

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition and complaint ) DOCKET NO. 931138-TL  
of Florida Independent Directory ) ORDER NO. PSC-96-0446-FOF-TL  
Publishers to amend Directory ) ISSUED: March 29, 1996  
Publishers Database Service )  
tariff of BellSouth )  
Telecommunications, Inc. d/b/a )  
Southern Bell Telephone and )  
Telegraph Company. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

- SUSAN F. CLARK, Chairman
- J. TERRY DEASON
- JOE GARCIA
- JULIA L. JOHNSON
- DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION

ORDER GRANTING, IN PART, AND DENYING, IN PART, PETITION BY FLORIDA INDEPENDENT DIRECTORY PUBLISHERS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

On November 24, 1993, the Florida Independent Directory Publishers (FIDP) filed a petition and complaint requesting that certain provisions of BellSouth Telecommunications, Inc.'s (BellSouth's) Directory Publishers' Database Service (DPDS) tariff be revised, as specified in Exhibit A attached to the petition. FIDP is an association of independent telephone directory publishers who compete with BellSouth and its affiliate, BellSouth Advertising and Publishing Company (BAPCO), in the publication of telephone directories. Members of FIDP subscribe to DPDS.

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On December 20, 1993, BellSouth filed a motion to dismiss the petition and complaint. By Order No. PSC-94-0641-FOF-TL, issued May 25, 1994, this Commission found that, although FIDP's petition failed to allege any act or omission on the part of BellSouth in violation of any Commission statute, rule, or order, as required under Rule 25-22.036(5), Florida Administrative Code, and thus did not constitute a complaint, it did meet the requirements of a valid petition. We, therefore, denied BellSouth's motion to dismiss.

Subsequently, BellSouth and FIDP entered into negotiations to settle their dispute. On November 1, 1994, the parties met with the staff of this Commission to discuss the progress of their negotiations. At that meeting, FIDP offered to settle the dispute under the terms and conditions that it had agreed to in a similar case filed in Louisiana. BellSouth agreed, and FIDP offered to prepare the agreement.

By letter dated February 24, 1995, BellSouth informed staff that FIDP's proposed agreement varied from the Louisiana agreement and that substantial areas of disagreement remained. By letter dated May 15, 1995, FIDP, stated that the parties had not reached agreement and were unable to resolve their differences.

II.

APPLICABLE LAW

Section 364.385, Florida Statutes, Savings Clauses, states, in pertinent part, that:

Proceedings including judicial review pending on July 1, 1995, shall be governed by the law as it existed prior to the date on which this section becomes a law. No new proceedings governed by the law as it existed prior to January 1, 1995, shall be initiated after July 1, 1995. Any administrative adjudicatory proceeding which has not progressed to the stage of a hearing by July 1, 1995, may, with the consent of all parties and the commission, be conducted in accordance with the law as it existed prior to January 1, 1996.

Since the latter provision is more specific, we believe that it takes precedence. Because this case had not progressed to the stage of a hearing by July 1, 1995, the current version of Chapter 364, Florida Statutes, applies to this proceeding.

Under the current version of Section 364.02(2), Florida Statutes, basic local telecommunications service is defined to include "access to . . . an alphabetical directory listing." In

the aggregate, access to an alphabetical directory listing means access to all the listings published in the "white pages." Accordingly, that information is a basic local telecommunications service. Under Section 364.01(4), Florida Statutes:

The Commission shall exercise its exclusive jurisdiction in order to:

\* \* \*

(b) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.

\* \* \*

(f) Eliminate any rules and/or regulations which will delay or impair the transition to competition.

(g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

(h) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.

Although DPDS is a database service, it is a database of alphabetical directory listings. Based upon the foregoing provisions, we find that this Commission may order BellSouth to make modifications to its DPDS.

III.

FIDP'S PETITION

According to FIDP'S petition, there are over 200 independent directory publishers in the United States, with approximately twelve competing with local exchange companies (LECs) in Florida. FIDP states that LECs hold 96 percent of the \$9 billion telephone

directory market. FIDP argues that, since independent publishers rely upon license agreements with LECs to obtain subscriber listing information, DPDS is a monopoly service for which there is no viable substitute.

