BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF
QWEST CORPORATION DBA
CENTURYLINK QC AND DEX MEDIA
INC FOR DECLARATORY RULING RE
DIRECTORY PUBLICATION

DOCKET NO. ______

Petition of Qwest Corporation dba CenturyLink QC and Dex Media, Inc.

November 13, 2015

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I. INTRODUCTION.

Qwest Corporation dba CenturyLink QC ("CenturyLink") and Dex Media, Inc. ("Dex Media")("Petitioners"), respectfully file this petition for a declaratory ruling to clarify that a Commission statute and regulations relating to telephone directories and directory listings do not require a paper printed format. Briefly, the grounds for this petition are:

- Both nationally and in South Dakota, the directories market has undergone
 revolutionary changes and is transitioning to digital and online from paper and print.
- 2. Due to the proliferation of alternative sources for telephone numbers and other directory information, consumers no longer need print for basic number listings.
- 3. South Dakota's directory regulations allow for digital or online directories and do not require paper or print.

Dex Media is the largest directory publisher in the state. In South Dakota, Dex Media acquired the publishing business of CenturyLink's predecessor, Qwest. Pursuant to publishing contracts between Dex Media and CenturyLink, Dex Media publishes the "official" directories for the CenturyLink telephone operating companies in South Dakota, in compliance with Commission regulations governing directories. CenturyLink does not pay Dex Media for publishing telephone directories or regulatory compliance. Rather, Dex Media bears the entire

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¹ In South Dakota, CenturyLink serves the two largest cities in the state, Sioux Falls and Rapid City, as well as many smaller communities and rural areas. Pursuant to its publishing agreements with CenturyLink, Dex Media publishes telephone directories for all the cities, communities, and rural areas that CenturyLink serves in the state.

cost, using revenues from the sale of yellow pages advertisements to businesses, which have declined substantially in recent years

II. REQUIREMENTS OF A PETITION FOR DECLARATORY RULING.

The Commission's rule provides that "any person ... may file with the commission a petition for declaratory ruling" on how the Commission's rules apply to them. S.D. Admin. R. § 20:10:01:34. Pursuant to that rule, the petition must contain:

- (1) The state statute or commission rule or order in question;
- (2) The facts and circumstances which give rise to the issue to be answered by the commission; and
- (3) The precise issue to be answered by the commission's declaratory ruling.

As the official directory publisher for CenturyLink, Dex Media must ensure that its directory practices as agent for CenturyLink in South Dakota comply with the Commission's regulations. Therefore, out of caution, Dex Media seeks clarification of certain rules to ensure that as it transitions to digital and online publication, the statutory and rule requirements pertaining to directories will still be met.

Each of the three petition requirements listed above are met herein below.

III. STATE STATUTE AND RULES IN QUESTION.

Dex Media respectfully seeks to clarify compliance with state statutes and regulations relating to directories, specifically S.D. Codified L. § 49-31-107, S.D. Admin. R. § 20:10:06:03, and S.D. Admin. R. § 20:10:32:10. Each of these sections addresses directories, but not one of them requires that directories be in a paper and print format or that a telecommunications company or its official publisher must deliver paper copies of printed directories to customers. The first two sections specify informational content that must be included in telephone

directories, without regard to how they are published. And Rule 20:10:32:10 merely requires that "access to a local directory" be made "available" to customers. Again, there is no requirement as to format of such directories.

IV. THE FACTS AND CIRCUMSTANCES WHICH GIVE RISE TO THE ISSUE TO BE ANSWERED.

The fundamental basis for this petition is that nothing in the South Dakota laws or this Commission's regulations says anything about the form that directories or their contents must take. As the publishing world—directories included—moves to digital and online formats, the laws and rules of this state clearly permit such advancement and modernization. Nevertheless, in addressing this petition, the Commission may benefit from some background and context regarding directories, both factual and legal.

A. Consumers Today Have Access to a Plethora of Options and Alternatives to Traditional Telephone Directories.

In South Dakota, Dex Media faces competition for print directories from Yellowbook and others. And consumers also have hundreds of options for digital searches and lookups. Some of the no-cost Internet options that can be used to search for people (residential listings) are: Bing, Google, Yahoo!, WhitePages.com, 411.com, Spokeo, InfoSpace, DexPages,² Realpageslive.com, and Yellowbook.com. Businesses can be searched by name or business classification for free at: Bing, Google, Yahoo!, DexKnows, Yellowbook.com, Realpageslive.com, Yellowpages.com,

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users.

² Dex Media publishes replicas of its traditional print directories (including residential white pages) on DexPages.com. Users of DexPages.com can view and "flip through" the online replicas of print directories as well as run searches by name or category and even download directories to their computers, tablets, and other devices. In addition, consumers can search for residential listings on DexKnows.com and Dex Mobile (available for download at DexKnows.com/Mobile). Likewise, AT&T provides online replicas of its print directories at www.realpageslive.com. All of these websites and applications are available for download and use at no charge to

and Yelp. All of the foregoing searches can be done on computers and most tablets and smartphones.

