

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**R.H. Donnelly, Inc. d/b/a Dex One as** :  
**agent for Illinois Bell Telephone Company** : **11-0668**  
:   
**Petition for Variance of Section 735.180 of** :   
**the Illinois Administrative Code.** :

**ORDER**

I. Procedural History

By the Commission:

On September 30, 2011, pursuant to Section 13-513 of the Public Utilities Act (220 ILCS 5/13-513) (“the Act”), R.H. Donnelly, Inc. d/b/a Dex One as agent for Illinois Bell Telephone Company (“Petitioner,” the “Company” or “Dex One”), filed a verified petition with the Illinois Commerce Commission (“Commission”) requesting a variance from 83 Ill. Adm. Code 735.180 (a)(1) and (d), and a modification of the Commission Order in Docket 07-0434.

The petition states that on September 1, 2004, Petitioner entered into a directory services license agreement with Illinois Bell Telephone Company (“Illinois Bell”) to publish Illinois Bell’s Yellow Pages and White Pages directories in Illinois. The agreement established Petitioner as Illinois Bell’s agent for the purpose of publishing the White Pages. Petitioner also contracted with Illinois Bell to fulfill its legal obligations relating to directories, including applicable Commission regulations.

Inside Chicago, Petitioner seeks the option to remove the Residential White Pages from Neighborhood Directories and requests that the variance it received in Docket 07-0434 be modified so that Petitioner is no longer required to deliver Neighborhood Directories in a saturation manner. Residents would continue to have the option of receiving the city-wide White Pages and all customers would continue to receive some form of Yellow Pages with all of the content required by regulation. Customers would continue to receive up to five additional print directories at no charge.

Outside Chicago, Petitioner requests permission to cease saturation delivery of the Residential White Pages in certain markets and provide White Pages in those markets upon customer request only. All customers would continue to receive some form of Yellow Pages with all of the content required by regulation. Customers would continue to receive up to five additional print directories at no charge.

Pursuant to notice as required by Commission regulations, a prehearing conference was scheduled before a duly authorized Administrative Law Judge (“ALJ”) of the Commission on October 17, 2011. Petitioner and Staff appeared by counsel. On October 25, 2011, pursuant to Section 13-513 of the Act, the Commission, at Staff’s request and on its own motion, authorized an investigation of the petition in this matter. This matter was continued to January 11, 2012, January 31, 2012, February 14, 2012 and March 6, 2012. On March 9, 2012, the Illinois Attorney General (“the AG”) filed an appearance in this Docket. This matter was continued to March 22, 2012 and then to May 1, 2012, for hearing.

At the hearing on May 1, 2012, Petitioner, Staff and the AG appeared by counsel. Petitioner presented Exhibits 1.0 and 2.0, the direct and the responsive testimony, respectively, of David Davidson, Senior Manager of Marketing; Exhibit 1.1, maps of Petitioner’s area of coverage; Exhibit 1.2, direct testimony of David Kelley, Director of Marketing, filed in Docket 07-0434; Exhibit 1.3, Table of Contents, Chicago Consumer phonebook, 2011; Exhibit 1.4, general information from Chicago Consumer phonebook, 2011; Exhibit 2.1, Petitioner’s Current and Proposed Configuration for Printed Directories; Exhibit 2.2, Proposed Order from the Florida Public Service Commission; Exhibit 2.3, a Resolution from the California Public Utilities Commission; and Exhibit 2.4, an Order from the New York Public Service Commission.

Staff presented Exhibit 1.0, the direct testimony of Joan Howard, Consumer Policy Analyst, and Exhibit 2.0R, Ms. Howard’s revised rebuttal testimony. The AG did not present any evidence in this Docket. Petitioner, Staff and the AG submitted post-hearing Initial and Reply Briefs. At the conclusion of the hearing on May 1, 2012, Petitioner and Staff exhibits were admitted into evidence and the record was marked “Heard and Taken.”

On June 27, 2012, the ALJ issued a Proposed Order in this Docket. Petitioner, Staff and the AG filed Briefs on Exceptions. Petitioner and the AG filed Reply Briefs on Exceptions.

## II. The Public Utilities Act and 83 Ill. Adm. Code 735

Section 13-513 of the Act states, in relevant part, “(A) telecommunications carrier may petition for waiver of the application of a rule issued pursuant to this Act... The petition shall include a demonstration that the waiver would not harm customers and would not impede the development or operation of a competitive market...” (220 ILCS 5/13-513).

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

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.

83 Ill. Adm. Code 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.

83 Ill. Adm. Code 735.50 states:

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 grant of the variance; and
- c) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

### III. Petitioner Position

#### a. Direct Testimony of Mr. Davidson

Mr. Davidson testified that Residential White Pages are published in the Chicago city-wide Residential White Pages Directory and in the Neighborhood Directories. All customers receive the Neighborhood Directories. Pursuant to the variance granted in Docket 07-0434, the Chicago city-wide Residential White Pages are delivered only upon customer request. Chicago residents receive Residential White Pages for their neighborhood without a request and can receive Residential White Page listings for the entire city upon request.

Inside Chicago, Petitioner seeks the option to remove the Residential White Pages from Neighborhood Directories and requests that the variance it received in Docket 07-0434 be modified so that Petitioner is no longer required to deliver Neighborhood Directories in a saturation manner. Under Section 735.50, the Commission may grant a variance from its directory rules. (Petition at 1). In Docket 07-0434, the Commission found no statutory mandate prohibiting the variance. (Docket 07-0434, Finding (6)). Residents would continue to have the option of receiving the city-wide White Pages.

