

I. INTRODUCTION

The People of the State of Illinois (“the People”), by Lisa Madigan, Attorney General of the State of Illinois (“the AG”), pursuant to the Illinois Commerce Commission’s (“the Commission” or “ICC”) rules, 83 Ill. Admin. Code Part 200.800, file this Reply Brief in response to the initial briefs filed by R.H. Donnelly Inc. d/b/a Dex One, as agent for Illinois Bell Telephone Company (“Dex One”) and the Staff of the ICC (“Staff”) regarding Dex One’s petition to significantly change its current delivery of residential white page directories, as mandated under the Commission’s Rules, 83 Ill. Admin. Code 735.180(a) and (d), to customers in and near the City of Chicago.

II. DEX ONE HAS NOT MET ITS BURDEN OF DEMONSTRATING THAT THE COMMISSION MAY GRANT A VARIANCE

As argued in the People’s initial brief, Dex One has the burden of proving that it satisfies the conditions precedent for the Commission to grant its requested variance. AG Initial Brief at 2. Dex One has not met that burden. Specifically, the People contend that Dex One failed to demonstrate that “no party will be injured” and that the controlling rule at issue in this docket (83 Ill. Admin. Code 735.180(a) and (d)) is “unreasonable or unnecessarily burdensome.” 83 Ill. Admin Code 735.50. Therefore, the Commission should reject Dex One’s requested variance.

A. Dex One has not demonstrated that “no party will be injured”

In its attempt to prove that “no party will be injured” by the requested variance, Dex One cobbles together a “customer experience” argument that cites to various “external factors” that allegedly influence customer experience along with alleged customer experiences in ICC Docket No. 07-0434 as well as in other jurisdictions. See, *generally*, Dex One Initial Brief at 7-12. Dex One’s testimony and its initial brief are riddled with anecdotal evidence and present nothing in the way of direct customer data relevant to the Illinois market. Because Dex One has failed to

meet its burden of showing that the requested variance would not injure Illinois customers, the Commission should reject the requested variance.

1. External Factors

Dex One argues that “external factors,” such as increased access to computers and the Internet, smart phones, specialty directories, and a decrease in the number of residential land-line telephones, reduce the demand for residential white pages. See Dex One Initial Brief at 8.

Throughout its brief, Dex One repeatedly cites to all of the available electronic versions of the information contained in the white pages directory, yet refuses to acknowledge the reality of the Illinois marketplace that electronic media, while perhaps pervasive among some segments of the population, is not ubiquitous. In its initial brief, Staff noted that approximately 20% of Illinois residents do not have a computer. ICC Staff Initial Brief at 9. However, nowhere in its brief does Dex One address or acknowledge that not every resident in the delivery territory has access to a computer, the Internet, or a smart phone. These vulnerable consumers continue to rely heavily on the residential white pages and Dex One fails to address the needs of this most vulnerable segment of the population.

Dex One acknowledges in its initial brief (see Dex One Initial Brief at 13), that a customer could conceivably dispose of a previous directory and not realize that he will not receive a new directory absent a request. Despite acknowledging this, Dex One offers no solution for these customers who, while waiting for delivery of a new directory, will be deprived of the important information contained in the residential white pages in the interim. Even more inexplicably, Dex One, on the next page of its brief, argues that “no customers will be harmed because all customers will continue to have access to the residential White Pages.” Dex One Initial Brief at 14. Dex One’s request fails to account for this vulnerable segment of the

population and, therefore, it cannot argue that “no customers will be injured.” Dex One has failed to meet its burden of proof and the Commission should reject the requested variance.

Dex One also cites environmental concerns as a reason for ceasing the saturation delivery of residential White Pages. The People do not dispute that printed white pages can have an impact on the environment and agree that disposal of paper directories may raise concerns. However, Dex One has made it clear that it will continue to print and deliver the revenue-producing Yellow Pages to all customers. See, *e.g.*, Dex One Initial Brief at 13. In light of the printing and saturation delivery of the more voluminous Yellow Pages, raising environmental concerns about the printing and delivery of what Dex One refers to as a “less complete set of listings for residential White Pages,” (Dex One Initial Brief at 8) seems hypocritical and should not be considered by the Commission.

Moreover, the People note that Dex One failed to cite to authority to support its arguments relative to the impact that the availability of electronic media has on a customer’s use of white pages directories. Therefore, the Commission should consider this evidence anecdotal at best and reject Dex One’s proposed variance.

2. Customer Usage Patterns Relative to ICC Docket No. 07-0434

Dex One also raises a number of comparisons to the Commission’s previous granting of the variance requested in ICC Docket No. 07-0434. See Dex One Initial Brief at 9, 12. The People argue that these are not fair comparisons. Pursuant to the order in Docket No. 07-0434, the Commission allowed Dex One to produce and deliver more targeted residential white pages directories, in the form of neighborhood directories, within the City of Chicago.¹

¹ Order, *RH Donnelly: Petition for Variance from Section 735.180 of the Illinois Administrative Code*, ICC Docket No. 07-0434 (October 27, 2007)..

