PUBLIC NOTICE

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NOTICE OF FEDERAL COURT ORDER MANDATING DISCLOSURE, SUBJECT TO A PROTECTIVE ORDER, OF NRUF AND LNP DATA AND 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 court, among others, orders the production of NRUF or LNP data or information derived from NRUF and LNP data ("NRUF/LNP Confidential

[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).

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). 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). Nonetheless, as we have done in this case, when the public interest has so required, the Commission has provided access to that data to the Department of Justice and 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.

[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).

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." Such a situation has arisen here.

On August 31, 2011, the United States filed a complaint in federal district court alleging that the merger of AT&T Inc. and T-Mobile USA, Inc. (the action underlying the license transfer applications in WT Docket No. 11-65) would violate the United States antitrust laws and seeking a permanent injunction against the merger.[3] Seven states (New York, Washington, California, Illinois, Massachusetts, Ohio and Pennsylvania) and Puerto Rico have joined the action as plaintiffs. On September 23, 2011, the court ordered that the parties produce to each other all information exchanged with third parties, including filings made with the Federal Communications Commission.[4] This includes both NRUF and LNP data and information derived from NRUF and LNP data. Prior to this order, the court on September 15, 2011, adopted a protective order protecting confidential information that may be produced or filed in the case and limiting disclosure to outside counsel and experts.[5] The court's protective order also provides that a non-party whose confidential information is subject to the protective order has ten days from receipt of the order to seek additional relief if it believes the protective order does not adequately protect its confidential information.[6]

The Commission is providing this notice to inform carriers of the pending civil action and the required exchange of information subject to the court's protective order in order to allow carriers the opportunity to contact the court if they have concerns regarding the exchange of the NRUF or LNP information. 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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[3] *United States of America v. AT&T Inc., T-Mobile USA, Inc. and Deutsche Telekom AG*, Civil No. 11-01560 (ESH) (D. D.C.).

[4] *United States of America v. AT&T Inc., T-Mobile USA, Inc. and Deutsche Telekom AG*, Civil No. 11-01560 (ESH), Stipulated Scheduling and Case Management Order (D. D.C. Sept. 23, 2011).

[5] *United States of America v. AT&T Inc., T-Mobile USA, Inc. and Deutsche Telekom AG*, Civil No. 11-01560 (ESH), Stipulated Protective Order Concerning Confidentiality (D. D.C. Sept. 15, 2011).

[6] *Id.* at 3.