Outside Chicago, in the suburbs, Rockford, Peoria, Springfield and Metro East (east St. Louis metropolitan area), Petitioner publishes, among other directories, the Core Directory containing Residential White Pages, business White Pages, and Yellow Pages. Petitioner seeks to remove the Residential White Pages from the Core Directory and publish these pages separately. Customers receiving the Core directory could request a copy of the Residential White Pages; however, initially upon-request White Pages would be available only in the Chicago area and Metro East. In deciding to expand upon-request delivery, Petitioner would consider the customer preferences, the size of the area,

changes in search methods and other business factors. Petitioner would also give the Commission three months notice before expanding delivery into the other areas outside Chicago.

Mr. Davidson testified that Petitioner is not discontinuing publication of any directory. It only proposes to update the method of delivering Residential White Pages in response to marketplace changes. Residential White Pages inside and outside of Chicago will continue to be available to all Illinois Bell customers upon request, free of charge, and will not be counted as one of the five free directories that subscribers can request. Inside and outside Chicago, customers can place a standing order for Residential White Pages delivery for three years without an additional request, and can renew that request at the end of the three year period.

Mr. Davidson testified that computer databases, the internet, and telephones that store contact lists contain the information sought in Residential White Pages. The number of unlisted residential customers has also increased and the number of landlines has decreased in favor of mobile phones or VoIP. Also, increased environmental concerns have translated into low value for printed listings that are of limited utility to customers.

In Docket 07-0434, Petitioner committed to notify subscribers that they could request the Chicago city-wide Residential White Pages within the table of contents and the phone/service/directory assistance section of the Chicago Consumer and Neighborhood Directories and within the table of contents on the Chicago Plus directory. In Chicago, Petitioner will continue to provide the same notices in the Chicago Consumer, Chicago Plus and Neighborhood Directories. Outside Chicago, the Core Directories will contain a notice in the table of contents and the phone service/directory assistance section that a subscriber may request a print copy of the Residential White Pages.

Mr. Davidson asserted that no one will be harmed by grant of the variance sought. Inside and outside Chicago, print versions of the Residential White Pages will be available free of charge upon request. Residential listings will also be available in non-print formats DexPages.com, DexKnows.com, Dex Mobile, yp.com, CD-ROMs and other online or mobile formats.

Mr. Davidson testified that the directory rule has become unnecessarily burdensome in part because it reflects an outdated view of customer needs. Most customers use the internet and mobile devices for listing information. The variance would also result in a significant reduction of waste paper each year, producing an environmental benefit.

Petitioner's proposal would not affect the provision of information to subscribers concerning emergency services, complaint procedures, telephone assistance programs, customer credits and other required information. Inside Chicago, governmental listings will still be available in the Chicago Consumer, Chicago City-wide Residential White Pages and Neighborhood Directories. Outside Chicago such listings will still be available in the Core Directories.

b. Responsive Testimony of Mr. Davidson

Mr. Davidson testified that Ms. Howard overstates the extent of the changes Petitioner is seeking, as well as the value of the survey data. It was his perception that Ms. Howard was treating the Residential White Pages as a freestanding telephone book that would disappear if the variance is granted. (Staff Ex. 1.0 at 2). It is merely the method of delivery that is changing, from saturation to request-only, and requests will be maintained for three years. Customers would still receive a phone book each year. Petitioner intends only to omit the Residential White Pages from its saturation delivery. Moreover, Petitioner intends to cease distribution of the Residential White Pages, not their publication. These pages will be available to customers by means of a phone call. Only the Neighborhood Directory White Pages will be unavailable if the variance is granted.

Mr. Davidson testified that Petitioner would meet each of the conditions stipulated by Ms. Howard: 1) a printed copy of the Chicago city-wide Residential White Pages directory at no charge; 2) the Chicago city-wide Residential White Pages on CD-ROM at no charge; and 3) directories to include notice to customers of the availability of the Chicago city-wide Residential White Pages to be delivered upon request. (Staff Ex. 1.0 at 4).

In response to Ms. Howard's testimony that Petitioner had no direct survey evidence pertaining to customer preferences, Mr. Davidson replied that Petitioner had no more current survey data concerning customer preferences than it provided in Docket 07-0434. (Staff Ex. 2.0R at 2). It was his belief that data obtained from markets that have already undergone this type of conversion is a more reliable indicator of customer reaction than a speculative customer survey. Other state commissions have allowed this change with no negative customer reaction. Petitioner provided to Ms. Howard, at her request, orders from state commissions permitting this change. (Staff Ex. 1.0 at 9-10). In the survey conducted in support of the petition in Docket 07-0434, 20% of customers responded that they would request a directory if Petitioner moved from saturation delivery to upon-request only for city-wide Residential White Pages. The actual request rate has been less than 1%.

In response to Ms. Howard's testimony that Petitioner had not shown that the distribution requirement imposes an undue burden on Petitioner, Mr. Davidson stated that the Commission may find that it is either unduly burdensome or unreasonable. (Staff Ex. 1.0 at 8). With fewer customers relying less on Residential White Pages, the cost in terms of resources and waste is unduly burdensome on Petitioner, on customers who do not want the materials, and on the environment.

Mr. Davidson also stated that, regarding removal of the Residential White Pages from the Core directories outside Chicago, Applicant decided not to include Metro East in its initial roll-out.

c. Additional Responsive Testimony of Mr. Davidson

Mr. Davidson testified that Ms. Howard suggested that the only condition she would consider as mitigation for continued opposition to the variance would be a customer survey. (Staff Ex. 2.0R at 3-4). He reiterated that a survey would not provide significant probative information. Customer surveys conducted and cited in other commission orders were found to have over-reported the interest in Residential White Pages. Actual customer experience demonstrated that there was no strong interest in saturation delivery of Residential White Pages and this experience is far more probative than any hypothetical survey. Saturation delivery has ceased in over 60 markets nationwide with no significant public objection. This is evidence that customers do not value automatic inclusion of Residential White Pages as long they can be obtained upon request at no cost.

