



U.S. Department of Justice

Antitrust Division

Liberty Square Building

*450 5th Street, N.W., Suite 7000
Washington, DC 20001*

October 11, 2017

Via E-Mail: Kris.Monteith@fcc.gov

Kris Monteith, Esq., Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Ms. Monteith:

As you are aware, the Antitrust Division of the United States Department of Justice ("the Department") investigates proposed mergers and other potentially anticompetitive agreements or practices, including in the mobile wireless services industry. To assist our efforts to enforce the antitrust laws, in the past the Department has sought, and been provided by the Commission, information contained in the Number Resource Utilization and Forecast ("NRUF") reports and local number portability data. *See* 47 C.F.R. § 0.442 (authorizing the Commission to disclose data to other government agencies).

As part of our ongoing efforts to monitor competition in the mobile wireless industry, and to be prepared for any future antitrust investigations, we request access to (a) the information contained in each NRUF report from December 2015 through the present submitted by wireless telecommunications carriers, by carrier and by rate center, and (b) the local number portability data in the Commission's possession related to wireless telecommunications carriers, by carrier and by rate center from January 2016 to the present. This type of information has been sought by the Department and provided by the Federal Communications Commission on numerous occasions in the past.

It is the Department's policy to protect the confidentiality of sensitive information provided by its sources, and to prevent competitively sensitive information from being shared among competitors. Sensitive information includes "confidential business information" which means trade secrets or other commercial or financial information (a) in which the company has a proprietary interest or which the company received from another entity under an obligation to maintain the confidentiality of such information, and (b) which the company has in good faith designated as confidential. Accordingly, sensitive information will only be used by the Department for a legitimate law enforcement purpose, and it is the Department's policy not to disclose such information

unless it is required by law or necessary to further a legitimate law enforcement purpose. In the Department's experience, the need to disclose sensitive material occurs rarely.

In the event of a request by a third party for disclosure of confidential business information under the Freedom of Information Act, the Department will act in accordance with its stated policy (*see* 28 C.F.R. § 16.8) and will assert all applicable exemptions from disclosure, including those exemptions set forth in 5 U.S.C. §§ 552(b)(4), (b)(7)(A) and (b)(7)(D) (to the extent applicable). *See also* Critical Mass Energy Project v. NRC, 975 F.2d 871, 880 (D.C. Cir.), *cert. denied*, 113 S. Ct. 1579 (1992) (protection of voluntarily provided information).

Although it is the Department's policy not unnecessarily to use sensitive information in complaints or court papers accompanying a complaint, which are publicly available documents, the Department cannot provide an absolute assurance that sensitive information will not be included in such documents. If a complaint is filed, it is the Department's policy to notify the concerned party as soon as is reasonably practicable of any decision by the Department to use confidential business information for the purpose of seeking preliminary relief. Our policy is generally to file under seal any confidential business information used for such purpose and advise the court that the information has been designated as confidential. Moreover it is the Department's policy to make reasonable efforts to limit disclosure of the information to the court and outside counsel for the other parties to the litigation until the concerned party has had a reasonable opportunity to appear before the court and until the court has ruled on the concerned party's application.

In the event of a request by a third party for disclosure of any appropriately designated confidential business information under any provision of law other than the Freedom of Information Act, it is the Department's policy to assert all applicable exemptions from disclosure permitted by law. In addition, the Department's policy is to use its best efforts to provide concerned parties such notice as is practicable prior to disclosure of any confidential business information to a third party who requests it under any provision of law other than the Freedom of Information Act.

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 applicable to the information is entered in the litigation. In addition, our policy is to not voluntarily produce the confidential business information until concerned parties have had a reasonable opportunity to review and comment on the protective order and to apply to the court for further protection. It is the Department's policy not to oppose a court appearance by concerned parties for this purpose.

Please contact Gloria Sheu, at 202-532-4932, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Scheele". The signature is fluid and cursive, with the first name "Scott" and last name "Scheele" clearly distinguishable.

Scott Scheele
Chief, Telecommunications & Media
Enforcement Section

cc: Donald Stockdale, Chief, WTB, FCC
Rodger Woock, IATD, WCB, FCC
Jim Bird, GC's Office, FCC