnecessary micro-management in light of the competition that drives user friendliness. Sprint also questioned the legality of the proposed rule in the absence of a clear legislative mandate.

Verizon does not believe the rule is necessary or appropriate, nor does it believe that the Commission has the authority to require directory publishers to include a Blue Pages section.

Verizon disagrees with the 2003 Attorney General's Opinion Letter because: (1) Section 222(e) of the Telecommunications Act of 1996 (the Act) requires TUs to sell subscriber listings in a non-discriminatory manner, reflecting congressional intent that directory publishing should be market-based and competitive; (2) the directory publishing business is an unregulated, competitive business, and the Commission cannot regulate it, either directly or indirectly; (3) the Commission has made no First Amendment analysis that satisfies the requisite tests for government regulation; and (4) even if the Commission had the authority to regulate directory listings, it could not discriminate among directory publishers because Section 253 of the Act requires that states act in a competitively neutral fashion.

Verizon also notes that it had received no demands for such a rule from its customers and that the widespread use of the Internet, mobile messaging technology and 211 services (which can be rapidly updated) makes it difficult to predict how customers will acquire such information in the future. Verizon intends to continue to provide government human services listings but believes that it is not a TU's responsibility or job to create listings or otherwise become involved with an intricately designed review process that may be burdensome or unworkable, especially in light of no discernable customer dissatisfaction.

Public Statements. A number of interested persons also made verbal statements at the public hearing. Significant items not already contained in their written testimony are set forth below.

Phil Nyegaard of the Commission Staff offered a modification of the proposed rule, inserting the word "government" in front of the words "human services" to more accurately reflect the intent of Staff's proposal. He noted that *211info* has a directory that it has compiled and would sell it to the TUs. The Commission can deal with tariff violations with respect to listings without having a rule.

Mr. Long noted the unanimity of the Portland City Council's support and reiterated statements made in his written comments. The marketplace is not working; there have been many omissions. School districts can be grouped in Blue Pages, and people will get accustomed to finding them there. Qwest and Dex Blue Pages have gotten worse over the past several years and contain more scattered entries than other directories.

David Olson, representing the City of Portland, stated that separate Comments filed by the Office of Neighborhood Involvement were not the official City Comments. He stated his belief that many establishments offer only one of the two books in the Portland directory with their pay phones and voiced his concern that duplicated listings are in both volumes but that the Blue Pages themselves are only in the white pages directory. There is also a real business case for keeping the Blue Pages, not just a citizen need.

George Grosch, Oregon 211*info*, said directories are confusing and that TUs have an obligation to provide the highest quality of service. Mr. Grosch said Oregon 211*info* would be willing to provide its database to TUs and work in partnership with TUs.

Jacqueline Zimmer, representing AAAAD, stated that 211 does not always route callers in a timely and efficient manner and its future funding is not assured.

Noreen Gibbons, a citizen, spoke in support of the rule and found it difficult to use phone books to find needed information. The public needs a standardized Blue Pages section.

Lawrence Reichman, on behalf of Qwest, stated that there is no reason to believe the Blue Pages' future is in doubt. He further alleges that no evidence exists to support suspicion of the Blue Pages demise. The competitive market for directories is functioning well, and any deviations from tariff requirements can be dealt with without a rule. As time goes on, the alternatives to TU directories will increase, and therefore the rule would apply to a smaller and smaller percentage of telecommunications services providers. 211 is even more useful than Blue Pages. The cost of directories is not included in phone rates. The Commission's role is to regulate the relationship between utilities and customers, and customers are not asking for Commission action. Qwest supported Mr. Nyegaard's rule change if the rule is adopted.

Schelly Jensen, representing Verizon and Verizon Directory Company, stated that Verizon has worked in good faith with others. In light of other sources of information coming, this is a poor time to regulate only ILECs.

Brant Wolf, representing OTA, said that small telephone companies competing with independent directory companies are at a disadvantage. The burden is great and unjustified in light of the lack of customer complaint.

Glenn Harris, representing Sprint, suggested that if Staff's proposal is adopted, and if the placement of the Blue Pages section is in a different location than it has traditionally been, it should be able to remain in that different location. Mr. Nyegaard of the Commission Staff agreed with the Sprint suggestion.

