



PUBLIC NOTICE

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NOTICE OF REQUESTS BY ADDITIONAL OFFICES OF STATE ATTORNEYS GENERAL TO REVIEW SUBMISSIONS IN WT 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 associated 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 Attorney General’s Office in connection with that Office’s investigation of the proposed transaction between T-Mobile and Sprint Corporation (T-Mobile/Sprint transaction), 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, 33 FCC Rcd 7376 (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, 33 FCC Rcd 7369 (2018).

³ *Id.* at para. 15. 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 Attorney General's Office intends on sharing those materials with other state attorneys general that are investigating the transaction 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 notified the Commission that in connection with their investigation of the proposed T-Mobile/Sprint transaction, they planned 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

On September 4, 2018, the Commission released a Public Notice notifying all wireless carriers that the New York State Office of the Attorney General and the Attorney General of the State of California, in connection with their investigation of the proposed transaction between T-Mobile and Sprint, intended to seek access to NRUF and LNP data submitted to the Commission.⁹ On October 22, 2018, the Commission released a second Public Notice¹⁰ notifying all wireless carriers that the Offices of Attorney General in nine states—Alabama, Connecticut, Florida, Hawaii, Mississippi, Tennessee, Virginia, Washington, and Wisconsin—and the District of Columbia were seeking similar access to NRUF and LNP data in connection with their inquiries and investigations into the proposed transaction

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*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, Public Notice, 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*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, Public Notice, 31 FCC Rcd 123 (2016).

between T-Mobile and Sprint.¹¹ On February 28, 2019, the Commission released a third Public Notice¹² notifying all wireless carriers that the Offices of Attorney General in four additional states—Colorado, Iowa, Maryland, and Massachusetts—were seeking similar access to NRUF and LNP data in connection with their inquiries and investigations into the proposed transaction between T-Mobile and Sprint.¹³ On April 24, 2019, the Commission released a fourth Public Notice¹⁴ notifying all wireless carriers that the State of Nevada Office of the Attorney General was seeking similar access to NRUF and LNP data in connection with its inquiries and investigations into the proposed transaction between T-Mobile and Sprint.¹⁵ On June 20, 2019, the Commission released a fifth Public Notice¹⁶ notifying all wireless carriers that the Offices of Attorney General in seven additional states—Arizona, Delaware, Michigan, Minnesota, Nebraska, North Carolina, and Pennsylvania—were seeking similar access to NRUF and LNP data in connection with their inquiries and investigations into the proposed transaction between T-Mobile and Sprint.¹⁷

The Commission has since received letters from additional Offices of Attorney General in two states—Indiana and Texas—seeking similar access to NRUF and LNP data in connection with their inquiries and investigations into the proposed transaction between T-Mobile and Sprint.¹⁸ The letters state that it is the policy of the Offices to keep the requested NRUF and LNP data confidential. The Offices each state that the Office will not disclose the information unless it is required by law or is

⁹ *Notice of Request by Offices of State Attorneys General To Review Submissions in WT Docket No. 18-197 That Contain NRUF and LNP Data*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, WT Dkt. No. 18-197, Public Notice, 33 FCC Rcd 8567 (2018).

¹⁰ *Notice of Requests by Additional Offices of State Attorneys General To Review Submissions in WT Docket No. 18-197 That Contain NRUF and LNP Data*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, WT Dkt. No. 18-197, Public Notice, 33 FCC Rcd 10142 (2018).

¹¹ Letter from Billington M. Garrett, Assistant Attorney General, State of Alabama Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 7, 2018); Letter from Gary M. Becker, Assistant Attorney General, State of Connecticut Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 31, 2018); Letter from Catherine Jackson, Chief, Public Integrity Section, Public Advocacy Division, Government of the District of Columbia Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 7, 2018); Letter from Christopher Hunt, Assistant Attorney General, State of Florida Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Oct. 4, 2018); Letter from Rodney I. Kimura, Deputy Attorney General, State of Hawaii Department of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 5, 2018); Letter from Crystal Utley Secoy, Special Assistant Attorney General, State of Mississippi Attorney General's Office to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 6, 2018); Letter from Victor J. Domen, Jr., Senior Assistant Attorney General, State of Tennessee Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 24, 2018); Letter from Tyler T. Henry, Assistant Attorney General, Commonwealth of Virginia Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 6, 2018); Letter from Neal H. Luna, Assistant Attorney General, Office of the Attorney General of Washington to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 7, 2018); Letter from Gwendolyn J. Cooley, Assistant Attorney General, Office of the Attorney General of the State of Wisconsin to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 27, 2018).

