Before the
Federal Communications Commission
Washington, D.C. 20554

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OCT 31 2008

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| In the Matter of | ) | |
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| Applications of | ) | |
| | ) | |
| AT&T Mobility Spectrum LLC | ) | FCC File No. 0003382436 |
| | ) | |
| Union Telephone Company | ) | FCC File No. 0003371176 |
| | ) | |
| Cellco Partnership d/b/a Verizon Wireless | ) | FCC File Nos. 0003382435, 0003382444 |
| | ) | CC Docket No. 99-200 |
| For 700 MHz Band Licenses, Auction No. 73 | ) | |
| | ) | |
| Protective Order | ) | |

# PROTECTIVE ORDER

**Adopted: October 2, 2008** **Released: October 2, 2008**

By the Acting Chief, Wireless Telecommunications Bureau:

1. AT&T Mobility Spectrum LLC, Union Telephone Company, and Cellco Partnership d/b/a/ Verizon Wireless have filed the above-referenced applications for 700 MHz band licenses pursuant to Auction No. 73.[1] In connection with the Commission's review of the applications, the Commission may examine information contained in the Numbering Resource Utilization and Forecast ("NRUF") reports filed by carriers engaged in the provision of wireless telecommunications services[2] ("Wireless Telecommunications Carriers") and disaggregated, carrier-specific local number portability ("LNP") data related to Wireless Telecommunications Carriers. These data may assist the Commission in assessing the competitive effects of the grant of the above-referenced applications. We also anticipate that parties participating in the proceeding may seek to review these data.

2. 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 – the NRUF report.[3] LNP data are collected by the LNP Administrator and provided to the Commission. The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from general public disclosure under 5 U.S.C. § 552(b)(4).[4] Accordingly, the NRUF reports and LNP data will be placed into the record subject to the

[1] *See* Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572 (2008); Wireless Telecommunications Bureau Announces That Applications for 700 MHz Band Licenses Are Accepted for Filing, *Public Notice,* 23 FCC Rcd 6722 (2008).

[2] *See* 47 C.F.R. § 1.907.

[3] *See* Numbering Resource Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd. 7574, 7578-79 ¶ 5 (2000).

[4] *Id.* at 7607 ¶ 78.

provisions of this Protective Order, and the reports will not be available to the public except pursuant to the terms of this Order. The Protective Order will ensure that the confidential information contained in the NRUF reports and LNP data is afforded adequate protection. The Protective Order does not constitute a resolution of the merits concerning whether any information submitted under the Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act ("FOIA") or otherwise.

3. *Scope.* Any person seeking access to the NRUF reports or LNP data or information derived therefrom in this proceeding shall request access pursuant to the terms of the Protective Order and must sign the Acknowledgement of Confidentiality (attached as Appendix A). The provisions of this Protective Order shall not be construed to apply to the Commission or its staff.

4. *Definitions.* As used herein, capitalized terms, not otherwise defined herein shall have the following meanings:

"NRUF/LNP Confidential Information" means the NRUF reports, the data contained in those reports, the LNP data, and any information derived from the reports or the data that is not otherwise available from publicly available sources;

"Counsel" means in-house counsel and Outside Counsel;

"Outside Counsel" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, *provided that*, such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel's activities, association, and relationship with a client do not involve the business decisions of the client or any competitor of any Wireless Telecommunications Carrier nor the analysis underlying the business decisions.

"Outside Consultants" means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, *provided that,* the Outside Consultants are not involved in competitive decision-making, *i.e.*, the Outside Consultants' activities, association, and relationship with a client do not involve the business decisions of the client or any competitor of any Wireless Telecommunications Carrier nor the analysis underlying the business decisions.

"Reviewing Party" means a person who has obtained access to NRUF/LNP Confidential Information pursuant to paragraphs 8 and 10 of this Protective Order.

5. *Use of NRUF/LNP Confidential Information.* Persons obtaining access to NRUF/LNP Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of this application proceeding before the Commission as delimited in this paragraph and paragraphs 8, 12, and 13, and any subsequent judicial proceeding arising directly from this proceeding. Except as provided herein, no person shall use NRUF/LNP Confidential Information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the NRUF/LNP Confidential Information in its decision in this proceeding, it will do so by redacting any NRUF/LNP Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to NRUF/LNP Confidential Information under this Protective Order, or by aggregating it so that no NRUF/LNP Confidential Information will be revealed by its disclosure.

6. *Non-Disclosure of NRUF/LNP Confidential Information.* Except as provided under this Protective Order, no NRUF/LNP Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

7. *Permissible Disclosure.* Subject to the requirements of paragraph 10, NRUF/LNP Confidential Information may be reviewed by Outside Counsel and Outside Consultants and by non-commercial parties who are specifically given written permission by the Commission (who will be treated as Outside Counsel or Outside Consultants for purposes of this Protective Order). Subject to the requirements of paragraph 10, Outside Counsel and Outside Consultants may disclose NRUF/LNP Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not described in clause 2 of this paragraph 8 assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph 8. Reviewing Parties may discuss and share the contents of the NRUF/LNP Confidential Information with any other Reviewing Party and with the Commission and its staff. A party's own NRUF/LNP Confidential Information may also be disclosed to employees and Counsel of such party.

