

DIRECT TESTIMONY
of

Joan Howard
Consumer Policy Analyst
Consumer Services Division

Docket No. 11-0668

R.H. Donnelley Inc. d/b/a Dex One as agent for Illinois Bell Telephone Company:
Petition for Variance of Section 735.180 of the Illinois Administrative Code.

November 30, 2011

1 **Q. Please state your name and business address.**

2 A. My name is Joan Howard. My business address is 527 E. Capitol Ave., 527 E.
3 Capitol Ave., Springfield, Illinois 62701.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by the Illinois Commerce Commission (“Commission”) as
6 Consumer Policy Analyst in the Consumer Services Division. My responsibilities
7 include development of consumer informational and educational materials;
8 review of utility and supplier notices and other forms of communication to
9 customers; review of supplier marketing materials; review of supplier applications
10 for certification of service authority; review of utility tariffs; development of rules
11 and policies pertaining to consumer protection and consumer billing and payment
12 practices; assisting division management in consumer complaint mediation and
13 resolution; and evaluation of data recorded in the Division’s complaint tracking
14 system.

15

16 **Q. What is the purpose of your testimony?**

17

18 A. The purpose of my testimony is to offer observations and recommendations of
19 Consumer Services Division Staff with regard to the request of R.H. Donnelley
20 Inc. d/b/a Dex One’s (RHD / Dex One) in its pending application for Commission
21 approval of a variance to Section 735.180 of Part 735.

22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

Q. What are the requirements of Section 735.180(a)(1) and Section 735.180(d)?

A. Section 735.180 Directories

a)

1) 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.

2) For the purpose of consolidating directories, variation in publisher's printing schedules, coordination with a large number of telephone number changes, or other good and sufficient reason, publication may be delayed thirty (30) days on written notification to the Commission. In addition to said delay in publication, an additional sixty (60) days may be allowed by the Commission upon notification by letter of the rescheduled publication dates and reason for the additional delay. In deciding whether to grant the delay, the Commission shall consider, among other things, physical impossibility and the consolidation of exchanges.

d) 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.

Q. The rule requires the telecommunications carrier to provide directories to customers. Why is RHD / Dex One, which is not a telecommunications carrier, the petitioner in this case?

A. As I understand matters, on September 1, 2004, RHD / Dex One purchased the interest of Illinois Bell Telephone Company ("AT&T Illinois") in an RHD / Dex One - AT&T Illinois partnership that published AT&T Illinois' Yellow Pages and White Pages directories in Illinois and Northwest Indiana. On the same date, RHD / Dex

59 One entered into a 50-year directory services license agreement with AT&T
60 Illinois to publish AT&T Illinois' Yellow Pages and White Pages directories in
61 Illinois. The agreement characterizes RHD / Dex One as the agent of AT&T
62 Illinois for the purpose of publishing White Pages directories. RHD / Dex One is
63 contractually obligated to comply with all of AT&T Illinois' legal obligations related
64 to directories, including the applicable regulations of the Commission. In effect,
65 RHD / Dex One discharges AT&T Illinois' legal obligations to provide directories
66 in Illinois. I was unable to ascertain whether the Commission approved this
67 transaction, and offer no opinion regarding whether such approval is required.

68
69

70 **Q. Can the Commission impose requirements upon RHD / Dex One and**
71 **enforce orders?**

72 A. This appears to be primarily a legal issue. That said, it appears to me that RHD /
73 Dex One has, by virtue of filing this Petition, submitted to Commission
74 jurisdiction.

75
76 **Q. What is your understanding of the request made by RHD / Dex One in**
77 **Docket No. 11-0668?**

78
79 A. My understanding is that RHD / Dex One as agent for AT&T seeks approval to
80 distribute "white pages" directories only upon customer request. This appears to
81 be nothing less than seeking approval to cease general publication and
82 distribution of the traditional "phone book". RHD / Dex One seeks approval to
83 implement the plan statewide, beginning in Chicago and phasing in the plan

84 throughout the rest of the state. Customers would continue to receive some form
85 of Yellow Pages directory.

86
87 Further, RHD / Dex One seeks Commission approval for partial relief from
88 the variance of directory obligations granted to RHD / Dex One by the
89 Commission in Docket No. 07-0434, which I will discuss in greater detail below.

90
91 By way of background, the White Pages, or “the phone book”, is an
92 alphabetical listing of telephone subscribers in an exchange, along with their
93 telephone numbers and their addresses as required by Section 735.180.

