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September 5, 1996

960000

Ms. Blanco Bayo
Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Ms. Bayo:

Enclosed in amended form are a signed and notarized original and fourteen copies of a *Petition* and accompanying *Position Statement*, which are hereby filed with the Florida Public Service Commission on behalf of Excell Agent Services, Inc., of Tempe, AZ.

All correspondence in this matter may be directed to:

Richard Thayer, President
Telecommunications & Technologies International, Inc.
7018 Beechwood Dr.
Chevy Chase, MD 20815

and/or

Mr. Dan Evanoff, CEO
Mr. Dan Pearce, President
Excell Agent Services, Inc.
2175 W. 14th Street
Tempe, AZ 85281

Sincerely yours,

Richard Thayer

Enclosure: Petition, Position Statement

960000

On behalf of

Excell Agent Services, Inc.
2175 W. 14th Street
Tempe, AZ 85281

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	FCC 96-333
	)	
Provision of Directory Assistance Services and Directory Listings	)	

PETITION FOR RELIEF AND COMPLIANCE

September 3, 1996 (Amended)

Before

The Federal Communications Commission,
The U.S. Department of Justice,
The California Public Utilities Commission,
The Colorado Corporation Commission,
The Florida Public Service Commission,
The Illinois Commerce Commission,
The New York Public Service Commission,
The Pennsylvania Public Service Commission,
The Public Utility Commission of Texas, and
The Virginia Corporation Commission.

Summation of Petition:

In accord with sections 222 (e) and 251 (b)(3) of the Communications Act of 1934, as amended by the Federal Telecommunications Act of 1996 (the Act), and in accord with the Final Rules adopted by the Federal Communications Commission (FCC) in the matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 [FCC 96-333, Appendix B - Final Rules, Sec. 51.217 (c)(3), Aug. 8., 1996], Excell Agent Services petitions the Federal Communications Commission (FCC), the U.S. Department of Justice (DoJ), and, respectively, each of the state commissions named above as follows: That Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Bell, SBC and U S WEST (collectively, RBOCs), ALLTEL, Cincinnati Bell, ConTel, GTE, Frontier, Sprint, and all other independent local exchange carriers, in all areas where they provide local exchange service as incumbent carriers, be ordered by the FCC, with the concurrence of the Department of Justice as appropriate, to immediately agree to license their subscriber list information to Excell, on fair and reasonable terms and conditions, for the provision of competitive directory assistance services, as the law requires. Competitive directory assistance services shall include: interLATA directory assistance; local exchange and intraLATA directory assistance; directory assistance call completion; enhanced searches; operator assisted Yellow Pages; and other similar directory assistance services.

The FCC is petitioned as the agency entrusted with primary and principal responsibility for implementation of the Act.

The DoJ is petitioned as the federal agency responsible for enforcing federal antitrust law and charged by the Act to monitor interconnection agreements of the RBOCs with competing telecommunications providers.

Each of the state commissions named above is petitioned as the agency responsible for overseeing the transition to competitive provision of telecommunications services in its respective jurisdiction, in compliance with federal law, particularly the provisions of The Telecommunications Act of 1996 cited above and all other provisions, and in compliance with state law.

Historical Summary

Beginning in 1993 and 1994, Excell Agent Services (Excell) has sought agreements with each of the RBOCs and many of the independent local exchange carriers (LECs), to obtain licensing to the LECs' subscriber list information for Excell to provide independent directory assistance services for long distance carriers and other telecommunications providers.

Availability and use of subscriber list information is essential to the independent provision of directory assistance. Commercial databases are available from more than 300 sources, including credit applications, magazine subscriptions, real estate transactions, U.S. Postal Service change of address records, and many others, but none of these contains information on telephone subscribers that is as complete, up-to-date, and accurate as the LECs' subscriber list information. ***Unlike other commercially available information lists in the public domain, the LEC subscriber list information alone maintains continuous electronic updates and no other source identifies subscribers with unlisted numbers, which enables competitive directory assistance companies to protect these customers' privacy.*** Using commercially available data, a competitive directory assistance company has no way of knowing which numbers are unlisted.

Excell's Requests to the RBOCs and other LECs Have Been Clear and Specific

Excell has asked to license the LECs' subscriber list information, including daily updates, for the purpose of providing wholesale directory assistance services, described above, to competitive long distance carriers, competitive local exchange carriers (CLECs), and other telecommunications companies.