Moreover, Petitioner commits to maintain, for Staff review, records containing the number and percentage of customers who request a print copy of the Residential White Pages. If the request rate signals to Staff that the program should be ended or not extended to other markets, Petitioner would not object to reopening this Docket to evaluate Staff's concerns. The Commission would be able to evaluate actual, not hypothetical, customer reaction.

Staff Exhibit 2.0R (at 4, lines 23-29) dismisses the non-impact of this change, citing only five states where publishers have moved to upon-request delivery, and omitting 17 other states and the District of Columbia where publishers have implemented this change with no substantial customer reaction. Staff requires a survey to be Illinois-specific, but fails to explain how Illinois markets are unique from the other 60 markets that have reported this change with no negative customer reaction. This change has occurred in Houston, Dallas and Atlanta, markets demographically similar to Chicago, with no substantial customer reaction.

Petitioner will commit not to extend upon-request delivery of Residential White Pages beyond Chicago and suburbs for at least two years. If, during that period, Staff develops concerns about implementation of upon-request delivery, it could request that the Commission reconsider its Order granting the petition. If Staff does not request reconsideration, upon-request delivery could be expanded to other areas, although Petitioner would commit to providing 120-days notice prior to any such expansion beyond Chicago suburbs.

Placing notification of the change in customers' Illinois Bell billing statements would be insufficient in cases where a party is not an Illinois Bell customer. Prominent notices placed in the current Residential White Pages directory table of contents and directory assistance/information pages would reach all directory users. Petitioner would also be willing to add a notice on the outside front cover of directories to supplement the interior notice. Customers can currently request a free directory, which will include the Residential White Pages, by calling toll free 877-2-GET-DEX or by going online to [www.selectyourdex.com](http://www.selectyourdex.com). Petitioner proposes to have customers renew requests for

Residential White Pages every three years, as it would be infeasible to continue matching people who moved to new addresses. Also, preferences for Residential White Pages may change over time. Petitioner would also commit to providing a reminder card or similar notice in the third year.

Petitioner also sees no need to provide notice to new customers about how to order the Residential White Pages, as directories are delivered to new customers upon notice from Illinois Bell. Petitioner added that customers of other carriers will receive the same notice regarding availability of Residential White Pages. It will also commit to provide notice to other carriers with whom it has publishing agreements regarding upon-request delivery of Residential White Pages.

Mr. Davidson testified that Petitioner processes a request for delivery of Residential White Pages and prepares for delivery within two days. It typically takes between seven and ten days for actual delivery. It is infeasible for Petitioner to guarantee delivery in less time than that, as it is dependent upon its delivery vendor and the U.S. Postal Service. It is also infeasible to provide free directory assistance between request and delivery. The provision of this service would occur infrequently and require the burdensome coordination of systems within Illinois Bell.

Petitioner plans to continue publishing residential listings throughout Illinois, even with upon-request delivery of Residential White Pages. Petitioner also would continue to honor Illinois Bell's non-publication/non-list designations in its print directories. These services would still have value for residential subscribers, so the charges would still be applicable.

#### IV. Staff Position

##### a. Testimony of Ms. Howard

Ms. Howard testified that Petitioner's request for approval to distribute Residential White Pages upon request only appears to be nothing less than a request to cease publication and distribution of the traditional phone book. She stated that the variance from Section 735.180(a)(1) and (d) granted in Docket 07-0434 exempted Petitioner from including the Chicago Residential White Pages in the primary directory. As a condition of the variance, Petitioner distributed to each customer in a designated neighborhood, a Neighborhood Directory that included Residential White Pages and Yellow Pages. Other conditions were that customers could request a printed copy of the Residential White Pages at no cost, Chicago city-wide Residential White Pages on CD-ROM at no cost, and notice to customers of the availability of the Chicago city-wide Residential White Pages to be delivered upon request.

Ms. Howard testified that Petitioner currently proposes to commit only to distribute some form of Yellow Pages to all customers. Petitioner did not propose to eliminate distribution of Residential White Pages in the previous case, and the Commission did not consider it. After obtaining authority from the Commission in Docket 07-0434 to allow

Petitioner to substitute distribution of Neighborhood Directories, rather than the Chicago city-wide directory, Petitioner now seeks to reverse that request and revert to distribution of the Chicago city-wide directory, which would be available upon request only. Petitioner also seeks to remove the Residential White Pages from the Neighborhood Directories and to extend the variance to cease distribution of directories to all customers in exchanges outside Chicago. Residential White Pages would be available upon request only.

Ms. Howard said that customers expect to receive White Pages and the current rules require primary telephone directories of all exchanges to be revised, printed and distributed to customers at least once annually. The proposed change provides for printed directories to be distributed upon customer request only. It is unclear how Petitioner would determine whether customers want to continue to receive White Pages without having to make a request. She added that the proposed change does not provide for adequate notice to customers who expect to receive White Pages, since notice is limited to that found in the Yellow Pages. Further, the petition does not explain how customers without internet access would obtain numbers before receiving the White Pages, nor does it specify how soon customers would receive a directory after ordering one.

Ms. Howard also testified that there is no mention in the petition whether an applicant for Illinois Bell service would be asked if he/she would want a White Pages directory, or whether Illinois Bell would take such an order.