8. *Protection of NRUF/LNP Confidential Information.* Persons described in paragraph 8 and gaining access to NRUF/LNP Confidential Information shall have the obligation to ensure that access to NRUF/LNP Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that NRUF/LNP Confidential Information is used only as provided in this Protective Order.

9. *Procedures for Obtaining Access to NRUF/LNP Confidential Information.* Prior to reviewing or having access to any NRUF/LNP Confidential Information, each person seeking such access shall execute the attached Acknowledgment of Confidentiality ("Acknowledgment") and file it with the Commission so that the Acknowledgment is received by the Commission at least five business days prior to such person's reviewing or having access to the NRUF/LNP Confidential Information, except that, where the person seeking access is one described in clause 1, 2, or 3 of paragraph 8, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. Each Wireless Telecommunications Carrier shall have an opportunity to object to the disclosure of NRUF/LNP Confidential Information to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining, or employing such person within three business days after that person's Acknowledgment has been filed with the Commission (or where the person seeking access is one described in clause 1, 2, or 3 of paragraph 8, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection shall not have access to NRUF/LNP Confidential Information.

10. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, such requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

11. *Filings with the Commission.* Documents filed in this proceeding may reference NRUF/LNP Confidential Information only if they comply with the following:

a. The cover or first page of the filing, and each page of the filing that contains or discloses NRUF/LNP Confidential Information subject to this order must be clearly marked "CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION."

b. One copy of the filing referencing NRUF/LNP Confidential Information (the "Confidential Filing") and two copies of the filing in which the NRUF/LNP Confidential Information has

been redacted (the "Redacted Confidential Filing") must be filed with the Secretary's Office. The Confidential Filing shall be filed under seal and shall not be placed in the Commission's public file. The Confidential Filing shall be accompanied by a cover letter clearly marked "CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The two copies of the Redacted Confidential Filing and their accompanying cover letter should be stamped "REDACTED – FOR PUBLIC INSPECTION." The copies of the Redacted Confidential Filing shall be placed in the Commission's public files. The cover letter accompanying the Redacted Confidential Filing shall state that a redacted version of the filing is being filed.

c. Two copies of each filing that contains NRUF/LNP Confidential Information and the associated cover letter must be delivered in person to Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, 1250 Maryland Avenue, S.W., Washington, D.C. 20554, or Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 1250 Maryland Avenue, S.W., Washington, D.C. 20554. Parties should not provide additional or courtesy copies of pleadings containing NRUF/LNP Confidential Information to Commission staff unless the Bureau so requests.

12. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Outside Counsel or Outside Consultants from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of NRUF/LNP Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Outside Counsel or Outside Consultants shall not disclose NRUF/LNP Confidential Information.

13. *No Waiver of Confidentiality.* Disclosure of NRUF/LNP Confidential Information as provided herein by any person shall not be deemed a waiver by any affected party of any privilege or entitlement to confidential treatment of such NRUF/LNP Confidential Information. Reviewing Parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use NRUF/LNP Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of NRUF/LNP Confidential Information shall not be deemed a waiver of any privilege or entitlement.

14. *Subpoena by Courts, Departments, or Agencies.* If a court or a federal or state department or agency issues a subpoena or orders production of NRUF/LNP Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify the Commission and each affected Wireless Telecommunications Carrier of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each affected Wireless Telecommunications Carrier has a full opportunity to oppose such production or disclosure prior to the production or disclosure of any NRUF/LNP Confidential Information.

15. *Violations of Protective Order.* Should a person that has properly obtained access to NRUF/LNP Confidential Information under this Protective Order violate any of its terms, such person shall immediately convey that fact to the Commission. Further, should such violation consist of improper disclosure of NRUF/LNP Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to NRUF/LNP Confidential Information or other confidential information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the affected Wireless Telecommunications Carriers at law or in equity against any person using NRUF/LNP Confidential Information in a manner not authorized by this Protective Order.

16. *Termination of Proceeding*. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 8 shall destroy or return to the Commission all NRUF/LNP Confidential Information. No material whatsoever derived from the NRUF/LNP Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the provisions of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing NRUF/LNP Confidential Information filed at the Commission on behalf of a party, and one copy of orders issued by the Commission, Bureau or Division containing NRUF/LNP Confidential Information. All Outside Counsel and Outside Consultants who are subject to this Protective Order shall file an affidavit with the Commission not more than three weeks after conclusion of this proceeding certifying that they have complied with this paragraph 17 and setting forth the steps that have been taken to comply.

17. *Authority*. This Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlicting
Acting Chief, Wireless Telecommunications Bureau

## APPENDIX A

### Acknowledgment of Confidentiality

### FCC File Nos. 0003382436, 0003371176, 0003382435, and 0003382444

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use NRUF/LNP Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Outside Counsel or Outside Consultant to a party or other person described in paragraph 8 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I hereby certify that I am not involved in "competitive decision-making" as that term is used in the Protective Order.

I acknowledge that it is my obligation to ensure that NRUF/LNP Confidential Information is used only as provided in the Protective Order; and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of NRUF/LNP Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at _____ this ___ day of _____, ____.

_____
[Name]
[Position]
[Address]
[Telephone]