

[FR Doc. 05-16292 Filed 8-16-05; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket Nos. 96-98, 96-115, 99-273; FCC 05-93]

Requirements for Nondiscriminatory Access to Directory Assistance

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: This document denies BellSouth Corporation (BellSouth) and SBC Communications Inc.'s (SBC) joint request that the Federal Communications Commission (Commission) reconsider the Commission's conclusion that local exchange carriers (LECs) may not impose specific contractual restrictions on competing directory assistance (DA) providers' use of DA data obtained pursuant to section 251(b)(3) of the Communications Act of 1934, as amended. The Order on Reconsideration (Order) clarifies that competing DA providers may not, however, use data obtained pursuant to this section for purposes not permitted by the Act, the Commission's rules, or state regulations. The Order also denies petitioners' joint request that the Commission reconsider its conclusion that LECs are required to provide nondiscriminatory access to local DA data acquired from third parties. Finally, the Order denies SBC's petition for reconsideration of the Commission's determination that competing providers are entitled to nondiscriminatory access to operator services (OS), DA and features adjunct to these services.

DATES: Effective September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Rodney McDonald, Attorney, Competition Policy Division, Wireline Competition Bureau, (202) 418-7513, or William Dever, Deputy Chief, Competition Policy Division, Wireline Competition Bureau, (202) 418-1578.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (Order) in CC Docket Nos. 96-98, 96-115, 99-273, FCC 05-93, adopted April 29, 2005, and released May 3, 2005. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC,

20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Synopsis of the Order on Reconsideration (Order)

Background

1. Section 251(b)(3) of the Act imposes on LECs the "duty to permit all [competing] providers [of telephone exchange service and telephone toll service] to have nondiscriminatory access to * * * directory assistance." In the *Local Competition Second Report and Order* (61 FR 47284-01, September 6, 1996), the Commission concluded that section 251(b)(3) requires LECs to provide such competing providers with access to DA equal to that which the LECs provide to themselves, and that LECs treat all such competitors equally.

2. The Commission affirmed this conclusion in the subsequent *SLI/DA Order on Reconsideration and Notice* (64 FR 51910-01, September 27, 1999) and determined that nondiscriminatory access under section 251(b)(3) of the Act requires that all LECs provide competing providers of telephone exchange service and toll service with nondiscriminatory access to the LECs' directory assistance databases. The Commission further acknowledged that "requesting carriers would not have nondiscriminatory access to operator services and directory assistance under section 251(b)(3) unless those carriers have access to adjunct features such as rating tables and customer information databases." SBC filed a petition for clarification or reconsideration of some of the Commission's conclusions in the *SLI/DA Order on Reconsideration and Notice* (64 FR 51910-01, September 27, 1999).

3. In the *SLI/DA First Report and Order* (66 FR 10965-02, February 21, 2001), the Commission explained that section 251(b)(3) provides competing DA providers with the same rights and obligations regarding DA data as it does to the providing LECs and concluded that "section 251(b)(3)'s requirement of nondiscriminatory access to a LEC's DA database thus does not contemplate continuing veto power by the providing LEC over the uses to which DA information is put." SBC and BellSouth filed a joint petition for reconsideration and/or clarification of certain conclusions made by the Commission in

the *SLI/DA First Report and Order* (66 FR 10965-02, February 21, 2001).

Discussion

4. In this Order, we address a joint petition for reconsideration filed by SBC and BellSouth, and a separate petition for reconsideration filed by SBC. We further clarify conclusions made in the *SLI/DA First Report and Order* (66 FR 10965-02, February 21, 2001) and *SLI/DA Order on Reconsideration and Notice* (64 FR 51910-01, September 27, 1999). SBC/BellSouth request that the Commission reconsider its decision and restrict the purposes for which competing DA providers may use DA information, or alternatively establish that LECs may contractually impose their own restrictions. In particular, SBC/BellSouth argue that restrictions should include limits on resale and a prohibition on use for purposes other than DA and DA-like services, such as sales solicitation and telemarketing.

5. *Contractual Restrictions on the Use of DA Information.* We deny SBC/BellSouth's petition for reconsideration of our determination regarding the scope of competing DA providers' access to DA databases. As we have previously noted, "[s]ection 251(b)(3) does not, by its terms, limit the use of directory assistance data solely to the provision of directory assistance." As we have previously concluded, "nondiscriminatory access" under section 251(b)(3) means that providing LECs must offer access equal to that which they provide themselves. We recognize that further restrictions on resale and other such use also might substantially increase the costs of providing competitive DA services, thereby reducing the benefits to consumers of competitive DA providers in the market.

6. We also agree with commenters that argue that the Commission should not provide LECs with the authority to impose their own restrictions on the purposes for which competing DA providers may use DA information. We find that the imposition of such contractual restrictions by the providing LEC is inconsistent with the nondiscriminatory access requirements of section 251(b)(3).