Ms. Howard expressed her concern that harm will result from granting the petition, as Petitioner offered no statistical support for the proposition that customers use the internet to obtain numbers. She cited evidence that as many as 20% of Illinois residents do not own a computer. Petitioner's conclusion that customers for varying reasons do not want directories (Petitioner Ex. 1.0 at 8 - 12) can be subject to different interpretations. Neighborhood Directories may fill customer needs, as Petitioner suggested in Docket 07-0434, and it is possible that the availability of city-wide directories has been inadequately publicized, despite Petitioner's compliance with Docket 07-0434. In either case, it is not clear that Petitioner's conclusions follow from the evidence.

Ms. Howard also stated that just because Petitioner does not receive revenue from the Residential White Pages, as it does from the Yellow Pages, does not mean that incorporating the White Pages into the Neighborhood Directories is burdensome. Ms. Howard concluded that Petitioner had not met its burden in this Docket and she could recommend only that the variance granted in Docket 07-0434 be continued.

Ms. Howard stated that she would be interested in seeing Petitioner's survey data pertaining to customers' desire, or lack thereof, for a printed White Pages directory; all other survey data in Petitioner's possession pertaining to the experience of AT&T Advertising Solutions with the request rate for published directories in the areas in which it publishes directories; the identity of the "many states" cited by Petitioner's witness that have updated their approaches to the provision of residential telephone listings and now permit upon-request delivery of Residential White Pages, with state Commission orders granting variances (Petitioner Ex. 1.0 at 11); the identity of "several states" in which

SuperMedia has implemented upon-request delivery of Residential White Pages (Petitioner Ex. 1.0 at 11-12) with state Commission orders granting waivers or the petitions seeking such variances; and all correspondence received from customers regarding White Pages directories.

b. Rebuttal Testimony of Ms. Howard

Ms. Howard testified that Petitioner provided data pertaining to waivers granted in other states, but did not provide supporting evidence specific to Illinois customers. Her opinion remained that the manner of publication and distribution of Residential White Pages should not change. The variance granted by Docket 07-0434 did not eliminate Residential White Pages; it permitted publication of neighborhood directories rather than a Chicago city-wide directory. Petitioner has not produced any Illinois-specific surveys to show the lack of need for Residential White Pages. It instead relies on orders from other state commissions that granted similar variances.

Ms. Howard stated that Petitioner's assertion that only a small percentage of customers have requested city-wide directories is not an argument for discontinuing Neighborhood Directories. Petitioner fails to present any data to support the proposition that customer's consider the Residential White Pages in Neighborhood Directories to lack usefulness. The position of other states on this issue does not bind the Commission. Petitioner has not proved that discontinuance of Residential White Pages in Neighborhood Directories would have no adverse effect and Staff is not convinced that customers no longer rely on Residential White Pages.

Ms. Howard testified that she would not oppose giving customers the option of not receiving Residential White Pages. For any waiver, Petitioner should be required to survey customers within the applicable service territory of each directory to determine whether customers wish to continue to receive Residential White Pages as part of at least one directory distributed annually; Illinois Bell should ask customers at the time of application whether they wish to receive a directory with the Residential White Pages; and the conditions imposed in Docket 07-0434 should remain in effect.

V. Proposed Commission Analysis and Conclusions

Petitioner requests a variance from 83 Ill. Adm. Code 735.180 (a)(1) and (d) so that, inside Chicago, it may remove the Residential White Pages from its Neighborhood Directories. Petitioner also seeks a modification of the variance granted in Docket 07-0434, permitting it to now cease saturation delivery of the Neighborhood Directories. Outside Chicago, the variance would allow it to remove the Residential White Pages from the Core Directory and cease saturation delivery of these pages. Petitioner would make the Core directory Residential White Pages available upon request, but initially only in the Chicago suburbs and Metro East area.

The Commission does not see a contested issue in the cessation of saturation delivery of Neighborhood Directories inside Chicago and the Core directories in the areas

specified, as Petitioner has pledged to provide those directories to customers upon request. The Commission finds that the variance granted in Docket 07-0434 should be extended and Petitioner should be permitted to deliver Neighborhood Directories upon request only.

Removal of the Residential White Pages from the neighborhood directories inside Chicago would leave customers with access only to the city-wide Residential White Pages, which would be available upon request. Petitioner states that there would be a time gap between the request and actual delivery; however, it appears that a requesting customer would be without Residential White Page listings for no more than a maximum of ten days. Very possibly, the time gap would be considerably less. (Pet. Ex. 3.0 at 9). The Commission does not see a likelihood of imminent harm to Chicago customers whose access to Residential White Page listings would be interrupted for only a few days. The Commission concludes that the variance granted in Docket 07-0434 should be extended, allowing Petitioner to cease saturation delivery of the Neighborhood Directories in Chicago. Petitioner should also be permitted to cease saturation delivery of the Core Directory in the areas specified, provided that the Neighborhood and Core Directories remain available to customers upon request.

Removal of the Residential White Pages from the Core Directories is problematic. Mr. Davidson testified that Residential White Pages would initially be available upon request only in the Chicago suburbs. (Pet. Ex. 1.0 at 8). That would leave customers in Metro East, Rockford, Peoria and Springfield with no access to Residential White Pages listings and there is no evidence to show when these pages would be made available. (Pet. 2.0 at 4). The Commission's concern is the possibility of harm to those customers. The AG argued that, without access to the Residential White Pages listings, customers could likely resort to some form of directory assistance at an additional cost. (AG Init. Br. at 7). The Commission agrees and regards this as unacceptable. Moreover, the Commission is not persuaded that the internet or cell phones provide a remedy, as there is no evidence in this Docket to demonstrate that all customers in these areas have internet access or own a cell phone. Customers in Metro East, Rockford, Peoria and Springfield lacking such devices would be without access to Residential White Page listings for an indefinite period of time.

