

ADP

Association of Directory Publishers

MEMORANDUM

To: All ADP Publisher Members

From: Larry Angove

Date: April 22, 2002

cc:

Re: McLeodUSA Publishing v.
Wood County Telephone

MESSAGE

The attached Advisory announces and explains the FCC's recent precedent-establishing order in the above proceeding.

The purpose of this memorandum is to offer some guidance on how this order might be used to assist in the listings acquisition process should you encounter a carrier attempting to charge rates in excess of the presumptively reasonable benchmarks of \$.04 and \$.06.

It is important to remember that the reason the FCC established "presumptively reasonable" rather than across-the-board flat rates was their recognition that there might be some carriers, most likely small or rural telephone companies, that in fact could not meet the burden of the benchmarks without a loss.

It is also important to remember that, should any carrier attempt to rely solely on the NTCA's long-pending petition for reconsideration of the SLI Order (requesting a secondary benchmark for small carriers of \$.42 per listing) as the justification for charging rates in excess of the benchmarks, the factual answer is that until that petition is acted upon by the FCC, it has absolutely no force or effect and that the carrier must comply with the FCC's existing rules (which establish that \$.04 and \$.06 are reasonable rates for all carriers), unless the carrier and publisher can arrive at a mutually acceptable negotiated rate.

With the FCC's decision in McLeod Publishing v. Wood County, the negotiation scale has been decidedly tipped in favor of the publisher. In general, the following statement or something similar may be helpful in any discussions you may have in the future with carriers attempting to charge rates in excess of the benchmarks:

The FCC recently held in McLeodUSA Publishing v. Wood County Telephone that Wood County must charge the presumptively reasonable rates of \$.04 and \$.06 for its SLI. Not only did the FCC hold that Wood County failed to cost-justify charging rates in excess of the benchmarks, it further made it clear that any attempt by a carrier to justify a higher rate must be detailed and specific and that the carrier would bear the full burden of proof. The FCC presumes that most carriers can recover their costs and a return at the \$.04 and \$.06

rates. Since you probably cannot justify a higher rate, you may find it wiser from a business perspective to charge the benchmarks (or negotiate a mutually acceptable rate with me) rather than to incur the expense and effort required for what is likely to be an unsuccessful effort to justify a higher rate before the FCC.

Please let me hear should you have questions or comments.