

GREGORY A. LUDVIGSEN
Attorney at Law
LUDVIGSEN'S LAW OFFICES
1360 University Ave. W., Suite 104 PMB 120
Saint Paul, MN 55104-4092, USA
Telephone: +1-651-641-8553
Fax: +1-612-454-5765
Cell +1-651-587-0089
Email: gregoryludvigsen@live.com

August 11, 2014

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

Via: E-file

Re: DOCKET NO. P-999/R-13-459: **REPLY COMMENTS OF DEX
MEDIA IN SUPPORT OF REVISED DRAFT PROPOSED
AMENDMENTS TO RULES CONCERNING WHITE PAGES
DIRECTORY PUBLICATION AND DISTRIBUTION**

Dear Dr. Haar:

Dex Media East, Inc. files its **REPLY COMMENTS OF DEX MEDIA IN SUPPORT
OF REVISED DRAFT PROPOSED AMENDMENTS TO RULES CONCERNING
WHITE PAGES DIRECTORY PUBLICATION AND DISTRIBUTION**
pursuant to the schedule established by the NOTICE OF COMMENT PERIOD ON
POSSIBLE RULE AMENDMENTS *Issued: June 27, 2014.*

Please direct questions regarding this filing to Gregory Ludvigsen at 651-587-0089.

Sincerely,



Gregory A. Ludvigsen

Enclosure

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Possible Amendments to
Rules Concerning White Pages
Directory Publication and Distribution

DOCKET NO. P-999/13-459

**REPLY COMMENTS OF DEX MEDIA IN SUPPORT OF REVISED DRAFT
PROPOSED AMENDMENTS TO RULES CONCERNING WHITE PAGES
DIRECTORY PUBLICATION AND DISTRIBUTION**

I. Introduction.

Dex Media East, Inc. (hereinafter “Dex Media”), continues to fully support the amendments in the revised draft proposed rule changes issued in this docket on June 10, 2014 (“Revised Draft”). This is not to say that the suggestions of the other parties would all be harmful in theory. But the Revised Draft is both a good rule and a vast improvement over the current rules. All commenters implicitly acknowledge this in supporting the need for rule changes. In contrast to the Revised Draft, the Commission’s current rules continue to mandate unnecessary costs and environmental waste in the distribution of residential white pages.¹

¹ See generally, Comments of Dex Media, December 6, 2013, Docket No. P-999/13-459 (“Prior Comments”).

The Commission should not let the elusive goal of perfection stand in the way of, or unduly delay, achievement of the “good.” The savings to be realized from the rule are much like a perishable commodity. Residential white pages represent approximately 79% of white pages overall and thus constitute the largest part of the volume of the white pages but with the smallest part of the usage. Each residential white pages directory that gets printed and then distributed to a household that does not want it and discards it without using it represents an environmental and cost savings opportunity that is lost.

While the process of printing and distributing directories is year-round and state-wide, in Minnesota the most significant savings opportunities only come twice a year, with the Minneapolis and St. Paul directories.² The next deadline for Dex Media to change the distribution method in the Twin Cities is this December, for the Minneapolis directory. If the rule amendments are not adopted by that time, the potential cost and environmental savings for that edition of the residential white pages—almost 270,000 books, 94 million pages, and 225,000 pounds—will be forever lost.

In contrast to the certain and substantial benefits that will result from a prompt adoption of the proposed rule changes, the benefits from the suggested changes of other commenters—*if any*—are speculative. And some of the suggested changes would be harmful to the public interest. Each of the suggestions is discussed below.

² The total Minneapolis and St. Paul potential savings are approximately 529,518 residential white pages books, 163 million pages and 156 tons annually. To be clear, Dex Media plans to extend the environmental benefits beyond the Twin Cities by implementing upon request delivery in other communities. Additional statewide savings are an approximate 1.5 million residential white pages books and 172 tons annually, in Dex Media’s service area alone.

II. Reply to Other Parties.

A. CenturyLink.

CenturyLink supports the proposed rules *as drafted* by Staff, as does Dex Media. Accordingly, no reply is needed.

B. Department of Commerce.

The Department of Commerce (“DOC”) does not oppose amendment of the current directory rules to permit distribution of printed residential white pages upon request. It is evident that the DOC has given careful consideration to the subject, which Dex Media appreciates. However, the DOC continues to suggest revisions which, while well-intentioned, are unnecessary and, in one case is detrimental to the public interest. The Commission should decline to adopt the DOC’s suggestions, as the Commission Staff implicitly did in issuing the Revised Draft.

First, the DOC suggests revision in terminology, for the sake of consistency. The DOC does not show that its proposed change is substantive or necessary to carry out the intent of the rule or proposed amendments.

