

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ANTHONY DALE, BRETT JACKSON,  
JOHNNA FOX, BENJAMIN  
BORROWMAN, ANN LAMBERT,  
ROBERT ANDERSON, and CHAD  
HOHENBERY on behalf of themselves and  
all other similarly situated,

Plaintiffs,

v.

DEUTSCHE TELEKOM AG, T-MOBILE  
US, INC., and SOFTBANK GROUP CORP.,

Defendants.

Case No. 22-cv-03189

Judge Thomas M. Durkin

Magistrate Judge Jeffrey Cole

**DECLARATION OF JUSTIN VAN ALSTYNE IN SUPPORT OF  
DEFENDANT T-MOBILE US, INC.'S OPPOSITION TO  
PLAINTIFFS' MOTION TO COMPEL**

I, Justin Van Alstyne, declare as follows:

1. I am T-Mobile USA, Inc.'s ("T-Mobile" or the "Company") Head of Discovery and Senior Corporate Counsel. I submit this declaration in support of T-Mobile's Opposition to Plaintiffs' Motion to Compel. I have personal knowledge of the matters set forth herein, except when stated otherwise, and if called to testify, I could and would competently testify thereto.

2. I have been employed by T-Mobile for almost 7 years. During that span, I've held several roles that inform this declaration:

- a. Corporate Counsel, eDiscovery (July 2017 – November 2020);
- b. Senior Corporate Counsel, Discovery and Information Governance (November 2020 – April 2023); and

c. Head of Discovery, Senior Corporate Counsel (April 2023 – present).

3. My responsibilities at T-Mobile include developing the strategic vision for discovery at T-Mobile and managing the documents and data created by T-Mobile; maintaining close partnerships with almost all business segments at T-Mobile to understand their systems and the data that they retain; and reviewing the technology T-Mobile's business units employ. I also work in close partnership with cross-functional legal teams and business units at T-Mobile to respond to discovery requests stemming from litigations and government investigations.

4. In the above-captioned action, I have overseen the collection of documents from the parties' agreed-upon custodians, as well as the collection, review, and production of documents responsive to Plaintiffs' discovery requests to date. In that role, I have liaised with T-Mobile's outside counsel at Gibson, Dunn & Crutcher LLP and K&L Gates LLP, as well as our outside e-discovery vendor, Lighthouse.

#### **Discovery to Date**

5. Since February 2023, T-Mobile has made 15 productions responsive to Plaintiffs' discovery requests, totaling multiple terabytes ("TB") of documents and data in this litigation. This includes over 4,400 documents and over 91,800 pages of documents, as well as two hard drives of structured data that T-Mobile and Sprint Corporation ("Sprint") produced in connection with the review of the merger by various government agencies—including the U.S. Department of Justice ("DOJ"), Federal Communications Commission ("FCC"), and California Public Utilities Commission ("CPUC")—and the litigation brought by various State Attorneys General, *State of New York v. Deutsche Telekom AG*, Case No. 19-cv-05434 (S.D.N.Y.) ("State AG Litigation").

6. In addition, T-Mobile has agreed to reproduce to Plaintiffs both its and Sprint's prior productions of documents in the State AG Litigation and the government's pre-merger review

process. T-Mobile's prior document production to the DOJ alone was over 2 TBs, consisting of approximately 1,827,500 documents and over 12 million pages of documents. To date, T-Mobile has reproduced six volumes of documents previously produced to the DOJ, totaling over 765 GB, including over 763,000 documents and over 3.6 million pages of documents. Sprint's prior document production to the DOJ was approximately 2 million additional documents, and I understand T-Mobile is producing the first volume of documents the week of this declaration. T-Mobile and Sprint had agreed to produce the merger agreement and related negotiations with the DOJ; those documents are encompassed within the documents T-Mobile is reproducing.

7. T-Mobile has agreed to 50 ESI custodians in this matter, 47 of which the Parties agree upon, and three of which Plaintiffs propose to drop in place of the three in-house counsel.

