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April 12, 2016

Honorable Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

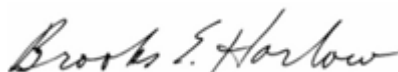
Re: Case 16-C-0190

Dear Secretary Burgess:

Enclosed for filing please find the Amended Petition of Dex Media, Inc. for Additional Waiver of New York Code of Rules and Regulations, Title 16, § 602.10(b) Pertaining to the Distribution of Telephone Directories. This amended petition makes a few non-substantive changes, such as correcting minor typographical errors and clarifying that the notice to Verizon subscribers and competitive local exchange carriers regarding the availability of directories on-line and on demand would be as set forth in Verizon's Petition. The only substantive change in the amended petition is to eliminate the request that paper directories would no longer have to be provided after a 36-month transition period under certain conditions, which was on page five of the original petition.

Thank you in advance for your assistance in this matter.

Sincerely,



Brooks E. Harlow

Cc: Donna Giliberto, Esq. (w/enc.)
Sarah R. Wilson (w/enc.)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

**Petition of Dex Media, Inc., for Additional
Waiver of New York Code of Rules
Pertaining to the Distribution of Telephone
Directories and for Consolidation with
Matter No. 16-00637**

Case 16-C-0190

AMENDED PETITION OF DEX MEDIA, INC.
FOR WAIVER AND CLARIFICATION OF DIRECTORY RULES
AND FOR CONSOLIDATION WITH
VERIZON CASE NO. 16-C-0186 (MATTER NO. 16-00637)

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I. INTRODUCTION AND BASIS FOR PETITION.

Dex Media, Inc. (“Dex Media” or “Petitioner”) hereby files this petition (“Petition”) seeking a waiver by the Commission of 16 NYCRR § 602.10 (“Directory Rule”) and clarification that other statutes and rules relating to contents of directories¹ (collectively, “Rules”) may be equally met with digital publication.

Dex Media is the “official” publisher for Verizon New York Inc. (“Verizon”) and is in full support of the petition filed by Verizon in Matter No. 16-00837² (“Verizon Petition”). Dex Media files this petition to offer further support and relevant background to the Commission. Dex Media respectfully suggests that the petitions be consolidated, either formally or informally, and be put on notice for public comment simultaneously, or with the same comment schedule. Additionally, Dex Media asks that the Commission ensure that its final order on the two petitions afford sufficiently broad and flexible relief to permit a full transition from paper to digital directories that is driven by consumer demand and usage, rather than out of date regulations.

As noted in the Verizon Petition, both nationally and in New York, the markets for telecommunications, information and directories have undergone revolutionary changes since this Commission first adopted directory and listing regulations. Today, there is a proliferation of alternative sources for obtaining telephone numbers and information. Consumers seek environmentally-sound options that minimize potential harms to the public interest. Print directories are no longer valued by consumers and often are viewed as wasteful. Moreover, competitors’ directories take full advantage of digital and online technologies. A further transition to digital publication of Verizon directories is ripe for approval by the Commission. Indeed, the Commission granted a similar waiver for Verizon almost six years ago.³

¹ Such as N.Y. Pub. Serv. Law § 91, N.Y. Pub. Serv. Law § 92-d, 16, NYCRR § 602.8, 16 NYCRR § 609.13, and 16 NYCRR § 632.1.

² Associated with Case No. 16-C-0186.

³ See Case 10-C-0215, *Petition of Verizon New York Inc. for Waiver of New York Code of Rules and Regulations, Title 16, §602.10(b) Pertaining to the Distribution of Telephone Directories*, Order Granting Waiver with Conditions, (October 15, 2010)(“*Verizon 2010 Order*”).

II. IDENTIFICATION OF POTENTIALLY RELEVANT RULES, DESCRIPTION OF CONTEMPLATED DIRECTORY CHANGES, AND CONDITIONS OF WAIVER.