There are also hundreds of mobile "smartphone" applications ("apps") that perform various types of searches or directory lookup. Many of them use location information, to make the search results more relevant. For example, all of the following apps can be downloaded for free to iPhones and/or Android phones and then used to make free searches: Avantar White & Yellow Pages (avantar.com) for iPhone, iPad, and Android; Dexknows, and YP (yellowpages.com) for all smartphones. As with traditional yellow pages directories, these applications are advertiser-supported, so that consumers do not pay for searches or lookups.

There is a small percentage of households that may not have access to the Internet, likely about or under 10% now in South Dakota, and continuing to shrink.³ But even households without Internet access have alternative, competitive options to print directories, using their telephones. They can call traditional directory assistance for a small charge per listing. And they can also call one of the toll-free information services. The current market leader, with a reported 20 million calls per month in 2007, is 1-800-FREE-411.

(http://en.wikipedia.org/wiki/800-The-Info). Any home with a telephone can call toll-free and get a listing for free, after listening to a short advertisement.

Thus, today, there is not a single home or business in South Dakota that does not have access to a competitive and free means to look up telephone numbers and other information

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³ The most recent Census Bureau data shows that even almost three years ago over 87% of South Dakota households had a computer and over 76% used high-speed Internet access. Both of these figures are close to the national averages. U.S. Census Bureau, Computer and Internet Use in the United States: 2013, American Community Survey Reports at 10 (Nov 2014 (2013 data)) (http://www.census.gov/history/pdf/2013computeruse.pdf).

provided in traditional regulated print directories. And for all but a small percentage—10% or less—there are hundreds of free alternatives online and on mobile app stores.

B. <u>Consumer Response to Competitive Options for Telephone Service and</u> Directories.

Consumers today seldom even use telephone directories for basic listing information, such as the residential white pages. Conclusive evidence that basic name and number directories are no longer needed to use telephone networks comes from the experience of the cellular industry. From the very beginning and continuing to today, cellphone numbers have not been listed or published in any directory. If directories were still considered essential to use of telephone networks, then cellphones would not have been adopted, and landlines would not have been abandoned. But exactly the opposite has occurred. Cellphones now serve over 90% of the voice market, while switched access lines serve only about 30%.

More important than competing directories is the change in consumer behavior brought about by cellphones. Nearly every household has a cellphone. Most people today rely wholly or mostly on their cellphones for voice calls. Those same cellphones can store large volumes of phone numbers, serving as a substitute for printed residential white pages directories. Even the most basic voice-only cellphones have this capability, not just smartphones. Many people automatically pick up their cellphone even when a landline is nearby because the call can be so easily completed with a touch of an icon or the called party's picture, or simply speaking the name to be dialed. Also, with caller ID, cellphones and some landline phones, have large capacities to store called and calling numbers, leading consumers to just redial numbers in their phone's saved numbers and call history records.

Consumers have also responded to the loss of usefulness of traditional white pages—an unavoidable consequence of the massive shift of subscribers from regulated LEC service to largely unregulated VoIP and cellular services, which do not provide listings to white pages publishers. With perhaps a third of households using VoIP in South Dakota and 40% or so being cord cutters (wireless only), the odds of being able to find a number in the residential white pages is likely *substantially less than 50/50* today.

C. Response of the Telephone Directory Industry to Massive Market Changes.

In response to the powerful and undisputed technological changes and usage trends discussed above, the first regulatory change that directory publishers in many states sought was to relax or repeal printed white pages directory delivery requirements. States that used to require a printed residential white pages directory to every telephone subscriber annually ("saturation delivery") have modified or eliminated that requirement by rule change or waivers. Many states moved from saturation delivery to "upon request" delivery for white pages—also called "opt-in." Some states have allowed the substitution of electronic directories for print directories. By today, the majority of states that had formerly required saturation delivery of printed white pages have modified or eliminated their requirement.⁴

In response to changing technology and diminished use of white pages, the directory publishing industry moved aggressively to upon request delivery for residential white pages

delivery of white pages. Order No. R-31825, In re: Possible Amendment to Section 501 A (c) and (e) of the White Page Directory Distribution Requirement, (LA PSC, rel. June 20, 2012).