94 Although customers may elect not to have their number listed, this requires an
95 affirmative election and incurs an additional charge. The White Pages includes
96 primarily residential listings. In contrast, Yellow Pages listings are organized by
97 business type (e.g., hardware stores, restaurants, electronics stores) rather than
98 alphabetically by business subscriber and are normally printed on yellow paper.

99 There is no regulatory requirement that a carrier revise, print, and distribute
100 Yellow Pages directories. The Yellow Pages is a for-profit enterprise; the
101 publisher sells advertising space in the Yellow Pages to businesses interested in
102 appearing in the Yellow Pages directory.

103

104

105

106 **Q. What is your understanding of the request for partial relief from the**
107 **variance of directory obligations granted by the Commission in Docket No.**
108 **07-0434?**

109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132

A. My understanding of the request is that the Commission granted RHD / Dex One permission to substitute distribution of neighborhood white pages directories for distribution of the Chicago city-wide residential white pages; prior to that, RHD / Dex One was required to print and distribute a directory containing city-wide listings. The variance permitted RHD / Dex One an exemption from including in the primary directory the White Pages for the entire City of Chicago (as one exchange). As a condition of that variance RHD / Dex One substituted neighborhood directories. RHD / Dex One printed and distributed to each customer in a designated neighborhood a neighborhood directory that included white pages and yellow pages. Other conditions imposed by the Commission were: 1) customers could request and receive at no charge a printed copy of the Chicago city-wide residential white pages directory; 2) Chicago city-wide residential white pages were available without charge on a CD-ROM; 3) Directories were to include notice to customers of the availability of the Chicago city-wide residential white pages directory to be delivered upon request of the customer.

Q. Is the variance requested in this case, Docket No. 11-0668, similar to that of the variance requested in Docket No. 07-0434?

A. No, the request in the current docket is very different from that of the request in Docket No. 07-0434. In the current proposal, RHD / Dex One would commit only to distribute some form of Yellow Pages directories to all customers. RHD / Dex

133 One did not propose to eliminate distribution of white pages with residential
134 listings in the previous case and the Commission accordingly did not consider it.

135
136 After obtaining authority from the Commission to allow RHD / Dex One to
137 substitute distribution of neighborhood directories rather than the Chicago city-
138 wide directory, Dex One is now seeking to reverse that request and revert to the
139 distribution of the Chicago city-wide directory with the exception that the city-wide
140 directory would be available only upon request. RHD / Dex One seeks authority
141 to remove white pages from neighborhood directories. In addition, RHD / Dex
142 One seeks authority to extend its variance to stop distribution of directories to all
143 customers in exchanges outside of the City of Chicago. Residential white pages
144 directories would be available only upon specific request. It is unclear whether
145 business white pages would be available.

146
147 **Q. What are some of your concerns about the proposal made by RHD / Dex**
148 **One?**

149
150 **A.** Customers expect to receive white page directories and the current rule requires
151 primary telephone directories of all exchanges to be revised, printed and
152 distributed to customers at least once each year.

153
154 The proposed change provides only for printed directories to be distributed
155 upon the request of the customer. It is unclear if or how RHD / Dex One would

156 determine whether customers want to continue to receive the white pages
157 directory without having to make a request.

158 The proposed change does not adequately provide for advance notice to
159 customers whose expectation is that they will receive a white pages directory.
160 Notice to the customer of the availability of printed white pages is limited to
161 language in yellow pages directory. The petition does not specify how customers
162 who do not have internet access to find telephone numbers would be able to
163 obtain those numbers while waiting for delivery of a printed directory. The
164 Petition does not specify how soon the company would provide printed
165 directories to those customers requesting them.
166

167 While AT&T has the obligation to comply with Section 735.180, RHD / Dex
168 One's proposal does not appear to contemplate a customer service role for AT&T
169 in its relationship with its customers. My understanding of the proposal is that a
170 customer who wants to receive a printed directory would have to contact RHD /
171 Dex One. There is no mention of whether an applicant for AT&T service would be
172 asked by an AT&T customer service representative if he or she would like a
173 printed white pages directory. Likewise, there is nothing to suggest that AT&T
174 would take an order for a printed directory.
175

176
177 **Q. Has Dex One demonstrated that no party will be injured by the granting of**
178 **the variance?**

179

180 A. In my opinion, Dex One has failed to demonstrate that no party will be injured by
181 the granting of the variance. Much of what Dex One uses to support its request
182 relies on information presented in Docket No. 07-0434 which assumed that white
183 pages would be printed and distributed to customers.

