

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

R.H. Donnelley	)	
	)	Docket No. 07-0434
Petition for Variance of Section 735.180	)	
of the Illinois Administrative Code	)	

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**VERIFIED STATEMENT OF DEBORAH LEWIS-JOHNSON**

My name is Deborah Lewis-Johnson. I am employed by the Illinois Commerce Commission as a Consumer Counselor in the Consumer Services Division, and have been so employed for 28 years. Among my duties in the Consumer Services Division is to take and address complaints and concerns lodged by utility customers with the Consumer Services Division. Accordingly, I am generally familiar with the needs and concerns of Illinois telecommunications customers

The purpose of this Verified statement is to give Staff's assessment of R.H. Donnelley's (hereafter referred to as "RHD") Petition for Variance and request for Expedited Relief, which was filed on August 8, 2007, pursuant to 83 Ill. Adm. Code 735.50.

**SUMMARY OF THE PETITION AND TESTIMONY**

In its Petition, RHD states that it has purchased from the Illinois Bell Telephone Company (hereafter "AT&T Illinois") the rights to publish AT&T Illinois' Yellow Pages and White Pages directories in Illinois. Petition, ¶3. RHD therefore is contractually obliged to carry out all regulatory responsibilities that AT&T Illinois had with respect to

the publication of such directories. Id. By the Petition, RHD seeks a variance from 83 Ill. Adm. Code 735.180(a)(1) and (d).

In support of this request, RHD offers the Testimony of David Kelly, which it has marked for identification as RH Donnelly Exhibit 1.0. Mr. Kelly states that he is Director of Marketing for RHD, and describes the relationship between RHD and AT&T Illinois under which RHD has published, and continues to publish, the White Pages and Yellow Pages, as a license / agency agreement. RHD Ex. 1.0 at 1-2. Mr. Kelly states that RHD currently publishes and distributes several directories to telephone subscribers in the City of Chicago, including the Chicago Consumer Yellow Pages, Chicago Residential White Pages, and Chicago Neighborhood directories, the latter being a series of directories distributed to Chicagoans based upon which of 13 Chicago neighborhoods they reside. Id. at 2-3; RHD Ex. 1.1. Mr. Kelly states that the Chicago Residential White Pages covers the entire City of Chicago, while the Neighborhood directories contain both residential and commercial (i.e., Yellow Pages) listings for each Chicago neighborhood. Id.

Mr. Kelly states that, beginning in April 2008, RHD seeks to discontinue distributing the Chicago Residential White Pages except to those subscribers that specifically request it; instead, only the Yellow Pages and neighborhood directories will be distributed to all customers. RHD Ex. 1.0 at 4, 6. Mr. Kelly states that RHD is of the opinion that, if it is to cease general distribution of the Residential White Pages, it must first obtain a waiver of 83 Ill. Adm. Code 735.180(a)(1) and (d), which, in RHD's view, require it to distribute the Residential White Pages to each Chicago subscriber. Id. at 5.

Mr. Kelly states that RHD views the distribution of both the Chicago Residential White Pages and the neighborhood directories as duplicative. RHD Ex. 1.0 at 6. He further states that customers have changed the manner in which they search for residential telephone numbers, and fewer than half now use published directories to search for residential numbers, instead preferring online searches, stored directories (e.g., cell phone memories) and other sources. Id. at 6-7.

Mr. Kelly testifies that, to more accurately assess the need for the Chicago Residential White Pages, RHD retained the services of a consultant, the Praxi Group, to determine whether Chicago residential telephone subscribers would be adversely affected by discontinuance of widespread general circulation of the Chicago Residential White Pages. RHD Ex. 1.0 at 4-5. The Praxi Group, in turn, conducted a survey regarding the needs of customers, and determined that over three-quarters of respondents (77%) “fe[lt] their needs would be met more effectively or would be met just as effectively” as a result of discontinuance of distribution of the Residential White Pages, according to Mr. Kelly’s testimony. Id. at 5, 6, 7. According to Mr. Kelly, the survey further determined that many customers prefer the neighborhood directories. Id. at 6. Reducing the circulation of the Residential White Pages by some 1.1 million copies would, according to Mr. Kelly, reduce by some 2.6 million pounds the amount of waste paper that must be recycled or deposited in landfills each year. Id. at 7.

Mr. Kelly states that RHD will continue to make the Chicago Residential White Pages available to subscribers who specifically request it, either in paper form or as a CD-ROM.<sup>1</sup> RHD Ex. 1.0 at 8-9. Mr. Kelly further testifies that RHD will use inserts in the

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<sup>1</sup> Mr. Kelly states that customers may request up to five additional directories without charge. RHD Ex. 1.0 at 9.