According to FIDP, directory listing information was historically made available on a contractual basis "on generally reasonable rates, terms, and conditions. However, since the divestiture of the Bell System and the ensuing increase in the level of competition provided by independent publishers, BellSouth and the other LECs have started restricting access to monopoly telephone listing information through the unreasonable bundling and pricing of services." FIDP argues that the rates, terms, and conditions of BellSouth's DPDS tariff are "unjust, unreasonable, unfairly discriminatory, unduly preferential, predatory, anticompetitive, and otherwise not in the public interest." FIDP, therefore, requests that this Commission:

- A. find that directory listing information is a monopoly service;
- B. order BellSouth to make certain revisions to the DPDS tariff as listed in Exhibit A attached to its petition;
- C. require BellSouth to make subscriber listing information available to all publishers, including BAPCO, through the amended DPDS tariff; and
- D. require BellSouth to hold all revenues collected through its DPDS tariff subject to refund, pending the resolution of FIDP's petition.

Each of FIDP's requests is discussed, under separate header, below.

A. Directory Listing Information as a Monopoly Service

This issue, while addressed in the original petition, has not been widely discussed during this proceeding. FIDP has never clearly identified why a determination that directory listing information is a monopoly service will further its cause. We do not believe that such a determination is either necessary or appropriate. However, we do find that BellSouth has the most accurate, up-to-date directory listing information among the various sources from which such data is available.

B. Appropriate Revisions to BellSouth's DPDS Tariff

Based upon the information our staff was able to accumulate during this proceeding, we believe that BellSouth should amend certain provisions in its DPDS tariff. In the instances where the parties have disagreed as to the appropriate language in BellSouth's Florida tariff, but had agreed to specific language in the Louisiana agreement, we have relied upon the language from that agreement. The following is a point-by-point discussion of each of the changes proposed by FIDP in its petition, together with our determination on each such provision.

1. A38.2.1 Description of Service

a. CURRENT

**A38.2.1A:** At the request of a customer, the Company will provide Directory Publishers Database Service (DPDS) to a customer solely for the compilation, production, publication, and distribution of directories in printed booklet form as an alphabetical and/or classified telephone directory for general telephone number service.

FIDP PROPOSED

At the request of a customer, the Company will provide Directory Publishers Database Service (DPDS) to a customer for use in compiling, correcting, producing, distributing, and selling and soliciting advertising in, and/or subscriptions to alphabetical, classified, and/or specialty directories or directory services, whether in printed or electronic form (other than traditional directory assistance services to which the Company's Directory Assistance Database Service applies).

The issues here are whether the database provided with this service should be allowed to be used for update and correction purposes, and for development of specialty directories, and whether the directories can be created in electronic form. In the Louisiana agreement, BellSouth agreed to amend its tariff to allow the database to be used to correct listing information, and to permit the listing information to be used for the sale or solicitation of advertising to be contained in the directories. BellSouth also agreed that directory publishers could publish specialty white page directories at a separate "multiple use" rate.

We believe that BellSouth should amend its intrastate DPDS tariff to incorporate these provisions. We believe that it is in the public interest for directory publishers to be able to provide the most current information to the end user. Corrections and updates are necessary to the maintenance of a directory listings database, and BellSouth should provide those at reasonable cost.

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

At the February 6, 1996 Agenda Conference, BellSouth expressed concern that "electronic directories" could be a form of directory assistance. According to FIDP, directory publishers do not wish to use the DPDS tariff to offer directory assistance. They only want to be allowed to offer directories on diskette or CD-ROM. In fact, FIDP's proposed revisions specifically exclude directory assistance from the list of allowable uses for the DPDS data. BellSouth's concerns, therefore, appear unfounded.

b.

CURRENT

**A38.2.1B:** Directory Publishers Database Service (DPDS) will optionally provide a Weekly Business Activity Report to be used solely for the sale or solicitation of advertising to be contained in a published directory.

