

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Dex One	)	Application No. C-4529/DR-0005
Corporation seeking a	)	
declaratory ruling of Nebraska	)	
Administrative Code Title 291,	)	
Chapter 5, Section 002.22A is	)	ORDER
satisfied by delivery of a	)	
directory only to access line	)	
customers who affirmatively	)	
request one.	)	Entered: February 26, 2013

APPEARANCES:

**For Dex One Corporation:**

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**For CenturyLink:**

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**For the Commission:**

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BY THE COMMISSION:

*Background*

On October 9, 2012, Dex One Corporation (Dex) filed a Petition seeking a Declaratory Ruling that Neb. Admin. Code, Title 291, Chapter 5, Section 002.22A is satisfied by delivery of a directory only to access line customers who affirmatively request one. Notice of this Petition appeared in the Daily Record, Omaha, Nebraska on October 12, 2012. A Petition of Formal Intervention was filed by United Telephone Company of the West d/b/a CenturyLink (CenturyLink) on November 12, 2012.

A prehearing conference was held on November 20, 2012. Katherine Vogel and Brooks Harlow appeared for Dex. Tre Hendricks appeared on behalf of CenturyLink. Consistent with the agreement of counsel, the Commission received comments in response to the Petition on December 10, 2012 and reply comments on December 21, 2012. An oral argument was held in Lincoln, Nebraska, on January 15, 2013. Appearances were entered as shown above.

*Jurisdiction*

The Commission has the authority to interpret the scope and meaning of its rules and regulations pursuant to Neb. Rev. Stat. Section 75-118.01. In this proceeding, the Commission was asked to determine whether Neb. Admin. Code, Title 291, Chapter 5, Section 002.22A is satisfied by the delivery of white page directories upon request of the access line customer.

Dex is not a common carrier or a telecommunications carrier under Nebraska law. Accordingly, it is not regulated by the Commission. Dex, under contract with CenturyLink, prints and distributes the alphabetical directory. Dex absorbs the cost of printing and distribution of the directories using revenues from its sale of advertising in the yellow pages. Dex claims to be an interested person under Neb. Rev. Stat. Section 75-118.01.

Dex and its predecessors and affiliates have been in the business of publishing telephone directories since 1886. Through a series of sales, larger incumbent local exchange carriers, including CenturyLink, have sold their directory publishing businesses to independent publishers such as Dex. Dex publishes directories for ILECs in 28 states, serving approximately 500 markets. Dex also publishes its print directories in digital format at [www.DexPages.com](http://www.DexPages.com). This site provides traditional layout of print white and yellow pages and keyword searches to access links to online business profiles and websites.

*Comments and Argument*

Dex estimates that less than 10 percent of households make any beneficial use of residential white pages. Dex states that more and more consumers are choosing to drop their landline at home in favor of other telecommunications platforms such as cell phones and Voice over Internet Protocol (VoIP). Cell phone numbers ordinarily do not appear in residential white page directories. In addition, Dex states consumers looking for residential telephone numbers can now find them easily on the Internet.

In a waiver request at the New York Public Service Commission, Verizon cited a Gallup study showing that only 11 percent of households used stand-alone residential white pages in 2008. According to Dex, AT&T which has switched to upon request delivery in several markets has experienced low request rates. Dex began to implement upon request delivery earlier this year. The directory publishing industry now has experience with upon request delivery in close to 100 markets across the United States.

According to Dex, some states do not have a regulation or statute requiring saturation delivery of white page telephone directories to all landline subscribers. In recent years, several states that did have requirements have repealed or relaxed those requirements including Oklahoma, Indiana, Michigan, Texas, Florida, Georgia and North Carolina. AT&T has pursued waiver requests in many states including Wisconsin, Missouri, Ohio, Kentucky, Florida, North Carolina, Kansas and Alabama. Verizon has pursued or is pursuing waiver requests in California, New York, Virginia and New Jersey. Minnesota recently granted a waiver to Frontier.

Dex maintains that it only has plans to stop saturation delivery in the Omaha area in the same footprint as the Omaha area directory is delivered currently for CenturyLink. The Omaha directory currently covers Omaha, Bellevue, Bennington, Boys Town, Carter Lake, Cedar Creek, Elkhorn, Florence, Gretna, La Platte, La Vista, Louisville, Manley, Millard, Murray, Mynard, Offutt AFB, Papillion, Plattsmouth, Ralston, Richfield, Springfield, Valley, Washington and Waterloo. Dex plans to notify consumers through door hangers and information on the front cover of the yellow page directories which will continue to be delivered to every household. Dex will provide a free paper copy of the white page directory listings to each consumer that requests it.

Dex argues that upon request delivery of residential white pages is fully consistent with both the letter and the spirit of section 002.22A. Dex states that the Commission's current directory rule does not require that alphabetical directories must be "provided" or "distributed" to any customer. Rather the Commission's rule provides that directories must be made available at no charge to each access line customer. Dex further states that Webster's defines "available" as "accessible" or "obtainable." If Dex One were to switch to upon request delivery in Omaha next year, the residential white pages would still be readily available, accessible and obtainable by all access line customers.

