



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 18-908

Released: September 4, 2018

NOTICE OF REQUEST BY OFFICES OF STATE ATTORNEYS GENERAL TO REVIEW SUBMISSIONS IN DOCKET NO. 18-197 THAT CONTAIN NRUF AND LNP DATA

CC Docket No. 99-200
CC Docket No. 95-116
WT Docket No. 18-197

On August 7, 2018, subject to a protective order, the Commission placed into the record in WT Docket No. 18-197 (Applications of T-Mobile US, Inc., and Sprint Corporation For Consent To 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. 18-197 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. 18-197] before the Commission.”²

The protective order further provides that if a state department or agency, among others, issues a subpoena for or orders the production of NRUF or LNP data or information derived from NRUF and LNP data (“NRUF/LNP Confidential 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.”³

Pursuant to this provision, on August 29, 2018, T-Mobile US, Inc. (“T-Mobile”), notified the Commission that it had received a subpoena from the New York State’s Attorney General’s Office in connection with that Office’s investigation of the proposed merger between T-Mobile and Sprint Corporation (T-Mobile/Sprint merger), seeking all materials T-Mobile received from the FCC in connection with the Commission’s investigation of this transaction, which includes NRUF/LNP

¹ See *Applications of T-Mobile US, Inc., and Sprint Corporation For Consent To Transfer Control of Licenses and Authorizations; Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed Into the Record, Subject to Protective Order*, WT Docket No. 18-197, CC Docket No. 99-200, Public Notice, DA 18-778 (WTB July 26, 2018).

² *Applications of T-Mobile US, Inc., and Sprint Corporation For Consent To Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, NRUF/LNP Protective Order, DA 18-777 (WTB July 26, 2018).

³ While the protective order requires notice, obeying a validly issued subpoena or order does not violate the terms of the protective order.

Confidential Information. T-Mobile further stated that the New York State's Attorney General's Office intends on sharing those materials with other state attorneys general that are investigating the merger and that have signed confidentiality agreements with T-Mobile and Sprint.⁴ Separately, the New York State Office of the Attorney General and the California Attorney General have notified the Commission that in connection with their investigation of the proposed T-Mobile/Sprint merger, they plan to seek materials that contain or incorporate NRUF/LNP Confidential Information.⁵

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).⁶ Nonetheless, when the public interest has so required, the Commission has provided access to that data 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.⁷ The Commission has also provided NRUF and LNP data to the United States Department of Justice for the Department's use in antitrust investigations upon assurances from the Department that the material will be kept confidential and used for only legitimate enforcement purposes.⁸

The letter from the New York State Office of the Attorney General states that it will use any NRUF and LNP data it receives only for legitimate law enforcement purposes and will keep the data confidential. It further states that the Office of the Attorney General will not divulge the data unless such disclosure is required by law or reasonably required to further a legitimate law enforcement purpose. If it does seek to disclose the data, the letter states that the Office of the Attorney General will seek to file the information under seal and will notify the affected parties as soon as is reasonably practicable, making reasonable efforts to notify them prior to disclosure. Finally, if the NRUF/LNP Confidential Information is sought pursuant to New York's Freedom of Information Law or a discovery request, the Office of the

⁴ Letter from Nancy Victory, DLA Piper, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 29, 2018).

⁵ Letter from Elinor Hoffmann, Deputy Bureau Chief, Antitrust Bureau, New York State Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 24, 2018); Letter from Paula Blizzard, Deputy Attorney General, Department of Justice, State of California to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 23, 2018).

⁶ *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).

⁷ See, e.g., *Applications of New Cingular Wireless PCS, LLC, Dycorn Holding, Inc., and Wilkes Cellular, Inc., for Consent To Assign Lower 700 MHz C Block License and a Cellular License in Georgia; Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports to be Placed into the Record, Subject to Protective Order*, WT Docket No. 17-82, CC Docket No. 99-200, Public Notice, 32 FCC Rcd 2955 (2017); *Applications of AT&T Inc., Leap Wireless Int'l, Inc., Cricket License Co., LLC, and Leap Licenseco, Inc., For Consent To Transfer Control and Assign Licenses and Authorizations; Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order*, WT Docket No. 13-193, CC Docket No. 99-200, Public Notice, 28 FCC Rcd 12821 (2013).

⁸ See, e.g., *Notice of Request for Access to Carrier Data Filed in the Numbering Resource Utilization and Forecast (NRUF) Reports, Pleading Cycle Established*, Public Notice, CC Dkt. No. 99-200, CC Dkt. No. 95-116, 32 FCC Rcd 7553 (2017); *Notice of Request for Access to Carrier Data Filed in the Numbering Resource Utilization and Forecast (NRUF) Reports, Pleading Cycle Established*, Public Notice, CC Dkt. No. 99-200, CC Dkt. No. 95-116, 31 FCC Rcd 123 (2016).

Attorney General will assert any exemptions it deems applicable and use its best efforts to provide the affected parties with notice prior to any release of the data.⁹ The letter from the Attorney General of the State of California states that it will not divulge any documents or information it receives pursuant to its subpoena power except in connection with a legitimate law enforcement purpose or judicial proceeding. The letter further states that if the information becomes the subject of a discovery request, the Attorney General will assert all privileges, exemptions from, or other objections to disclosure that it believes in good faith are appropriate under applicable law.¹⁰

The Commission is providing this notice to inform carriers of the requests of the New York and California state Offices of the Attorney General to allow carriers the opportunity to contact the state Offices of the Attorneys General or to take any other action they may deem appropriate if they have concerns or oppose disclosure. 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.

- FCC -

⁹ Letter from Elinor Hoffmann, Deputy Bureau Chief, Antitrust Bureau, New York State Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 24, 2018).

¹⁰ Letter from Paula Blizzard, Deputy Attorney General, Department of Justice, State of California to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 23, 2018).