



DEC 19 2011

December 19, 2011

Federal Communications Commission
Office of the Secretary

BY HAND DELIVERY AND ECFS

Marlene H. Dortch
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: **REDACTED — FOR PUBLIC INSPECTION**

Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25

Dear Ms. Dortch:

As required by the Second Protective Order in this proceeding, attached is a redacted version of Sprint Nextel Corporation's cover letter on its provision of data to the Wireline Competition Bureau related to the above-referenced proceeding. All information on the DVD referenced in the attached cover letter is Highly Confidential Information subject to the Commission's Second Protective Order, as clarified by the Wireline Competition Bureau's May 2, 2011 letter, DA 11-805, in this proceeding. Thus, no copy of that DVD is attached.

Please let me know if you have any questions.

Respectfully submitted,

Paul Margie

No. of Copies rec'd 0+1
List Article

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Marlene H. Dortch
445 12th Street, S.W.
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Washington, DC 20554

Andrew Mulitz
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FILED/ACCEPTED

DEC 19 2011

Federal Communications Commission
Office of the Secretary

Re: **REDACTED — FOR PUBLIC INSPECTION (HIGHLY CONFIDENTIAL ENCLOSURE OMITTED)**

Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25

Dear Ms. Dortch and Mr. Mulitz:

Sprint Nextel Corporation (“Sprint”) hereby encloses with this letter information responsive to the Federal Communication Commission’s September 19, 2011 Public Notice requesting competition data in the above-referenced proceeding.¹ ***Please note that all information on the enclosed DVDs is Highly Confidential Information subject to the Commission’s Second Protective Order, released December 27, 2010 in WC Docket 05-25, as clarified by the Wireline Competition Bureau’s May 2, 2011 letter, DA 11-805, in the same proceeding.*** Per our conversation with FCC Staff on November 16, 2011, we understand that the Bureau intended its Public Notice of September 19 to serve as “specific[] authoriz[ation]” to designate information in this response as Highly Confidential.² This information contains highly

¹ Data Requested in *Special Access* NPRM, Public Notice, WC Docket No. 05-25, DA 11-1576 (rel. Sept. 19, 2011) (“Public Notice”).

² See *Special Access for Price Cap Local Exchange Carriers, Second Protective Order* ¶ 5, WC Docket No. 05-25 (rel. Dec. 27, 2010) (requiring specific authorization); Public Notice at 2 (noting that parties may submit data “in accordance with the *Modified First Protective Order*, the *Second Protective Order*, and supplements to the *Second Protective Order* issued in this proceeding”); *id.* at 21 (noting filing procedures for Highly Confidential Information).

detailed or granular customer or geographic information regarding the following categories of highly confidential information covered by the *Second Protective Order*:

- The locations that companies serve with last-mile facilities and the nature of those facilities (*e.g.*, whether the last-mile facilities consist of conditioned copper loops, DS1 loops, DS3 loops, Ethernet loops, number of fiber strands, actual and potential capacity, whether the facilities are leased on an indefeasible right of use basis or are self deployed);
- The extent to which companies rely on incumbent local exchange carrier (“ILEC”) and nonincumbent LEC last-mile facilities and local transport facilities to provide special access-like services and the nature of those inputs (*e.g.*, the names of suppliers and whether the inputs are conditioned copper loops, DS1 loops, DS3 loops, Ethernet loops);
- The location of companies’ fiber network routes;
- The location of individual companies’ cell sites and the wire center associated with these cell sites, the nature or type of structure where individual companies’ cell sites are placed, the name of the provider that provides a connection to individual companies’ cell sites; and the type or capacity of the connections provided to companies’ cell sites;
- The types of customers companies serve and the types of special access-type services demanded by those customers;
- The rates or charges associated with channel terminations or transport facilities, and information from which, whether alone or in combination with other confidential or nonconfidential information, such rates or charges could be inferred;
- The circuit identifiers, tariff or contract identifiers, or other information associating channel terminations or transport facilities with a particular tariff or contract;
- The CLLI codes for the end office nearest to channel terminations or transport facilities.

In addition, out of an abundance of caution, Sprint is claiming protection from disclosure of the information designated as "Highly Confidential Information" in this submission pursuant to exemption 4 of the Freedom of Information Act (“FOIA”) and the Commission's rules, and requests that such information be withheld from public inspection except pursuant to the protections afforded to "Highly Confidential Information" in the *Second Protective Order*.³ Specifically, pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, FCC 98-184, released August 4, 1998, and in accordance with the FOIA and the Commission's Rules related to public information and inspection of records, *e.g.* 47 C.F.R. §§

³ 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d) (exempting from disclosure "[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential").

