

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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)

Docket No. 11-0668

**DEX ONE'S PROPOSED
DRAFT ORDER**

I. Procedural History

On September 30, 2011, R.H. Donnelley Inc. d/b/a Dex One ("Dex One") filed a verified Petition requesting a variance from the rules of the Illinois Commerce Commission and from the Commission's Order in Docket No. 07-0434, which now require Dex One as the agent of Illinois Bell Telephone Company ("AT&T Illinois") to publish and distribute on a saturation basis paper copies of the residential White Pages annually in all of the exchanges served by AT&T Illinois. Dex One seeks relief that would allow Dex One, first in the City of Chicago and its suburbs and, potentially later in other markets, to omit residential White Pages from the directories it will continue to deliver on a saturation basis, and provide printed version of the residential White Pages at no cost, but only upon demand.

On October 13, 2011, the Staff filed its Request for Investigation. On October 25, 2011, the Commission voted to authorize such an investigation.

On November 3, 2011, the Attorney General Intervened. On October 17, 2011, and on May 1, 2012, pursuant to notice as required by law and the rules and regulations of the Commission, this matter was heard by a duly authorized Administrative Law Judge at the Commission's Chicago, Illinois offices. At the May 1, 2012 hearing, Dex One provided testimony from David Davidson, its Senior Manager of Marketing. Staff provided testimony from Joan Howard, Consumer Policy Analyst of its Consumer Services Division. The Attorney General attended the hearing but proffered no witness. At the end of the May 1, 2012 hearing, the record was marked "heard and taken."

II. Background

As a result of its publishing agreement obligations to AT&T Illinois, Dex One discharges AT&T Illinois' legal obligations to provide directories in Illinois. While distribution numbers change from year to year, in the State of Illinois, for directories published in the 12 months ending April 2011, Dex One distributed a total of almost 11.5 million printed copies of its directories.

To understand the change that Dex One is proposing, it is necessary to understand what directories Dex One currently publishes in the State of Illinois. For market and historical reasons, Dex One has one approach within the Chicago City limits and another for all markets outside Chicago, including the Chicago suburbs. Currently in the City of Chicago, Dex One publishes four types of directories: Chicago Consumer, Chicago Plus, Chicago Citywide Residential White Pages, and Neighborhood Directories. The “Chicago Consumer” includes the Yellow Pages and the business White Pages for the entire city. The “Chicago Plus” is a smaller, more convenient version of the Yellow Pages and business White Pages listings and much of the other content found in the Chicago Consumer. Residential White Pages for the city are published in a separate, stand-alone directory called the “Chicago Citywide Residential White Pages.” In addition to these three citywide directories, Dex One divides the city into 13 neighborhoods, each with its own directory, known as the “Neighborhood Directories.” Currently, each Neighborhood Directory includes residential White Pages, business White Pages, and Yellow Pages for its specific neighborhood.

As a result, residential White Pages are currently found in two directories – the Chicago Citywide Residential White Pages and the Neighborhood Directories. The Chicago Citywide Residential White Pages contains residential listings for the entire City of Chicago while each Neighborhood Directory includes residential listings only for the specific neighborhood covered by the directory. Every customer receives a Neighborhood Directory for his or her neighborhood, unless the customer has requested not to receive the directory. As this Commission permitted in Docket No. 07-0434, Dex One delivers the Chicago Citywide Residential White Pages only upon a customer’s request. In addition, everyone in Illinois can request up to five directories in addition to the ones they receive automatically from Dex One, so customers in Chicago can receive Neighborhood Directories for neighborhoods other than their own. The result is that residents of Chicago receive residential White Pages for their neighborhood without a request and can receive residential White Pages for the entire city, as well as additional neighborhoods, by requesting them from Dex One.

In AT&T Illinois exchanges outside the City of Chicago, *e.g.*, in the Chicago suburbs, Rockford, Peoria, Springfield, Metro East (in the east St. Louis metropolitan area), Dex One publishes two types of directories. The “Core Directory” includes residential White Pages, business White Pages, and Yellow Pages for the city or other area covered by the directory. Every customer in these areas receives a Core Directory, including the residential White Pages, for his or her area, unless the customer has requested not to receive the directory. In all but the smallest markets, Dex One also publishes the “Plus Directory,” a smaller, more convenient version of the Core Directory, except that the Plus Directory includes only the Yellow Pages and in many cases the business White Pages – but not the residential White Pages.