CenturyLink disagreed with Dex's interpretation of the Commission's rule. In the alternative, CenturyLink recommended that a rational first step is to allow white page directory customers to "opt-out" of receiving a paper copy of the directory. CenturyLink believes that access to white page directories would not be significantly impaired by an opt-out requirement where customers would notify the company when they do not wish to receive a directory. CenturyLink was concerned that customers may not understand or could miss the notifications sent out by Dex One and suddenly no longer receive the directory. CenturyLink stated that this could be troublesome for customers who rely on the white page directory or do not have access to the Internet.

CenturyLink was further concerned that the public safety and service listings would not be made available to consumers. In addition, CenturyLink stated that some customers, particularly those who lack Internet access, may be placed at a disadvantage. In the alternative, CenturyLink recommended an opt-out requirement where customers would notify the company when they do not wish to receive a directory.

Dex replied that Commission's Rule 002.22D would be unaffected by its delivery upon request proposal. Dex would continue saturation delivery of the emergency numbers, government listings and service pages which would be at the front of the yellow pages. In addition, Dex stated an opt-out mechanism would yield insignificant benefits as it would not achieve the environmental or cost savings compared to upon request delivery.

## O P I N I O N      A N D      F I N D I N G S

The relevant provision of the Commission's rules reads as follows:

002.22A One exchange alphabetical directory for each access line shall be made available, without charge, to all access line customers. The listings of customers in foreign exchanges to which extended area service is provided shall also be made available to all access line customers. Where such listings are not included in the exchange directory, the exchange carrier shall inform customers how such listings may be obtained. Inclusion of all listings for the calling area within a single volume is recommended.

Upon consideration of the Commission's current rule, we agree with Dex that unlike some states' requirements, the Commission's rules do not specifically require that white page directories be "delivered" to all access line consumers. Rather, Section 002.22A requires only that a directory be available to or readily obtainable by all access line customers.

While the Commission's "make available" language does not require saturation delivery to all access line subscribers, the Commission interprets this rule to mean that all access line subscribers must have the ability to readily obtain a paper copy of the white page directory free of charge. Consumers must also know how and where to obtain paper copies of the white page directories. Crucial to our analysis in determining whether consumers have readily obtainable access to paper copies of the white page directories, we must determine factually how readily obtainable the white page directories will be for consumers under Dex's proposal. For example, if consumers weren't properly informed of the change, if obtaining a paper copy of the white page directory listing was burdensome, or if the wait time was lengthy for consumers, the Commission would consider white page directory listings not readily obtainable.

Based on the information provided, Dex plans to directly notify each subscriber how white page directory listings may be obtained by placing a notice on the front cover of the yellow page directory that will continue to be delivered. Plastic bags used to distribute yellow page directories will also contain information related to obtaining a white page directory. White page directories can be obtained through calling a toll-free number or requesting one via the Dex website at [DexKnows.com/Green](http://DexKnows.com/Green). However, Dex has no plans to conduct a media

campaign, or to notify subscribers of this change through any other mode of communication.

Because various versions of yellow page listings are distributed throughout the year, and because some consumers may recycle or dispose of these yellow page listings without reading the cover page, the Commission is concerned that a number of subscribers will not know of the change or where to call to obtain a paper copy of the white page directory. In addition, the Commission has concerns that subscribers without Internet services may not have immediate access to white page listings when the need arises.<sup>1</sup> The Commission anticipates that CenturyLink and/or the Commission may receive inquiries from subscribers not receiving white page directory listings.

Consequently, in addition to providing direct marketing on the bag and/or the cover of the yellow page directories which will continue to be distributed to all consumers, the Commission finds in order to meet the spirit of the Commission's requirement, information on how to readily obtain copies of white page listings should be provided by Dex to community organizations and associations.

The Commission further believes that it may be important in some of the smaller communities that white page directories be available at a physical location so that consumers can simply pick up a copy. Accordingly, we suggest that Dex consider delivering a sufficient number of copies of the smaller community white page directories to a physical location designated in the community.

As noted above, the Commission makes these findings on the facts and arguments placed in this record. As such, the Commission's findings are limited in scope based on the information and area described in the petition. Any request to change from a saturation delivery outside the area designated in the petition or through other means, must be preceded by a request to the Commission for a determination of whether §002.22A is met.

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<sup>1</sup> Although 411 services are provided in the area, some subscribers may refrain from using this service because of the fees associated with this service. Dex provided information as a late-filed exhibit that 411 services are competitive in nature and free directory listing services are available. The Commission does not believe consumers are generally aware of the competitive free directory assistance options.

If the Commission later determines that white page directory listings are not made available as the rule requires, or if public interest so requires, the Commission may revisit this issue either through an investigation or a rulemaking.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the opinions and findings contained herein are hereby adopted.

IT IS FURTHER ORDERED that the Commission maintains jurisdiction over this matter to ensure that directory listings are made available to all access line customers as provided herein.

MADE AND ENTERED at Lincoln, Nebraska, this 26<sup>th</sup> day of February, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

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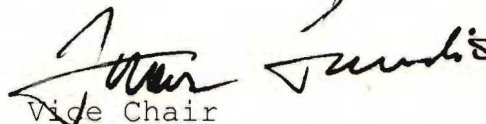
COMMISSIONERS CONCURRING:





//s//Rod Johnson

//s//Frank E. Landis

  
Vice Chair

ATTEST:

  
Executive Director