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" 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 for hearing 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 ("the Act") and 83 Ill. Adm. Code

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 Commission rule 735.50 cited above, 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. 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 Sections 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 argues 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 argues 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 asserts 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 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's position is 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 Part 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 urges 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 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).

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). While it is not known whether Petitioner's notices will mirror those issued in New Jersey, Florida and Ohio, Petitioner nonetheless clearly states that notice will be provided to all customers in areas where changes in delivery are to occur. The AG's concern is that, absent a directive from the Commission requiring notice, Petitioner would be free to cease delivering white pages without notice. (AG BOE at 9). The Commission regards the AG's concerns to be unfounded. There is no evidence that Petitioner has ever changed any aspect of its delivery operations without first seeking Commission approval and stating that it will notify its customers of the change.

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 Sections 735.180 (a)(1) and (d) to remove the residential White Pages from the Neighborhood Directories in Chicago and the Core Directories in the Chicago suburbs, Metro East, Rockford, Peoria and Springfield, and to cease saturation delivery of the Core Directories;

(2) in Docket 07-0434, Petitioner was granted a variance from Sections 735.180 (a)(1) and (d) to distribute Chicago Residential White Pages upon request only; Petitioner requests an extension of the variance granted in Docket 07-0434 to cease saturation delivery of the Neighborhood Directories 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 Neighborhood Directories in Chicago and making them available upon request; the extension should be granted;

(5) Petitioner's evidence shows that no harm to customers would result from the cessation of saturation delivery of the Core Directories outside Chicago and making them available to customers upon request; the request for a variance from Section 735.180 (a)(1) and (d) should be granted;

(6) Petitioner's evidence shows that no harm to customers would result from the removal of the residential White Pages from Neighborhood Directories and making them available to customers upon request; the request for a variance from Section 735.180 (a)(1) and (d) should be granted;

(7) Petitioner's proposed removal of the residential White Pages from the Core Directories in the Metro East, Rockford, Peoria and Springfield areas would potentially harm customers, as there is no showing that the listings would be available to all customers in these four areas; the request for a variance from Section 735.180 (a)(1) and (d) should not be granted;

(8) 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 at such time as these pages, or some other no-cost access to its listings, becomes available.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the request to extend that variance granted in Docket 07-0434 permitting Petitioner to cease saturation delivery of the Neighborhood Directories 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 Core Directories outside 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 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 in Metro East, Rockford, Peoria and Springfield areas, is denied.

IT IS FURTHER ORDERED that Petitioner has complied with Section 735.50 pertaining to the extension of the variance granted in Docket 07-0434 to cease saturation of the Neighborhood Directories, pertaining to cessation of saturation delivery of the Core Directories, and pertaining to cessation of saturation delivery of the residential White Pages in Chicago.

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 6th day of September, 2012.

(SIGNED) DOUGLAS P. SCOTT

Chairman