

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

In the Matter of)
Joseph I. Marchese Freedom of Information Act)
Request for the Unredacted Declaration of)
Declaration of Colin B. Weir Filed in)
WT Docket No. 11-65)

FOIA Control No. 2012-012

FILED/ACCEPTED

NOV 14 2011

Federal Communications Commission
Office of the Secretary

OPPOSITION OF VERIZON WIRELESS

Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) hereby opposes the request by Joseph I. Marchese to obtain access to the unredacted declaration of Colin B. Weir filed June 10, 2011 in WT Docket No. 11-65 (the “Weir Declaration”).¹ The Weir Declaration includes HHI calculations that utilize competitively sensitive Numbering Resource Utilization and Forecast (“NRUF”) data and Local Number Portability (“LNP”) data subject to the *NRUF/LNP Protective Order* for use in the AT&T/T-Mobile proceeding.² Mr. Marchese now seeks release of these data without the protections provided by the *NRUF/LNP Protective Order*.

As discussed below, Mr. Marchese is seeking highly sensitive commercial data that is entitled to be withheld from public disclosure pursuant to Exemption 4 of the Freedom of Information Act (“FOIA”).³ The unredacted figures in the Weir Declaration would easily enable a person to determine an individual service provider’s disaggregated NRUF data, including

¹ Public Notice, “Notice and Request for Comments Concerning a Freedom of Information Act Request for a Record Containing Numbering Resource Utilization and Forecast and Local Number Portability Data,” DA 11-1830 (Nov. 1, 2011).

² *Applications of AT&T, Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, 26 FCC Rcd 6031 (WTB 2011) (“*NRUF/LNP Protective Order*”).

³ 5 U.S.C. § 552(b)(4).

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Verizon Wireless's data. Indeed, Mr. Marchese's request is a blatant attempt to side-step the procedures and protections guaranteed by the *NRUF/LNP Protective Order* and should be denied.

It is beyond dispute that the carrier-specific NRUF and LNP data utilized in the Weir Declaration is highly sensitive, commercial data that is properly withheld from public disclosure under the FOIA Exemption 4 and the Commission's rules, 47 C.F.R. § 0.457(d). The Commission ruled, over a decade ago, 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 In addition, for this reason, disclosure of NRUF data to state regulatory commissions is expressly conditioned on "appropriate protections in place to prevent public disclosure of disaggregated carrier-specific data."⁵ It has therefore been the Commission's long standing practice to release NRUF and LNP data only if necessary for the review of a transaction and only subject to a protective order that strictly limits access to such data to outside counsel of record and outside consultants.⁶

The Commission was correct to conclude that NRUF and LNP data is properly withheld from public disclosure under FOIA Exemption 4 and to protect such data from public disclosure. The information "is likely . . . to cause substantial harm to the competitive position of the person

⁴ See *Numbering Resource Optimization*, 15 FCC Rcd 7574, 7607 (2000) (emphasis added).

⁵ 47 C.F.R. § 52.15(f)(7).

⁶ See, e.g., *NRUF/LNP Protective Order*, 26 FCC Rcd at 6031; *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*, 23 FCC Rcd 11401 (WTB 2008); *Applications of AT&T Inc. and Dobson Communications Corp. for Consent to Transfer Control of Licenses and Authorizations*, 22 FCC Rcd 18624 (WTB 2007); *Applications of Western Wireless Corp. and ALLTEL Corp. for Consent to Transfer Control of Licenses and Authorizations*, 20 FCC Rcd 4214 (WTB 2005).

from whom the information was obtained.”⁷ This is no less true for the data in the Weir Declaration that can easily be reverse engineered to determine carrier-specific NRUF data.⁸ Access to such data would provide Verizon Wireless’s competitors with information about its business plans and strategies, effectively giving competitors a roadmap to Verizon Wireless’s deployment, where it has been successful in winning customers, its expansion plans, and market growth.⁹ This would place Verizon Wireless at a severe competitive disadvantage.

Moreover, Mr. Marchese’s request itself is a transparent effort to game the Commission’s processes. To the extent that Mr. Marchese has a legitimate need for the carrier-specific NRUF and LNP data utilized in the Weir Declaration in order to represent client interests in the AT&T/T-Mobile proceeding, he can and should pursue access to the data under the *NRUF/LNP Protective Order* and his pursuit of access to this data under FOIA is redundant.

It appears, however, that Mr. Marchese’s eligibility to obtain access to NRUF and LNP data under the *NRUF/LNP Protective Order* is in doubt.¹⁰

Frustrated in his attempt to gain access to the NRUF and LNP data through the *NRUF/LNP Protective Order* process, Mr. Marchese is now seeking to avoid compliance with the *NRUF/LNP Protective Order* altogether. The Commission should not condone such regulatory gamesmanship. As discussed above, the release of the unredacted Weir Declaration without the restrictions of the *NRUF/LNP Protective Order* would cause Verizon Wireless

⁷ See *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

⁸ See *Canadian Commercial Corp. v. Department of the Air Force*, 514 F.3d 37, 41 (D.C. Cir. 2008) (affirming that a requesting party’s ability to reverse-engineer disclosed information to determine competitively sensitive data is relevant to Exemption 4).

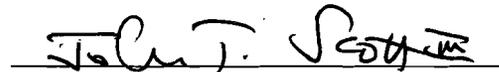
⁹ See *Numbering Resource Optimization*, 15 FCC Rcd at 7607.

¹⁰ See Letter from Peter J. Schildkraut, Arnold & Porter LLP and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 11-65 (May 12, 2011).

significant competitive harm. For this reason as well, the Commission should not release the unredacted information without the restrictions of the *NRUF/LNP Protective Order*.

Accordingly, the Commission should deny Mr. Marchese's FOIA request for a copy of the unredacted Weir Declaration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John T. Scott, III", is written over a horizontal line.

John T. Scott, III
Vice President & Deputy General Counsel
VERIZON
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Date: November 14, 2011

CERTIFICATE OF SERVICE

I, Sarah Trosch, hereby certify that on this 14th day of November, 2011, I caused a copy of the foregoing "Opposition of Verizon Wireless" to be served by first class mail, postage pre-paid upon the following:

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Copies of the foregoing document were sent by email to the following:

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