**Plaintiffs' Request to Add Three T-Mobile In-House Counsel as Custodians**

8. I understand that Plaintiffs are seeking the Court's intervention to add three former and current in-house lawyers for T-Mobile as ESI custodians in this matter: (1) David Miller, former Executive Vice President and General Counsel of T-Mobile; (2) Mark Nelson, Executive Vice President and General Counsel of T-Mobile; and (3) Kathleen Ham, former Senior Vice President, Government Affairs.

9. None of these three individuals served as ESI custodians in the State AG Case or in the productions to the DOJ, FCC, and CPUC, although T-Mobile did produce certain responsive, targeted "go get" documents from Mr. Miller's and Ms. Ham's files. I understand T-Mobile has offered and remains willing to similarly produce responsive targeted "go get" documents from the custodial files of these three individuals.

10. Based on my years of experience overseeing T-Mobile's discovery in various litigation and investigation matters, communicating with Mr. Miller and Mr. Nelson as part of my

work on those matters, and working closely with cross-functional legal teams, among other things, I am familiar with the roles and responsibilities of Mr. Miller and Mr. Nelson.

**David Miller, Former Executive Vice President and General Counsel**

11. Mr. Miller served as T-Mobile's Executive Vice President and General Counsel for over twenty years until his retirement in October 2021. During that time, he served as T-Mobile's chief lawyer. I worked with him in that role, as did my colleagues in the legal department. Mr. Miller's responsibilities consisted of providing legal advice to T-Mobile's business executives, supervising in-house attorneys like myself in our provision of legal services to the Company, obtaining legal advice from outside counsel on behalf of T-Mobile, and overseeing T-Mobile's litigation and legal strategy.

12. With respect to T-Mobile's merger with Sprint in 2020, Mr. Miller advised the Company on legal issues relating to the transaction and oversaw the Company's defense of the merger in litigation filed by various State AGs. He was similarly involved in the Tunney Act lawsuit the DOJ filed in the District Court for the District of Columbia in connection with the merger.

13. I am unaware of any business role involving T-Mobile's prices or service plans that Mr. Miller had at the Company. T-Mobile's senior business executives who made those decisions are already included as custodians.

14. Based on his role and responsibilities, my experience working with Mr. Miller, and my knowledge of documents that were previously collected and produced in the merger review and previous litigation involving the merger, I estimate that 75–80% of Mr. Miller's documents concerning the merger will be privileged and/or protected by the work product doctrine.

**Mark Nelson, Executive Vice President and General Counsel**

15. Mr. Nelson joined T-Mobile in October 2021 as Executive Vice President and General Counsel. Prior to October 2021, Mr. Nelson was a partner with the law firm Cleary Gottlieb Steen & Hamilton LLP, and he was one of T-Mobile's outside counsel with respect to legal issues relating to the merger. Mr. Nelson succeeded Mr. Miller as T-Mobile's chief lawyer and has since had the same responsibilities and roles as Mr. Miller, namely, providing and securing legal advice for T-Mobile. After he joined T-Mobile, he has supervised this lawsuit.

16. I am unaware of any business role involving T-Mobile's prices or service plans that Mr. Nelson has had at the Company. T-Mobile's senior business executives who are responsible for making the Company's business decisions are already included as custodians. Based on Mr. Nelson's role and responsibilities and my experience working with Mr. Nelson, I estimate that virtually all of his documents related to the merger will be privileged and/or protected by the work product doctrine.

**Burden of Adding Three T-Mobile In-House Counsel as Custodians**

17. Collecting, searching and reviewing the custodial files for Mr. Nelson, Mr. Miller, and Ms. Ham will require T-Mobile to expend substantial time and expense. The size of their T-Mobile email and Microsoft OneDrive (an online cloud storage service provided by Microsoft) files for the agreed upon collection period are listed below:

Name	Email Volume	OneDrive Volume	Total Volume
David Miller	88 GB	2 GB	90 GB
Kathleen Ham	115 GB	2 GB	117 GB
Mark Nelson	52 GB	183 GB	235 GB
<b>Total</b>	<b>255 GB</b>	<b>187 GB</b>	<b>442 GB</b>

Based on my discussions with T-Mobile's discovery vendor Lighthouse and the average number of files per GB across T-Mobile's custodian base, I understand that the total 442 GB volume of Mr. Nelson's, Mr. Miller's, and Ms. Ham's files would likely translate to over 622,000 non-duplicative documents.