FIDP PROPOSED

Directory Publishers Database Service (DPDS) will optionally provide a Weekly Activity Report for use in compiling, correcting, producing, distributing, and selling and soliciting advertising for inclusion in, and/or subscriptions to, alphabetical, classified, and/or specialty directories or electronic directory services.

The issue here is how BellSouth's optional Weekly Business Activity Report (WBAR) may be used. Currently, BellSouth limits its use to the sale and solicitation of advertising by the DPDS customer. FIDP wishes to be able to use WBARS to make corrections to listings as well. In the Louisiana agreement, BellSouth agreed to this change, subject to a disclaimer that WBARS may not be suitable or complete for update purposes, and that the customer

assumes liability for the use of WBARs for such purposes. We believe that an update service, consisting of new and corrected residential and business listings, is essential in order to allow publishers to keep and maintain a directory database. Accordingly, BellSouth should file a tariff for an appropriate update service.

c. CURRENT

**A38.2.1D.1:** Central Office Listing file: An extract containing the listed names, addresses and telephone numbers of Company subscribers located within the central office codes requested. The Company will require sufficient time (approximately 2 weeks) after receiving an order to prepare the Central Office Listing File.

FIDP PROPOSED

Central Office Listing file: A data file, on paper or magnetic media at the customer's option, containing the listed names, addresses, telephone numbers, and, for business listings, the business designation and primary business classification, of Company subscribers located within the central office codes requested. The Company will require sufficient time (approximately 2 weeks) after receiving an order to prepare the Central Office Listing File.

BellSouth has stated that it does not oppose this tariff modification. In response to staff data requests, BellSouth stated that it had "not determined any resource requirements, costs, or price to modify its systems to provide these features." In Louisiana, BellSouth did not state that it needed a separate or additional rate to include the business designation and primary business classification of business subscribers in the central office listing file. We do not expect it to do any differently in Florida. Accordingly, we find that BellSouth should amend the language in this section as shown above.

d. CURRENT

**A38.2.1D.2:** Business Activity Report: Weekly reporting changes affecting the business listings of the Company's subscribers served by a requested Central Office will be provided optionally, at the

FIDP PROPOSED

Weekly Business and Residence Activity Report: Weekly reporting changes affecting the business and/or residence listings of the Company's subscribers served by a requested Central Office will

customer's request, as specified in A38.2.3 following. These reports will include changes in main listed names, addresses and telephone numbers resulting from orders establishing, terminating, or orders transferring main service (N, D, R, X, C and T orders). The business subscriber data will include:

- a. Listed Name
- b. Listed Address
- c. Listed Telephone Number
- d. Billing Name (if different from the listed name)
- e. Billing Address (if different from the listed address)
- f. Primary Business Classification (as selected by the business subscriber if such business classification was obtained by the Company).<sup>2</sup>

Note 2: The primary business classification may not be retained by the Company beyond one week and therefore may not be available after that week.

be provided optionally, at the customer's request, as specified in A38.2.3 following. These reports will include changes in main listed names, addresses and telephone numbers resulting from orders establishing, terminating, or orders transferring main service (N, D, R, X, C and T orders). The subscriber data will include:

- a. Listed Name
- b. Listed Address
- c. Listed Telephone Number, and for business listings will also include:
- d. Billing Name (if different from the listed name)
- e. Billing Address (if different from the listed address)
- f. Primary Business Classification (as selected by the business subscriber if such business classification was obtained by the Company)<sup>2</sup>

[ALTERNATIVE A: Delete note 2 in its entirety.]

[ALTERNATIVE B: Amend note 2 as follows:]

Note 2: the primary business classification may not be retained by the Company beyond one week and therefore may not be available after that week unless a customer under this service requests that the Company retain this information for specified central offices.

BellSouth has stated that it does not oppose making this change. In Exhibit A, FIDP has proposed language that would modify the Weekly Business Report to include residential listings. In the

Louisiana agreement, BellSouth agreed to eliminate the footnote that stated that the primary business classification may not be retained beyond one week. We, therefore, direct BellSouth to make these modifications.

e. CURRENT

**A38.2.1.E:** Directory Publishers Database Service will not make available data in connection with non-published or non-listed subscriber service or subscriber address if so requested by the subscriber. Customer agrees to remove from its records and not publish in its directory any listing relating to subscriber service which it has been advised or has reason to know is or has become non-published or non-listed in the records of the Company.