Dex Media respectfully seeks a waiver of certain Commission directory rules and, to the extent needed, an order clarifying that digital publication of other information as required by statutes and regulations (“front of book information”) is expressly permitted. In particular, as detailed in the Verizon Petition, 16 NYCRR § 602.10 should be further waived⁴ as to the Verizon directories Dex Media publishes in New York. To the extent not waived,⁵ Section 602.10(a) requires Verizon to cause subscribers’ numbers to be published at approximately yearly intervals. Section 602.10(b) requires Verizon to “distribute” a “copy” of each directory published to each subscriber. Thus, the implication of both subsections is that printed directories are required. Dex Media performs all the functions for Verizon to meet these regulatory obligations, at no charge to Verizon or its subscribers.

Section 602.10 also contains certain content requirements in addition to basic number listings. Other statutes and regulations that may have applicable or related content requirements are: N.Y. Pub. Serv. Law § 91, N.Y. Pub. Serv. Law § 92-d, 16 NYCRR § 602.8, 16 NYCRR § 609.13, and 16 NYCRR § 632.1. Out of caution, Dex Media requests that the Commission’s order make it clear that distribution of directories digitally in compliance with the terms of its waiver order shall also be deemed to satisfy the “front of book” content requirements of these and any other statutes and regulations that touch on or refer to directories.

Dex Media seeks to discontinue saturation delivery of business white and yellow pages to some households, to be implemented only on a market-by-market basis as Dex Media determines the needs in a particular market. There would not be a “flash cut” throughout the Verizon territories in the State. Over time, for a given market, Dex Media would make a market-specific determination to curtail the extent of distribution of paper. Verizon subscribers and competitive local exchange carriers would be given notice of the availability of directories on-

⁴ The Commission’s prior order allowed digital publication with print upon request as to residential white pages. *Verizon 2010 Order*.

⁵ Currently, Verizon has a waiver for residential listings, but not for business listings or front of book information.

line and on demand as set forth in Verizon's Petition, and the notice would include a toll-free number to request a paper directory.

As technology advances and customer usage and tastes have continued to change, Dex Media must continue to move away from paper directories and more towards digital. In a given local market, Dex Media would continue to make paper directories available at no charge to Verizon customers on an "upon request" basis. Thus, all subscribers will have access to the digital directory and those who request a print directory will receive one at no charge.

Importantly, Dex Media would continue to publish the front of book information and content required by the Rules on its websites in the digital versions of the directories, as it already does today. Moreover, it will continue to include that information in the paper versions of the directories that will be provided to customers who request them.

The Rules, adopted years ago, still effectively require ILECs to distribute paper directories to each and every customer, despite the diminished use and usefulness of the paper format with today's technologies. Dex Media seeks a Commission ruling allowing it to make directories containing the listings and required front of book information online, by waiving and clarifying the Rules to the extent necessary to transition to digital and online services.

III. BACKGROUND AND RELEVANT HISTORY.

Pursuant to publishing contracts, Dex Media publishes the "official" directories for the Verizon telephone operating companies in New York. In addition to New York, Dex Media publishes directories for incumbent LECs in over 40 other states and the District of Columbia, serving over 500 markets nationwide. Dex Media also publishes its print directories in a digital format at www.DexPages.com, using the traditional layout of its printed white and yellow pages. All the content and information required by the Rules are also contained in the digital directory for each and every community Dex Media serves in New York, on DexPages.com.

In 1996, Congress took the bold step of fully opening all telecommunications markets—including local service—in the U.S. to competition. Public Law 104-104; 110 Stat. 143 ("1996

Act”). Additionally, the 1996 Act sought to promote competition in the publishing of directories, by requiring phone companies to provide “subscriber list information” to any directory publisher, “on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions.” 47 U.S.C. § 222(e). The 1996 Act reserved to the states the ability to, “protect the public safety and welfare,” but only “on a competitively neutral basis.” 47 U.S.C. § 253(b).

Today, both the telephone and directory industries are vibrantly competitive, but have evolved and developed in ways that few could have predicted in 1996. Competition for voice communications today comes primarily from the Internet (using voice over Internet protocol or “VoIP”) and from Commercial Mobile Radio Service (CMRS),⁶ commonly called “cellular” or “wireless.” Technology-driven market change has also hit directory publishing, as online sources for both basic listings and classified advertising have proliferated for computers as well as tablets and other mobile substitutes for the traditional landline.