Next, the DOC suggests changing “compiled” to “compiled and published” in 7810.2900, subp. 1. Again, this is not a substantive change and is not necessary to implement the intent of the rules. The Revised Draft continues to retain the requirement to provide “a complete directory per year.” It is already clear that merely compiling but not publishing directories would not satisfy the rules in the Revised Draft.

Third, the DOC continues to advocate for specific content regulation of both print and online directories. It renews its suggestion that the front cover of the printed directory should be required to contain information on how to access the provider's electronic directory. The market will effectively regulate the details of notice because website providers want to drive traffic to their sites, as that is what generates revenues for the sites. For example, Dex Media includes a call out similar to this on the cover of every directory in markets that have converted to upon request, even though no state has a regulation requiring it: *"Looking for the Residential White Pages? Request a free copy at DexKnows.com/Green or call 1-877-2-GET-DEX."*³

The DOC also wants a provision regulating a provider's online directories. Setting aside jurisdictional and other legal questions relating to proposed Commission regulation of the Internet, the DOC proposal would create a vague requirement for emergency calling information based on the layout of legacy printed directories. The DOC does not explain how an online provider would ensure compliance nor how the Commission could effectively enforce such a provision. There is no good reason for the Commission to start down the slippery slope of micro-managing the contents of directories in any way, as the DOC urges.

Fourth, the DOC again proposes unduly restrictive language on the information that a provider may obtain from consumers who make contact to express a directory preference and how such information can be used. The DOC's stated goal is to ensure that providers "[can]not . . . maintain a list of the directory preferences of their

³ See, e.g., <http://www.dexpages.com/app.php?RelId=6.1.8.3&BookCode=sea14htm> (cover of Seattle, Washington directory).

customers.” In its quest for privacy, the DOC seems to have lost sight of the essentials of providing good customer service. Just as phone companies need to maintain lists of their customers’ service preferences, directory providers cannot meet customers’ needs effectively without maintaining lists of those preferences. Dex Media has learned from years of experience that consumers do not want to have to renew their directory delivery requests every year. Accordingly, Dex Media retains a customer’s request and honors it for three years. The DOC’s proposal would prohibit Dex Media from retaining minimal customer identification information—name and address—to facilitate a service that Dex Media’s customers value highly as a great convenience and which is necessary for adherence to other subscriber preferences such as directory delivery opt-out.

Finally, the DOC suggests revised versions of 7811.0600 and 7812.0600, subps. 1F. The DOC’s alternative versions seem to be distinctions without differences. DOC’s comments do not elaborate on how its suggested alternatives differ substantively from the Revised Draft, which already gives customers the option to request an electronic format if the provider produces one.

C. Minnesota Telecom Alliance.

The MTA not only supports changes to the current directory publishing rules, it apparently would go so far as to effectively repeal the rules entirely. MTA provides a number of arguments in support of its recommendations. At a theoretical level, Dex Media agrees with MTA’s facts and policy arguments.⁴ And if the Commission were

⁴ Dex Media would not necessarily argue that the holding in *Dex Media v. Seattle*, 696 F.3d 952 (9th Cir., 2012), *reh’g denied*, ___ F.3d ___ (Jan. 3, 2013), applies to stand-alone white pages. MTA’s First Amendment arguments have merit for consolidated directories, such as those MTA’s members produce and distribute. However, Dex Media would prefer to focus on policy and public interest points, which support either amendment or repeal of the current Commission directory rules.

inclined to simply repeal the current directory rules and could do so before the end of December this year, Dex Media would support such an outcome.

As Dex Media noted in its December 6, 2013 comments (“Prior Comments”), over 30 states have never had directory rules or have repealed, modified, or waived their directory rules. In its Prior Comments, Dex Media identified and detailed numerous other states that have relaxed their regulatory requirements based on the massive changes in consumer demands, preferences, and usage. MTA notes the increasing prevalence of “cord cutters” or wireless-only households. Just last month, the CDC issued updated data through the end of 2013, showing a further increase—from 38% to 41%—in the number of households that no longer have a wired phone of any kind.⁵ For adults living in poverty, 56.2% rely solely on wireless.⁶ Couple the cord cutting data with the fact that up to 45% of households that still have wired telephone service have switched to a VoIP provider,⁷ and it is easy to see why the Commission’s current rules regarding publication and distribution of residential white pages are severely behind the times.

The MTA suggests specific revisions to the Revised Draft at the conclusion of its comments. Dex Media understands those proposed revisions are in the alternative to simply repealing the directory rules. To the extent the changes are intended to put more control over publication and distribution of directories with the LEC, Dex Media does not see a need to tweak the Revised Draft. Under the Revised Draft, the LEC would still

⁵ *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2013*, Centers for Disease Control and Prevention, National Center for Health Statistics (July 2014)(available at: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf>).