The variance from Section 735.180(a)(1) and (d) allowing removal of the Core Directories' Residential White Pages should not be granted until Petitioner makes available to customers in the Metro East, Rockford, Peoria and Springfield areas, free of charge, the same Residential White Pages information that has been available at no cost in prior years. This could be done by making the actual pages available upon request or through some other medium, e.g., a toll-free directory assistance number. The Commission notes that Petitioner maintains toll-free numbers for customers to obtain directories and Residential White Pages in other Illinois locations. (Pet. Ex. 2.0 at 3, 8; Ex. 3.0 at 7). Petitioner should petition for a variance from Section 735.180(a)(1) and (d) in a separate Docket at such time as the Core Directories' Residential White Pages become available upon request, or through some other source available to all customers in the Metro East, Rockford, Peoria and Springfield areas.

By granting the variance from Section 735.180(a)(1) and (d) except in the case of the Core Directories' Residential White Pages, the Commission finds that the requirements of Section 735.50 have been met. The rule is not statutorily mandated. No customers outside of the Metro East, Rockford, Peoria and Springfield areas will be harmed, as Neighborhood Directories, Core Directories and Residential White Pages in Chicago will be available upon request. To the extent that Petitioner is required to provide saturation delivery of directories and publish Residential White Pages in Chicago, the rule is unreasonable, as customers may obtain directories and listings upon request from Petitioner at no charge.

## VI. Exceptions

### a. Petitioner

Petitioner argued that Core Directories will continue to be delivered on a saturation basis and that Petitioner would not remove the Residential White Pages from them in any market until it was prepared to make these pages available upon request. Removal of the Residential White Pages from a Core Directory market outside of the Chicago area would be simultaneous with the availability of a stand-alone copy of the same pages for the same market. Implementation of these changes into any market outside of Chicago would not occur until at least two years after implementation in Chicago and its suburbs. Petitioner would not limit implementation to the four markets outside the Chicago area, but would consider extending the program on a market-by-market basis according to needs and usage patterns.

Petitioner argued that other state commissions have rejected survey evidence as insufficiently probative and neither Staff nor the AG provided any legal support for its position. An Illinois customer survey would be logical only if there were some demographic unique to Illinois customers that would make their need for Residential White Pages different from the other markets where implementation has already occurred. Moreover, other state legislatures have repealed statutory directory rules and the Illinois legislature has never required them, which provides support for an uncontested finding on the opening element of Petitioner's variance request.

Petitioner also asserted that it is not attempting to compel customers into an Internet-or-nothing approach to obtaining phone numbers. Fewer personal numbers are contained in the Residential White Pages and there are other sources for personal listings, e.g., church directories, club directories and other small group directories, as well as the growing use of telephones that store numbers. Customers will still receive, among other things, instructions on how to receive Residential White Pages.

Petitioner further argued that the industry conducted state surveys in other markets and found that these surveys over-reported the interest in Residential White Pages. Actual customer experience demonstrated that there was no strong interest in saturation delivery of Residential White Pages, and this has more probative value than a hypothetical

survey. The fact that saturation delivery has ceased in over 60 markets with no significant public opinion is far more relevant evidence that customers do not value automatic receipt of Residential White Pages, as long as they are available upon request at no charge.

b. Staff

Staff argued that cessation of the Neighborhood Directories raises an issue, since the waiver granted in Docket 07-0434 should be continued in its present form. The Order in Docket 07-0434 does not find that Neighborhood Directories are to be distributed only upon specific request. The Order states that R.H. Donnelly would continue delivery of local Neighborhood Directories to all Chicago residential customers, but distribution of the Residential White Pages would be delivered upon request only. Staff's witness explained that the waiver did not eliminate the Residential White Pages, it permitted publication of Neighborhood Directories instead of a Chicago city-wide directory. Saturation delivery of city-wide directories ceased and Neighborhood Directories took their place.

Staff stated that the waiver granted in Docket 07-0434 is proper and should not be expanded, as Petitioner has failed to meet its burden. Instead of using Illinois-specific evidence to show that no harm would occur from the requested waiver, Petitioner relied upon the fact that other states have granted similar waivers. Also, 20% of Illinoisans do not own a computer. Since Petitioner relies upon the ability of customers to obtain numbers on-line, it follows that 20% will be harmed by discontinuance of the Neighborhood Directories. The waiver cannot be granted on this basis alone.

Staff further argued that the Neighborhood Directories were Petitioner's idea, intended to relieve it of the purported burden of saturation delivery of city-wide directories. To now argue that this less stringent requirement is excessively burdensome is more than the Commission should be prepared to entertain. Also, Petitioner conducted a Chicago-specific survey to support its waiver request in Docket 07-0434. Petitioner in this Docket relies upon nothing more than other state orders.

Staff stated that if the Commission declines to adopt Staff's recommendations, the following conditions should be imposed:

Petitioner 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 suggested that Petitioner conduct the survey using a postage-paid card to be included with the distributed Core Directory in the market where cessation of the Residential White Pages is targeted.

Illinois Bell should be required to ask new customers at the time of application whether they wish to receive Residential White Pages with their directory.

Conditions imposed by the Commission in Docket 07-0434 should remain in effect.

c. Attorney General

The AG argued as an initial matter that the Proposed Order omitted language from Section 13-513 of the Act which assigns the burden of proof to Petitioner.

The AG and Staff repeatedly asserted that Petitioner relied upon anecdotal evidence to support its position that no harm would come to Illinois consumers as a result of the variance requested. As there is no relevant data in the record relating directly to Illinois markets, the Proposed Order errs by essentially taking Petitioner's word that its customers do not want or need Residential White Pages.