Over the years, the ways in which consumers access local information have changed, and Dex One has adapted its directory products accordingly. Dex One replicates its print directories, including the look and feel of the directories, on DexPages.com. Local search options, including for residential listings, are available online

for exchanges throughout Illinois (and in other states) through DexKnows.com and for mobile phones (where customers permit) through Dex Mobile. Dex One also provides CD-ROMs with White Pages and Yellow Pages information. In addition, AT&T provides local information, including residential listings, in Illinois and other states on yp.com.

III. Regulations

Section 735.180 of the Illinois Administrative Code subjects AT&T Illinois (and, as its agent, Dex One) to a directory publication obligation. Subsection 735.180(a)(1) states in relevant part:

Primary telephone directories of all exchanges shall be revised, printed and distributed to customers at least once a year. Each directory shall list the name, address and telephone number of all customers, except public telephones.

In addition, subsection 735.180(d) states:

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.

Dex One is also subject to the obligation imposed by the Commission's Order in Docket No. 07-0434 to deliver Neighborhood Directories to all customers in the City of Chicago on a saturation basis. Dex One is seeking a modification of that obligation in this docket.

According to the Commission's rules (83 Ill. Adm. Code § 735.50), the Commission may grant a temporary or permanent variance from its directory rules if 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.

IV. The Requested Variance

Dex One believes that most customers no longer use or value residential White Pages. Rather, customers find "personal"¹ numbers for their friends and

¹ With the proliferation of cell phones, the term "residential" has become somewhat of a misnomer for the telephone numbers customers associate with their personal calls.

acquaintances through on-line sources (which includes Dex One's own on-line directories) or from their personal contact lists (particularly in the case of cell phones) or from small group directories, such as church, school or club directories. Recognizing the declining utility of residential White Pages (which normally don't even include cell phone information or VoIP telephone users), Dex One proposes to continue distributing on a saturation basis an annual directory that includes business White Pages, other regulated content and the Yellow Pages, but to distribute residential White Pages "upon request" as a separate directory.

Throughout Illinois, Dex One proposes to make the delivery of residential White Pages more progressive, more customer-focused, and more environmentally friendly than the current saturation method of providing residential White Pages to all customers, regardless of their interest in residential listings. In the City of Chicago, Dex One is seeking the option to remove the residential White Pages from the Neighborhood Directories. However, residents would continue to have the option of requesting the Chicago Citywide Residential White Pages from Dex One. In addition, Dex One is seeking a modification of the variance it received in Docket No. 07-0434. In that docket, Dex One agreed to continue saturation delivery of the Neighborhood Directories and the Chicago Consumer. With the removal of the residential White Pages from the Neighborhood Directories, those directories would no longer provide an alternative to the Chicago Citywide Residential White Pages for the residential White Pages. Therefore, Dex One requests that it no longer be required to deliver the Neighborhood Directories in a saturation manner.

Outside the City of Chicago, Dex One is seeking the option to remove the residential White Pages from the Core Directories. In markets where Dex One removed the residential White Pages from a Core Directory, the residential White Pages would be published in a stand-alone directory, apart from the Core Directory. Customers who received the Core Directory would have the opportunity to request at no charge a copy of the residential White Pages for their area. Initially, Dex One is planning to move to upon-request delivery of the residential White Pages only in the Chicago suburbs. Prior to expanding upon-request delivery into additional markets, especially more-rural areas, Dex One would take into account customer preferences, the size of the area and the directory, changes in search methods, and other business factors. Before Dex One implemented upon-request delivery of residential White Pages in these other areas, it would notify the Commission of its intentions at least 120 days in advance.

Dex One is not proposing to discontinue the publication of any directory in the State. Rather it is proposing only to update the method of delivering residential White Pages in response to changes in each marketplace. Residential White Pages listings will continue to be available to all customers in AT&T Illinois' local service areas.

V. Positions of the Parties

- A. Whether the provision from which the variance is granted is statutorily mandated.

Dex One

Dex One states that the Commission's directory obligations are not statutorily mandated. In Docket No. 07-0434, the Commission found that there was no statutory mandate prohibiting the variance requested to reduce Dex One's delivery obligations.

Staff

Staff took no position on this element.

Attorney General

The Attorney General took no position on this element.

- B. Whether Any Party Will Be Injured By The Granting Of The Variance

Dex One

Dex One contends that customers will not be injured by the granting of this variance. Customer usage patterns for residential White Pages have changed. According to Dex One, the evidence of non-injury lies in the over 60 different markets that have gone to upon request delivery of residential White Pages with no negative customer feedback.