⁴ Including: Wisconsin (Docket No. 6720-GF-108), Missouri (Docket No. IE-2009-0357), Ohio (Docket No. 09-0042-TP-WVR), New Mexico (NMPRC Case No. 12-00237-UT), Washington (WUTC Dkt. UT-120451), Kentucky (Docket No. 2009-00480), Florida (Docket No. 090082-TL), North Carolina (Docket No. P-55, Sub 1767), Kansas (Docket No. 11-SWBT-270-MIS), Colorado (CPUC Docket No. 12M-817T), Alabama (Docket No. 15957), and most recently Minnesota (MPUC Docket No. P-999/R-13-459). Likewise, Verizon has pursued waiver requests in several states, including California (Resolution T-17302), New York (Case No. 10-C-0215), Virginia (Case No. PUC 2010-00046), and New Jersey (Docket No. TO10040255). Louisiana modified its rule to permit upon request

where there were no state regulations requiring saturation delivery or where waivers or rule changes were obtained. AT&T has moved to upon request delivery for residential white pages in over 60 markets in about 20 states.⁵ Dex Media also moved to upon request delivery for residential white pages for directories in many states where it was already permitted, or with regulatory relief in numerous markets in about 30 states beginning in 2012.⁶

What has been particularly remarkable about the discontinuance of a 100-year old practice of saturation delivery of residential white pages is how few people even seemed to notice. There was no noticeable backlash, complaint, or effort to restore saturation delivery in a single one of the hundreds of markets in dozens of states that made the change. Moreover, before 2010 the request rates in new upon request markets was as high as five percent. But today the request rate is substantially less than one percent in nearly all of Dex Media's markets and no more than two percent in any state.

As consumers have come to rely more on the Internet and less on print media for name and business searches, Dex Media has supported these evolving consumer needs by offering digital platforms such as DexKnows.com and Dex Mobile. Dex Media also publishes its print directories in a digital format at www.DexPages.com. This site provides those who prefer the traditional layout of printed white and yellow pages a way to access any of the Dex directories

⁵ Including: Wisconsin (Milwaukee, Madison, Green Bay, Racine, Kenosha, Waukesha), Ohio (Columbus, Cleveland, Dayton, Akron), Indiana (Indianapolis, Evansville), Missouri (Kansas City, St. Louis), Oklahoma (Tulsa, Oklahoma City), Michigan (Grand Rapids), Kentucky (Louisville), North Carolina (Charlotte, Raleigh, Greensboro, Winston-Salem), South Carolina (Columbia, Charleston, and Greenville), Florida (Miami, Orlando, Jacksonville, Pensacola, Gainesville, Daytona), Texas (Austin, Ft. Worth, San Antonio, Dallas, Houston), Georgia (Atlanta), Tennessee (Chattanooga, Memphis), and Alabama (Mobile). *See* AT&T's November 9, 2011 filing with the Alabama Public Service Commission (Docket No. 15957).

⁶ Including: Arizona, California, Colorado, Connecticut, the District of Columbia, Delaware, Florida, Idaho, Indiana, Massachusetts, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, and Washington.

from the convenience of their computer or smartphone, with the added benefit of keyword search, and live links to online business profiles and websites.

D. Legal Background Relating to Directories.

In 1996, Congress took the bold step of fully opening all telecommunications markets in the U.S. to competition. Public Law 104-104; 110 Stat. 143 ("1996 Act"). Section 253 of the 1996 Act preempted any state or local laws that had the effect of prohibiting competitive entry, but reserved to the states the ability "to impose ... requirements necessary to preserve and advance universal service, protect the public safety and welfare, [and] ensure the continued quality of telecommunications services...." 47 U.S.C. § 253(b). However, any such requirements may be imposed only "on a competitively neutral basis." *Id.* Additionally, the 1996 Act sought to promote competition in the publishing of directories, by requiring phone companies to provide "subscriber list information" to any directory publisher, "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions." 47 U.S.C. § 222(e); *see also, Directory Competition Order, supra,* at Note 15. This, in large part, is what led to the development of numerous competitors in the directory markets, both print and online.

Standing alone, the telephone directory business consists of compiling and publishing information. It is not a utility business. With minor exceptions, states do not regulate and have not regulated any other kind of publishers. Indeed, absent a compelling state interest, regulating publishing would raise serious First Amendment free speech issues. *See, e.g., Dex Media v. Seattle,* 696 F.3d 952 (9th Cir., 2012) (phone books recognized as protected free speech). Indeed, with the exception of ratemaking issues, yellow pages received little or no regulatory attention in most states, including South Dakota.

South Dakota statutes give the PUC broad, but flexible, jurisdiction to regulate public utilities, such as CenturyLink. *E.g.*, S.D. Codified L. § 49-31-3 ("The commission has general supervision and control of all telecommunications companies offering common carrier services within the state to the extent such business is not otherwise regulated by federal law or regulation."). Within this broad jurisdictional grant, the Commission is given great leeway as to the scope and specifics of regulation. In short, this Commission is free to allow a seamless transition to a digital and online world so as to best serve the public interest as industry and consumer behaviors change over time.

V. THE PRECISE ISSUE TO BE ANSWERED.

The Commission should issue an order clarifying and confirming that its statutes and regulations pertaining to directories and listings do not require printed directories. Compliance can be met by published digital or online directories.

VI. CONCLUSION.

The information world is going online. Directories cannot halt this trend. Fortunately, South Dakota's laws and rules allow both LEC and independent publishers alike to embrace it and thrive in it. Accordingly, this Petition should be granted.

Respectfully submitted this 13th day of November, 2015.

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