FIDP PROPOSED

Directory Publishers Database Service will not make available data in connection with non-published or non-listed subscriber service or subscriber address if so requested by the subscriber. Customer must take reasonable steps to remove from its records and not publish in its directory or directory service any listing relating to subscriber service which it has been advised in writing by the Company is or has become non-published or non-listed in the records of the Company.

In the Louisiana agreement, both parties agreed to the following language:

DPDS will not make available data in connection with non-published or non-listed subscriber service or subscriber address if so requested by the subscriber. The customer must take reasonable steps to remove from its records and not publish in its directory or directory service any listings relating to subscriber service upon reasonable notice given by the Company and confirmed in writing that the listing is or has become non-published or non-listed in the records of the Company.

BellSouth and FIDP have considered similar language in this proceeding, but could not reach any agreement. We find that the language adopted in Louisiana should be adopted here.

f. CURRENT

**A38.2.1.F:** Customer understands and acknowledges

FIDP PROPOSED

[This provision should be deleted in its entirety.]

that the data will require editorial review and revision according to the standards and guidelines of the customer in publishing its directory.

In the Louisiana agreement, both parties agreed to the following language:

The Company will take reasonable steps to provide current and accurate information when listings are ordered under this tariff. Customer understands and acknowledges, however, that the data will require editorial review and revision. When the customer suspects errors or omissions in the listing information received, the customer agrees to contact the Company and supply it with copies of the suspected errors or omissions. The customer may change the listing provided to reflect the corrected listing information in the directory it publishes.

The Company has no obligation to update the information after it has been transmitted to customer, except as provided in any tariffed update service.

As with the preceding provision, the parties have discussed similar language in this proceeding, but could not reach any agreement. We believe that BellSouth should adopt the language from the Louisiana agreement in its Florida DPDS tariff.

g.

CURRENT

**A38.2.1.G:** Additions, changes and discontinuance of central office codes arising from Company operations may occur. It is the intention of the Company to give notice of such additions, and discontinuances of central office codes to the customers upon any request for Directory Publishers Database Service. In anticipation of any such changes, the customer shall advise the Company of its publishing schedules and request Directory Publishers Database Service sufficiently

FIDP PROPOSED

Additions, changes and discontinuance of central office codes arising from Company operations may occur. [ ] The Company will give timely notice of such additions, and discontinuances of central office codes to customers subscribing to DPDS or who have subscribed to DPDS within the preceding 12 (twelve) months, and to any other customer upon any request for Directory Publishers Database Service. In anticipation of any such changes, the customer shall

in advance to plan for such changes.

advise the Company of its publishing schedules and request Directory Publishers Database Service sufficiently in advance to plan for such changes. The Company will keep information concerning the customer's publishing schedules and orders for service confidential and will not disclose such information to third parties or to any of the Company's affiliates.

In the Louisiana agreement, both parties agreed to the following language:

Upon any requests for DPDS, the Company shall provide the customer with or will notify the customer of a reasonable procedure for obtaining such additions and discontinuances of central office codes. The Company is not required to provide notice of such additions and discontinuance of central office codes to the customer as long as there is a reasonable method by which the customer can obtain that information.

Again, the parties have discussed similar language in this proceeding but could not reach any agreement. We find that BellSouth should adopt the language agreed to in Louisiana.

h. CURRENT

FIDP PROPOSED

**A38.2.1.H:** License fees for DPDS are as set forth in A38.2.3 following.

Rates for DPDS are as set forth in A38.2.3 following.

