



PUBLIC NOTICE

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DA 11-1192
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NOTICE OF REQUEST BY OFFICES OF STATE ATTORNEYS GENERAL TO REVIEW SUBMISSIONS IN DOCKET NO. 11-65 THAT CONTAIN NRUF AND LNP DATA

CC Docket No. 99-200
CC Docket No. 95-116
WT Docket No. 11-65

On April 28, 2011, and June 3, 2011, subject to a protective order, the Commission placed into the record in WT Docket No. 11-65 (Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations) various Numbering Resource Utilization and Forecast (“NRUF”) reports filed by wireless telecommunications carriers and disaggregated, carrier-specific local number portability (“LNP”) data related to wireless telecommunications carriers.¹ Pursuant to the protective order, outside persons participating or intending to participate in Docket No. 11-65 who are not involved in competitive decision-making activities and who have signed the Acknowledgment of Confidentiality attached to the protective order may review and use the NRUF and LNP data “solely for the preparation and conduct of [Docket No. 11-65] before the Commission.”²

The protective order further provides that if a state department or agency, among others, issues a subpoena for or orders the production of NRUF or LNP data or information derived from NRUF and LNP data (“NRUF/LNP Confidential Information”) that a person has received pursuant to the protective order, the person receiving such an order must notify all affected parties and the Commission, such that “the Commission and each affected Wireless Telecommunications Carrier has a full opportunity to oppose such production prior to the production or disclosure of any NRUF/LNP Confidential Information.”

Pursuant to this provision, on June 28, 2011, Sprint Nextel Corp. (“Sprint”) notified the Commission that it had received civil investigation demands (“CIDs”) from various states seeking full, unredacted copies of all materials Sprint has filed (or will file) with the Commission in WTB Docket No.

¹ See Proposed Transfer of Control of T-Mobile USA, Inc. and Its Subsidiaries From Deutsche Telekom AG to AT&T Inc.; Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports To Be Placed Into the Record, Subject to Protective Order, WT Docket No. 11-65, CC Docket No. 99-200, *Public Notice*, DA 11-710 (rel. Apr. 18, 2011); Proposed Transfer of Control of T-Mobile USA, Inc. and Its Subsidiaries From Deutsche Telekom AG to AT&T Inc.; Additional Local Number Portability Information To Be Placed Into the Record, Subject to Protective Order, WT Docket No. 11-65, CC Docket No. 99-200, *Public Notice*, DA 11-945 (rel. May 24, 2011).

² Applications of AT&T Inc. and Deutsche Telekom AG for Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, *NRUF/LNP Protective Order*, DA 11-711 (rel. Apr. 18, 2011).

11-65, and that those materials contained NRUF/LNP Confidential Information.³ The Texas Office of the Attorney General has informed the Commission that CIDs that may require the production of NRUF/LNP Confidential Information also have been issued to AT&T Inc., T-Mobile USA Inc. and third parties other than Sprint, and that others may be issued in the future.⁴

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).⁵ Nonetheless, when the public interest has so required, the Commission has provided access to that data to persons not involved in competitive decision-making subject to a protective order requiring that the data be used solely for the purpose of participating in the relevant proceeding before the Commission and that the data and information derived from the data not be made public.⁶ The Commission has also provided NRUF and LNP data to the United States Department of Justice for the Department's use in antitrust investigations upon assurances from the Department that the material will be kept confidential and used for only legitimate enforcement purposes.⁷

In connection with the CIDs to Sprint and other carriers, on July 11, 2011, the Offices of the Attorney General of four states, New York, Pennsylvania, Texas, and Washington, sent letters to the Commission stating that they seek to review NRUF/LNP Confidential Information in connection with their investigations of AT&T's proposed acquisition of T-Mobile USA.⁸ The letters state that it is the

³ Letter to Rick Kaplan, Chief, Wireless Telecommunications Bureau, Federal Communications Commission from Antoinette Cook Bush, John M. Beahn, Counsel for Sprint Nextel Corp. (June 28, 2011) Sprint stated it received CIDs from the Attorneys General of Arizona, Florida, Hawaii, Illinois, Minnesota, New York, Pennsylvania, Texas and Washington. Sprint has informed the Commission that it has individually notified those parties specifically identified in its filings.