Residents within the City of Chicago have the option of requesting a city-wide directory. In 2010, according to Dex One, only .37% of residential customers requested a city-wide directory. Dex One Initial Brief at 9. Dex One cites to this statistic in order to demonstrate that residents do not want residential white pages. The People argue that the comparison between the instant docket and 07-0434 is not valid and should not be considered by the Commission. In 07-0434, the consumers continued to receive some form of residential white pages directory, whereas, in the instant docket, Dex One is seeking to strip customers in and around the City of Chicago of *any* residential white pages listings. In addition, Dex One has not presented the Commission or the parties with any context for this statistic or any demographic information associated with it. It is a raw statistic and should be viewed as such.

As noted in the People's initial brief, it is possible that the neighborhood residential white pages directory is serving its intended purpose. It is equally possible that the residential customers have no idea that they can call to request a citywide directory. But without further information, the Commission is hamstrung and required to take Dex One's word that customers simply do not want the directories. Therefore, Dex One's reliance upon the customer experience in ICC Docket No. 07-0434 does not demonstrate that customers will not be injured by the requested variance.

3. Customer Usage Patterns in Other Jurisdictions

Dex One argues that "customer usage patterns for residential White Pages have changed." Dex One Initial Brief at 7. In support of this assertion, Dex One points to several different markets where directory providers have suspended or ceased saturation delivery of residential white pages and there has not been "significant negative customer feedback." Dex One Initial Brief at 8. However, outside the customer response statistics discussed above, Dex

One has presented no data specific to the Illinois market. The Commission should reject this argument.

Dex One notes that several other jurisdictions have allowed similar variances. However, Dex One fails to provide any discussion as to why or how these jurisdictions are demographically similar to the Illinois marketplace, or more importantly, why the Commission should consider the orders from other jurisdictions persuasive. Therefore, the Commission should reject this argument and the proposed variance.

The People note that Staff proposes customer surveys in order to appropriately gauge customer interest in continuing to receive residential directories. Although the People do not take a position on the validity of such a proposed survey, the People acknowledge the importance of data specific to the customer experience in Illinois. It is for this very reason that the People presented three alternatives in our initial brief. Therefore, if the Commission does not reject the requested variance, it should consider implementing one of the three alternatives previously presented by the People in order to gain valuable customer data about the Illinois marketplace.

B. Dex One Has Not Proven That The Rule Is Unreasonable Is Unreasonable or Unnecessarily Burdensome

Dex One also argues that the rule at issue (83 Ill. Admin. Code 735.180(a) and (d)) is unreasonable and unnecessarily burdensome “because it reflects an outdated view of most consumers’ need for and use of residential White Pages directories.” Dex One Initial Brief at 14. The People disagree. To the extent that Dex One relies on the same arguments about customer experience in Docket No. 07-0434 and environmental impact, the People reiterate the arguments above and assert that Dex One has again failed to provide alternatives for the most vulnerable segment of the population. Moreover, Dex One’s environmental impact argument should not be

considered by the Commission in light of Dex One's commitment to continue saturation delivery of the revenue-generating yellow pages.

III. ALTERNATIVES

Finally, Dex One states that "it is clear from actual consumer feedback that customers would not be harmed..." Dex One Initial Brief at 12. If the Commission determines that some sort of variance to the current rule should be allowed, the People assert, as in the Initial Brief, the importance of considering some modifications to the proposed variance that will assist in generating actual customer experience data from the Illinois market, including a two-year opt-out program; a one-year opt-in program; a one year delay on the request, with greatly increased publicity, advertisements, and notifications to customers; or universally accessible free directory assistance service. Delaying the implementation of the variance will allow Dex One time to tailor a delivery program that will still reach vulnerable customers yet still allow a reduction in printing and waste. Therefore, if the Commission finds that a variance is acceptable in this matter, the People urge the Commission to consider the alternative proposals in the People's Initial Brief to allow vulnerable customers to continue accessing the important information contained in the white pages directory at no cost to them.

IV. CONCLUSION

The People respectfully request that the Commission enter an order consistent with the recommendations contained in this Reply Brief and the People's Initial Brief.

Respectfully Submitted,

People of the State of Illinois
Lisa Madigan, Attorney General

By: _____/s/_____
Timothy S. O'Brien
Assistant Attorney General
Illinois Attorney General's Office
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
Telephone: (312) 814-7203
Facsimile: (312) 812-3212
E-mail: tsobrien@atg.state.il.us