IV. DESCRIPTION OF RELEVANT MARKETS TODAY.

The staid, simple, and limited environment for telephonic communications and information services that existed when the Commission’s directory rules were initially adopted, bears little resemblance to the world of today. Consumers today can obtain voice service from ILECs, CLECs in some areas, CMRS companies serving over 95% of the U.S. population, and VoIP providers over cable or wireless Internet networks. And the options for obtaining telephone numbers and other directory information are, if anything, even more numerous.

⁶ Indeed, late last year the FCC granted ILECs full or partial forbearance from the majority of categories of requirements covered by the petition of the United States Telecom Association for forbearance from numerous federal regulatory requirements. The FCC granted the extensive regulatory relief despite not finding that narrowband voice communications services are fully competitive, noting that many of its regulations had become “outmoded” given the large percentages of the population that have switched to VoIP or cellular service only, and the minority of households that still subscribe to traditional ILEC service. As the FCC summed up, many of the “outdated legacy regulations” for which it granted forbearance “were based on technological and market conditions that differ from today.” See Memorandum Opinion and Order, *In the Matter of Petition of USTelecom for Forbearance from Enforcement of Obsolete ILEC Legacy Regulations*, ¶ 2 (WC Dkt. 14-192, rel. Dec. 28, 2015)(“USTelecom Order”).

A. The State of Telephone Competition, Technologies, Competitive Alternatives for Voice Communications, and Consumer Adoption.

In 2013, there were roughly 122.5 million households in the U.S., *less than a third* of which (37.5 million) still had a traditionally regulated residential landline from a LEC.⁷ But, while less than 30% of *households* had a LEC service, there was an average of nearly one wireless phone in service for *every person* (0.98) in the United States.⁸ Of course, the Commission's Rules govern only the 30%, not the VoIP or CMRS.

Twice each year, the CDC⁹ National Center for Health Statistics releases selected estimates of telephone coverage for the civilian non-institutionalized U.S. population based on data from NHIS. The CDC's telephone coverage data show that during the first half of 2015, the percentage of wireless-only households nationwide had grown to 47.4% and the percentage of households with both wireless and landline service stood at 41.6%. The data also show a clear, consistent, long-term trend away from landline service and towards wireless service nationally.

These national trends are echoed in New York. The most recent CDC state report showed that in 2013, 41% of households were wireless only - with no landline at all, or wireless mostly-households.¹⁰ And FCC subscribership data clearly reflects New Yorkers' embrace of ILEC alternatives, including CMRS and migration away from traditional ILEC wireline service.¹¹ New Yorkers' subscription to voice service provided by ILECs declined almost two-thirds over a 14-year period from nearly 12.7 million in 1999 to 4.5 million in 2013, while their purchase of voice service from non-ILECs increased over 400%, from 1.2 million to 5 million. *Id.* And subscribership of mobile voice service increased even more, 4.8 million to 21 million. *Id.*

⁷ Compare, <http://www.census.gov/hhes/families/data/cps2013H.html> with http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0219/DOC-329975A1.pdf (Figure 4).

⁸ Compare, http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0219/DOC-329975A1.pdf (Fig. 1) and <https://www.census.gov/popest/data/national/totals/2013/index.html>.

⁹ United States Department of Health and Human Services Centers for Disease Control and Prevention.

¹⁰ CDC Report No. 70, Wireless Substitution: State-level Estimates From the National Health Interview Survey, 2012 at 9 (Dec. 18, 2013) (<http://www.cdc.gov/nchs/data/nhsr/nhsr070.pdf>).

¹¹ See FCC's Local Telephone Competition Reports are available at the FCC's website at: <https://www.fcc.gov/encyclopedia/local-telephone-competition-reports>.