18. Based on my years of eDiscovery experience in litigation matters involving T-Mobile and my discussions with Lighthouse, I anticipate that the review of the files of Mr. Nelson, Mr. Miller, and Ms. Ham will require significantly more time and expense than the review of non-legal custodians' files. Reviewing potentially privileged ESI requires careful review and analysis of each document's content and often involves review by outside counsel familiar with the issues presented in the lawsuit to ensure that T-Mobile only asserts privilege or work product protection with respect to qualifying documents and, conversely, that highly-sensitive, protected materials are not produced. For non-legal custodians, the cost and burden of conducting privilege review can be reduced materially by applying privilege filters like attorneys' names to segregate only those documents that are potentially privileged. Because these types of privilege filters cannot be used on the files of attorneys, all of the responsive documents in their files are subject to costly and time-consuming privilege review.

19. Based on my experience overseeing with the collection, review and production of documents in the previous proceedings involving the merger, as well as my experience and knowledge of T-Mobile's efforts to comply with various obligations arising from the merger, I estimate that including Mr. Nelson, Mr. Miller, and Ms. Ham as ESI custodian will drastically increase the volume of documents that will be subject to privilege review. For example, in connection with T-Mobile's acquisition of Sprint, the Company made commitments regarding its pricing, its business selling wholesale network capacity to mobile virtual network operators

(“MVNOs”), its spectrum purchases and sales, and its business dealings with DISH, among other commitments, to dozens of States Attorneys General, the DOJ, the FCC, and numerous state public utilities commissions, including the CPUC. T-Mobile’s business people have routinely sought legal advice in connections with those commitments, which indicates that there will be a high percentage of responsive, privileged communications in the files of Mr. Nelson, Mr. Miller, and Ms. Ham. Additionally, T-Mobile’s in-house attorneys have engaged in numerous discussions among themselves and with outside counsel in connection with providing legal advice to T-Mobile about the merger, including conferring on legal analysis of laws and regulations relating to the merger, strategizing about litigation and regulatory proceedings related to the merger, and analyzing legal issues related to compliance with T-Mobile’s commitments after the merger, among other things. These types of communications would also significantly increase the percentage of responsive, privileged communications in the disputed custodians’ files.

20. Working closely with T-Mobile’s outside eDiscovery vendor, I estimate that there will be approximately 124,400 documents from the files of Mr. Nelson, Mr. Miller, and Ms. Ham that will require human privilege review, after taking into account culling and review methods designed to narrow the universe of documents subject to human review, such as deduplication, search terms and technology assisted review. I estimate that privilege review of Mr. Nelson’s, Mr. Miller’s, and Ms. Ham’s responsive documents alone will take approximately 4,765 additional attorney review hours and cost T-Mobile more than \$357,000 in additional expenses. Moreover, because the vast majority of the three disputed custodians’ documents are expected to be privileged, protected by the work product doctrine, or both, T-Mobile would have to expend additional time and effort creating privilege logs and redacting documents as appropriate, which I

estimate will take approximately 10,477 additional attorney review hours and cost T-Mobile an additional \$785,000.

21. In total, I estimate that including Mr. Miller, Mr. Nelson, and Ms. Ham as custodians would result in \$1,142,000 in additional costs for T-Mobile.

22. In the event Plaintiffs identify relevant, non-privileged categories of documents that may be in the files of Mr. Nelson, Mr. Miller, and Ms. Ham, it would be more cost-efficient to retrieve such documents on a “go get” basis. For example, I understand that T-Mobile has already collected and produced communications with the monitoring trustee from in-house lawyers through “go get” searches, which totaled over 2,000 documents. Such communications were readily located by searching specifically for emails to and from the trustee. That process did not entail making anyone in legal an ESI custodian. T-Mobile offered to take the same “go get” approach for other categories of non-privileged, relevant documents, and to revisit specific communications or topics for such “go get” searches as custodial productions occur for the 50 agreed-upon custodians.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on September 11, 2024 at Bellevue, Washington.

Signed by:

*Justin Van Alstyne*

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Justin Van Alstyne