Yellow Pages and a notice in the neighborhood directory to notify customers that they may request the Residential White Pages. Id. at 8-9. Copies of such notices are attached to Mr. Kelly's testimony. RHD Ex. 1.2, 1.3.

Mr. Kelly states that RHD will continue to publish information required by Commission rules regarding publication of company name, telephone numbers for various emergency services, telephone numbers and processes for lodging complaints regarding telephone service, and such other information required by 83 Ill. Adm. Code 735.180(e-g). RHD Ex. 1.0 at 7-8.

Mr. Kelly summarizes RHD's position as follows: (1) customers will not be harmed by cessation of general distribution of the Residential White Pages; (2) there is no statutory mandate prohibiting RHD from ceasing general distribution of the Chicago Residential White Pages; and (3) continuing general distribution of the Chicago Residential White Pages is unduly burdensome to RHD. RHD Ex. 1.0 at 10-11.

## **RULES OF WHICH WAIVER OR VARIANCE IS SOUGHT**

RHD seeks a waiver or variance from Section 735.180(a)(1), which provides that:

Primary telephone directories of all exchanges shall be revised, printed and distributed to customers at least once each year. Each directory shall list the name, address and telephone number of all customers, except public telephones. At the customer's request, that customer's listing or a portion of that listing, may be omitted. A company may charge for listing additional names for each main station on separate directory lines.

83 Ill. Adm. Code 735.180(a)(1)

RHD also seeks a waiver or variance from Section 735.180(d), which provides that:

Upon issuance, one copy of each directory shall be distributed to each customer served by that directory and two copies of each directory shall be furnished to the Commission.

83 Ill. Adm. Code 735.180(d)

Inasmuch as the entire City of Chicago has been designated a single exchange, Staff interprets these rules, read together, to require distribution of a directory like the Chicago Residential White Pages (e.g., a directory listing each customer in the exchange) to all customers in Chicago.

### **STANDARDS FOR EVALUATION THE PETITION**

Although I am not a lawyer, I am advised by counsel that parties seeking a waiver of Commission rules are required to make certain showings. Waivers of rules promulgated under Article XIII of the Public Utilities Act are authorized by Section 13-513, which provides that:

A telecommunications carrier may petition for waiver of the application of a rule issued pursuant to this Act. The burden of proof in establishing the right to a waiver shall be upon the petitioner. The petition shall include a demonstration that the waiver would not harm consumers and would not impede the development or operation of a competitive market. Upon such demonstration, the Commission may waive the application of a rule, but not the application of a provision of this Act. The Commission may conduct an investigation of the petition on its own motion or at the request of a potentially affected person. If no investigation is conducted, the waiver shall be deemed granted 30 days after the petition is filed.

220 ILCS 5/13-513

RHD seeks a waiver or variance of certain provisions of Code Part 735, specifically 83 Ill. Adm. Code 735.180(a)(1) and (d). Accordingly, Section 735.50 of the Commission's Rules is relevant. That Section provides that:

The Commission, on application of a company, customer, applicant, or user or on its own motion, may grant a temporary or permanent variance from this Part in individual cases where the Commission finds that:

- a) The provision from which the variance is granted is not statutorily mandated;
- b) No party will be injured by the granting of the variance; and
- c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

83 Ill. Adm. Code 735.50

#### **STAFF'S ASSESSMENT**

Staff has no objection to the Petition, based upon certain representations made by RHD to Staff regarding the matter. It appears that RHD has satisfied the applicable requirements.

On review of the Petition and Mr. Kelly's testimony, Staff identified three specific concerns that it had with RHD's proposal. First, Staff is of the view that RHD should give customers recurring notice of the availability of the Chicago Residential White Pages. In contrast, RHD's proposal would give such notice to customers in the first year, but not in subsequent years.

Second, Staff is of the opinion that there is a need for RHD to take additional steps to publicize the availability of the Chicago Residential White Pages to those customers who wish to obtain it. In Staff's view, this can be accomplished in a number of ways, including the issuance by RHD of a general press release explaining that the

Residential White Pages will remain available to interested subscribers, and by making similar information available to social service agencies for distribution to their clients.

Third, Staff is of the opinion that the notices that RHD intends to distribute, specifically those of which copies are attached to Mr. Kelly's testimony, see RHD Ex. 1.2, 1.3, require certain revisions. Specifically, the Staff considers the notices to give insufficient prominence to the toll-free 800 number that customers use to request Residential White Pages or CD-ROMs containing the same information.

The Staff has discussed these matters with RHD, and RHD has represented that it agrees to, and will, take the following steps to address Staff's concerns as enunciated above:

1. Give notice to customers each year that the Residential White Pages are available to those customers requesting them. Such notice will be given each April and August, when RHD distributes the Chicago Yellow Pages and neighborhood directories, respectively;
2. Issue a general press release explaining that the Residential White Pages will remain available to interested subscribers, and make similar information available to social service agencies for distribution to their clients;
3. Use a typeface of equal prominence for the "Dexknows.com" portion of the notice and the toll-free 800 number that customers use to request Residential White Pages or CD-ROMs containing the same information.

