

EXHIBIT F



March 29, 2024

Hill Brakefield
Associate

888 16th Street NW
Suite 300
Washington DC 20006
+1 202 540 7200
hbrakefield@hausfeld.com

VIA ELECTRONIC MAIL

Rod J. Stone
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
RStone@gibsondunn.com

Re: March 8, 2024 Letter in *Dale v. Deutsche Telekom AG*, Case No. 1:22-cv-03189 (N.D. Ill.)

Dear Rod:

Thank you for your letter dated March 8, 2024. We are still reviewing the documents from T-Mobile's March 1, 2024 production. We plan to follow up soon regarding T-Mobile's request that Plaintiffs forgo pre-merger discovery beyond what T-Mobile produced to the DOJ and FCC.

I further write to address T-Mobile's objections listed in your letter. Plaintiffs propose some modifications to their requests, and are still considering whether they can modify others.

- RFP No. 15: As an initial matter, you are incorrect that Plaintiffs' request "effectively seeks, for instance, every single T-Mobile employee communication referencing spectrum." The request is narrowly focused on spectrum auctions, purchases, and acquisitions in the United States. However, as a good faith proposal to avoid a dispute, and contingent on reaching a global resolution of T-Mobile's responses and objections, Plaintiffs are willing to narrow it to the following:

All documents, ESI, and communications related to (1) the need or desire to acquire spectrum—whether via auction, purchase from a competitor, or via acquisition of another company—to compete with other mobile network operators; (2) analysis or projections of how spectrum acquisitions by T-Mobile would affect plan costs, or plan pricing for T-Mobile customers; (3) analysis or projections of how spectrum acquisitions by T-Mobile or other mobile network operators would affect plan costs for other mobile network operators, or plan pricing set by other mobile network operators; and (4) the portion of customer plan costs T-Mobile attributes to capital expenditures related to spectrum acquisition.

- RFP No. 24: Plaintiffs agree to table discussion on this request until after we finish reviewing T-Mobile's prior productions to the DOJ and FCC.
- RFP No. 25: Although T-Mobile has not identified any trade associations where the meetings would be wholly irrelevant—in other words, where the association does not discuss market conditions in the retail mobile wireless market—and indeed has not even

identified the number of trade associations for which it would need to locate documents responsive to Request No. 25, Plaintiffs are willing, contingent on reaching a global resolution of T-Mobile's responses and objections, to narrow their request as follows:

All documents, including agendas, minutes, notes, or memoranda, of any industry or trade association meeting, discussion group, or other group communication where any participant discussed (1) the proposed merger between AT&T and T-Mobile, which was announced in 2011; (2) Sprint's discussions to acquire T-Mobile, originally reported publicly in 2013; (3) T-Mobile's acquisition of Sprint; (4) 4-to-3 mergers, including regulatory scrutiny or competitive effects thereof; (5) market conditions following T-Mobile's acquisition of Sprint, including any discussions of industry profit or income trends; (6) entrance of cable or internet providers (e.g., DISH) into the retail mobile wireless market; (7) the cost of 5G network deployment and maintenance; or (8) the profitability of providing 5G services to customers.

- RFP Nos. 33, 34, 37, 39, and 40: In the spirit of resolving disputes without involving the Court, Plaintiffs will table its request for documents related to T-Mobile's litigation hold (i.e., Request No. 39). If potential issues with T-Mobile's preservation, collection, and/or production of documents and ESI later come to light, Plaintiffs reserve the right to revisit this request.

However, Plaintiffs maintain their request for documents responsive to Request Nos. 33, 34, 37, and 40. Relevant material under Rule 26(b) includes documents describing “the *existence*, description, nature, *custody*, condition, and *location* of any documents or other tangible things and the *identity* and location of *persons* who know of any discoverable matter.”¹ For this reason, several courts across the country have found that document retention policies have independent relevance, including to “identify any documents that are missing, and focus and refine . . . future discovery requests.”² That includes district

¹ Fed. R. Civ. P. 26(b)(1) Committee Notes on Rules, 2015 Amendment. Although this language was removed from the present rule, “[d]iscovery of such matters is so deeply entrenched in practice that it is no longer necessary to clutter the long text of Rule 26 with these examples.” *Id.*; *see also In re Disposable Contact Lens Antitrust Litig.*, No. 3:15-MD-2626-HES-LLL, 2022 WL 21295818, at *7 (M.D. Fla. Dec. 23, 2022) (citation omitted).