**A38.2.3A:** The following license fees apply for Directory Publishers Database Service (DPDS):

The following rates will be charged for Directory Publishers Database Service (DPDS):

At issue here is the term "license fee." In Louisiana, BellSouth agreed to replace "license fee" with "rates for use of the listings." FIDP agreed to that language in Louisiana, but not in this case. We agree with BellSouth that the service offers the

use of the listing and not the listing itself. We do not believe that the term "license fee" suggests other, unstated, rights or restrictions. We do believe that BellSouth retains certain responsibilities with respect to the data, which are clearly stated in the tariff. BellSouth is, accordingly, directed to amend its Florida DPDS tariff to adopt the Louisiana language.

2. A38.2.2 Regulations

a. CURRENT

FIDP PROPOSED

**A38.2.2.A:** All right, title and interest in and to DPDS, including all intellectual property rights pertaining thereto, will remain with the Company. The Company licenses the use of DPDS to the customer. The title to DPDS shall remain solely with the Company whether or not it is in the possession of a customer. The listings in DPDS may be appended (added to) but may not be changed. Customers must use verbatim the name, address and telephone number listings provided when publishing a directory.

[This provision should be deleted in its entirety.]

This issue involves whether BellSouth has intellectual property rights over the listing information. The parties were unable to agree on appropriate language. In Louisiana, however, they agreed on the following:

Company authorizes the use of DPDS pursuant to the terms of this Tariff. By virtue of such authorization, the Company does not transfer right, title or interest (including intellectual property rights), if any, which it may have in and to DPDS. This Tariff does not create or negate any rights, restrictions, or prohibitions which exist pursuant to federal copyright or state and federal trademark law. The rights and obligations of the parties under those laws shall be determined in the appropriate agency or forum.

We find that BellSouth should adopt the language from the Louisiana agreement in its Florida DPDS tariff.

b. CURRENT

**A38.2.2.B:** The Company grants to the customer the right to use the Directory Publishers Database Service provided by the Company hereunder solely for the compilation, production, publication and distribution of one edition of its directory in printed booklet form as an alphabetical and/or classified telephone directory for general telephone number service and for the sales or solicitation of advertising to be contained therein.

FIDP PROPOSED

A customer using DPDS to publish a printed directory must purchase a Central Office Listing File for each edition of the directory unless the customer subscribes to Weekly Activity Report service and uses that service to continuously maintain its own subscriber listing database.

This provision restricts the use of DPDS data to the publication of a single printed directory. FIDP's proposed language presumes that electronic directories are permitted. It would also set the conditions under which FIDP believes a central office listing file should be purchased. FIDP does not want the tariff to require the purchase of a central office listing file if the customer subscribes to the Weekly Activity Report. A central office listing file is the basic subscriber data to which the DPDS customer subscribes.

As for the electronic directories issue, BellSouth argues that DPDS is designed only for printed directories. It argues that its Directory Assistance Database Service tariff provides the listing information for use in electronic directories. As stated in our analysis of the proposed changes in tariff section A38.2.1A above, we do not believe that the DPDS tariff should restrict directory publishers to printed, as opposed to electronic, directories. Therefore, BellSouth should amend its DPDS tariff to remove the restriction against using DPDS to produce electronic directories.

With respect to FIDP's concerns regarding how often and under what conditions the central office listing file must be purchased, the point here is that FIDP wants a service that provides updated listing information on a regular basis. They do not wish to pay for the entire database each year. In our discussion of the

appropriate modifications to section A38.2.1A of the DPDS tariff, we have already directed BellSouth to offer such an update service. Accordingly, we find that FIDP's proposed language is unnecessary.

c. CURRENT

**A38.2.2.C:** When ordering an initial Central Office File, any customer who publishes a directory must either: 1) publish a directory within 90 days, or 2) Order a subsequent Central Office File. Customer must publish its directory within 15 months of receipt of the initial DPDS Central Office Listing File. The Directory shall be initially published within such time frames in order to assume reasonably current number services data to users of the directory and thus avoid unnecessary use of the Company network, facilities or operations.

FIDP PROPOSED

When ordering an initial Central Office File, any customer who publishes a printed directory must either: 1) publish a directory within 90 days, 2) order a subsequent Central Office File, [ ] or 3) subscribe to Weekly Activity Report Service and use said service to maintain a subscriber listing database.