Brooks Harlow and Tim Bauer, representing Dex Media, stated that directory publishers are most closely attuned to the needs of customers and the marketplace and that many service providers self-select their locations. 211 is a referral service, not directory service, and that is what some individuals need. A directory is a mass media product. The Yellow Pages book is a non-regulated business directory with no ties to Qwest and competes with other directory publishers. Adding more categories to Blue Pages makes them more convoluted.

Directories are ending their lifecycle as a product. Dex is moving into Internet and search engine technologies not available with a print directory. Dex directories are on CD-ROM at no charge to customers. School listings are a particular problem because there are so many alternatives, and many will self-identify in ways different from what consumers would search. Yellow Book, Trans Western Publishing and Phone Directories Companies are Dex's three main independent competitors. The Medford and Grants Pass markets are heavily competitive. Furthermore, Verizon and Dex compete with each other in many locations.

Discussion. The instant rulemaking captures many of the dilemmas facing a governmental agency when it considers whether or not to regulate a particular type of commercial activity.

Sometimes the decisions are easily arrived at. Where there has been a history of acts or events contrary to the public interest and the effects of those incidents have not been promptly remedied by the competitive forces of the marketplace, the role of the government as protector of the public comes to the fore. Conversely, where entrepreneurs devise new products and services with no historical precedent and no obviously foreseeable harm, marketplace forces are best able to dictate the growth, development, price, features, functions and public acceptance of such products and services.

In between these two extremes lie industries where competition has proven to be imperfect in serving the public interest, but where the full panoply of regulation has not encouraged the cost savings, product variety and responsiveness to consumer needs that are best accomplished via competition.

During the course of the past 35 years, telecommunications has moved relentlessly from being a highly regulated, vertically and horizontally integrated monopoly enterprise to an industry that is highly diverse, segmented and subject to varying levels of competition. As a consequence, these market segments are subject to highly varying degrees of regulatory oversight. As noted in the Background section of this Order,¹⁵ and attested to by many of the interested persons on both sides of the issue in this proceeding, the telephone directory market, once integral to the provision of local exchange wireline telecommunications services, is now legally and economically separated from TUs and offered by a variety of publishers in markets that are highly competitive.

Assuming the absence of any legal constraint to our rule as the Attorney General's office previously advised, the question for the Commission is whether there is either a record of acts or events harming the public interest that marketplace forces have failed to remedy or there is a substantial likelihood that future activity by marketplace participants will cause public harm.

¹⁵ See *supra* pp. 2-3.

Proponents of the proposed rule essentially assert that: (1) the Blue Pages, as they are currently offered by publishers under contract with TUs, could be more complete and better organized; and (2) there is a possibility that, at some time in the future, publishers under contract with TUs may reduce the size or quality of the Blue Pages or eliminate them entirely. A review of the entire record in this case fails to substantiate either circumstance.

TUs note that the publishers with whom they have contractual agreements have been offering Blue Pages without regulatory mandates for many years, even in the face of serious, aggressive competition. Furthermore, directory companies with no TU publishing contracts also offer Blue Pages. The obvious conclusion is that Blue Pages continue to exist precisely because there is direct competition in the marketplace.

In failing to find a public interest reason to enact a rule at this time, we do not leave the public without a regulatory safety net. In the event that the predictions of the interested persons who submitted comments and spoke at the hearing come to pass and the public is left without a simple, convenient, fast and inexpensive means to obtain government and government human services listings, the Commission will acknowledge that the marketplace has failed and will not hesitate to open an appropriate rulemaking proceeding and act upon the findings elicited therein.

ORDER

IT IS ORDERED that:

1. The proposed rule is NOT ADOPTED.
2. This docket is CLOSED.

Made, entered, and effective FEB 05 2006.

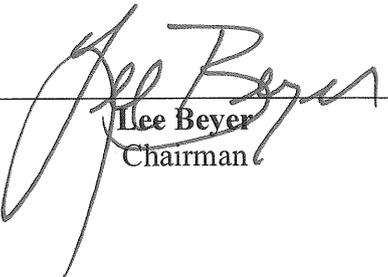


Ray Baum
Commissioner



John Savage
Commissioner

I dissent.



Lee Beyer
Chairman



A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.