

**BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Re: Rulemaking to Consider Modifications to, or)	
Elimination of, the Requirement Related to)	
Distribution of Telephone Books in)	
WAC 480-120-251)	Docket UT-120451
)	
Notice of Opportunity to File Written)	COMMENTS OF DEX ONE COR-
Comments)	PORATION ON PROPOSED RULE
)	(CR-102 FILED JULY 18, 2012)
)	

INTRODUCTION

1 Dex One Corporation (and its subsidiaries—collectively, “Dex One”) appreciates this opportunity to comment on the Commission’s Proposed Rule¹ to its rule regarding the distribution of telephone directories, WAC 480-120-251 (“Directory Rule). Dex One particularly appreciates the prompt adoption hearing the Commission has scheduled in this docket. However, while Dex One continues to urge the Commission to move expeditiously, it is also important that the final rule changes the Commission adopts are sufficiently flexible to serve the public interest in all markets in the state, whether urban, suburban, or rural. Dex One believes that with minor changes as suggested in Appendix A, the Proposed Rule can serve the public interest state-wide and be adopted on September 12, 2012, as currently scheduled.

2 The Proposed Rule is a giant step in the right direction, and is, for the most part, what Dex One advocated in its comments filed in May, in response to the CR-101. However, rather than increasing regulatory flexibility, the Proposed Rule substitutes heavy-handed regulation in one direction for heavy-handed regulation in the other direction. In so doing, the Commission would mandate a uniform approach state-wide for directories without recognition that directories

¹ As used herein, “Proposed Rule” refers to the amendments proposed in the CR-102 notice issued and filed with the Code Reviser on July 18, 2012.

and consumer usage of directories vary considerably between the most urban versus the more rural communities in the state. The public interest requires a more nuanced and flexible approach. Fortunately, the Proposed Rule is not that far off the mark, since it was clearly well-intentioned and moves toward modernizing the directory rule consistent with the rapid and substantial decline in usage of residential white pages.

3 To better protect the public interest in all areas of the state, Dex One proposes two relatively minor changes to the Proposed Rule. First, since the existing Directory Rule addresses only white pages² Dex One suggests adding a new subsection 7 that would clearly define “directory” for purposes of the rule to clarify it is limited to residential white pages, and does not cover business directories such as yellow pages. Second, to address differences in how directories are produced as well as different usage patterns in rural communities there should be an exception from the mandatory “opt-in” provisions of the Proposed Rule. The most practical way to provide the necessary flexibility both today and in the future as usage patterns continue to change, is to exempt “co-bound” directories (white and yellow pages bound together in a single book) from mandatory opt-in.

4 Dex One’s proposed revisions are contained in Appendix A to these comments. Under the proposed revisions, in large metro areas like Seattle customers would have to opt-in to receive residential white pages to the extent they were not published with the Yellow Pages directory, thereby ensuring that the significant environmental savings the Proposed Rule seeks would in fact be achieved. But at the same time, the rule would permit LECs and directory publishers to distribute the relatively small co-bound books in communities like Cle Elum and Colville—where digital literacy and access to broadband are not as widespread—to all customers

² *I.e.*, directories listing the name, address, and phone number of telephone company subscribers.

who do not opt-out. Dex One also urges greater flexibility and a more targeted approach in the notice provisions.

COMMENTS AND RECOMMENDATIONS OF DEX ONE

A. The Proposed Rule Should be Clarified Consistent With its Intent to Not Encompass Yellow Page Directories.

5 The Commission has never regulated anything relating to the form, contents, or distribution of yellow pages directories.³ The current Directory Rule reflects the lack of Commission regulation, implicitly, by only requiring the publication of a directory “listing the name, address ..., and primary telephone number for each customer....” This regulation describes what are commonly called “white pages.” In contrast, a defining feature of “yellow pages” are the organization of business listings into numerous business classifications—from attorneys and dentists, to restaurants and zippers—and the addition of enhanced listings, display advertising, and other editorial content far beyond the basic name and number listing.⁴