- The subscriber list information must be complete, up-to-date, and in all respects equal to the subscriber list information which the LEC uses to provide its own directory assistance services. Subscribers with non-published numbers must be included. Allowing access to local databases is not a substitute for licensing of subscriber list information for several reasons, but principally because each of the database systems maintained by the LECs is configured differently from others, requiring different access interfaces, protocols, hardware and software -- making it very expensive to match these separate systems. A competitive directory assistance provider would spend millions of dollars to match each of the systems and staff a separate group of operators for each system, and doing so would greatly increase costs and render the competing provider's services less competitive.

  In addition, customers served by wholesale directory assistance providers typically require services from many LEC serving areas. The costs for a wholesale provider to attempt to access multiple LEC databases would be prohibitive and would severely limit the services that could be offered. Even such basic services as uniform branding in a customer's name, for example, would be impossible.

- Pricing of subscriber list information must be based on incremental costs incurred in making the list available and providing "look-ups." Excell suggests a price of $.01 per listing or less, which would provide a reasonable margin of profit for the LECs.

- Subscriber list information must be provided in a timely manner, without unnecessary delays, in a format suitable for directory assistance use, and updated on a daily basis.

A Number of LECs Use Anticompetitive Delay and Stalling Tactics in Responding to Excell's Requests

Examples of such tactics include:

- appealing to long-established monopoly-based operating procedures within their companies -- tactics that ignore new federal and state competitive requirements;

- seeking clarification of requests which already are clear;

- seeking detailed information on how the lists will be used, when their use already has been well defined;

- asserting concerns regarding disclosure of customer proprietary network information and unlisted numbers, in spite of Excell's record of complete respect for customers' proprietary rights and its express commitment to fully respect customers' rights in the future;

- maintaining that the subscriber list information already is available through other sources, which clearly is not so;

- offering partial information or suggesting an incompiete and unsatisfactory substitute, such as restricted access to the local database;

- offering the subscriber list information in a format or through technologies which are difficult or costly to access, and which the LECs themselves do not use in their own update processing.

Most LECs Have Not Complied in Any Form with Excell's Requests for Subscriber List Information, as the Act Requires

Initially, upon receiving Excell's request, nearly all of the RBOCs and other LECs refused to provide their subscriber list information to Excell, offering various reasons or delaying their responses.

- Ameritech initially agreed to provide subscriber list information, as Excell had requested, then held back on its agreement for a time while offering its own directory assistance services at prices below cost, and then went forward with the agreement, but at a higher rate. The format in which Ameritech's subscriber list information is provided and the high price charged by Ameritech for the subscriber list information make its use by Excell difficult and costly, and therefore not fully competitive.

- Bell Atlantic's first response was that it "is not offering a licensed listing service for directory assistance." Rather, it said, it offers its own operator service, access to Electronic ReQuest®, or direct access to a Bell Atlantic regional database with directory assistance functionality. Nearly a year after that request, in response to Excell's expressed interest in obtaining access to listing information, Bell Atlantic notified Excell that "direct access" was currently being developed and was contingent upon the availability of the NTI [Northern Telecom, Inc.] Directory One database, which was still in trial. Bell Atlantic's response continues to be entirely unsatisfactory and the prices it specifies are not competitive. In addition, Excell would have to invest millions of dollars in new equipment to access the information.

- Pacific Bell sought responses to a number of questions on: applications for directory list information; reasons for Excell's seeking access to the directory list; regulatory requirements; and a number of technical issues. Recently, Pacific Bell agreed to provide its subscriber lists, but terms of the agreement remain to be worked out.

- U S WEST has agreed to provide subscriber list information, but it has offered the data in a hard-to-use format and has withheld the names of subscribers with unlisted numbers. Major customers or potential customers, particularly long distance companies, understandably, are not satisfied with any competing directory assistance service whose customer list does not include the names of customers with non-published numbers. Without access to all of the names included in the subscriber list information, no directory assistance service can be truly competitive.

  A directory assistance provider without the names and addresses of customers with non-published numbers will spend costly operator work time searching for a "not found" listing, while a competitor with the customer information can instantly stop a search and make the appropriate report to the caller.

- To date, Excell has been unable to reach any agreement with Bell Atlantic, BellSouth, NYNEX, SBC, GTE, and other LECs.