In the Louisiana agreement, both parties agreed to the following language:

The Company will amend the tariff to provide that the Publisher must, within 180 days of ordering an initial base file, (1) publish a directory, (2) order a subsequent base file, or (3) if available, subscribe to an update service.

We find that the Louisiana language is appropriate and direct BellSouth to amend its DPDS tariff accordingly. As already discussed, BellSouth shall also make an update service available.

d. CURRENT

**A38.2.2D:** Customer shall furnish without charge to the Company, within one month of directory publication, a copy of its published directory.

FIDP PROPOSED

[This provision should be deleted in its entirety.]

FIDP argues that BellSouth does not need to "police the marketplace," that BellSouth's general limitations of liability are sufficient, and that BellSouth is not held to any standard of accountability. We disagree with FIDP on this point. If any DPDS customer published a directory containing non-published, for example, BellSouth could conceivably be held liable.

Based upon the foregoing, we find that BellSouth should amend this section of its tariff to require only that a copy of the white pages from the published directory be provided to BellSouth. BellSouth acknowledges that it only requires a copy of the white pages, in order to verify that they are in compliance with the tariff. If the customer publishes electronic or specialty directories, then a copy of the white pages from those directories should also be provided within a month of being made available.

e. CURRENT

**A38.2.2.G:** Except for the permitted uses, the customer shall not disclose DPDS to others and shall use due care in providing for the security and confidentiality of DPDS. Failure to comply with the provisions of this Tariff shall result in termination of the service and customer shall immediately return to the Company all copies of DPDS in its possession and shall make no further use of DPDS data. The Company may refuse to furnish the service when it has reasonable grounds to believe that such service shall be used in violation of this Tariff.

FIDP PROPOSED

Except for the permitted uses, the customer shall not disclose DPDS to other. [] In the event that a customer fails to comply with this or any other provision of this tariff, the Company's remedy shall be to seek appropriate relief in a state or federal court having jurisdiction.

As for this section, FIDP objects to BellSouth's ability to terminate service to any customer who violates the confidentiality of the DPDS data beyond that which is authorized. BellSouth opposes modifying the tariff in that manner; it does not wish to have to remedy the situation in court. In Louisiana, the parties were able to agree on the provisions of this section. We find that BellSouth should modify this section of its DPDS tariff as follows:

Except for the permitted uses, the customer shall not disclose DPDS to others and shall use due care in providing for the security and confidentiality of DPDS. The Company may suspend, terminate, or refuse to furnish service if it has reasonable grounds to believe that the customer has failed to comply with any material provision of this Tariff, including failure to pay amounts due. If there is a "bona fide dispute" over whether the customer has failed or will fail to comply, the Company will follow its internal procedures to investigate and resolve the dispute.

If the Company refuses to furnish service, the Company shall give the customer notice, by certified mail, of the Company's grounds to believe that the customer will fail to comply, and of the intent to refuse service. Prior to any suspension or termination of service, the Company shall give the customer notice by certified mail of the customer's failure to comply and of the intent to suspend or terminate service. Following ten days from receipt of the notice, the Company can suspend or terminate service.

The customer shall have the right to bring the issue of the suspension of, termination of, or refusal to furnish service before the Florida Public Service Commission and the Florida Public Service Commission shall have final authority over the suspension, termination, or refusal to furnish service. If service is suspended or terminated, the customer agrees to return immediately all copies of DPDS in its possession and to make no further use of DPDS data.

f.

CURRENT

**A38.2.2.H:** Neither the customer nor its employees, agents or representatives shall represent in any way to any person or make any advertising claim that its Directory is sponsored or approved by the Company or that the Company or any of its affiliates are in any way connected with the customer or that the Company or any of its affiliates have any responsibility for the

FIDP PROPOSED

Neither the customer nor its employees, agents, or representatives shall state or represent || to any person or make any advertising claim that its directory is sponsored or approved by the Company. ||

compilation, production,  
publication or distribution of  
the customer's directory.

[This provision should be  
deleted in its entirety.]

