PUBLIC NOTICE

Federal Communications Commission
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DA 10-71
January 13, 2010

NOTICE OF REQUEST FOR ACCESS TO CARRIER DATA FILED IN THE NUMBERING RESOURCE UTILIZATION AND FORECAST (NRUF) REPORTS

PLEADING CYCLE ESTABLISHED

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

Comment Date: January 25, 2010

The United States Department of Justice, Antitrust Division (the "Department"), "is completing its investigations of two wireless mergers, including evaluating the proposed acquirers of the assets to be divested pursuant to the Final Judgment entered in *U.S. et al. v. Verizon Communications Inc. and Alltel Corp.*, No. 08-cv-01878 (D.D.C. Apr. 23, 2009) and the proposed Final Judgment in *U.S. et al. v. AT&T Inc. and Centennial Communications Corp.*, No. 09-cv-01932 (D.D.C. filed Oct. 13, 2009)."[1] 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, 47 U.S.C. § 251, gives 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 utilization reports of their current inventory of telephone numbers and a five-year forecast of their numbering resource requirements.[2] LNP data is 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 public disclosure under 5 U.S.C. § 552(b)(4).[3]

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[1] Letter to Sharon Gillett, Bureau Chief, Wireline Competition Bureau, Federal Communications Commission, from Nancy Goodman, Chief, Telecommunications and Media Section, Antitrust Division, U.S. Department of Justice, dated January 4, 2010 (Letter).

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

[3] *Id.* at 7607, para. 78.

In general, the Commission may share information it has collected with another government agency under 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. Although 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 and implementing regulations, 5 U.S.C. § 552, 47 C.F.R. § 0.457(d), 0.459(d), the Commission may disclose records to other federal agencies that have been submitted to the Commission in confidence upon another agency's request pursuant to 47 C.F.R. § 0.442(d).

The Department states in its request that its policy is to protect the confidentiality of sensitive information and to prevent it from being shared among competitors. 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 maintains that if it is necessary to enclose any confidential business information in court filings, its policy is to notify the affected party as soon as is reasonably practical, to seek to file such information under seal, and to 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 for the disclosure of confidential information, it is the Department's 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 ensure 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 the Commission's regulations in 47 C.F.R. § 0.442, affected parties have 10 days from the date of this notice to oppose disclosure of NRUF and LNP data to the Department of Justice. 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 shall apply. All pleadings should refer to CC Docket Nos. 99-200 and 95-116. Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's e-Rulemaking Portal, or (3) by filing paper copies.[4]

Comments filed through the ECFS can be sent as an electronic file via the Internet to http://fjallfoss.fcc.gov/ecfs2/ or the Federal e-Rulemaking Portal: http://www.regulations.gov.[5] Generally, only one copy of an electronic submission must be filed. Because 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

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

[5] Filers should follow the instructions provided on the Federal e-Rulemaking Portal Web site for submitting comments.

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." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and six copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- § Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m.

- § 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, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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Parties must also send a courtesy copy of their filing to Gary Remondino, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C143, Washington, D.C. 20554. His e-mail address is gary.remondino@fcc.gov; his telephone number is (202) 418-2298.

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, please contact Marilyn Jones, Competition Policy Division, Wireline Competition Bureau, marilyn.jones@fcc.gov, (202) 418-2357.

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