

encourage Mr. Long to seek clear authority for a blue pages rule from the Legislature next session." The current Telecommunications Division staff was unfamiliar with the 1988 legal advice Mr. Weirich referred to in his memorandum.

In this memorandum, I will assume the Commission has the legal authority to promulgate a Blue Pages rule covering directories published by telecommunications utilities, except cooperatives, as well as directories published for telecommunications utilities by affiliates or third party publishers. I agree with Mr. Weirich that such a rule might be challenged by the telecommunications utilities and Dex in court. The Commission might wish to weigh this possibility as it considers my recommendation.

I am not certain whether Mr. Long intends to seek Legislation concerning Blue Pages in 2005. I do know he wants to proceed with a rulemaking docket now.

After receiving Mr. Weirich's legal advice, I called a meeting on May 14, 2004, involving Mr. Long, the telecommunications utilities, Dex, and certain human services advocates invited by Mr. Long. The purpose of the meeting was to work toward agreement among the parties. Unfortunately, the meeting was not productive. At its conclusion, I asked Mr. Long to review his proposed rule in light of the discussion at the meeting. On September 1, 2004, Mr. Long filed a revised rule proposal. This proposal is Attachment B. I gave those in attendance at the May 14th meeting an opportunity to comment on this proposed rule, and Mr. Long an opportunity to respond. I received Mr. Long's response on November 10, 2004.

Mr. Long's Proposal

The proposed rule in Attachment B is premised on the belief that the Yellow Pages classification system does not work for government and human services telephone customers. Mr. Long is convinced that such customers frequently do not receive the two listings they are entitled to under the tariffs of telecommunications utilities. He advocates Blue Pages as a solution to this problem, as they provide the required two listings in a way that is easier for telephone customers to use than Yellow Pages listings. Mr. Long is pleased that most telecommunications utilities implicitly agree with this conclusion, as evidenced by their inclusion of Blue Pages in their directories. However, he feels strongly that many Blue Pages sections are poorly formatted and do not include all appropriate listings. Mr. Long's proposed rule would eliminate this problem by requiring a standard Blue Pages format and by specifying the information that Blue Pages must contain.

One important feature of Mr. Long's proposed rule is that it mandates the creation of an advisory group for each telecommunications utility. Each advisory group would either compile the listings "...for all human services agencies in the area covered by that telecommunications utility's directory, and other service providers outside that area as deemed essential...[Option A]," or review such information after it is compiled by the telecommunications utility [Option B].

Mr. Long's proposed rule would mandate the font to be used for Blue Pages. It would also require that Blue Pages have either blue or green borders. Currently, other colors are used in some directories.

Finally, Mr. Long wants to make sure that when the White Pages and Yellow Pages are in separate books, the Blue Pages are in both books. This has become an issue with Qwest's Portland directory, which has Blue Pages in the White Pages book, but not the Yellow Pages book. Mr. Long has indicated that Qwest's approach, which is a departure from past practice, makes him wonder whether Qwest intends to stop putting Blue Pages in its directories. This concern, and a rumor that Verizon will soon stop including Blue Pages in its directories, was one of Mr. Long's original reasons for requesting a Blue Pages rule. Qwest does not see a problem with the current version of its Portland directory because every customer gets a copy of both the White Pages book and the Yellow Pages book. Verizon denies that it plans to stop putting Blue Pages in its directories.

The telecommunications utilities and Dex are strongly opposed to Mr. Long's proposed rule. Among their criticisms are:

- The proposed rule is unfair and anticompetitive because it would not apply to independent directories, which have become more common in recent years.
- The new 211 service makes the rule unnecessary. This service, which recently became functional in the Portland metropolitan area, allows telephone users to speak to a trained operator with access to an up-to-date database of human services information. Customers merely dial 211, at no cost. The long-term goal is to make 211 available statewide. Mr. Long supports 211 service, but still sees a need for Blue Pages. He also questions how well the service is working in Portland, and wonders about the financial viability of the service.
- Mr. Long's rule would require a large amount of new information, especially from social service agencies. Getting this information and creating new pages with it would be difficult and costly. Dex states that each additional page in its Oregon directory would cost \$13,200, and that it cannot publish an odd number of pages.