6 Dex One understands the intent of the Proposed Rule is not to expand the scope of the current Directory Rule to cover yellow pages or business white pages. Nor is there any need to. Both types of business publications are self-sustaining based on advertising sales to the businesses listed. Moreover, there is effective competition in the business directory business, as non-ILEC publishers entered the market decades ago. Market forces are sufficient to ensure that

³ Other than requiring imputation of yellow pages revenues to support the costs of basic local exchange service, the Commission has essentially let phone companies do whatever they wanted with regard to their yellow pages directories. *See, e.g., In re the Petition of US WEST Communications for an Accounting Order*, Docket No. UT-980948, Fourteenth Supplemental Order, ¶ 82 (July 27, 2000). Beyond the question of imputation for rate-making purposes, yellow pages are unregulated and always have been. *See, id.* (“The Commission has and exercises jurisdiction only to the extent that is necessary to produce rates that are fair, just, reasonable, and sufficient.”)

⁴ In a number of markets, Dex One has also created separate white pages for businesses versus residential white pages. The business white pages are alphabetized by business name, rather than business category, but like the yellow pages contain paid advertising and not merely listings of names and numbers. Accordingly, from a regulatory perspective, business white pages should be considered unregulated, the same as yellow pages.

business directories are published and distributed in the most efficient manner based on customer usage and businesses' advertising needs.

7 The Commission also probably lacks jurisdiction to regulate directories beyond basic name and number directories. *See, e.g.,* RCW 80.01.040. Business directories are advertising publications, not utility businesses, nor are they an essential “related activity” to the telephone business. *See, id.; see also, In re U S WEST, supra*, Note 3.

8 The Commission may feel that from the context and history of the current Directory Rule, the scope of the Proposed Rule is already clear. However, Dex One respectfully suggests that ILECs, publishers, and the Commission could potentially face numerous complaints from customers receiving yellow pages who failed to understand the limitations of the Proposed Rule. Such confusion and claims could arise due to the lack of a definition of “directory.” Dex One proposes the following to avoid such problems:

(7) As used in this section, “directory” means a published compilation of names and numbers of LEC customers organized alphabetically or by phone number, but does not include compilations of business names, numbers or advertising classifications in publications that also include advertising in the listings, such as yellow pages or similar publications.

9 Addition of a simple definition such as the foregoing would help to minimize consumer confusion and reduce the potential burden of misguided claims on the Commission, ILECs, and directory publishers.

B. The Proposed Rule For Mandatory Opt-in Should Be Modified To Allow For Some Flexibility In Small, Rural Markets.

10 While Dex One appreciates that the Commission has strongly embraced upon request, or “opt-in,” delivery for residential white pages, the Proposed Rule goes further than it should by making opt-in mandatory for large cities and small communities alike. The Proposed Rule should be modified so that LECs and their official publishers are given a bit more flexibility to

meet consumer demand and the practicalities that exist in smaller markets. Just as the current “one size fits all” approach of mandatory saturation delivery does not work well in all markets, the change to mandatory opt-in does not serve the public interest in all communities.

11 Dex One publishes and distributes directories in dozens of markets in the state, ranging from the largest—Seattle, with hundreds of pages in the residential white pages—to the very small—such as Cle Elum, with about 10 pages in the residential white pages section.⁵ In fact, Dex One distributes directories in 18 markets in the state with fewer than 40 residential white pages each.⁶ The environmental and cost savings of switching to upon request in the larger markets, such as Seattle and Tacoma, is very clear and is why Dex One strongly supports modification of the current Directory Rule. But the savings are minimal or non-existent in the smaller markets and the demographics and usage patterns are not the same, either.

12 In the smaller markets, Dex One and other directory publishers physically combine the white and yellow pages into a single directory book. The residential white, business white, and yellow pages are “co-bound,” to use the industry’s terminology. Accordingly, to follow the Proposed Rule, Dex One would have to redesign the small market books to separate the white from the yellow pages and then would have to establish a separate, year-round, distribution scheme for the white pages. The only other alternative would be to only deliver the co-bound books upon request, which would be extremely harmful to Washington’s small businesses, who still rely heavily on yellow pages advertising, and could jeopardize the entire directory business in Washington, as yellow pages revenues support the cost of producing residential white pages.