The Act Requires All Incumbent LECs to Provide Subscriber List Information

The Telecommunications Act of 1996, signed into law February 8, 1996, includes an explicit provision that, "a telecommunications carrier that provides telephone exchange service shall provide subscriber list information...on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format". [47 U.S.C. 222 (e).] (Section 702 of The Telecommunications Act of 1996 added a new section 222 to the Communications Act of 1934.) This provision of the Act was effective upon enactment, as the FCC has expressly stated. [FCC 96-221, Notice of Proposed Rulemaking (NPRM) adopted May 16, 1996, Para. 2]

In Part II of The Telecommunications Act of 1996, which deals with the development of competitive markets, in the section on the interconnection obligations of all local exchange carriers, these carriers have, "...the duty to permit [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." [47 U.S.C. 251]

In a recent order implementing the local competition provisions of the Act, the FCC adopts final rules on Part 51 of Title 47 of the U.S. Code of Federal Regulation, dealing with directory assistance and other issues. Under a section on directory assistance and directory listings, the rule states, "**(ii)** ***Access to directory listings. A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC also must permit competing providers to have access and read the information in the LEC's directory assistance databases.***" [Emphasis added.] [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, Appendix B - Final Rules, Sec. 51.217 (c)(3).]

The Order states, "Section 251 (b)(3) requires that each LEC, to the extent that it provides telephone numbers, operator services, directory assistance, and/or directory listings for its customers, must permit competing providers *nondiscriminatory* [*sic*] access to these services. Any standard that would allow a LEC to permit access that is inferior to the quality of access enjoyed by that LEC itself is not consistent with Congress' goal to establish a pro-competitive policy framework." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 102.]

In additional comments, the FCC concludes, "...the term 'nondiscriminatory access' means that a LEC that provides telephone numbers, operator services, directory assistance, and/or directory listings ("providing LEC") must permit competing providers to have access to those services that is at least equal in quality to the access that the LEC provides to itself. We conclude that 'nondiscriminatory access,' as used in section 251 (b)(3), encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC. LECs owe the duty to permit nondiscriminatory access to competing providers of telephone exchange service and to providers of telephone toll service, as the plain language of the statute requires. Such competing providers may include, for example, other LECs, small business entities entering the market as resellers, or CMRS providers." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 101.]

And still further, in discussing the need for LECs to make available directory assistance and listings for purchase or resale to competitors, the Order says: "Under the general definition of 'nondiscriminatory access,' competing providers must be able to obtain at least the same quality of access to these services that a LEC itself enjoys. Merely offering directory assistance and directory listing services for resale or purchase would not, in and of itself, satisfy this requirement, if the LEC, for example, only permits a 'degraded' level of access to directory assistance and directory listings." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 142.]

The Order also says, "Finally, we note that in the *First Report and Order* we found that operator services as well as directory assistance are network elements that an incumbent LEC must make available to requesting telecommunications carriers.... The obligation of incumbent LECs to provide operator services and directory assistance as unbundled elements is in addition to the duties of all LECs (including incumbent LECs) under section 251 (b)(3) and the rules we adopt herein." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 115.]

Two points in the FCC's recent Order require clarification. The first point has to do with provision for access to the database as a means to provide directory assistance information. The FCC's discussion of the LECs' provision of directory assistance and listings says, "We further find that a highly effective way to accomplish nondiscriminatory access to directory assistance, apart from resale, is to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing access." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 143.]

While allowing competing providers to obtain read-only access to the LECs' databases theoretically and conceptually may be a highly effective way to accomplish nondiscriminatory access to directory assistance, this is not the case in practice. Actually, variations among database systems, technologies and protocols used by different LECs would require that competing providers invest many millions of dollars to match each of the systems used by the LECs. Such expenditures would make it impossible for competing providers to offer directory assistance on a competitive basis.

The governing principle in this matter must be the FCC's own broader statements in the same Order. In the immediately preceding paragraph, the Order states, "Under the general definition of 'nondiscriminatory access,' competing carriers must be able to obtain at least the same quality of access...that a LEC itself enjoys." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 143.] More specifically, in its final rules, noted above, the FCC states that, "A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC *also* [emphasis added] must permit competing providers to have access to and read the information in the LEC's directory assistance databases." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, Appendix B - Final Rules, Sec. 51.217 (c)(3)(ii).]

Again, in an earlier discussion, the Order says, "LECs owe the duty to permit nondiscriminatory access to competing providers of telephone exchange service and to providers of telephone toll service, as the plain language of the statute requires." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 101.]