The Proposed Order erroneously concluded that Petitioner produced evidence to show that customers in and near Chicago have access to electronic media that would enable them to obtain Residential White Page listings. While electronic media is pervasive among some segments of the population, it is not ubiquitous. Some residents in and near Chicago will continue to rely on printed directories, because they lack access to an electronic source. Without access to a print directory, there is a greater likelihood that vulnerable customers in and near Chicago will not have access to numbers, or will have to obtain them from directory assistance at additional cost. The Proposed Order fails to address these arguments or the detrimental effect it could have on the most vulnerable customers.

The Proposed Order also accepts Petitioner's anecdotal evidence and unsupported assertions regarding the impact that the availability of electronic media has on customer use of Residential White Pages. The Proposed Order notes that there would be a time gap between a request for Residential White Pages and actual delivery. This finding together with the AG's argument that electronic sources are not available to all customers comprises the very definition of harm. No proof was offered that a segment of vulnerable customers will not be harmed by the variance and the Commission should modify the order.

Petitioner asserts that, because of the low request rate for the city-wide directory following entry of the Order in Docket 07-0434, customers do not want residential directories. The AG finds this to be invalid. Customers have been without Residential White Pages since entry of the Order in Docket 07-0434, but they continued to receive neighborhood Residential White Pages. Granting the variance requested in this Docket would leave customers without access to any Residential White Pages.

The Proposed Order also appears to accept Petitioner's testimony that saturation delivery has ceased in over 60 markets with no significant public objection. This is evidence that customers do not require Residential White Pages as long as they are available upon request at no cost. The AG again asserts that Petitioner has failed to present any data specific to Illinois markets and has failed to explain how these other

markets are demographically similar to Illinois. The Proposed Order does not address these arguments.

The AG further argued that the Proposed Order erroneously concluded that Section 735.180(a) and (d) is unreasonable and unnecessarily burdensome to Petitioner. Both Staff and the AG highlighted the fact that Petitioner will continue to print and distribute revenue-producing Yellow Pages. Given this production and distribution network, it cannot be argued that offering the smaller residential directories is somehow unreasonable and unnecessarily burdensome.

The AG urged the Commission, in the event it grants the requested waiver, to require notice to customers similar to the various notice provisions required by the New Jersey Board of Public Utilities, the Florida Public Service Commission and the Public Utilities Commission of Ohio. Such notice would give customers adequate opportunity to prepare for the cessation of saturation delivery. The Proposed Order does not address notice requirements and Petitioner is free to stop delivery of Residential White Pages at will.

The AG argued that Petitioner's first exception is an attempt to clarify the Proposed Order, that some form of Core Directory will still be delivered in a saturation manner. The Core Directories to be delivered will not contain residential listings and the revenue-generating Yellow Pages, also without residential listings, are an unacceptable substitute. Petitioner is required to prove that no customers would be harmed by its requested waiver and that the rule at issue, 83 Ill. Adm. Code 735.180(a) and (d), is unreasonable and unnecessarily burdensome. Petitioner's evidence is insufficient to meet that standard.

In its second exception, Petitioner seeks to further clarify its position by noting that it does not plan to expand its program into other markets for two years and only after a stand-alone copy of residential listings is available for that market. With this exception, Petitioner presumes that it has proven that no harm will result from removal of the white pages from regular directories; however, there is no customer-specific evidence pertaining to the needs or usage patterns of customers in Illinois markets. Twenty percent of Illinois residents who do not own a computer could be harmed by discontinuance of the Neighborhood Residential Directories. Petitioner's evidence does not address the Illinois rule. It has failed to draw a correlation between the customer response from Docket 07-0434 and the need for residential listings, without which customers may resort to directory assistance at additional cost. The AG concluded that it agrees with Staff's exceptions and proposed conditions.

## VII. Post Exceptions Analysis and Conclusions

The Commission finds that Petitioner, as the party seeking relief, has the burden of proof in this matter and the Commission's findings are based upon whether Petitioner has met that burden.

Nowhere in the conclusions does the Proposed Order take “Petitioner’s word for it” that Petitioner’s customers do not want or need Residential White Pages. (AG BOE at 2). The Proposed Order relies solely upon Petitioner’s evidence that, inside Chicago and in the suburbs, the city-wide Residential White Pages will continue to be available to customers upon request. Where white pages are not available, the variance will not be granted. (Proposed Order at 10). The Commission disagrees with Staff’s position that, because a certain percentage of Illinois residents do not own a computer, that same percentage will be harmed by discontinuance of the Neighborhood Directories. (Staff Init. Br. at 9). The record is clear that those customers without access to electronic sources can obtain a copy of the city-wide Residential White Pages by calling a toll-free number. (Pet. Ex. 2.0 at 3).

The Proposed Order does not conclude that Petitioner provided evidence to show that customers in and near Chicago have access to electronic media that would enable them to obtain Residential White Pages. (AG BOE at 4). The Proposed Order states only that as long as the city-wide Residential White Pages will continue to be available to customers free and upon request, customers will not be harmed by removal of the Residential White Pages from the Neighborhood Directories. (Proposed Order at 10).

The Proposed Order does not accept Petitioner’s anecdotal evidence and unsupported assertions regarding the impact that the availability of electronic media has on customer use of the Residential White Pages. (AG BOE at 3). The Proposed Order specifically states that “the Commission is not persuaded that the internet or cell phones provide a remedy, as there is no evidence in this Docket to demonstrate that all customers in these areas have internet access or own a cell phone.” (Proposed Order at 10).

The AG views the time gap between the Order and the delivery of Residential White Pages, together with the lack of access to electronic sources, as the very definition of harm. (AG BOE at 4). As customers will have full access to all emergency and other necessary numbers during the interval, the Commission does not see any potential harm in that regard. The AG’s concern is the possibility that customers would incur directory assistance charges prior to delivery. The Commission shares this concern, but considers the time interval to be so short that the likelihood of customers incurring directory assistance charges would be virtually negligible.

