

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

In the Matter of
Applications of T-Mobile US, Inc.
and
Sprint Corporation
Consolidated Applications for Consent To
Transfer Control of Licenses and Authorizations
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WT Docket No. 18-197

SUPPLEMENTAL PROTECTIVE ORDER

Adopted: February 13, 2019

Released: February 13, 2019

By the Chief, Wireless Telecommunications Bureau:

1. In this proceeding, the Commission has issued several information and document requests. The Instructions to those requests recognize that some documents may be withheld from the Commission on the ground of privilege and, indeed, the Applicants have done so.1 In this Supplemental Protective Order, we adopt procedures to further limit access to proprietary or confidential information or documents that may be filed in this proceeding where a Submitting Party claims that information or documents may be withheld as privileged, including as being protected by the attorney work product doctrine, but is nonetheless willing to submit them into the record. We will permit Reviewing Parties who are entitled to review Highly Confidential Information under the Protective Order2 to review this Supplemental Highly Confidential Information provided that they agree that the fact of its submission does not constitute a waiver, including but not limited to a subject matter waiver, of the Submitting Party's claims of attorney-client privilege or work product protection with respect to any undisclosed communications, documents, or information.3 The information the Applicants submit, the information we request as relevant and material to the issues raised by the applications, and the information submitted by other parties to the proceeding together constitute the record on which the Commission must base its determination of whether granting the applications serves the public interest. While we are mindful of the sensitive nature of some of the information involved, we are also mindful of the general right of the public, and our desire for the public, to participate in this proceeding in a meaningful way. We find that allowing limited access to competitively sensitive materials that are claimed to be privileged pursuant to the procedures set forth in this Supplemental Protective Order allows the public (through appropriate

1 See, e.g., T-Mobile US, Inc., Supplemental Response to General Information and Document Request (Dec. 27, 2018); Letter from Nancy Victory, Counsel for T-Mobile US, Inc. (filed Dec. 12, 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, Protective Order, DA 18-624 (WTB June 15, 2018) (Protective Order).

3 The agreed restriction applies only to the fact of the submission. Parties are not agreeing to be restricted from making other arguments against any claim of privilege or work product protection, including that the Submitting Party's other actions constitute a subject matter waiver or that information contained in the submitted documents supports a challenge to a privilege claim.

representatives) to do so while also protecting this sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private interests involved, we conclude that these supplemental procedures serve the public interest and adopting them “best conduce[s] to the proper dispatch of the Commission’s business and to the ends of justice.”<sup>4</sup>

2. *Definitions.* As used herein, capitalized terms not otherwise defined in the Protective Order or this Supplemental Protective Order shall have the following meanings:

“Supplemental Highly Confidential Information” means Highly Confidential Information that the Applicants claim is privileged or protected by the attorney work product doctrine.

“Stamped Supplemental Highly Confidential Document” means any document, or any part thereof, that contains Supplemental Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “SUPPLEMENTAL HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SUPPLEMENTAL PROTECTIVE ORDER IN WT DOCKET NO. 18-197 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” By designating a document a “Stamped Supplemental Highly Confidential Document,” a Submitting Party signifies and represents that it contains Supplemental Highly Confidential Information.

“Supplemental Reviewing Party” means a Reviewing Party whose Acknowledgment remains in full force and effect who also has obtained access to Supplemental Highly Confidential Information (including Stamped Supplemental Highly Confidential Documents) pursuant to this Supplemental Protective Order.

3. For sake of clarity, Supplemental Highly Confidential Information is also Highly Confidential Information and Stamped Supplemental Highly Confidential Documents are also Stamped Highly Confidential Documents; accordingly, in addition to the provisions of this Supplemental Protective Order, the provisions of the Protective Order apply to Supplemental Highly Confidential Information and Stamped Supplemental Highly Confidential Documents, and Supplemental Reviewing Parties are subject to the restrictions and obligations contained in the Protective Order.

4. *Procedure for Obtaining Access to Supplemental Highly Confidential Information.* Access to Supplemental Highly Confidential Information (including Stamped Supplemental Highly Confidential Documents) is limited to Reviewing Parties entitled to access Highly Confidential Information and Support Personnel. Any person other than Support Personnel seeking access to Supplemental Highly Confidential Information subject to this Supplemental Protective Order shall sign and date the Supplemental Acknowledgment (attached hereto as Appendix A) agreeing to be bound by the terms and conditions of this Supplemental Protective Order, including agreeing that he or she will not argue in this proceeding or in any other federal or state proceeding that disclosure of Supplemental Highly Confidential Information pursuant to the Supplemental Protective Order constitutes a waiver of attorney-client privilege or work product protection as to any undisclosed communications or information. A copy of the Supplemental Acknowledgment shall be filed with the Commission and also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person’s reviewing or having access to the Submitting Party’s Supplemental Highly Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Supplemental Acknowledgment must be served on each within the time period stated above.

5. *Permissible Disclosure.* A Supplemental Reviewing Party may discuss and share the contents of Supplemental Highly Confidential Information with another Supplemental Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party’s

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<sup>4</sup> 47 U.S.C. § 154(j).

Supplemental Highly Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Supplemental Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder.