⁴ Letter to Sharon Gillett, Chief, Wireline Competition Bureau, Rick Kaplan, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from William J. Shieber, Assistant Attorney General, Antitrust Division, Texas Office of the Attorney General (July 11, 2011).

⁵ Numbering Resource Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7607, para. 78 (2000).

⁶ *See, e.g.*, Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements – Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order, WT Docket No. 08-246, CC Docket No. 99-200, *Public Notice*, 24 FCC Rcd 2910 (2009); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 08-95, CC Docket No. 99-200, *Public Notice*, 23 FCC Rcd 11398 (2008).

⁷ Notice of Request for Access to Carrier Data Filed in the Numbering Resource Utilization and Forecast (NRUF) Reports, *Pleading Cycle Established*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, 25 FCC Rcd 271 (2010); Notice of Request for Access to Carrier Data Filed in the Numbering Resource Utilization and Forecast (NRUF) Reports, *Pleading Cycle Established*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, 24 FCC Rcd 8637 (2009).

⁸ Letter from GERALYN J. TRUJILLO, Assistant Attorney General, Acting Deputy Bureau Chief, Antitrust Bureau, State of New York Office of the Attorney General, to Sharon Gillett, Chief, Wireline Competition Bureau, Rick Kaplan, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (July 11, 2011); Letter from Joseph S. Betsko, Deputy Attorney General, Commonwealth of Pennsylvania, Office of the Attorney General, to Sharon Gillett, Chief, Wireline Competition Bureau, Rick Kaplan, Chief, Wireless Telecommunications Bureau,

Offices' policy to keep this information confidential. They further state that the information will be used only for legitimate law enforcement purposes and that the Offices will not disclose the information unless it is required by law or is necessary to further a legitimate law enforcement purpose. The Offices of the Attorney General of Pennsylvania and Texas state that they will not disclose the information without the consent of the affected parties or unless ordered by a court for cause; the Offices of the Attorney General of New York and Washington state that if it is necessary to disclose the confidential information in court filings, they will notify the affected parties 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 parties have had an opportunity to appear before the court and the court has ruled on any request by the affected parties.

The Offices of the Attorney General of Pennsylvania and Texas state that the information is exempt from disclosure under their state freedom of information laws, while the Offices of the Attorney General of New York and Washington state that if a request is made under their state freedom of information laws, they will assert all applicable exemptions and use their best efforts to provide concerned parties with notice prior to the release of any information. The Offices of the Attorney General of New York and Washington further state that if the confidential information becomes the subject of discovery in any litigation to which they are a party, they will use their best efforts to ensure that a protective order is entered, and will 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.

Sprint has agreed that it will not provide unredacted materials containing NRUF/LNP Confidential Information to these state Offices of the Attorney General earlier than July 25, 2011. The Commission is providing this notice to inform carriers of the requests of the state Offices of the Attorney General to allow carriers the opportunity to contact the state Offices of the Attorneys General or to take any other action they may deem appropriate if they have concerns or oppose disclosure. Comments or objections should not be filed with the Commission.

For further information, please contact Joel A. Rabinovitz, Office of General Counsel, joel.rabinovitz@fcc.gov, (202) 418-0689.

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Federal Communications Commission (July 11, 2011); Letter from William J. Shieber, Assistant Attorney General, Antitrust Division, Texas Office of the Attorney General, to Sharon Gillett, Chief, Wireline Competition Bureau, Rick Kaplan, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, (July 11, 2011); Letter from David M. Kerwin, Assistant Attorney General, Office of the Attorney General of Washington, to Sharon Gillett, Chief, Wireline Competition Bureau, Rick Kaplan, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (July 11, 2011).