**A38.2.2.I:** Customer shall not  
solicit advertising for, nor  
shall it publish its directory  
in any manner or form as may  
tend to cause or create  
confusion or identification  
with directories published by  
or on behalf of the Company.

In these sections, FIDP wishes to modify the language that  
requires customers not to represent themselves as affiliated with  
or acting with the approval of BellSouth. BellSouth states that  
this restriction is important to protect its business interests.  
We find that BellSouth should amend its DPDS tariff to include the  
language from the Louisiana agreement:

A38.2.2 H: Unless otherwise agreed to in writing,  
neither the customer nor its employees, agents, or  
representatives shall state or represent or use any  
methods of advertisement, solicitation, order form,  
billing invoice, directory, stationery, promotional  
material or any artifice or device which indicates that  
its directory is sponsored or approved by the Company or  
its affiliates. In addition, customer shall clearly  
display its name in print sufficiently large that a  
reasonable observer could easily determine the identity  
of the customer on each of the above.

A38.2.2.I: The customer shall undertake reasonable steps  
in advertising and publishing the directory to  
distinguish the identity of its directory from  
directories published by or on behalf of the Company.

g. CURRENT

FIDP PROPOSED

**A38.2.2.J:** The customer, its  
employees, representatives or  
agents shall not use any  
methods of advertisement,  
solicitation, order form,  
billing invoice, directory  
covers, stationery, promotional  
material or any artifice or

[This provision should be  
deleted in its entirety.]

device which would tend to create the impression or imply that the customer was or is associated with or sponsored by the Company or any of its affiliates. In addition, customer shall prominently display its name on each of the above.

BellSouth has stated that it is willing to modify this provision to read as follows:

A customer shall prominently display its name in any telephone directory published by it and in advertising, sales and promotional material and other publicity related to any such directory.

FIDP argues that this provision provides "vague and ambiguous standards," and that inclusion in the tariff is unnecessary and inappropriate. We believe that the language offered by BellSouth is clear, specific, and appropriate. Accordingly, BellSouth should amend its tariff to include the language depicted above.

h.

CURRENT

**A38.2.2.M:** The customer releases the Company from any liabilities for damages due to error or omissions in the Directory Publishers Database Service furnished or to be furnished by the Company or due to failure to promptly deliver or make available such Directory Publishers Database Service to the customer.

**A38.2.2.N:** The customer shall indemnify, protect, save harmless and defend the Company

FIDP PROPOSED

[ALTERNATIVE A: Incorporate by reference the general limitation of liability provisions of the telephone company's tariff.]

[ALTERNATIVE B: The Company's liability to the customer for errors or omissions in the Directory Publishers Database service shall be limited to a refund of amounts paid therefore unless such errors or omissions are the result of intentional wrongdoing or gross negligence on the part of the company or its agents.]

[This provision should be deleted in its entirety.]

from and against any and all loss, liability, damages and expense arising out of any demand, claim, suit or judgment for damages that may arise out of the Company's supplying of Directory Publishers Database Service or use of such information, irrespective of any fault, failure, or negligence on the part of the Company.

These sections address the extent of BellSouth's liability for damages arising from errors or omissions from the database or from failure to deliver the database. The parties agreed to a more specific description of the limits of liabilities in the Louisiana agreement, and we find that that language, as depicted below, should be adopted in the Florida tariff:

**A38.2.2.M:** The Customer accepts the listing information as received from the Company's subscriber on an "as is" basis, with all the faults, errors, and omission, if any, that exist when the Company receives the information from the Company's subscriber, and the Company does not warrant the accuracy of the information as received from its subscriber and furnished to the customer. The Company assumes no responsibility or liability for any errors or omissions in the information as received by the Company from its subscriber and furnished to the customer.

The Company assumes no liability for errors and omissions of any kind contained in any paid advertisement included in publisher's directory. Customer agrees that all listing information derived from DPDS and contained in any such paid advertisement, including names, addresses and telephone numbers shall be obtained from or verified by the advertiser whose advertisement appears in publisher's directory.