Because only ILEC listings are typically available for inclusion in the traditional directories—especially residential listings—directories are necessarily less complete today given the massive shift of consumers from ILECSs to VoIP and CMRS. Accordingly, consumers today are much less likely to rely on print directories for basic number lookups and much more likely to turn to digital alternatives, especially on their cellphones. And to the extent consumers need or demand listings, consumer rights information, or directories of some sort, competition and telecommunications market forces are more than adequate today to ensure their needs are met without the need for traditional printed directories supplied by the phone company. Digital media will not only suffice, it is already serving the public widely and well.

B. The State of Competition in Directories.

At the same time as the explosion on alternative providers and technologies for voice communications, New Yorkers also have gained much greater access to alternatives to traditional printed directories for listings and information. According to the most recent Pew Research report, 80% of adults have broadband Internet access today nationally, up from 78% in 2013.¹² And, overall, 87% of adults are Internet users, which likely includes dial-up connections and usage outside the home. *Id.*, Note 1. The numbers are similar in New York. Even two years ago almost 89% of New York households had a computer and over 80% used high-speed Internet access.¹³ Both of these figures are above the national averages for the same period. *Id.*

Any household with a device that can connect to the Internet has the ability to obtain directory information from a wide variety of sources other than print directories, such as Google, Avantar White & Yellow Pages (avantar.com), DexPages.com, Dexknows.com. Hundreds of mobile “smartphone” applications (“apps”) perform various types of searches or directory lookup. Many of them use location information to make the search results more relevant. As with traditional yellow pages directories, these applications are advertiser-supported, so that

¹² Pew Research Center, December 21, 2015, “Home Broadband 2015,” available at: <http://www.pewinternet.org/2015/12/21/2015/Home-Broadband-2015/>.

¹³ U.S. Census Bureau, Computer and Internet Use in the United States: 2013, American Community Survey Reports at 10 (Nov 2014 (2013 data))(<http://www.census.gov/history/pdf/2013computeruse.pdf>). (<http://www.census.gov/history/pdf/2013computeruse.pdf>).

consumers do not pay for searches or lookups. In New York, Dex Media also faces competition for print directories from companies such as Yellowbook.

Even households without Internet access have alternative, competitive options to print directories, using their telephones. They can call traditional directory assistance for a small charge per listing. And they can also call one of the toll-free information services. The current market leader, which reportedly handles millions of calls every month, is 1-800-FREE-411. (<http://en.wikipedia.org/wiki/800-The-Info>). Any home with a telephone can call toll-free and get a listing for free, after listening to a short advertisement.

Thus, today, there is not a single home or business in America with a phone that does not have access to a competitive and free means to look up telephone numbers and other information provided in traditional regulated print directories. And for all but a small percentage—10% or so—there are hundreds of free alternatives online and on mobile app stores.

V. STATES' REGULATORY RESPONSE TO DIRECTORY USAGE TRENDS TO DATE.

In response to the powerful technological changes and usage trends noted above, the majority of states that once required saturation delivery of printed white pages have modified or eliminated their requirements.¹⁴ Since 2012, Dex Media has delivered residential white pages directories only upon request in about 40 states, including New York.¹⁵

What has been particularly remarkable about discontinuing the 100-year old practice of saturation delivery of residential white pages in so many markets is the scant consumer attention

¹⁴ Including: Wisconsin (Docket No. 6720-GF-108), Missouri (Docket No. IE-2009-0357), Ohio (Docket No. 09-0042-TP-WVR), New Mexico (NMPRC Case No. 12-00237-UT), Washington (WUTC Dkt. UT-120451), Kentucky (Docket No. 2009-00480), Florida (Docket No. 090082-TL), North Carolina (Docket No. P-55, Sub 1767), Kansas (Docket No. 11-SWBT-270-MIS), Colorado (CPUC Docket No. 12M-817T), Alabama (Docket No. 15957), and most recently Minnesota (MPUC Docket No. P-999/R-13-459). Likewise, Verizon has pursued waiver requests in several states, including California (Resolution T-17302), New York (Case No. 10-C-0215), Virginia (Case No. PUC 2010-00046), and New Jersey (Docket No. TO10040255). Louisiana modified its rule to permit upon request delivery of white pages. Order No. R-31825, In re: Possible Amendment to Section 501 A (c) and (e) of the White Page Directory Distribution Requirement, (LA PSC, rel. June 20, 2012).