0.457 and 0.459, Sprint submits this request for confidential treatment of all information designated as Highly Confidential Information in this filing to the Commission and all previous filings in this docket, specifically including Sprint's response to the Commission's Request for Data of October 28, 2010.⁴ If the Commission rejects Sprint's request for highly confidential treatment, Sprint requests that the materials be returned without consideration pursuant to 47 C.F.R. § 0.459(e).

Statement pursuant to 47 C.F.R. § 0.459(b)

(1) Identification of the specific information for which confidential treatment is sought.

All of the information designated as "Highly Confidential Information" submitted in response to the Public Notice is confidential commercial information under Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4). Accordingly, pursuant to Commission Rule 0.459(a), Sprint requests that such information not be made routinely available for public inspection except pursuant to the protections afforded to Highly Confidential Information as provided in the *Second Protective Order* in the above-referenced docket.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The information is being provided to the Commission in response to the Public Notice in the above-captioned proceeding.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

Sprint's responses to the data requested by the Commission in the Public Notice contain some of Sprint's most commercially sensitive information. These include, *inter alia*, information regarding the costs of some of Sprint's most crucial inputs and granular, detailed explanations of Sprint's own business judgment in how to negotiate tariff requirements. The disclosure of this information would place Sprint at a significant competitive disadvantage.

(4) Explanation of the degree to which the information concerns a service that is subject to competition.

The records being provided to the Commission involve various telecommunications services purchased by Sprint, which it uses to provide both wireline and wireless telecommunications services. Releasing these records to competing companies would allow them to undermine Sprint's business activities significantly, as these companies would learn details regarding Sprint's current customers, network assets, cost information, strategy and other key highly confidential data. The likelihood of competitive injury threatened by release of the information provided to the Commission by Sprint should compel the Commission to withhold

⁴ Data Requested in *Special Access* NPRM, Public Notice, WC Docket No. 05-25, DA 10-2073 (rel. Oct. 28, 2010).

the information from public disclosure, except as provided in the *Second Protective Order*. See *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazer v. U.S. Forest Service*, 97 F.3d 367, 371 (9th Cir. 1996); *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure. The Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4. Under 47 C.F.R. § 0.459(e), Sprint requests that the materials be returned without consideration if the Commission rejects its request for highly confidential treatment.⁵

The materials designated as "Highly Confidential Information" and being provided to the Commission in response to the Public Notice are not customarily released to the public, are maintained on a confidential basis, and are not ordinarily disclosed to parties outside the company. Disclosure would subject Sprint to substantial competitive harm.

The records being provided to the Commission contain information regarding Sprint's operating expenses and the extent of Sprint's network and thus represent confidential commercial information that should not be released under the FOIA, except as provided in the *Second Protective Order*. Competitors could use the confidential information to assist in targeting their service offerings and enhancing their competitive positions, to the detriment of the Sprint's competitive position. See, e.g., *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994).

Commission precedent has clearly found this type of information to be competitively sensitive and withholdable under Exemption 4.⁶ Accordingly, Sprint requests that the

⁵ See also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter). Sprint's submission also meets the test for withholding established by *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

⁶ See e.g. *Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport; Southwestern Bell Telephone Company*, 13 FCC Rcd. 13615 (1998) (keeping administrative operating expenses confidential because it would provide insight into business strategies); *In Matter of Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, Protective Order, CCB/CPD File No. 00-23, DA 00-2618 (rel. Nov. 20, 2000) (supporting confidentiality for collocation data); *AT&T/McCaw Merger Applications*, 9 FCC Rcd. 2610 (1994) (keeping confidential accounting records showing account balance information); *Mercury PCS II, LLC (Request for Inspection of Records)* *Omnipoint Corporation (Request for Confidential Treatment of Documents)*, FOIA Control

information submitted be withheld from public inspection except as provided in the *Second Protective Order* in the above-referenced docket.

As required by the Protective Orders, we are hand-delivering one unredacted copy of this filing to the Secretary's Office and two copies to Andrew Mulitz. A copy of this letter (but without the Highly Confidential DVD) is being filed publicly under separate cover.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Paul Margie". The signature is stylized and cursive.

Paul Margie