In addition, RHD has represented to Staff that it will deliver Residential White Pages to those customers requesting them within ten days of such request.

The Illinois Attorney General's Office (hereafter "AG") and the City of Chicago (hereafter "City") filed petitions to intervene in this proceeding, and expressed concerns of their own regarding the Petition. The City's and AG's concerns are, as I understand matters, identical. Specifically, the City and AG are concerned that:

1. Customers may be unaware of the Chicago neighborhood boundaries that RHD is using to compile and distribute the neighborhood directories;
2. In the absence of the Chicago Residential White Pages, customers may place a greater number of calls to directory assistance, in some cases unaware that a charge is often assessed for such calls;
3. Customers requesting Chicago Residential White Pages should receive such directories in a timely manner;
4. Customers requesting additional directories should be permitted to order up to five additional directories, covering any portion of MSA-1.

Representatives of RHD have met with Staff and representatives of the AG and the City, and, in response to the City / AG concerns, RHD represents that it will undertake the following:

1. RHD will include a copy of the map identified as RHD Ex. 1.1 in each Neighborhood Directory. This map identifies the boundaries of each of the 13 Chicago neighborhoods RHD uses for purposes of compiling and distributing the neighborhood directories;
2. RHD will include in its various publications (as described below) the following disclosures:

- In addition to incorporating Staff's font size concern, RHD will delete the text of the filler advertisement contained in the Chicago Consumer Yellow Pages originally set forth in RHD Ex. 1.3 and replace it with the following:

Looking for Residential Phone Numbers? Go online to DexKnows.com, YellowPages.com or other Internet sites or find local information in your Chicago neighborhood directory. Customers dialing 411 incur service charges per call and may incur additional charges per requested listing. Check with your Local Service Provider for the charges for obtaining telephone numbers using 411.

For additional Chicago White Pages, Call 800-487-6733 to request a free city-wide White Pages directory and up to five complimentary AT&T Real Yellow Pages directories with business and residential listings or a CD-ROM, published by Dex.

- The Neighborhood Directories will contain the following replacement filler advertisement:

Looking for Residential Phone Numbers? Check out the White Pages in the back of directory or go online to DexKnows.com, YellowPages.com or other Internet sites or find local information in your Chicago neighborhood directory. Customers dialing 411 incur service charges per call and may incur additional charges per requested listing. Check with your Local Service Provider for the charges for obtaining telephone numbers using 411.

For additional Chicago White Pages, Call 800-487-6733 to request a free city-wide White Pages directory and up to five complimentary AT&T Real Yellow Pages directories with business and residential listings or a CD-ROM, published by Dex.

- Additionally each Neighborhood Directory will contain the following information within the "General Information" section of the directory:

Directory Assistance: To obtain a local telephone number, dial 411. When the operator answers, give the name and city of the subscriber whose telephone number you are trying to find. Some carriers apply service charges for each requested listing and other carriers allow more than one requested listing per call. Check with your Local Service Provider for the charges for obtaining telephone numbers using 411. Telephone number listings are also available online at DexKnows.com, YellowPages.com and other Internet sites. Customers can request city-wide AT&T White Pages directory, up to five complimentary AT&T Real Yellow Pages directories with business and residential listings, or a CD-ROM directory by calling 800-487-6733.

3. RHD as noted above, will commit to deliver Chicago Residential White Pages within 10 days of the request.

4. RHD will extend requests for additional directories to anywhere within MSA-1.

In light of these representations by RHD, Staff believes that its concerns have

been addressed. Staff understands that the concerns of the AG and City have also been addressed.

The Petition does not seek relief that, if granted, would be harmful to competition, and the Staff is of the opinion that, if RHD takes the steps that it has represented to Staff that it will take, customers will not be harmed in the aggregate. The Staff is not in a position to speak to the burden imposed on RHD by compliance.

In summary, the Staff has no objection to RHD's Petition, and sees no reason why the Commission should not grant it in its entirety. This concludes my Verified Statement.

VERIFICATION

STATE OF ILLINOIS                    )  
  ) SS  
COUNTY OF COOK                    )

I, Deborah Lewis-Johnson, do on oath depose and state that I am competent to testify, and that, if called as a witness herein, I would testify that the facts contained in the foregoing Verified Statement are true and correct, based upon personal knowledge.

*Deborah Lewis-Johnson*  
Deborah Lewis-Johnson

Signed and Sworn Before Me This 24<sup>th</sup> Day of September, 2007

*Esperanza De Los Santos*  
Notary Public