¹² *Notice of Requests by Additional Offices of State Attorneys General To Review Submissions in WT Docket No. 18-197 That Contain NRUF and LNP Data*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, WT Dkt. No. 18-197, Public Notice, 34 FCC Rcd 1036 (2019).

necessary in connection with a legitimate law enforcement purpose or a judicial proceeding. The Offices also indicate that they will protect the confidentiality of the documents and information to the fullest extent applicable, including pursuant to any applicable state law, and if a discovery request or a request under applicable state laws is made, they will assert all applicable exemptions, privileges, and objections to disclosure.

The Commission is providing this notice to inform carriers of the requests of the Indiana and Texas Offices of Attorney General to allow carriers the opportunity to contact those Offices of Attorney 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.

The Commission has previously notified carriers that certain of the above-mentioned Offices of State Attorneys General, in connection with their investigation of the proposed transaction between T-Mobile and Sprint, have filed suit in the Southern District of New York and plan on using NRUF and LNP data in the context of that litigation.¹⁹ The District Court in that case adopted a protective order that, among other things, specifically states that any filings, documents, testimony, or confidential information from which disaggregated NRUF or LNP data can be readily ascertained shall be clearly labeled as containing NRUF or LNP data and shall be treated by the parties to the litigation consistent with the Commission's rules and orders.²⁰ We anticipate that any additional Offices of State Attorneys General

¹³ Letter from Devin Laiho, Senior Assistant Attorney General, State of Colorado Department of Law to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Jan. 15, 2019); Letter from Max M. Miller, Assistant Attorney General, Iowa Department of Justice Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Jan. 8, 2019); Letter from John R. Tennis, Assistant Attorney General & Chief, Antitrust Division, State of Maryland Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Jan. 31, 2019); Letter from Matthew M. Lyons, Assistant Attorney General, Commonwealth of Massachusetts Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Dec. 6, 2018).

¹⁴ *Notice of Request by the State of Nevada Office of the Attorney General To Review Submissions in WT Docket No. 18-197 That Contain NRUF and LNP Data*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, WT Dkt. No.18-197, Public Notice, 34 FCC Rcd 2443 (2019).

¹⁵ Letter from Lucas J. Tucker, Senior Deputy Attorney General, State of Nevada Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Mar. 1, 2019).

and other parties to the litigation seeking access to NRUF and LNP data in connection with this litigation will be able to seek such access pursuant to the terms of the protective order in that judicial proceeding. Wireless carriers can monitor the proceeding for any actions relevant to the continued confidential treatment of their NRUF/LNP Confidential Information and can contact the court or take any other action they may deem appropriate if they have concerns or oppose disclosure. Accordingly, comments or objections should not be filed with the Commission, and the Commission does not anticipate providing additional notices related to requests by Offices of State Attorneys General for access to NRUF and LNP data in this or related proceedings.

For further information, please contact Joel A. Rabinovitz, Office of General Counsel, joel.rabinovitz@fcc.gov, (202) 418-0689.

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¹⁶ *Notice of Requests by Additional Offices of State Attorneys General To Review Submissions in WT Docket No. 18-197 That Contain NRUF and LNP Data*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, WT Dkt. No. 18-197, Public Notice, DA 19-580 (WTB June 20, 2019).

¹⁷ Letter from Dana Vogel, Antitrust Unit Chief, Office of the Arizona Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 5, 2019); Letter from Michael A. Undorf, Deputy Attorney General, Delaware Department of Justice to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 18, 2019); Letter from Wisam E. Naoum, Assistant Attorney General, Corporate Oversight Division, State of Michigan Department of Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 5, 2019); Letter from Justin A. Moor, Assistant Attorney General, State of Minnesota Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 12, 2019); Letter from Meghan Stoppel, Assistant Attorney General, Chief, Consumer Protection Division, State of Nebraska Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 18, 2019); Letter from K.D. Sturgis, Special Deputy Attorney General, State of North Carolina Department of Justice to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 13, 2019); Letter from Joseph S. Betsko, Senior Deputy Attorney General, Commonwealth of Pennsylvania Office of Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 4, 2019).

¹⁸ Letter from Matthew Michaloski, Deputy Attorney General, Consumer Protection Division, State of Indiana Office of the Attorney General to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 20, 2019); Letter from Bret Fulkerson, Assistant Attorney General, Antitrust Division, Office of the Attorney General for the State of Texas to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 20, 2019).

¹⁹ *Notice of Federal Court Protective Order Relating to NRUF and LNP Data*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, WT Dkt. No. 18-197, Public Notice, DA 19-624 (WTB July 2, 2019).

²⁰ Stipulated Interim Protective Order, *State of New York, et al. v. Deutsche Telekom AG, et al.*, No. 19-cv-5434 (VM), at 13-14 (S.D.N.Y. June 28, 2019).