The Company's liability to the customer shall be limited to a pro rata refund or credit of amounts paid for listings affected thereby. The subscriber's recovery for any and all damages resulting from errors or omissions in the listing information furnished by the Company to the customer for use in directories shall be limited to the amount of actual impairment of the subscriber's service

and in no event shall exceed one-half of the amount of the charge to the subscriber for Local Exchange Service during the period covered by the directory, or \$500.00, whichever is less.

The Company's liability for intentional or gross fault is not hereby limited.

Any claim or demand by the Customer based on alleged errors or omissions in the information furnished must be brought to the attention of the Company within sixty days of the time the information is furnished to the customer.

**A.38.2.2.N:** Customer shall indemnify, hold harmless, and defend the Company from and against any cost, damage, expense (including but not limited to reasonable attorneys fees and expenses) or liability arising out of any demand, claim, suit, or judgment for damages however caused, which may arise out of the customer's use of the listings provided under this Tariff, including but not limited to claims arising out of errors or omissions in any paid advertisements and claims arising out of publication or nonpublication of listing information that changes after the listing is provided to customer. The customer shall not be responsible for any cost, damage, expense or liability arising out of any fault or negligence of the Company.

C. Should all Directory Publishers, Including BAPCO, Obtain Listing Information Through the Amended DPDS Tariff?

BellSouth is currently under contract with BAPCO to provide subscriber listing data, directory delivery information, and billing and collection service to BAPCO. BAPCO in turn publishes and delivers white and yellow page directories for BellSouth. As compensation for the services BellSouth and BAPCO provide each other, BAPCO receives 45.75 percent of advertising revenues and BellSouth-Florida receives 54.25 percent. This arrangement was in effect on February 11, 1994, when we issued Order No. PSC-94-0172-FOF-TL, by which we approved a stipulation between BellSouth and the Office of Public Counsel in Docket No. 920260-TL. That Order also required BellSouth to continue to report revenues and expenses for the purpose of calculating sharing amounts, as required by Order No. 20162, issued October 13, 1988, in Docket No. 880069-TL.

The most equitable arrangement would be to require all directory publishers, including BAPCO, to purchase directory

listing information out of the DPDS tariff. This would ensure that all competitors obtain like services under the same terms and conditions, and that BellSouth does not discriminate in favor of its affiliate. However, if the BAPCO contract is cancelled in favor of the currently tariffed rates, BAPCO would pay significantly lower rates, and very different levels of revenues and expenses could result compared to what is currently reported for sharing purposes.

Accordingly, for reporting purposes and for the sharing calculation, BellSouth should continue to calculate revenues and expenses related to directory operations in the manner affirmed by Order No. PSC-94-0172-FOF-TL. For purposes of this proceeding, we find that the tariffed rates should be imputed to BAPCO, and deducted from the publisher's fee paid to BellSouth. This will leave the terms of the BAPCO contract unaffected for the duration of the stipulation approved in Order No. PSC-94-0172-FOF-TL.

D. Should Revenues Generated Under DPDS Tariff be Held Subject to Refund?

As discussed in the case background, in Order No. PSC-94-0641-FOF-TL, by which we denied BellSouth's motion to dismiss, we noted that BellSouth was not required to give prior notification to FIDP of its intention to file the tariff. We also noted that the DPDS tariff was approved in Order No. PSC-93-0485-FOF-TL. Therefore, since BellSouth was offering service under a lawfully approved tariff, for which the protest period has run, it should not be required to hold the revenues subject to refund at this point.

It is, therefore,

ORDERED by the Florida Public Service Commission that the Florida Independent Directory Publishers' petition to require amendments to BellSouth Telecommunications, Inc.'s Directory Publishers Database Service is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. shall file appropriate tariff revisions, as set forth in the body of this Order, including the establishment of an update service, within sixty (60) days of the date this Order becomes final. It is further

ORDERED that, unless a person whose interests are substantially affected by the action proposed herein files a petition in the form and by the date specified in the Notice of

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Further Proceedings or Judicial Review, this Order shall become final and this docket shall be closed on the following date.

By ORDER of the Florida Public Service Commission, this 29th day of March, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

RJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 19, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.