⁵ As presented here, “pages” refers to the number of physical paper sheets. Each page/sheet has listings printed on the front and back sides.

⁶ See *id.*

13 The savings of moving to upon request in smaller markets simply aren't worth the effort. Separating a co-bound directory requires a duplicative one-by-one follow up distribution scheme. In the smallest markets, the cost and environmental savings are minimal to non-existent. Moreover, there is another important reason not to mandate opt-in in the smaller communities, which is that consumer reliance on residential white pages is greater in rural communities than in large cities, for a number of reasons. Many rural areas have a greater percentage of retirees. Rural communities have less access to broadband and less take up of broadband. Digital literacy rates are lower in rural areas. Fewer people have gone to wireless only, so residential listings are more complete in rural areas.⁷ Whereas in a large city residences may rely on their school or church directories for frequently called numbers, in a small town the Dex One residential white pages may be almost the equivalent of the school and church directory. So for many reasons, customers in small communities still frequently turn to their residential white pages, while usage rates in big cities like Seattle and Tacoma have become miniscule.

14 Again, Dex One sees a simple "fix" for the Proposed Rule, which will modernize it to maximize the benefits of opt-in delivery in larger cities, but allow LECs and publishers to continue to efficiently serve small towns with co-bound directories. As set forth in context in Appendix A,⁸ Dex One proposes an exception from mandatory opt-in for co-bound directories as follows: "provided that a written directory that is physically bound together in the same publication with a business classified directory, such as yellow pages, may be delivered to customers who do not explicitly request not to receive a directory." Essentially, for co-bound directories, the rule would allow for opt-out.

⁷ Rural residents may be less likely to request unlisted or non-published numbers, too.

⁸ Changes are shown in legislative format, with additions underscored. The Commission's additions are shown with a single underscore, and Dex One's proposed further additions are shown with a double underscore. Dex One's proposed deletions are shown with a double strike-through, e.g.: ~~deleted~~.

15 Dex One’s proposed minor revision would offer several advantages over the Proposed Rule as published with the CR-102. First, it would recognize the right of consumers to opt-out of delivery of printed directories in all markets. Second, it revises the rule to track how the directory industry does business in the real world. Third, it ensures that LECs or publishers will not be forced to split up their co-bound directories unless and until it becomes economical to do so in a community. Fourth, since the proposed revision is somewhat flexible, it will automatically adapt over time, allowing LECs and publishers to modify directories and distribution as consumer usage declines further in smaller communities—without the need for a further rulemaking or waiver petitions.

C. **Merely Allowing Customers To Opt-Out Of Receipt of Residential White Pages Will Achieve Almost No Public Interest Benefits Compared to Opt-In.**

16 Dex One strongly opposes comments that call for the rule to merely permit customers to opt-out of residential white pages delivery and not allow for the opt-in approach. These comments fail to address today’s real-world consumer demand and consumer behavior and would almost completely fail to achieve the environmental and cost savings potential of an opt-in rule.

17 From years of experience and research, Dex One knows that directories are a “low-involvement” product. What this means is that consumers seldom think about directories at all except at two times: 1) when they receive the delivery of the directory; and 2) when they need to use a directory. Accordingly, when Dex One delivers its directories, consumers will initially decide to either keep one or more of them, or recycle one or more of them. If they kept the directory, thereafter they will think of it again only when they need to locate a business or a phone number.

18 The second thing Dex One has learned from adopting and promoting—very aggressively in some markets—opt-out programs, is that consumers’ response rates to opt-out programs is very low. The gulf between consumers’ rates of usage of residential white pages and their willingness to take the time to opt-out is incredibly large. Thus, while opt-in rates for residential white pages are substantially less than 5% in major metro markets, opt-out rates are the reverse of that—usually less than 5%. Accordingly, in major markets perhaps 90% of households or more *which will not use a residential white pages directory during the entire year life of the directory* will nevertheless *fail to opt-out*. Many of these households will not have even brought the directories into the house and may have intended to opt-out later. But again, as a low involvement product, once the consumer recycles or shelves the unwanted or unneeded directory, they simply forget about it.