184 Furthermore, it appears to me that a significant degree of harm will indeed
185 result from the grant of the variance. While RHD / Dex One witness David
186 Davidson asserts that changes in the way customers obtain telephone numbers,
187 and most specifically use of the Internet to do so, see RHD / Dex One Ex. 1 at 9-
188 10, he presents no statistical support for this proposition. Id. Further, available
189 evidence suggests that a substantial number of Illinoisans do not or cannot use
190 the Internet. Recent estimates from the U.S. Census Bureau indicate that as
191 many as 20% of Illinoisans do not even own a computer. See Table B6,
192 “Exploring the Digital Nation: Computer and Internet Use at Home”, U.S.
193 Department of Commerce, November 2011.

194 RHD / Dex states that it will continue to distribute “White Pages”
195 directories to those customers who specifically request copies. RHD / Dex Ex. 1
196 at 8-9. It further states that during the period it has been delivering the Chicago
197 citywide directory only upon request, it has received few requests. Id. at 10-11. It
198 states that other entities that publish directories have experienced a similar lack
199 of interest on the part of customers. Id. at 11-12. This, suggests RHD / Dex,
200 supports the proposition that customers do not want directories. Id. at 10.

201 However, these data points can be subject to differing interpretations.
202 First, the existing neighborhood directories may indeed fill the needs of customer,

203 as RHD / Dex suggested that they would in Docket No. 07-0434. See Direct
204 Testimony of David Kelly, RHD Ex. 1.0 at 7¹, *et seq.* Second, it may be that the
205 availability of citywide directories has been inadequately publicized, despite RHD
206 / Dex's compliance with the Commission's Order in Docket No. 07-0434. IN
207 either case, it is not clear that RHD / Dex's conclusions follow from the evidence
208 that it has submitted.

209

210 **Q. Has Dex One demonstrated that the rule from which the variance is**
211 **granted would, in the particular case, be unreasonable or unnecessarily**
212 **burdensome?**

213

214 A. In my opinion, the petitioner has not demonstrated that the publishing and
215 distribution of directories is burdensome. In fact, Dex One will continue to
216 distribute at least one Yellow Pages directory of some sort to every customer.
217 RHD / Dex seeks to eliminate inclusion of the residential white pages in the
218 Neighborhood Directories. RHD / Dex receives no advertising revenue from the
219 White Pages, but it cannot be said that incorporating it into the Neighborhood
220 Directories is unduly burdensome..

221

222 **Q. Do you support the petitioner's request for a variance?**

223

224 A. No, I do not, for the reasons stated above. In my opinion, RND / Dex One has not
225 carried its burden of proving that it is entitled to the variance or waiver that it

¹ Mr. Kelly's testimony has been marked as RHD / Dex Ex. 1.2 in this proceeding.

226 seeks. Accordingly, the most I can recommend is that the variance granted to
227 RHD / Dex in Docket No. 07-0434 should be continued.

228

229 **Q. Is there any evidence that might cause you to reconsider your position,**
230 **entirely or in part?**

231

232 A. While I cannot make any assurances that any single piece of data or evidence
233 will certainly cause me to reconsider my position to any degree, I am interested
234 in reviewing the following:

235 1. All survey data in the possession of RHD / Dex One that relates to AT&T
236 Illinois' customers' desire or lack thereof to receive a printed White Pages
237 directory;

238 2. Any and all survey or other data in the possession of RHD / Dex One
239 relating to the assertions made by Mr. Davidson regarding the experience
240 of AT&T Advertising Solutions with respect to the request rate for
241 published directories in the territories in which AT&T Advertising Solutions
242 published directories, see RHD / Dex One Ex. 1 at 11;

243 3. The identity of each and every one of the "many states" which according
244 to Mr. Davidson "have updated their approaches to the provision of
245 residential telephone listings and now allow some version of upon-request
246 delivery of print residential White Pages[,]" see RHD / Dex Ex. 1 at 11,
247 along with any orders from state Commissions approving such waivers or
248 variances;

249 4. The identity of each and every one of the “several states” in which,
250 according to Mr. Davidson, SuperMedia has implemented, or is planning
251 to implement, upon-request delivery for print residential White Pages[,]”
252 RHD / Dex One Ex. 1 at 11-12, along with any orders from state
253 Commissions approving such waivers or variances, or if such waivers or
254 variances have not been granted or approved, any Petitions or
255 Applications currently pending seeking such waivers or variances; and
256 5. Any and all correspondence regarding White Pages Directories received
257 by RHD / Dex from residential customers.

258

259 **Q. Does that conclude your testimony?**

260

261 A. Yes.