² *In re Disposable Contact Lens Antitrust Litig.*, 2022 WL 21295818, at *7 (citation omitted); *See, e.g., Sharma v. BMW of N. Am. LLC*, No. 13CV02274, 2016 WL 1019668, at *4 (N.D. Cal. Mar. 15, 2016) (“The document retention policies may help Plaintiffs determine the universe of responsive documents and evaluate any gaps in document production.”); *PCS Phosphate Co., Inc. v. Am. Home Assurance Co.*, No. 5:14-CV-99-D, 2015 WL 8490976, at *5 (E.D.N.C. Dec. 10, 2015) (finding that “[d]ocument retention polices are generally discoverable” and collecting cases); *Newman v. Borders, Inc.*, 257 F.R.D. 1, 3 (D.D.C. 2009) (“That a party’s document retention policies, including its policies as to electronically stored information, may be a fit subject of discovery cannot be gainsaid.”).

courts in this Circuit, which have endorsed “straightforward and reasonable” requests akin to Plaintiffs’ RFPs here.³

These requests are particularly important here where two corporate entities merged, and documents shifted from one entity to another. Plaintiffs are entitled to know—among other things—(i) what Sprint documents were preserved, the custodians who may possess them, (ii) the inter-relationship of document preservation and access at T-Mobile and Deutsche Telekom, respectively, and (iii) any other information about the existence and location of documents and things responsive to Plaintiffs’ discovery requests.

T-Mobile does not adequately justify its objections to these RFPs based on attorney-client privilege or work-product protection. To begin with, neither case that T-Mobile cites in its March 8, 2024 Letter establish that litigation hold documents are *per se* privileged. In any event, Plaintiffs are not currently pursuing T-Mobile’s litigation hold documents. T-Mobile provides no explanation for how any of the other material that Plaintiffs seek through these RFPs could conceivably be protected by attorney-client privilege or attorney work-product protection. Accordingly, they should be produced.

- RFP Nos. 38 and 41: These requests are not directed to T-Mobile’s “e-discovery process.” Rather than asking about the process employed by T-Mobile to comply with discovery, these requests “go[] directly to where relevant evidence will be found Plaintiffs should be able to explore the location of relevant evidence during discovery.”⁴ Unless T-Mobile reconsiders its position on these requests, we are at an impasse.
- RFP No. 42: Based on our discussions to date, it is our understanding that T-Mobile’s objection to this request is one of burden, not relevance. Accordingly, Plaintiffs will not seek to compel production at this time. The parties can discuss burden after agreeing on custodians and search terms when T-Mobile has a chance to provide hit reports.

Please let us know if T-Mobile intends to stand on its objections to any of the requests outlined above. At this stage, Plaintiffs’ tentative proposals for these requests are focused on ensuring that T-Mobile will not withhold documents identified for these requests after T-Mobile searches agreed-upon custodians using search terms or a TAR protocol. The parties will address disputes of burden and proportionality through their custodian, and search term or TAR proposals.

³ *In re Mercury Fin. Co. of Ill.*, No. 97 C 3035, 1999 WL 495903, at *5 (N.D. Ill. July 12, 1999); *see also Brodsky v. Humana, Inc.*, No. 08 C 50188, 2009 WL 1956450, at *3-4 (N.D. Ill. July 8, 2009) (finding that document retention policies were “relevant” and granting motion to compel production).

⁴ *AOT Holding AG v. Archer Daniels Midland Co.*, No. 19-2240, 2021 WL 6118175, at *4 (C.D. Ill. Sept. 3, 2021).

While we maintain hope that judicial intervention is unnecessary, we would like to promptly submit any disputes to the Court so that T-Mobile can start producing documents by its original target date in a couple of months.

Kind regards,



Hill Brakefield