Dex One explains that, in recent years, several external factors have brought into question whether consumers use or want printed Residential White Pages content. Telephone directory use has changed for residential White Pages due to increasing access to technology, including computer databases and the Internet, as well as telephones that store contact lists and greater use of specialty directories, such as those provided by schools and neighborhood associations.

The increase in the number of unlisted residential consumers, Dex One argues, has also reduced the utility of printed residential White Pages. More and more consumers are choosing to drop their landline telephone at home in favor of other telecommunications platforms, such as mobile phones and voice over Internet protocol (VoIP). This trend draws into to question the meaning of "residential" telephone numbers when so many consumers have dropped a "residential" telephone in favor of a personal phone number that follows them wherever they go. In many cases, these consumers are not listed in the residential White Pages. In fact, most consumers do not want their cell numbers in the residential White Pages and decline to purchase a listing for their cell numbers in any widely published directory.

The result of fast-paced technological change and increased privacy concerns is a less complete set of listings for residential White Pages than what was available in years past. Finally, there is increasing environmental sensitivity in more and more markets. That sensitivity translates into a low value for printed residential White Pages listings that provide no more than marginal utility to consumers in those markets.

In response to Staff's demand that only survey evidence from Illinois customers could support the grant of a variance, Dex One asserts significant shortcoming of survey evidence. As an example, Dex One states that the survey it relied on for its 2007 variance greatly overstated the actual demand for stand-alone citywide residential white pages. Dex One believes that a customer survey in this situation would provide no more reliable record of customer preferences. Given the cost-free option of continuing to receive a product, survey respondents tend to overstate their desire to continue receiving the product, even if they may end up not using the product.

More importantly, survey evidence would not be more reliable than the actual experiences in other markets where the upon-request approach was actually rolled out. The track record from the growing number of markets that have already been through this conversion is a more reliable indicator of customer reaction than a survey of speculative customer preferences. A number of state commissions have allowed carriers to implement this change in markets of all different sizes with no significant negative customer reaction. Some state commissions have withdrawn or reduced their directory regulations and some state legislatures have repealed their commissions' authorities.

Several state commissions have taken note of the experience of AT&T in Atlanta, Georgia. In Atlanta, fewer than 1% or 2% of AT&T's customers actually requested residential White Pages after they were placed into a separately published, upon demand directory. See, e.g., the July 8, 2009 Order of the Florida Public Service Commission in *In re Petition of BellSouth Telecommunications, Inc.*, Docket No. 090082-TL at p. 4. The Florida Commission also noted a request rate of 1.7% in Austin, Texas. Other state commissions have expressed skepticism or even rejected survey evidence in the face of actual experience. See Communications Division Policy Analysis Branch, Resolution T-17302 of the Public Utilities Commission of the State of California (June 9, 2011) at p. 11; Public Service Commission of New York *Order Granting Waiver with Condition, in Petition of Verizon New York, Inc.*, Case No. 10 C 0215 (Oct. 15, 2010) at p. 4.

In explaining the breadth of that experience, Dex One states that AT&T has moved to upon-request delivery for residential White Pages in over 60 markets across at least 13 states. AT&T has experienced low request rates across these markets and states, which include 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), Florida (Miami, Orlando,

Jacksonville, Pensacola, Gainesville, Daytona), Texas (Austin, Ft. Worth, San Antonio, Dallas, Houston), Georgia (Atlanta), Tennessee (Chattanooga, Memphis), and Alabama (Mobile). Dex One also emphasizes that this list encompasses a number of different size markets that are demographically comparable to the markets served by Dex One for AT&T Illinois.

Likewise, SuperMedia, the official publisher for Verizon, has made similar changes to residential White Pages listings in recent years. According to its website, SuperMedia has removed or will remove residential White Pages from several directories in California, Connecticut, the District of Columbia, Delaware, Florida, Massachusetts, Maryland, New Jersey, New York (including Manhattan), Pennsylvania, Rhode Island, Texas and Virginia. Dex One Exhibit 2 at lines 244-248. Finally, Dex One notes that at least seven states – Oklahoma, Indiana, Michigan, Texas, Florida, Georgia, and North Carolina – have entirely or mostly repealed their directory delivery requirements.

Dex One argues that it is clear from actual consumer feedback that customers would not be harmed by the granting of the variance that Dex One is seeking in this docket. Nor would customers be likely to suffer in the transition from saturation delivery to upon-request delivery.