¹⁵ Including: Arizona, California, Colorado, Connecticut, the District of Columbia, Delaware, Florida, Idaho, Indiana, Massachusetts, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania (Verizon only), Rhode Island, Texas, Utah, Virginia, and Washington.

it has generated. It seems hardly anybody noticed. In not one of the dozens of states and hundreds of markets where saturation delivery ended did consumers raise any significant complaint. In all of the “upon request” states under 2% of Dex Media’s customer base requested a printed white pages directory in 2014, and most were well under 1%, including New York, at just 0.70%.

VI. LEGAL AND POLICY GROUNDS FOR THE PETITION.

A. Brief Review of the Historic Legal and Policy Bases for State Regulation of Directory Publishing.

Telephone service itself became regulated when it came to be viewed as an essential public service, for which subscribers then had no competitive alternatives. *See generally, The Economics of Regulation: Principles and Institutions*, Kahn, Alfred E. (reprinted by Mass. Institute of Technology, 1988). As for telephone directories, until recently they were considered an essential adjunct to the telephone service. And, until about the last 20 years, directories also faced little or no competition, like the utility service itself. Thus, regulation of directory publishing was a byproduct of regulation of the telephone industry.

B. State Law Does Not Require the Commission to Maintain Regulation Over Telephone Directories.

The Commission has great leeway as to the scope and specifics of regulation of telephone directories. There is no statute in New York that requires directories be provided to all customers every year, let alone that they be published in a particular format, such as paper and ink.¹⁶ Thus, as industry and consumer behaviors change over time, this Commission has the authority to waive its Rules and to interpret both the Rules and statutes, so as to best serve the public interest in today’s digital information world. The New York legislature has not tied the hands of the Commission with regard to directories, thereby affording sufficient flexibility to meet the needs and practices of today’s customers.

¹⁶ There are content requirements, if and when directories are published, such as N.Y. Pub. Serv. Law §§ 91, 92-d.

C. Given the Revolutionary Changes in Both Telecommunications and Directory Publishing Markets, There is “Good Cause” to Waive the Commission’s Legacy Rules to Allow Digital Publication.

To the extent consumers need or demand directories of some sort, competition and telecommunications market forces are more than adequate today to ensure their needs are met without the need for traditional printed directories supplied by the phone company. Digital media will not only suffice, it is already serving the public widely and well. Only the advertising function of directories (yellow pages) continues to be widely used, and even there, usage has declined; advertising revenues have dropped over 40% in the last 15 years,¹⁷ with further declines forecast for the next five years as digital advertising grows.¹⁸ Moreover, in today’s market the information required by much of the Commission’s content requirements in the Rules aren’t pertinent to the sizeable number of New York households which no longer subscribe to ILEC voice service.

The experience of the cellular industry provides conclusive evidence that printed name and number directories are no longer needed to use telephone networks. From the very beginning and continuing to today, wireless phone numbers have not been listed or published in any directory. Nor do CMRS companies ever distribute printed information—in directories or in any publication—similar to what LECs are required to print annually by the Rules at issue here. Despite the lack of traditional directories, wireless phones now serve over 90% of the market nationally, while switched access lines serve only about 30%.

The decline of printed white pages directory use and usefulness is, in great part, an unavoidable consequence of the massive shift of subscribers from regulated LEC service to largely unregulated VoIP and CMRS, which do not provide listings to white pages publishers. With roughly a third of households using VoIP and close to 50% being cord cutters, the odds of being able to find a number in the residential white pages is *substantially less than 50/50* today

¹⁷ See, e.g., <http://www.bloomberg.com/bw/articles/2012-03-22/the-golden-allure-of-the-yellow-pages#p1>.