6. *Filings with the Commission.* A party making a filing in this proceeding that contains Supplemental Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Supplemental Highly Confidential Information (the "Supplemental Confidential Filing") and an accompanying cover letter. The cover or first page of the Supplemental Confidential Filing and each page of the Supplemental Confidential Filing that contains or discloses Supplemental Highly Confidential Information shall be clearly marked "SUPPLEMENTAL HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 18-197 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Supplemental Confidential Filing shall be made under seal and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential, Highly Confidential Information or Supplemental Highly Confidential Information (the "Redacted Supplemental Confidential Filing"), to the Commission via ECFS.<sup>5</sup> The Redacted Supplemental Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Supplemental Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Supplemental Confidential Filing shall have the same pagination as the Supplemental Confidential Filing from which it is derived, and the unredacted Supplemental Confidential Filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information, the Supplemental Highly Confidential Information, and the non-confidential information. Two copies of each Supplemental Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Kathy Harris, [kathy.harris@fcc.gov](mailto:kathy.harris@fcc.gov), (202) 418-0609, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 2-B550, Washington, D.C. 20554. The submission of a Supplemental Confidential Filing and Redacted Supplemental Confidential Filing pursuant to this paragraph meets the obligation to submit a Confidential Filing under the Protective Order. Parties should not provide courtesy copies of pleadings containing Supplemental Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

7. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Supplemental Highly Confidential Information to which they have access under this Supplemental Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Supplemental Highly Confidential Information.

8. *No Waiver of Confidentiality.* Disclosure of Supplemental Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Supplemental Highly Confidential Information. Supplemental Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Supplemental Highly Confidential Information to seek disclosure in any other proceeding; (3) not to assert that the submission of Supplemental Highly Confidential Information constitutes a waiver of attorney-client privilege or work product protection with respect to any undisclosed communications or information; and (4) that accidental disclosure of Supplemental Highly Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or

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<sup>5</sup> If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

entitlement provided that the Submitting Party takes prompt remedial action.

9. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Stamped Supplemental Highly Confidential Documents or Supplemental Highly Confidential Information that a party has obtained under the terms of this Supplemental Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Supplemental Highly Confidential Document or Supplemental Highly Confidential Information.

10. *Violations of the Supplemental Protective Order.* Should a Supplemental Reviewing Party violate any of the terms of this Supplemental Protective Order, such Supplemental Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Supplemental Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Supplemental Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential, Highly Confidential Information or Supplemental Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Supplemental Highly Confidential Information in a manner not authorized by this Protective Order.

11. *Termination of Proceeding.* The provisions of this Supplemental Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Supplemental Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Supplemental Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Supplemental Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Supplemental Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Supplemental Highly Confidential Information. All Supplemental Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Supplemental Highly Confidential Documents and copies of the same and Supplemental Highly Confidential Information shall not be construed to apply to the Commission or its staff.

12. *Questions.* Questions concerning this Protective Order should be addressed to Kathy Harris, [kathy.harris@fcc.gov](mailto:kathy.harris@fcc.gov), (202) 418-0609, Wireless Telecommunications Bureau, and to Joel Rabinovitz, [Joel.Rabinovitz@fcc.gov](mailto:Joel.Rabinovitz@fcc.gov), (202) 418-0689, Transaction Team, Office of General Counsel.

13. *Authority.* This Order is issued pursuant to Sections 4(i), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214 and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale, Jr.  
Chief  
Wireless Telecommunications Bureau

**APPENDIX A****Supplemental Acknowledgment of Confidentiality****WT Docket No. 18-197**

I hereby acknowledge that I have received and read a copy of the foregoing Supplemental Protective Order in the above-captioned proceeding, and I understand it.

I certify that I am a Reviewing Party entitled to review Highly Confidential Information under the Protective Order,<sup>1</sup> that I have signed the Acknowledgment attached to the Protective Order, that any challenge to such Acknowledgment has been resolved in my favor, and that the Acknowledgment remains in full force and effect. I agree that I am bound by the Protective Order and that the restrictions contained in the Protective Order with regard to Highly Confidential Information apply to Supplemental Highly Confidential Information.

I agree that I am bound by the Supplemental Protective Order and that I shall not disclose or use Stamped Supplemental Highly Confidential Documents or Supplemental Highly Confidential Information except as allowed by the Supplemental Protective Order.

I agree not to argue in this proceeding, or in any other federal or state proceeding, that disclosure of Supplemental Highly Confidential Information pursuant to the Supplemental Protective Order constitutes a waiver of attorney-client privilege or work product protection as to any undisclosed communications or information.

I acknowledge that a violation of the Supplemental Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of the Supplemental Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential, Highly Confidential Information or Supplemental Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Supplemental Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Supplemental Highly Confidential Information in a manner not authorized by this Supplemental Protective Order.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Supplemental Protective Order is due solely to my capacity as Outside Counsel or Outside Consultant to a party or as an employee of Outside Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Supplemental Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Supplemental Protective Order and to ensure that there is no disclosure of Supplemental Highly Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, except as provided in the Supplemental Protective Order.

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<sup>1</sup> *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent To Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, Protective Order, DA 18-624 (WTB June 15, 2018) (Protective Order).

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Supplemental Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order or the Supplemental Protective Order.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

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[Name]  
[Position]  
[Firm]  
[Telephone]  
[Party]