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The Staff of the Illinois Commerce Commission (the "Staff"), by and through its counsel, and pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the above-captioned matter.

Initially, the Staff observes, as it did in its Initial Brief, that R.H. Donnelly d/b/a Dex One (RHD) has the burden of proof in this proceeding. Staff Initial Brief at 2-3. Thus, it has the burden of demonstrating that: (1) no party will be injured by the granting of the variance; and (2) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.¹ 83 Ill. Adm. Code 735.50.

I. RHD has Failed to Demonstrate that No Party Will Be Harmed by the Grant of the Waiver

RHD first argues that no one will be injured by grant of the requested waiver. In support of this premise, RHD cites technological change which, in its view, gives customers choices to obtain telephone numbers (e.g., looking them up on the Internet) other than the traditional print directory, while at the same time rendering print directories less useful, insofar as wireless or VoIP customers are unlisted. RHD Initial Brief at 7-9. It cites the relatively small number of requests for printed directories as further evidence of this proposition. *Id.* at 7-8. RHD further argues that customers place a low value on the printed directory because of "environmental sensitivity". *Id.* at 8.

RHD concedes that it possesses no survey data (at least more recent than that it

¹ RHD argues that Section 13-513 does not apply here. RHD Initial Brief at 7. As the regulatory waiver requirements are, if anything, more stringent than the statutory one, Staff sees little reason to deal with this question at length.

proffered in support of its 2007 request², but argues that recent Orders from other state Commissions granting similar relief somehow constitute an adequate proxy for such data. RHD Initial Brief at 9. It further contends that customer responses to any such survey would be skewed in favor of receiving a directory, since it costs nothing. *Id.* It then grandly states that: “it is clear from customer feedback that customers would not be harmed by the granting of the variance[.]” *Id.* at 10.

This might be true, were RHD relying on any Illinois-specific customer feedback. However, it is not. Save for the relatively modest rate of requests for city-wide print directories, RHD cites no Illinois-specific data in support of its request. Moreover, the modest rate of requests for print directories in Chicago may be directly attributable to the fact that RHD is required to generally distribute Neighborhood print directories containing residential listings, which customers may very well consider to be of equal utility to the City-wide directory. It may also be due to the fact that the availability of the city-wide print directory was not adequately publicized³.

The point, however, is this: RHD has failed to demonstrate that no injury would result from the cessation of saturation delivery of Neighborhood Directories in the City of Chicago. Its argument that other state Commissions have permitted other carriers similar relief in other states is largely irrelevant, in light of the numerous unknowns connected with the individual circumstances obtaining in those states, most specifically

² See, generally, Order, R.H. Donnelly: Petition for Variance from Section 735.180 of the Illinois Administrative Code, ICC Docket No. 07-0434 (October 24, 2007); Amendatory Order, R.H. Donnelly: Petition for Variance from Section 735.180 of the Illinois Administrative Code, ICC Docket No. 07-0434 (July 8, 2009).

³ This statement is not intended to suggest any unlawful or improper conduct on RHD's part. It might simply be that the conditions imposed by the Commission in its several Orders in Docket No. 07-0434 were not sufficient to apprise customers of the availability of City-wide print directories.

whether those jurisdictions had already granted the affected carriers a waiver of the sort the Commission granted to RHD in Illinois – the right to substitute Neighborhood directories for City-wide directories in Chicago.

In addition, the intransigent fact remains that – as Staff has pointed out, see Staff Initial Brief at 9 – that as many as 20% of Illinoisans do not even own a computer. This renders that 20% of Illinoisans completely unable to utilize the technologies that RHD suggests make the printed residential White pages obsolete.

Finally, the Staff is compelled to note that RHD's putative concern for the environment is difficult to characterize as anything but risible. As Staff noted in its Initial Brief, every argument favoring the cessation of saturation delivery of the residential White pages is a more compelling argument for the cessation of saturation delivery of the Yellow pages. Staff Initial Brief at 11. Looking up business information on line is clearly simpler than looking up residential telephone listings, given the likelihood of all but the smallest businesses (and, indeed, a great many of those) to have a website. It is safe to assume that cessation of saturation delivery of the City-wide Yellow pages would constitute a vastly greater environmental benefit than cessation of saturation delivery of the far smaller Neighborhood directories, especially where other products very similar to the Yellow pages are delivered on a saturation basis by other companies. Tr. at 20-21. Accordingly, RHD's putative environmental concerns should be either discounted or ignored.

In short, RHD has failed, by a considerable margin, to bear its burden of proof in this proceeding. It has failed to show by a preponderance of the evidence, that no party would be harmed by the waiver, if granted. In fact, all the evidence points to the fact that

harm will result. Since RHD must show that the waiver will not occasion harm, and that the waiver will be unduly burdensome, RHD's request must be rejected and its Petition denied.

II. RHD has Failed to Demonstrate that the Rule from which the Waiver is Sought Would, in the Particular Case, Be Unreasonable or Unnecessarily Burdensome

Even less convincing is RHD's arguments in favor of the proposition that delivery of the Neighborhood directories is unreasonable or burdensome. In support of this position, RHD first advances its "other technologies" argument, see RHD Initial Brief at 14, which, as noted, is infirm in light of the fact that as many as 20% of Illinoisans have no access to them. It next trots out its environmental sensitivity argument, see RHD Initial Brief at 14, which as has been previously noted, is slightly less than a non-starter. Again, RHD has failed to prove a necessary element of its claim, and its request should be rejected and its Petition denied.

III. In the Event the Commission Elects to Grant the Waiver, the Staff's Proposed Conditions Should Be Imposed

In its testimony and Initial Brief, the Staff proposed that, should the Commission elect to grant the requested waiver, it should do so on the following conditions:

- RHD should be required to conduct a general survey of customers within the service territory covered by each directory to determine whether consumers wish to continue to receive residential white pages as part of at least one directory distributed annually. Staff suggests a survey could be conducted using a return postage paid card included with the core directory distributed prior to RHD's intention to eliminate white pages in a specific area. The postage card would be provided in a conspicuous manner to help ensure maximum response by directory recipients. Since

RHD chooses saturation distribution, the survey should be made of all recipients of the core directory. RHD would present the results of the survey when providing prior notice (120 days) to the Commission of its intent to eliminate residential white pages in a specific directory.

- The Illinois Bell Telephone Company (“AT&T Illinois”) should be required to ask new customers at the time of application whether they wish to receive a directory containing residential white pages.
- The conditions imposed by the Commission in Docket No. 07-0434 should remain in effect.

Staff Ex. 2.0R at 3-4

RHD proposes certain of what the Staff presumes to be alternative conditions in its Initial Brief. See RHD Initial Brief at 15-20. Insofar as these conditions are consistent with Staff’s, and in addition to them, Staff has no objection to their imposition. Staff nonetheless recommends that the Commission not grant the requested waiver in the first place.

IV. Conclusion

The requested waiver should not be granted. RHD has already received substantial relief from the duties and obligations imposed by Section 735.180, in Docket No. 07-0454, and has failed to make the case for further relief, in that it has failed to show either lack of harm or undue burden.

If the Commission does, however, elect to grant the waiver, it should do so subject to Staff’s proposed conditions.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

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Respectfully submitted,

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