¹⁸ See, e.g., BIA/Kelsey, U.S. Local Media Forecast 2015 Spring Update (summary at: <http://www.localmedia.org/wp-content/uploads/2014/04/Ducey-BIAKelsey-2015-U.S.-Local-Media-Forecast-LMA.pptx>).

nationally.¹⁹ Unfortunately for publishers, white pages directories are no longer viewed as a useful resource, let alone an essential one.

D. The Legacy Rules Impose Significant and Needless Costs and Threatens More Harm to the Public Interest than Ongoing Benefit.

The continued existence of directory regulations that require distribution of paper and ink copies of unwanted or unused directories is not just a benign, if unnecessary, anachronism. Regulation always comes at some cost to society, including the environmental cost of requiring printed basic listings directories unwanted by most homes and businesses. In the absence of any continuing benefit of significance, the Commission's Rules should be modernized through waiver to reduce ongoing regulatory costs and the risks of broader harms to the public interest in New York, such as harms to yellow pages. *See, e.g., USTelecom Order*. Because as many as 70% of households still use the yellow pages to find local businesses, this is a substantial benefit both to consumers and to local businesses. The yellow pages are an important resource for people and advertising,²⁰ but outmoded regulation can strangle them.

Finally, Dex Media and other LEC publishers need greater flexibility to satisfy environmental concerns. New Yorkers are justifiably proud of their efforts on behalf of the environment. Dex Media wants to continue to deliver print products to customers that value and use them. That is "utility," not "waste." But delivery of millions pounds of content that likely will never be used is inherently wasteful of both scarce dollars and natural resources. To avoid this undue waste in rapidly changing markets, Dex Media needs the regulatory flexibility to switch to digital products, as and when it is prudent.

¹⁹ In fact, it has been reported that 60% of phone numbers are unlisted for one reason or another as of 2013, including ILEC customers who choose to be unlisted or non-published. *See, e.g.,* <http://patch.com/maryland/rockville/reverse-phone-number-lookup-free-vs-paid--reverse-lookup-for-cell-and-landlines>.

²⁰ In fact, it is estimated that yellow pages still generate hundreds of billions of dollars of revenues for local businesses in the U.S. The industry still prints 422 million directories a year, and businesses still pay almost \$7 billion to advertise in them, as *Bloomberg Businessweek* [reported](http://www.bloomberg.com/bw/articles/2012-03-22/the-golden-allure-of-the-yellow-pages#p1) in 2012. <http://www.bloomberg.com/bw/articles/2012-03-22/the-golden-allure-of-the-yellow-pages#p1>.

E. The Legacy Directory Regulations Distort What are Otherwise Competitive Markets, and Unfairly Disadvantage Certain Telephone Providers and Their Contracted Directory Publishers.

As discussed above, there are hundreds of potential sources for the information that is contained in directories, including other print directory publishers. But in any given locality in New York, only **one** of those sources is subject to the Commission's regulations. That is the directory affiliate or contractor of the serving ILEC—Dex Media in the case of Verizon. Thus, apart from distorting and inhibiting a competitive directory service market, the legacy regulations hinder fair competition in telecommunications markets, because the providers that now serve the majority of homes and businesses are not subject to the regulations, which consequently have become outmoded and are not competitively neutral. *See, e.g., USTelecom Order* and 47 U.S.C. § 253(b).

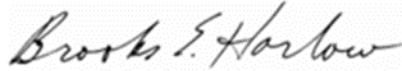
VII. CONCLUSION.

For the foregoing reasons, Dex Media respectfully requests that this petition be consolidated with Matter No. 16-00837 (Case No. 16-C-0186) and that its final order granting the two petitions affords sufficiently broad and flexible relief to permit a full transition from paper to digital directories by Verizon and its official directory publisher, Dex Media. Petitioner specifically seeks a waiver by the Commission of 16 NYCRR § 602.10 and clarification that

other statutes and rules relating to contents of directories may be equally met with digital publication, including online, with print provided to customers who request it.

Respectfully submitted this 12th day of April, 2016.

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