19 Opt-out programs for residential white pages are largely unsuccessful at achieving the potential cost and environmental savings compared to opt-in. In contrast, in most markets that have gone to opt-in for residential white pages, request rates are below 5%, generally around 1 or 2% or less. Thus opt-out saves less than 5% compared to over 95% for opt-in. The Proposed Rule got it right in focusing on opt-in. Opt-in should be retained as the foundation for the proposed rule, but with the minor revisions Dex One proposes.

D. The Notice And Request Provisions In The Proposed Rules Are Generally Reasonable, With One Significant Exception.

20 Dex One is not a LEC and therefore does not have a direct interest in all of the notice provisions in proposed Subsection (3)(b), such as the requirement to give notice of opt-in “in at least one bill insert” per year. However, based on extensive experience, Dex One views some of the proposals as being unnecessary, unduly costly, and largely ineffectual. The bill insert is the prime example. As discussed above, directories are a low involvement product. And bill inserts

of all types tend to generate a low response rate. The vast majority of customers will simply discard the opt-in insert without acting on it immediately or without even reading it. Once discarded, it will be forgotten.

21 Dex One opposes the bill insert requirement of (3)(b), as it would impose a cost on LECs for no particular benefit. In contrast, maintaining the opt-in information on the LEC’s website would impose only minimal costs on LECs. Although Dex One would not be directly affected by the Proposed Rule, Dex One already maintains a prominent web page for consumers to opt-in or opt-out. Thus, LECs who contract with Dex One could simply link their opt-in web notices and instructions to: <http://DexKnows.com/Green>. And including opt-in information in the consumer information guide is something Dex One has done in every market where it has switched to upon request delivery of residential white pages.⁹ It is included in the yellow pages, which are still delivered to every household, to ensure maximum exposure to consumers.¹⁰ Notification of directory options in and with a directory is contextual; *i.e.*, the consumer will see it when they turn to the directory. Therefore, it is most effective relative to non-contextual notices like bill inserts.¹¹

22 Finally, Dex One sees no significant issues with Subsection (3)(a) regarding the three methods consumers can request to opt-in to a residential white pages. Again, Dex One’s practice when it moves to upon request delivery already allows for all three methods: a toll-free call, email or on-line request; or mailed request. As Dex One understands the draft subsection, Qwest/CenturyLink and Embarq/CenturyLink would be in compliance with the Proposed Rule if

⁹ Dex One calls the guide the “Phone Service Pages.”

¹⁰ Further, as noted and shown by Dex One in examples in its June 15, 2012, Supplemental Comments and Request for Expedited Rulemaking, Dex One includes the opt-in notice and request options in two other locations in its yellow pages on the front cover and inside the directory, plus on both sides of the yellow pages delivery bag.

¹¹ Appendix A merely shows insert requirement as deleted. However, there are other options available, such as substituting one of the other notice methods Dex One supports but that are not in the current Proposed Rule.

Dex One maintained those request avenues. Dex One does not see any need for the LECs it contracts with to maintain duplicate and parallel procedures. In fact, such duplication could simply lead to confusion and extra steps that could result in requests being lost and unfulfilled.

E. The Changes To The Proposed Rule Requested By Dex One Would Not Make It “Substantially Different” From The Published Rule.

23 Dex One continues to request that the Proposed Rule be adopted on September 12, 2012—but with the revisions it proposes in Appendix A and as discussed above. For purposes of RCW 34.05.340,¹² Dex One’s proposed revisions should not be considered “substantially different” from the Proposed Rule as published in the Washington State Register. Alternatively, if they are viewed as substantially different in some part, the Commission should nevertheless adopt the Proposed Rule with the revisions Dex One recommends and as scheduled, pursuant to the procedures of RCW 34.05.340(3).¹³

24 The revised amendments are strongly in the public interest and should be adopted as soon as possible. The changes Dex One proposes are largely clarifying and indeed are beneficial to the handful of parties who object to opt-in. Accordingly, the likelihood of a petition under RCW 34.05.340(3) is low, and if there is a petition, the burden of dealing with it likely would not be

¹² This section of the Administrative Procedure Act (“APA”) provides, in part: “(1) Unless it complies with subsection (3) of this section, an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance, or the agency may withdraw the proposed rule and commence a new rule-making proceeding to adopt a substantially different rule.”