Finally, The Act itself, in an already-noted provision that was not part of the FCC's recent Order but which will be the subject of a later rulemaking, states clearly that. "...a telecommunications carrier that provides telephone exchange service shall provide subscriber list information ...on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format". [47 U.S.C. 222 (e).]

A second point in the FCC's recent Order that requires clarification has to do with access to information on customers with unlisted numbers. The FCC's Order states, "We conclude that the obligation to permit access to directory assistance and directory listings does not require LECs to permit access to unlisted telephone numbers, or other information that a LEC's customer has specifically asked the LEC not to make available." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 135.] And the final rules adopted by the FCC in its Order explicitly exclude unlisted numbers from the directory listing information a LEC is to provide: "*Unlisted numbers*. A LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available1, The LEC shall ensure that access is permitted only to the same directory information that is available to its own directory assistance customers." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, Appendix B - Final Rules, Sec. 51.217 (c)(3)(iii).]

This statement of the FCC should not be misinterpreted as meaning that the LECs are not required to provide the *names* of subscribers with unpublished numbers, even if the unlisted numbers as such are withheld. The distinction is important. Including the names of subscribers with unpublished numbers, with a notation to that effect, enables a competing directory assistance provider to inform callers that the telephone number requested is unlisted, whereas, with no information on the customer at all, a competing directory assistance provider cannot be helpful to callers in any way. Commercially available lists, which Excell and other competing directory assistance providers are compelled to use today in the absence of subscriber list information, make no distinction between published and non-published numbers and so afford no opportunity for competing directory assistance providers to protect the privacy of individuals with non-published numbers.

Excell urges the FCC to give further consideration to its position and to require LECs to make all subscriber list information, including the non-published numbers, available to competing directory assistance providers, with appropriate requirements for privacy and confidentiality. The availability of the non-published numbers is necessary for competing directory assistance providers to offer a full range of information and services in competition with the LECs. With the availability of the non-published numbers, a directory assistance operator in an emergency situation, for example, can offer to contact a party with a non-published number -- if the party has indicated a desire to be contacted in such situations -- and enable the non-published subscriber to contact the calling party. Some incumbent carriers already offer this service. For competing directory assistance providers to offer comprehensive services in competition with the LECs, all subscriber list information must be made available on an equal basis.

The Telecommunications Act Supersedes Any Inconsistent State or Local Law or Regulation

The requirements of The Telecommunications Act of 1996, including the specific requirements with respect to subscriber lists in sections 222 (e) and 251 (b)(3) of the Communications Act, supersede all state and local regulations that are not in agreement. The Act states that, "No state or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." [47 U.S.C. 253 (a)] The Federal law does not, however, prevent states or local jurisdictions from imposing additional requirements that support the intent of the Act.

The FCC Has Primary Authority with Respect to Subscriber List Information

The Federal Communications Commission (FCC) has primary and chief authority to interpret and implement The Telecommunications Act of 1996 and the Communications Act of 1934, as amended, including the directory assistance requirements of the Act. Additionally, as a matter of fact, telephone subscriber list information is a matter that requires interstate jurisdiction. The subscriber information gathered by LECs for local calling areas frequently goes beyond the geographical limits of a state or locality and encompasses two or more jurisdictions, as is the case in Washington, DC; Kansas City; Cincinnati; Philadelphia; Chicago; Pittsburgh; New York, and many other U.S. metropolitan areas.

State and Local Commissions Have Authority to Regulate Provision of Subscriber List Information Provided Their Regulations Are Consistent with the Act

The Telecommunications Act of 1996 does not take away the authority of state and local public utility commissions (PUCs) in this matter. State and local PUCs may prescribe their own regulations with respect to subscriber list information so long as they do not impose regulations inconsistent with the federal law, particularly as set down in the 1996 Act. State and local PUCs may affirmatively order LECs within their jurisdictions to provide subscriber list information expeditiously, as requested by Excell and other competitive directory assistance providers, in compliance with the federal law and regulations and their own state laws and regulations.

In a recent order, the New York Public Service Commission instituted a process to investigate the sale of local exchange carrier directory database information and directory assistance services. The Order addresses issues ranging from ownership of the database to whether, with whom, and how the database should be shared. The public is invited to participate actively in meetings to develop and discuss the issues. [NYPSC Case 94-C-0095, Order Instituting Process to Investigate the Sale of Local Exchange Carrier Directory Database Information and Directory Assistance Services, July 19, 1996.]