7. We clarify, however, that no language in the *SLI/DA First Report and Order* (66 FR 10965-02, February 21, 2001) was ever intended to grant competing DA providers greater latitude in their use of DA data than that permitted to providing LECs, or to permit competing DA providers to use that data in a manner inconsistent with Federal or state law or regulation. We again note that all qualified DA

providers, both providing LECs and competing DA providers, are subject to state limitations regarding use of accessed directory information (e.g., by prohibiting the sale of customer information to telemarketers), as long as those state regulations are consistent with the nondiscrimination requirements of section 251(b)(3) of the Act.

8. We also note that section 51.217(c)(3) of the Commission's rules already balances the Commission's interests in ensuring nondiscriminatory access to DA, and in protecting customer privacy. The section indicates that even though a LEC shall not provide access to the unlisted number of its customers, it must "ensure that access is permitted to the same directory information, including customer name and address, that is available to its own directory assistance customers." We clarify, however, that although competing DA providers may be entitled to nondiscriminatory access to DA information, all competing DA providers must adhere to the disclosed privacy requests of LEC customers for all DA information obtained pursuant to section 251(b)(3). This means that, to the extent competing DA providers have received notice of a LEC customer's privacy requests, they must comply with such requests, and may not use or disclose any DA information that a LEC's customer has requested that the LEC not use or make available.

9. We grant SBC/BellSouth's request insofar as they ask the Commission to agree that there is no statutory basis for allowing DA providers to use DA listings obtained pursuant to section 251(b)(3) of the Act for directory publishing. SBC/BellSouth submit that permitting such use would allow competing DA providers to avoid the statutory distinctions between directory assistance and directory publishing indicated by the separate treatment of these services under section 251(b)(3) and section 222(e) of the Act. We agree, and note that in the *SLI/DA First Report and Order* (66 FR 10965-02, February 21, 2001), the Commission found that although the underlying databases for the two services are similar, they are not identical, and any seeming convergence between DA and directory publishing is not strong enough at this time to obviate the distinctions drawn by Congress in the Act.

10. *Nondiscriminatory Access to Local DA Listings Acquired from Third Parties.* We are not persuaded by SBC/BellSouth's assertion that in instances where more than one facilities-based LEC serves a local area, LECs should not be required to provide

nondiscriminatory access to local DA listings purchased from third parties. Rather, we agree that competitive DA providers are entitled to receive nondiscriminatory access to a LEC's entire local DA database pursuant to section 251(b)(3) of the Act. We reaffirm that even though the Commission has declined to require LECs to provide nondiscriminatory access to *nonlocal* DA data, it has consistently required that LECs provide nondiscriminatory access to all of their *local* DA database listings.

11. *Nondiscriminatory Access to Operator Services, Directory Assistance and Features Adjunct to These Services.* Finally, we deny SBC's separate petition for reconsideration of the Commission's determination regarding the scope of competing DA providers' access to operator services (OS), DA and the features adjunct to these services. SBC specifically requests that the Commission find that section 251(b)(3) does not require that LECs provide "unbundled" access to all of the facilities used to provide OS/DA services, including adjunct features and software.

12. We acknowledge that carriers are no longer required to provide OS/DA services as unbundled network elements (UNEs) under section 251(c)(3). We note, however, that in coming to the conclusion that UNE access would no longer be necessary under that section, the Commission specifically recognized the continued obligation to provide nondiscriminatory access to OS/DA under section 251(b)(3). We reaffirm the Commission's determination that requesting carriers would not have nondiscriminatory access to operator services and directory assistance under section 251(b)(3) unless those carriers have access to these services in their entirety, including access to any adjunct features such as rating tables and customer information databases necessary to allow competing providers full use of these services.

Ordering Clauses

13. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4, 201, 222, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201, 222, and 251, this Order on Reconsideration *is adopted*.

14. *It is further ordered* that Qwest Corporation's Request to Withdraw its Pending Petition for Reconsideration *is granted*.

15. *It is further ordered* that the above mentioned Petition for Clarification or, in the Alternative, Reconsideration filed by SBC/BellSouth *is granted in part and*

denied in part, to the extent discussed herein.

16. *It is further ordered* that SBC Communications Inc.'s Request to Withdraw Issue in Its Pending Petition for Reconsideration *is granted*.

17. *It is further ordered* that the Petition for Clarification or, in the Alternative, Reconsideration filed by SBC *is denied*, to the extent discussed herein.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-16334 Filed 8-16-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-2199; MB Docket No. 05-81; RM-11102]

Radio Broadcasting Services; Altheimer, AR and Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Charles Crawford, Channel 251C3 is allotted at Altheimer, Arkansas, as the community's first local aural transmission service. Station KURB(FM), Channel 253C, Little Rock, Arkansas is reclassified as 253C0 pursuant to the reclassification procedures adopted by the Commission. See Second Report and Order in MM Docket 98-93 (1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules) 65 FR 79773 (2000). An Order to Show Cause was issued to Citadel Broadcasting Company, licensee of Station KURB(FM) (RM-11102). Channel 251C3 is allotted at Altheimer, Arkansas, at Petitioner's requested site 20.4 kilometers (12.7 miles) southwest of the community at coordinates 34-09-00 NL and 91-56-00 WL.

DATES: Effective September 12, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05-81, adopted July 27, 2005, and released July 29, 2005. The full text of this Commission decision is available for