¹³ Subsection (3) is not particularly onerous, merely providing, in part: “The agency shall briefly describe any changes, other than editing changes, and the principal reasons for adopting the changes. The brief description shall be filed with the code reviser together with the order of adoption for publication in the state register. Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule.” Thus, in the worst case scenario, the Commission might have to open another rulemaking in 60 days. That would not be too much more involved than having to issue an amended CR-102 and process another round of comments in the present docket.

greater than having to issue an amended CR-102 and process an additional round of comments in this docket.

25 Dex One essentially proposes two changes to the Proposed Rule. The first is to merely clarify for the public what should already be clear to industry insiders and other commenters in this docket, which is that the Proposed Rule applies only to basic alphabetical name and number listings and does not cover advertising publications, such as yellow pages. The first proposal is not “substantially different,” from the published rule, since a “reasonable person affected by the adopted rule” would have understood the Proposed Rule to operate just as Dex One seeks to clarify and the “effects of the adopted rule” with the addition of the clarifying definition would also be the same. *See* RCW 34.05.340(2)(a) and (c). The clarification would head off potential public confusion and meritless claims, but would not change the substantive rights of any person compared to the published Proposed Rule.

26 The second change Dex One proposes *would* make a small change “the effects of the adopted rule.” That is Dex One’s goal, and it is an important one. However, the change should not prejudice any commenter in the docket or any person who might have had sufficient interest to comment based on the CR-102. The notice in the CR-102 is more than adequate to encompass Dex One’s version of the Proposed Rule under RCW 34.05.340(2)(a). Specifically, a “reasonable person affected by the adopted rule” would have also understood the original Proposed Rule to affect the same interests as Dex One’s proposed revisions. And the revisions Dex One proposed do not change the subject or issues of the Proposed Rule by one iota, so RCW 34.05.340(2)(b) is not implicated.

27 The APA issue related to Dex One’s suggested “co-bound” exception—if there is one—comes down to RCW 34.05.340(2)(c), which looks at “the extent” to which the effects of the

adopted rule would differ from the Proposed Rule. But the statute does not bar any and all revisions that have different effects, only those that are “substantially different.” Dex One’s suggested revision is “different,” but *not* “**substantially different.**” Moreover, a different effect is but one of three factors to guide the agency in determining whether it must re-notice a rule to prevent an unanticipated harmful effect in the original proposal.

28 While Dex One believes its proposal to carve out “co-bound” residential white pages from the mandatory opt-in delivery provision is not a “substantial” change to the proposed rule, assuming, *arguendo*, that it were, no interested person would be procedurally prejudiced by the change. The CR-101 and CR-102 teed up the Commission’s Directory Rule for substantial revision or repeal and drew comments from a full spectrum of interested parties, including Public Counsel, large ILECs, small ILECs, CLECs, the City of Seattle, environmental interests, and an independent directory publisher (Dex One). The co-bound exception that Dex One proposes would actually move the adopted rule closer to the position of those relatively few parties who oppose moving to opt-in, thus benefitting them. And the change would have no effect on Seattle, where Dex One intends to move to upon-request delivery of residential white pages just as soon as this Commission permits it. If the environmental interests are seriously concerned that opt-in will not be mandatory in places like Cle Elum, then they are free to file supplemental comments or argue against Dex One’s second proposed change on September 12th, at the adoption hearing. To ensure that all parties are aware of Dex One’s proposed revisions and have a meaningful opportunity to respond upon reasonable notice, counsel has caused these comments to be served as stated in the attached certificate of service, even though service is not required.

