



U.S. Department of Justice

Antitrust Division

Liberty Square Building

*450 5th Street, N.W., Suite 7000
Washington, DC 20001*

June 5, 2014

Via E-Mail: Julie.Veach@fcc.gov

Julie Veach, Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Ms. Veach:

As you are aware, the Antitrust Division of the United States Department of Justice (“the Department”) is investigating the proposed acquisition of Time Warner Cable, Inc. by Comcast Corp.

Our efforts would be assisted by, and we request, access to disaggregated broadband subscriber data collected through FCC Form 477 (and any updates that become available during the pendency of the investigation), by carrier and census tract, from June 2009 forward. See Report and Order, *In the Matter of Modernizing the FCC Form 477 Data Program*, at ¶78, WC Docket No. 11-10 (June 27, 2013) (indicating that the Commission “makes provider-specific [Form 477] subscription data available to state commissions...and to other federal agencies upon request, pursuant to confidentiality conditions.”); 47 C.F.R. §1.7001(d) (authorizing the Chief of the Wireline Competition Bureau to release provider-specific Form 477 data to state commissions). Although this information has not been sought previously by the Department, other confidential data such as Number Resource Utilization and Forecast (“NRUF”) reports and local number portability data has been sought and provided to the Department by the Commission in connection with numerous wireless merger investigations, including, but not limited to, the proposed merger of T-Mobile USA, Inc. and MetroPCS Communications, Inc., and the proposed acquisitions of T-Mobile USA, Inc. by AT&T Inc., Centennial Communications Corp. by AT&T Inc., Alltel Corp. by Verizon Wireless, Rural Cellular Corp. by Verizon Wireless, Dobson Communications Inc. by AT&T Inc., Midwest Wireless Holdings L.L.C. by Alltel Corp., and Western Wireless Corp. by Alltel Corp.

It is the Department’s policy to protect the confidentiality of sensitive information provided by its sources, and to prevent competitively sensitive information from being shared among competitors. Sensitive information includes “confidential business

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information” which means trade secrets or other commercial or financial information (a) in which the company has a proprietary interest or which the company received from another entity under an obligation to maintain the confidentiality of such information, and (b) which the company has in good faith designated as confidential. Accordingly, sensitive information will only be used by the Department for a legitimate law enforcement purpose, and it is the Department’s policy not to disclose such information unless it is required by law or necessary to further a legitimate law enforcement purpose. In the Department’s experience, the need to disclose sensitive material occurs rarely.

In the event of a request by a third party for disclosure of confidential business information under the Freedom of Information Act, the Department will act in accordance with its stated policy (*see* 28 C.F.R. § 16.8) and will assert all applicable exemptions from disclosure, including those exemptions set forth in 5 U.S.C. §§ 552(b)(4), (b)(7)(A) and (b)(7)(D) (to the extent applicable). *See also* Critical Mass Energy Project v. NRC, 975 F.2d 871, 880 (D.C. Cir.), *cert. denied*, 113 S. Ct. 1579 (1992) (protection of voluntarily provided information).

Although it is the Department’s policy not unnecessarily to use sensitive information in complaints or court papers accompanying a complaint, which are publicly available documents, the Department cannot provide an absolute assurance that sensitive information will not be included in such documents. If a complaint is filed, it is the Department’s policy to notify the concerned party as soon as is reasonably practicable of any decision by the Department to use confidential business information for the purpose of seeking preliminary relief. Our policy is generally to file under seal any confidential business information used for such purpose and advise the court that the information has been designated as confidential. Moreover it is the Department’s policy to make reasonable efforts to limit disclosure of the information to the court and outside counsel for the other parties to the litigation until the concerned party has had a reasonable opportunity to appear before the court and until the court has ruled on the concerned party’s application.

In the event of a request by a third party for disclosure of any appropriately designated confidential business information under any provision of law other than the Freedom of Information Act, it is the Department’s policy to assert all applicable exemptions from disclosure permitted by law. In addition, the Department’s policy is to use its best efforts to provide concerned parties such notice as is practicable prior to disclosure of any confidential business information to a third party who requests it under any provision of law other than the Freedom of Information Act.

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 assure that a protective order applicable to the information is entered in the litigation. In addition, our policy is to not voluntarily produce the confidential business information until concerned parties have had a reasonable opportunity to review and comment on the

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protective order and to apply to the court for further protection. It is the Department's policy not to oppose a court appearance by concerned parties for this purpose.

I trust that the above information addresses any concerns that you may have. Please contact Yvette Tarlov, at 202-514-5808, so that we can make arrangements to obtain this information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott Scheele".

Scott Scheele
Chief, Telecommunications & Media
Enforcement Section

cc: Kirk Burgee, Chief of Staff, Wireline Competition Bureau, FCC
Rodger Woock, Industry Analysis & Technology Division, Wireline Competition
Bureau, FCC
Hillary Burchuk, Office of the General Counsel, FCC