⁶ *Id.*

⁷ VoIP providers also typically do not provide residential listings to Dex Media. See Prior Comments at 6-7.

have the option to continue to rely on printed directories delivered to all households, rather than take advantage of the new provisions allowing electronic directories and upon-request delivery. Accordingly, the proposed amendments will not increase the regulatory burden on any LEC. While Dex Media does not oppose the requested changes *per se*, it is opposed to further delay in approving much needed changes to relax the current requirements.

As both MTA and Dex Media have noted, not only has the world changed, it continues to change, and rapidly. The Commission's current directory rules are long overdue for amendment, as proposed, or repeal. The Commission needs to act promptly to avoid falling even further behind the market and technology changes that continue to makes its directory rules increasingly irrelevant.

D. Citizens Telecommunications and Frontier Communications.

Frontier supports the proposed amendments "as described in the Notice." While no reply is necessary due to agreement, Dex Media wishes to note that Frontier has had a waiver since 2012 permitting it to deliver printed residential white pages only upon request. The relevance of this fact is two-fold. First, as Frontier notes in its comments, demand for printed residential white pages in Minnesota under its waiver has proven to be quite low, *less than 1%*, demonstrating the extent to which the current rule is unnecessary. Second, despite Frontier's obvious success with upon request under a waiver, over two years later other directory providers such as Dex Media must continue to waste resources needlessly under the current rules.

E. Minnesota Cable Communications Association.

The Minnesota Cable Communications Association (“MCCA”) joins all the other commenters in supporting the need for changes in the existing rules to reduce waste and reflect current technologies and consumer behavior. Yet despite acknowledging the massive changes in directory usage and alternatives, MCCA inconsistently argues that *additional* regulations, supposedly to protect competitive providers. Further, MCCA argues for definitional changes that it acknowledges are not necessary “to further any particular policy goals.” *See* MCCA Initial Comments at 2.

While Dex Media does not suggest that the Revised Draft’s proposed rules are perfect, it would discourage the Commission from spending more time in this docket to implement changes that admittedly are non-substantive or not necessary. The Commission Staff has been working on these rules for nearly a year and a half and has achieved a draft on which there is full consensus as to the overarching goals and substantial consensus as to the means to achieve the goals. The public interest should not be made to suffer from further delay in implementation in an effort to achieve one party’s vision of the ideal.

MCCA argues for “clarification” of the intent, minor changes to language, and for two new rules to protect competitive providers from hypothetical potential anticompetitive acts by ILECs. However, MCCA offers no evidence that competitive providers have been disadvantaged under the current directory rules, which have never contained the new provisions MCCA now seeks. Nor does MCCA attempt to explain

why, in a world where traditional residential white pages are becoming less relevant it is suddenly essential to layer on new regulations to solve a heretofore non-existent competitive problem.

Dex Media respectfully submits that MCCA's suggested new regulations are not necessary, given applicable federal law and the Commission's general powers to ensure that ILECs' practices are just and reasonable, especially with no evidence ILECs have heretofore used their control over directories to gain any unfair advantage. For example, pursuant to 47 U.S.C. § 251(b)(3), FCC regulations require that any LEC that provides directory listings to its customers and compiles directory listings: "shall share directory listings with competing providers...." 47 C.F.R. § 51.217(c)(3)(ii). *See also* 47 U.S.C. § 222. And LECs subject to 47 U.S.C. § 271 also have an explicit duty to provide: "White pages directory listings for customers of the other carrier's telephone exchange service."

Absent any record or evidence of past problems or abuses, the Commission should leave the details of access to listings and directories to interconnection negotiations between local service providers. Should LECs be unable to reach agreement in the future, they are free to seek Commission guidance through mediation or arbitration under 47 U.S.C. § 252.

In sum, the MCCA's recommendations are solutions in search of problems, at best. At worst, adoption of their suggested rule changes could upset the general consensus on the need to revise the rules regarding distribution of printed directories by creating new obligations for ILECs that have never been part of the state's rules.

CONCLUSION

For the foregoing reasons and the reasons set forth in Dex Media's comments filed July 31, 2014 and December 6, 2013, the Commission should publish the proposed rule amendments as set forth in the revised draft as soon as reasonably practicable.

Respectfully submitted, on behalf of the Dex Media East, Inc., this 11th day of August, 2014.



Brooks E. Harlow
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive
Suite 1200
McLean, VA 22102
Tel: (703) 584-8680
Fax (703) 584-8696
Counsel for Dex Media East, Inc.



Gregory A. Ludvigsen (MN #64890)
Ludvigsen Law Offices
1360 University Ave. W.
Suite 104 PMB 120
St. Paul, MN 55104-4092
Tel: (651) 641-8553
Fax: (612) 454-5765
Counsel for Dex Media East, Inc.