



PUBLIC NOTICE

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NOTICE OF REQUEST BY THE OFFICE OF THE ATTORNEY GENERAL OF FLORIDA 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,

¹ See Proposed Transfer of Control of T-Mobile USA, Inc. and Its Subsidiaries From Deutsche Telecom 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 Telecom 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).

unredacted copies of all materials Sprint has filed (or will file) with the Commission in WTB Docket No. 11-65, and that those materials contained NRUF/LNP Confidential Information.³

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).⁴ 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.⁵ 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.⁶

On July 13, 2011, the Commission released a Public Notice notifying all wireless carriers that the Offices of Attorney General of four states – New York, Pennsylvania, Texas and Washington – were seeking from several parties copies of unredacted materials filed in this proceeding and that some of those materials contained confidential information derived from NRUF and LNP data.⁷ And on August 9, the Commission released a Public Notice notifying all wireless carriers that the Offices of Attorney General of an additional six states – Arizona, California, Hawaii, Illinois, Kansas, and Minnesota – were seeking similar access in connection with their investigations of AT&T's proposed acquisition of T-Mobile USA.⁸

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 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).

⁵ 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).

⁶ 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).

⁷ 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, *Public Notice*, DA No. 11-1192 (rel. July 13, 2011).

⁸ Notice of Request By Additional 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, *Public Notice*, DA No. 11-1377 (rel. Aug. 9, 2011).

The Commission has since received a letter from the Office of the Attorney General of Florida also seeking similar access in connection with its investigations of AT&T's proposed acquisition of T-Mobile USA. Florida has issued a Civil Investigation Demand (CID) to certain parties seeking materials containing NRUF and LNP data. The letter states that there is an explicit exception to Florida's public records act for investigative materials that Florida receives in response to a CID and that the Florida Attorney has a statutory duty "to maintain the secrecy of all evidence, testimony, documents, work product, or other results of such investigative demand."

The Commission is providing this notice to inform carriers of the request of the Florida Office of the Attorney General in order to allow carriers the opportunity to contact that Office 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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