Sprint says that each additional page would cost it more than \$10,000. The industry believes adding more pages could make the Blue Pages more difficult to use.

- Customers do not complain to telecommunications utilities, or the PUC, about the Blue Pages. Commission records show that complaints to the Consumer Services Division are rare. Mr. Long responds that his proposed rule is supported by many government and social service agencies. I have received messages of support from some of these entities.
- Dex, which publishes directories for Qwest in 14 states, argues that Mr. Long's rule would either effectively require that directories in the other 13 states conform to the rule, or that substantial costs be incurred to create a unique Oregon directory. Dex currently publishes directories using a uniform format.
- Customers increasingly rely on the Internet to get information about government and human services agencies.
- Mr. Long's advisory group proposal is too impractical and costly to work, especially given the tight deadlines directory publishers must follow.
- The rule is unnecessary because the industry is voluntarily providing useful Blue Pages information.

Three Options

I will present three options for the Commission to consider regarding a Blue Pages rulemaking docket. Option 1 is to initiate a rulemaking docket based upon Mr. Long's proposed rule. I do not recommend this option. I have been persuaded by the telecommunications utilities and Dex that Mr. Long's proposal is unreasonable. In particular, I think the new 211 service should be given a fair trial before Mr. Long's proposal is considered. I am also concerned that the proposed rule can only be applied to directories published by, or for, telecommunications utilities. The directory business appears to be increasingly competitive. Given this view, putting a significant regulatory burden on only some of the competitors, when there is no clear evidence that telephone customers are unhappy with current Blue Pages, is not good public policy. Finally, I have strong reservations about the practicality of the advisory groups Mr. Long endorses. Putting together unpaid groups to review large amounts of information on a schedule that won't disrupt directory publishing deadlines would be problematic.

Option 2 is to decline to open a rulemaking docket. That, of course, is the option strongly supported by the telecommunications utilities and Dex. Option 2 is a reasonable option.

Nevertheless, I recommend the Commission not adopt Option 2. Instead, I offer Option 3. I recommend the Commission initiate a rulemaking docket based upon Attachment C, which is a proposed rule I drafted. This rule would bring certainty to issues that have previously been brought to the Commission and the Legislature. Specifically, the rule would end speculation about whether telecommunications utilities will stop publishing Blue Pages. Section (3) of the rule would ensure that all government, school, and non-profit corporation customers receive the number of listings required by telecommunications utility tariffs. I included Section (5) in the proposed rule, which would permit rule waivers to allow for special circumstances and major changes in the telecommunications industry.

PROPOSED COMMISSION MOTION:

The Commission open a rulemaking docket in AR 464 based upon Attachment C.

Attachments

AR 464
Staff's Proposed Rule
November 29, 2004

860-xxx-xxxx

Government and Human Services Information in Telephone Directories

(1) Every telecommunications utility that publishes an annual telephone directory, or has one published by an affiliate or third party publisher, must publish a specialized directory of government and human services telephone numbers. This requirement does not apply to cooperative corporations. The specialized directory must be placed after the customer guide and before the white pages listings.

(2) Telecommunications utilities subject to this rule must, at a minimum, provide alphabetical listings of city, county, state, regional, and federal government offices, and public school and school district offices.

Telecommunications utilities must make a good faith effort to identify all such entities for inclusion in the specialized directory.

Telecommunications utilities are encouraged to include private non-profit corporations that provide human services to the public in the specialized directory.

(3) A telecommunications utility that fails to include a government entity, school, or private non-profit corporation in its specialized directory is not relieved of its obligation to provide all of the directory listings required by its tariff.

(4) All specialized directories created to comply with this rule must have blue or green colored borders. This requirement does not apply to directories that have traditionally used other colors as borders.

(5) A telecommunications utility may file a petition with the Commission seeking a waiver from the requirements of this rule in whole or in part. The Commission may grant the waiver for good cause shown.

Stat.Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.035

Hist.: New