The AG errs when it states that granting the requested variance “strips customers in and around Chicago of *any* residential white pages listings.” (AG BOE at 5). The Proposed Order clearly states that, at all times, customers in and around Chicago would have access to Residential White Pages upon request. (Proposed Order at 10).

The Proposed Order does not accept Petitioner’s testimony that saturation delivery has ceased in over 60 markets with no significant public objection. (AG BOE at 5). The findings in the Proposed Order are based solely upon evidence that Residential White Pages in and around Chicago will be available free of charge upon request. The Proposed Order makes no mention of, and does not rely to any extent, upon Petitioner’s statements regarding the cessation of saturation delivery in other markets.

The Proposed Order found that producing the Residential White Pages in and around Chicago was unduly burdensome, strictly on the basis that these pages are available for free upon request. Even if production of the Residential White Pages is less burdensome than producing the Yellow Pages, it is still burdensome to an extent, as long as the same pages are made available upon request, free of charge. (Proposed Order at 11).

Petitioner notes that, while it is seeking to cease saturation delivery of Residential White Pages in Chicago, it is only seeking the “option” to cease such saturation delivery of Residential White Pages outside of Chicago. Petitioner further notes that prior to ceasing saturation delivery of Residential White Pages in areas outside of Chicago it would take into account customer preferences, the size of the area and the Directory, changes in search methods, and other business factors. These statements indicate, consistent with the evidence in this proceeding, that Petitioner’s request to cease saturation delivery of Residential White Pages in areas outside of Chicago is premature. For this reason, the Commission does not, at this time, grant Petitioner’s request with respect to areas outside Chicago. While the Commission does not now grant this part of Petitioner’s request, Petitioner is free to petition the Commission again with respect to any area outside Chicago at such time as Petitioner actually proposes to cease saturation delivery of Residential White Pages in that area. The Commission expects, consistent with Petitioner’s commitment to continue saturation delivery of Residential White Pages outside Chicago for at least two years and with the fact that cessation in Chicago will, as Petitioner notes, produce the type of information the Commission needs to assess the potential impact of cessation elsewhere, that Petitioner will not request such further variance outside Chicago for at least two years.

Staff recommends that the Commission impose three conditions upon Petitioner. While the Commission declines to impose the first two conditions, the Commission does agree with Staff’s third proposal that the conditions imposed in Docket 07-0434 should remain in effect. The Commission believes that the following conditions imposed by the Order in Docket 07-0434 should remain in effect:

1. The Company will distribute the city-wide Chicago Residential White Pages upon request from customers at no additional charge.
2. Customers have the option of establishing a “standing order,” whereby the book will be delivered in subsequent years without the need for additional requests.
3. The Neighborhood Directories (or Directories Petitioner continues to deliver on a saturation basis) will continue to include Section 735.180(e), (f), and (g) information about emergency services, complaint procedures, etc., that must appear in directories. They will include Sections 757.110(b) and 757.410(a)(2) information on telephone assistance programs. They will include Section 732.50 information about customer credits.

4. The Company will add a notice in the front pages of the Neighborhood books (or Directories Petitioner continues to deliver on a saturation basis) about the availability of the city-wide Chicago Residential White Pages.
5. Governmental listings for the entire Chicago exchange will continue to be available in all Neighborhood Directories (or Directories Petitioner continues to deliver on a saturation basis) and the Chicago Residential White Pages.
6. The Company will deliver, upon request and at no charge to consumers, a CD ROM with the city-wide White Pages, or consumers can access yellowpages.com on-line for Residential White Pages listings.
7. Customers who want to continue to receive the Chicago Residential White Pages directory (the city-wide directory) to continue to receive it free with just one toll-free call.
8. The Company will 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.
9. The Company will continue to notify its customers that city-wide White Pages remain available upon request and by printing an additional notification of its availability within the table of contents of the Chicago Consumer Yellow Pages, Neighborhood Directories and the Chicago Consumer Plus directories.
10. The Company will 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.

Furthermore, during the course of the instant proceeding, Petitioner has made certain commitments it would accept if so ordered by the Commission. Accordingly, in addition to all other requirements contained herein, the Commission directs Petitioner to comply with the following commitments it made during the course of the instant proceeding:

1. Dex will continue to distribute, on a saturation basis, an annual directory that includes business White Pages, government and emergency numbers and Yellow Pages.
2. In any AT&T Illinois' local service area where Dex no longer provides saturation delivery of Residential White Pages, Dex will include directions for obtaining a paper copy of the Residential White Pages on the phone services pages of the directory it distributes on a saturation basis.
3. In any AT&T Illinois' local service area where Dex no longer provides saturation delivery of Residential White Pages, Dex will include directions for obtaining a

- paper copy of the Residential White Pages on table of contents pages of the directory it distributes on a saturation basis.
4. In any AT&T Illinois' local service area where Dex no longer provides saturation delivery of Residential White Pages, Dex will include directions for obtaining a paper copy of the Residential White Pages on the cover of the directory it distributes on a saturation basis.
  5. In any AT&T Illinois' local service areas where Dex no longer provides saturation delivery of Residential White Pages, Dex will provide customers the option of establishing a standing order, whereby the print Residential White Pages will be delivered to them for three years without the need for additional responses. At the end of the three year period, Dex will send a reminder, which allows customers to renew their order for an additional three-year period.
  6. Dex will initially cease saturation delivery of Residential White Pages in the Chicago area only.
  7. Dex will maintain a target of processing requests for paper copies of the Residential White Pages within two days of receipt and keep processing records for one year and make these records available upon request.
  8. Dex commits to maintaining records about the number and percentage of customers who request a print copy of the Residential White Pages. Dex would make those numbers available for Staff review upon request.
  9. Dex will make available a printed version of the Residential White Pages free-of-charge, upon request to all customers in any AT&T Illinois' local service areas where Dex no longer provides saturation delivery of Residential White Pages. The request for a free print copy of the Residential White Pages will not be counted as one of the five free directories that subscribers can request.
  10. Dex will allow requests for Residential White Pages free of charge by calling a toll free number (877-2-GET-DEX) or by request online at [www.DexKnows.com/Green](http://www.DexKnows.com/Green).
  11. When Dex moves to upon request delivery Residential White Pages, it will notify carriers (other than AT&T Illinois) with which it has direct publishing agreements.