Present Situation

Excell has negotiated for two to three years with established LECs to obtain and use subscriber list information. Even since The Telecommunications Act of 1996, with its clear provisions, was signed into law on February 8, Excell has had only limited success. Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Bell, SBC, U S WEST, GTE, and other LECs are still refusing to provide the requested subscriber list information under nondiscriminatory and reasonable rates, terms, and conditions. This broad lack of compliance has severely impacted Excell's ability to conduct business effectively and competitively, and, in some cases, has made it impossible for Excell to provide independent directory assistance services for its customers. One RBOC, SBC, has even aggressively waged an anti-competitive campaign against Excell by promoting the "quality" of SBC's regulated database over Excell's "compiled" database.

Excell Therefore Appeals to the FCC for Immediate Action

Excell appeals to the FCC, seeking expeditious consideration of Excell's request that the RBOCs and other LECs provide subscriber list information on an unbundled basis, in a timely manner, and under nondiscriminatory and reasonable rates, terms, and conditions. The purpose of this request is to enable Excell to provide fully competitive, independent directory assistance services to long distance carriers and other telecommunications service providers. Excell asks that the FCC take into account the lengthy and costly delays sustained by Excell during the time its requests have been pending with the LECs, and urges the FCC to require Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Bell, SBC, U S WEST, GTE, and other LECs to comply expeditiously and completely with Excell's requests in all cases.

Excell Appeals to the Respective State and Local PUCs for Immediate Action

Recognizing the jurisdiction of the several states and local PUCs in this matter, Excell seeks expeditious consideration of its request by each respective PUC named in this petition, and asks each PUC to order LECs in its jurisdiction to provide subscriber list information on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, for the purpose of enabling Excell to provide independent directory assistance services to long distance carriers and other telecommunications service providers.

Excell Asks the Department of Justice to Review RBOCs' and LECs' Behavior

The failure of the RBOCs and GTE to respond to repeated requests by Excell to obtain and use subscriber list on a timely and nondiscriminatory basis represents evident anticompetitive behavior on the part of these companies that is at odds with established antitrust law embodied in the Sherman Act and the Clayton Act, and directly at odds with the express intent of The Telecommunications Act of 1996.

The behavior is especially anticompetitive in the case of SBC, which actually uses the fact that Excell does not have the subscriber list information available to it as an example of a competitive advantage SBC has over Excell in providing wholesale directory assistance. The DoJ has direct responsibility to enforce the antitrust laws and Excell now urges the DoJ to scrutinize the LECs' behavior with respect to subscriber list information and to take all necessary steps to compel compliance with the law.

The continuing anticompetitive behavior on the part of the RBOCs and independent LECs in this matter, specifically their adamant refusal to respect the clear provisions of the federal law and provide their subscriber list information, must be of particular concern to the DoJ as it reviews proposed interconnection agreements between the Bell companies and prospective competitors in the local exchange market; as it considers applications of the Bell companies to provide interLATA services; and as it reviews the mergers planned between SBC and Pacific Bell, and Bell Atlantic and NYNEX. The behavior of Bell Atlantic, NYNEX, Pacific Bell, and SBC is of particular concern, but the behavior of other RBOCs, GTE and other independent LECs must not be ignored or allowed to continue.

In addition to its deliberations on the importance of such anticompetitive behavior on other pending matters, the DoJ should move to require the RBOCs and independent LECs to respond fully and immediately to Excell's requests for subscriber list information.

CERTIFICATE OF SERVICE

We, Alan Pearce and Richard Thayer, do hereby certify that true and correct copies of the foregoing *Petition* and the attached *Position Statement* were served by overnight courier service or by first-class U.S. mail, postage prepaid, to the following persons at the addresses listed below.

Alan Pearce

Richard Thayer

Sept. 4, 1996.
Date

9/4/96
Date

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We, Alan Pearce and Richard Thayer, declare under penalty of perjury that the foregoing, and the attached *Position Paper* are true and correct to the best of our knowledge and belief.

Executed: Sept. 4, 1996

Alan Pearce

Richard Thayer

STATE OF MARYLAND
COUNTY OF MONTGOMERY ss:

Subscribed and sworn to before me this 4th day of September, 1996.

Robert J. Sher - Notary Public

My Commission expires: 11-1-98