To further avoid confusion or inconvenience to any customer, Dex One will employ the same robust communication plan that the Commission approved in Docket No. 07-0434 for upon-request delivery of the print Chicago Citywide Residential White Pages. Specifically, an announcement will appear prominently on the first page (*i.e.*, the table of contents) of the saturation delivered directory regarding the availability of print residential White Pages listings and how to order them. The same information also will appear in the phone service/directory assistance section of the Yellow Pages directory. If the Commission so orders, Dex One will also put the information on the front of the Core Directory (for markets outside of the City of Chicago) and the Chicago Consumer (for the City of Chicago).

The notice in the phone book would provide a toll free telephone number to Dex One and a website. The printed version of the residential White Pages listings will be available upon-request through a clear, simple, and free process. If a customer still wants a printed copy of the residential White Pages, that person can place an order using Dex One's toll-free telephone number at any time during the year, and Dex One will deliver the print residential White Pages.

In addition, for those who prefer to access residential listings through non-print means, listings will continue to be available in digital formats, which currently include DexPages.com, DexKnows.com, Dex Mobile, yp.com, and Dex's CD-ROMs.

Moreover, Dex One explains, no customers will be harmed because all customers will continue to have access to the residential White Pages. Inside the City of Chicago, the printed version of the Chicago Citywide White Pages will continue to be available upon request and free-of-charge to every customer who requests it. In

areas outside the City of Chicago where Dex One removes the residential White Pages from the Core Directories, the printed version of the residential White Pages will be available upon request and free-of-charge to every customer who requests it. In addition, as mentioned above residential listings will continue to be available inside and outside of Chicago in a non-print formats, which currently include DexPages.com, DexKnows.com, Dex Mobile, yp.com, Dex's CD-ROMs, and other online and mobile formats.

Staff

Staff contends that Dex One has failed to meet its burden of proof that no party would be injured by the variance.

Attorney General

The Attorney General contends that Dex One has failed to meet its burden of proof that no party would be injured by the variance.

- C. Whether The Rule From Which The Variance Is Granted Would, In The Particular Case, Be Unreasonable Or Unnecessarily Burdensome.

Dex One

According to Dex One, the directory rule has become unreasonable and unnecessarily burdensome, in part, because it reflects an outdated view of most customers' need for and use of residential White Pages directories. Many customers looking for listing information utilize alternative methods such as the Internet and mobile devices. Printing and delivering unwanted directory content is also burdensome on the environment, a point that is not lost on customers. Implementation of Dex One's proposed variance could result in a significant reduction in paper waste each year. For example, upon-request delivery for the Chicago Citywide Residential White Pages has resulted in the printing and delivery of almost 3.5 million fewer directories since the program began in 2008. Dex One believes that such a reduction in waste is consistent with the City of Chicago's and other municipalities' efforts in this State to drastically reduce waste disposal in landfills. As a result of all of this, a Commission grant of the proposed variance would be in the public interest.

Staff

Staff contends that Dex One has failed to meet its burden of proof that the regulation is unduly burdensome.

Attorney General

The Attorney General contends that Dex One has failed to meet its burden of proof that the regulation is unduly burdensome.

VI. COMMISSION CONCLUSIONS

The Commission finds that Dex One has met its burden of proof and demonstrated that the variance it is requesting relates to a Commission rule that is not statutorily mandated, that, subject to the commitments that Dex One has made, no party will be injured by the granting of the variance; and that, given current market circumstances, the regulation from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (2) on September 1, 2004, Dex One entered into a long term directory services license agreement with AT&T Illinois to publish AT&T Illinois' directories in Illinois. In essence, Dex One discharges AT&T Illinois's legal obligations to provide directories in Illinois;
- (3) Dex One is acting as contractual agent of AT&T Illinois, a telecommunications provider as defined by the Public Utilities Act;
- (4) the recital of facts and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the petition for variance is granted subject to the commitments made by Dex One as more fully set forth in its direct testimony, responsive testimony, and additional responsive testimony; and
- (6) the requested variance will not harm customers, it will not impede competition, there is no statutory mandate prohibiting the variance, and in this circumstance Sections 735.180(a)(1) and (d) of the Code are unnecessarily burdensome.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Petition for Variance by Dex One is approved pursuant to 220 ILCS 5/13-513 and 83 Ill. Adm. Code § 735.50.

IT IS FURTHER ORDERED that so long as this variance is in effect, Dex One shall comply with the commitments generally described herein and contained in its direct testimony.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the

Administrative Review Law.

By Order of the Commission this ___the day of _____, 2012.

(SIGNED) DOUG SCOTT

Chairman