The Commission clarifies the AG's assertion that the Proposed Order in its current form does not address notice provisions to consumers. (AG BOE 8). The Proposed Order does not address this issue in its Analysis and Conclusions; however, it was testified to by Mr. Davidson and is contained in the summary of his testimony. (Pet. Ex. 1 at 14-15; Proposed Order at 4). Therein, Petitioner states that notice will be provided to all customers in areas where changes in delivery are to occur. While the Commission

believes that notice provisions are thus addressed in the Proposed Order, the AG's assertions do suggest that clarity and direction are required with respect to notices. It is not, for example, clear exactly what notices the Petitioner will provide absent explicit guidance or the extent to which any such notices will mirror those in New Jersey, Florida, and Ohio. To ensure clarity on this matter, the Commission finds, consistent with the recommendations of the AG, that in order to ensure that consumers are properly notified when the residential portion of any White Pages directory will no longer be delivered, Petitioner must provide sufficient notice to customers. Petitioner must provide a press release to generally read periodicals and newspapers in the service territory. In addition to a press release, the following must be included on or with the directories: (1) a message on any bag that contains the directory; (2) a message printed on the actual cover of the directory; (3) a message on the table of contents pages of the directory; (4) a message on the phone services pages of the directory; and (5) a message on the 911 page in the directory. Each message will specify to customers the cessation of delivery of the residential portion of the White Pages Directory, will provide customers with a toll-free number and website address where they can request a free copy of the White Pages directory, and inform customers of the maximum length of time (not to exceed 12 calendar days) until they will receive that free copy of the Residential White Pages Directory.

The AG's lack of clarity with respect to whether or not the Commission's Proposed Order addresses notice requirements further brings to light a broader area of concern that requires Commission clarification. In particular, the limited variances granted by the Commission in this proceeding, are granted with the knowledge of, and based upon, commitments made throughout this proceeding by Petitioner and its witnesses. The Commission clarifies that the limited variances granted in this proceeding are conditioned upon Petitioner complying with all commitments it has offered to the Commission in this proceeding as well as those specified above.

#### VIII. Findings and Ordering Paragraphs

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

- (1) Petitioner filed a verified petition with the Commission pursuant to Section 13-513 of the Act, requesting a variance from Section 735.180 (a)(1) and (d) to remove the Residential White Pages from the Neighborhood Directories in Chicago and the Core Directories outside of the City of Chicago (including, but not limited to the Chicago suburbs, Metro East, Rockford, Peoria and Springfield), and to cease saturation delivery of the Residential White Pages;
- (2) in Docket 07-0434, Petitioner was granted a variance from Section 735.180 (a)(1) and (d) which required it to distribute Residential White Pages in a saturation manner within its Neighborhood directories, but to distribute Chicago-wide Residential White Pages directories upon request only; Petitioner requests an extension of the variance granted in Docket 07-0434 to cease saturation delivery of the Residential White Pages in its

Neighborhood Directories (thereby no longer distributing Residential White Pages on a saturation basis in any form) in Chicago and make them available upon request only;

- (3) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (4) Petitioner's evidence shows that no harm to customers would result from an extension of the variance granted in Docket 07-0434 to cease saturation delivery of the Residential White Pages in its Neighborhood Directories in Chicago and making Residential White Pages available only upon request in Chicago; the extension for Chicago should be granted;
- (5) Petitioner's proposed removal of the Residential White Pages from the Core Directories outside of Chicago (including, but not limited to, the Chicago suburbs, Metro East, Rockford, Peoria and Springfield areas), pursuant to a schedule that was not specified by Petitioner to begin in two years is premature; the request for a variance from Section 735.180 (a)(1) and (d) outside Chicago should not be granted;
- (6) Petitioner should apply in a separate Docket for a variance from Section 735.180 (a)(1) and (d) allowing removal of the Core Directories' Residential White Pages outside Chicago at such time as Petitioner actually proposes such removal, but no sooner than two years from the date on which Petitioner ceases saturation delivery of Residential White Pages in Chicago;
- (7) Petitioner shall comply with all of the conditions enumerated herein that were imposed upon Petitioner in Docket 07-0434, agreed to by Petitioner in the instant proceeding, and imposed by the Commission in this Order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the request to extend the variance granted in Docket 07-0434 to permit Petitioner to cease saturation delivery of the Residential White Pages in its Neighborhood Directories (and thereby to no longer distribute Residential White Pages on a saturation basis in any form in Chicago) is granted.

IT IS FURTHER ORDERED that the request for a variance from Section 735.180 (a)(1) and (d) to cease saturation delivery of the Residential White Pages outside Chicago (including, but not limited to, the Chicago suburbs, Metro East, Rockford, Peoria and Springfield areas), is denied.

IT IS FURTHER ORDERED that Petitioner comply with all of the conditions enumerated herein that were imposed upon Petitioner in Docket 07-0434, agreed to by Petitioner in the instant proceeding, and imposed by the Commission in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 20<sup>th</sup> day of November, 2012.

(SIGNED) DOUGLAS P. SCOTT

Chairman