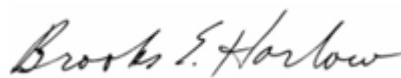
29 The benefits of moving to upon request or opt-in delivery of residential white pages in the major metropolitan markets are substantial and should not be delayed any further. While the

harm to mandating opt-in in small markets is also real, the Proposed Rule can and should be modified to avoid that harm. Such a minor modification is well within the provisions of RCW 34.05.340. Either the modification is not “substantial” or the Commission can rely on RCW 34.05.340(3), in the unlikely event a commenter or some other person invokes that provision. In the past, the Commission has made much more substantial and extensive changes in an adopted rule than what Dex One proposes here. *See, e.g., Re Telecommunications Companies*, 1991 WL 496940, Dkt. UT-900726 (WUTC June 17, 1991)(with four pages discussing over a dozen clarifying and substantive changes).

CONCLUSION

30 Dex One appreciates all the work and speed with which the Commission has proceeded to amend its Directory Rule to bring it more in line with consumer behavior and industry trends. Dex One encourages the Commission to clarify the scope of the rule and soften the Proposed Rule for rural markets, consistent with Appendix A hereto, and proceed with adoption in September, as scheduled.

Respectfully submitted,



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APPENDIX A

WAC 480-120-251 Directory service. (1) A local exchange company (LEC) must ensure that a telephone directory is regularly published for each local exchange it serves, listing the name, address (unless omission is requested), and primary telephone number for each customer who can be called in that local exchange and for whom subscriber list information has been provided.

(2) Any residential customer may request from the LEC a dual-name primary directory listing that contains, in addition to the customer's surname, the customer's given name or initials (or combination thereof) and either one other person with the same surname who resides at the same address or a second name, other than surname, by which the customer is also known, including the married name of a person whose spouse is deceased.

(3) A LEC must provide (~~each customer~~) a written copy of the directory for the customer's local exchange area to each customer who requests a directory. A LEC must not provide a written copy of the directory to any customer who does not request a copy; provided that a written directory that is physically bound together in the same publication with a business classified directory, such as yellow pages, may be delivered to customers who do not explicitly request not to receive a directory;

(a) A LEC must establish reasonable ways by which a customer may request a directory including, but not limited to, making all of the following options available:

(i) Calling a toll-free telephone number;

(ii) Submitting a written request via e-mail or on-line registration; or

(iii) Mailing a written request to a specified address.

(b) A LEC must provide reasonable notice to customers describing the ways by which they may request a directory including, but not limited to, all of the following forms of notice:

(i) ~~Providing the information in at least one bill insert each calendar year;~~

(ii) ~~Maintaining the information in a prominent place on the LEC's web site; and~~

(iii) ~~Including the information in the consumer information guide required in subsection (6) of this section.~~

(c) If the directory provided for in subsection (1) of this section does not include the published listing of all exchanges within the customer's local calling area, the LEC must, upon request, provide at no charge a copy of the directory or directories that contain the published listing for the entire local

calling area.

(4) Telephone directories published at the direction of a LEC must be revised at least once every fifteen months, except when it is known that impending service changes require rescheduling of directory revision dates. To keep directories correct and up to date, companies may revise the directories more often than [2] OTS-4885.1

specified.

(5) Each LEC that publishes a directory, or contracts for the publication of a directory, must print an informational listing (LEC name and telephone number) when one is requested by any other LEC providing service in the area covered by the directory. The LEC to whom the request is made may impose reasonable requirements on the timing and format of informational listings, provided that these requirements do not discriminate between LECs.

(6) Telephone directories published at the direction of the LEC must include a consumer information guide that details the rights and responsibilities of its customer. The guide must describe the:

(a) Process for establishing credit and determining the need and amount for deposits;

(b) Procedure by which a bill becomes delinquent;

(c) Steps that must be taken by the company to disconnect service;

(d) Washington telephone assistance program (WTAP);

(e) Federal enhanced tribal lifeline program, if applicable; and

(f) Right of the customer to pursue any dispute with the company, including the appropriate procedures within the company and then to the commission by informal or formal complaint.

(7) As used in this section, “directory” means a published compilation of names and numbers of LEC customers organized alphabetically or by phone number, but does not include compilations of business names, numbers or advertising classifications in publications that also include advertising in the listings, such as yellow pages or similar publications.

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