



PUBLIC NOTICE

Federal Communications Commission
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DA 05-174
January 25, 2005

NOTICE OF REQUEST FOR ACCESS TO DATA TO CARRIERS WHO FILE NUMBERING RESOURCE UTILIZATION AND FORECAST REPORTS (NRUF)

PLEADING CYCLE ESTABLISHED

CC Docket No. 99-200
CC Docket No. 95-116

Comment Date: February 4, 2005

The United States Department of Justice, Antitrust Division (the “Department”) is investigating the proposed merger of Sprint Corporation and Nextel Communications, Inc., and the proposed acquisition of Western Wireless Corp. by ALLTEL Corporation. For the purpose of assisting in those investigations, the Department has requested access to information contained in the Numbering Resource Utilization and Forecast (“NRUF”) reports filed by wireless telecommunications carriers and to disaggregated, carrier-specific local number portability (LNP) data related to wireless telecommunications carriers.

Section 251 of the Communications Act grants the Commission jurisdiction over the North American Numbering Plan (“NANP”) and related telephone numbering issues. In order to better monitor the way numbering resources are used within the NANP and efficiently allocate NANP resources, the Commission requires telecommunications carriers to provide the Commission with a utilization report of their current inventory of telephone numbers and a five-year forecast of their numbering resource requirements.¹ LNP data is collected by the LNP Administrator, and provided to the FCC. The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from public disclosure under 5 U.S.C. § 552(b)(4).²

¹ See *In the Matter of Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 7574, 7578-79 ¶ 5 (2000).

² *In the Matter of Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 7574, 7607 ¶ 78 (2000).

In general, the Commission may share information collected with another government agency. 44 U.S.C. § 3510. Section 3510 further provides that all provisions of law that relate to the unlawful disclosure of information apply to the employees of the agency to which the information is released. While the Commission's regulations provide that proprietary and commercially sensitive information will be withheld from public disclosure, subject to the public's right to seek disclosure under the Freedom of Information Act, 5 U.S.C. § 552, 47 C.F.R. § 0.457(d), 0.459(d), the Commission may disclose records to other federal government agencies that have been submitted to the Commission in confidence upon another agency's request, 47 C.F.R. § 0.442. The other agency must establish a legitimate need for the information and the disclosure is made subject to the provisions of 44 U.S.C. § 3510(b). 47 C.F.R. § 0.442(b). Further, parties that furnished records in confidence to the Commission will be notified of the request and be given 10 days in which to oppose disclosure. 47 C.F.R. § 0.442(d).

The Department states in its requests that it is its policy to protect the confidentiality of sensitive information and to prevent it from being shared among competitors.³ The Department further states that the information requested will be used only for a legitimate law enforcement purpose and that it will not disclose such sensitive information unless it is required by law or is necessary to further a legitimate law enforcement purpose. The Department states that if it is necessary to disclose any confidential business information in court filings, it is its policy to notify the affected party as soon as is reasonably practical, seek to file such information under seal, and make reasonable efforts to limit disclosure of the information until the affected party has had an opportunity to appear before the court and the court has ruled on any request by the affected party.

The Department further states that if a request is made under the Freedom of Information Act or another law for the disclosure of confidential information, it is its policy to assert all applicable exemptions and to use its best efforts to provide concerned parties with notice prior to the release of any information. It also states that if confidential business information becomes the subject of discovery in any litigation to which the Department is a party, it is the Department's policy to use its best efforts to assure that a protective order is entered, and to not voluntarily provide the information until concerned parties have had an opportunity to review and comment on the protective order and to apply to the court for further protection.

Pursuant to Commission's regulations, affected parties have 10 days from the date of this notice to oppose disclosure of NRUF and local number portability data to the Department of Justice. 47 C.F.R. § 0.442. If the Commission receives no opposition from affected parties within 10 days of this notice, the Commission will disclose the information requested above to the Justice Department. If disclosure is opposed, the procedures set forth in 47 C.F.R. § 0.442

³ See Letter to Alan Feldman, Acting Chief, Industry Analysis and Technology Division, Wireline Competition Bureau, and Eric Einhorn, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, from Nancy Goodman, Chief, Telecommunications and Media Section, Antitrust Division, U.S. Department of Justice, dated December 22, 2004; Letter to Rodger Woock, Chief, Industry Analysis and Technology Division, Wireline Competition Bureau, and Narda Jones, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, from Nancy Goodman, Chief, Telecommunications and Media Section, Antitrust Division, U.S. Department of Justice, dated January 19, 2005.

shall apply. All filings should refer to CC Docket Nos. 99-200 and 95-116. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁴

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20054.

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

For further information, contact Sanford Williams, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-1508, TTY (202) 418-0484, or sanford.williams@fcc.gov.

⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).