

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

ANTHONY DALE, BRETT JACKSON,
JOHNNA FOX, BENJAMIN BORROW-
MAN, ANN LAMBERT, ROBERT ANDER-
SON, and CHAD HOHENBERY on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

DEUTSCHE TELEKOM AG et al.,

Defendants.

Case No. 22-cv-3189

Judge Thomas M. Durkin

Magistrate Judge Jeffrey Cole

**DEFENDANT T-MOBILE US, INC.'S MOTION FOR LEAVE TO FILE A RESPONSE
TO PLAINTIFFS' MOTION TO COMPEL DISH TO PRODUCE DISCOVERY
RESPONSIVE TO PLAINTIFFS' SUBPOENA**

Defendant T-Mobile respectfully requests leave to file a response to Plaintiffs' Motion to Compel DISH to Produce Discovery Responsive to Plaintiffs' Subpoena (Dkt. 232) and to DISH's anticipated opposition thereto. In their motion to compel, Plaintiffs ask the Court to order DISH to (1) search for and produce documents from eight custodians likely to have information responsive to five buckets of requests propounded by Plaintiffs and (2) produce structured data with respect to mobile brands operated by DISH's MVNO subsidiaries, including Gen Mobile and Ting Mobile. Like Plaintiffs, T-Mobile has served a subpoena on DISH seeking various documents and data relevant to the parties' claims and defenses in this case. Although T-Mobile's subpoena seeks additional documents and data not covered by Plaintiffs' subpoena, there are some overlaps between the two subpoenas, particularly with respect to the discovery that is the subject of Plaintiffs' pending motion.

On January 21, 2025, DISH issued its responses and objections to T-Mobile's subpoena. In those responses and objections and in subsequent discussions between DISH and T-Mobile, DISH has largely refused to produce any documents responsive to T-Mobile's subpoena beyond the 383 documents it has already produced to Plaintiffs and structured data it has agreed to produce concerning subscribers of its Boost brands. While the discussions between DISH and T-Mobile are ongoing, on February 13, 2025, Plaintiffs filed their motion to compel DISH to produce documents that T-Mobile also seeks from DISH in its subpoena.*

While T-Mobile is not a party to Plaintiffs' motion, the relief sought by the motion covers some of the discovery that T-Mobile is seeking from DISH as well. T-Mobile's interests and ability to fully defend this litigation will therefore be impacted by the Court's resolution of the issues presented. T-Mobile also wishes to avoid duplicative motions or motions to revisit prior rulings. To minimize such risks, and in the interest of fairness, T-Mobile requests an opportunity to respond to Plaintiffs' motion and any brief DISH files in opposition to Plaintiffs' motion so that the Court can decide the issues on a more complete record.

For instance, Plaintiffs point to T-Mobile as a justification for seeking structured data concerning DISH's MVNO subsidiaries. Plaintiffs claim that while they conceptually agree with DISH that MVNOs are not relevant because they do not participate in the same market as MNOs, Plaintiffs nevertheless need discovery concerning DISH's MVNO brands because T-Mobile disagrees. Dkt. 233 at 16. T-Mobile, not DISH or Plaintiffs, is best situated to make

* Prior to the filing of Plaintiffs' motion, T-Mobile was not aware of the specific issues regarding Plaintiffs' negotiations with DISH and which ones Plaintiffs would raise with the Court. T-Mobile and Plaintiffs have since started discussions to better coordinate on presentation to the Court of overlapping discovery disputes involving nonparties and third parties going forward. T-Mobile welcomes the opportunity to discuss that further with the Court at the next status conference or at the Court's convenience, so that issues impacting both parties' subpoenas may be resolved in an orderly fashion.

representations on T-Mobile's position, which is that MVNO-related information is relevant to several hotly contested issues in this case. If permitted, T-Mobile will provide a more fulsome explanation of how MVNOs are relevant to these issues, including market definition, the proper treatment of MVNOs' subscribers in computing market share statistics, the state of competition in the retail wireless mobile telecommunication services industry given the entry and substantial growth of multiple MVNOs in the post-merger time period, and T-Mobile's failure to mitigate defense, among other things.

T-Mobile's responses will also provide additional explanation for the relevance of Plaintiffs' proposed custodians for the Court's consideration, which includes T-Mobile's interactions with those individuals since the merger closed.

For the foregoing reasons, T-Mobile respectfully requests that the Court grant its motion for leave to file a response to Plaintiffs' motion and DISH's opposition thereto.

DATED: February 25, 2022

Respectfully submitted,

/s/ Rachel S. Brass

Clifford C. Histed
ARDC No. 6226815
Michael E. Martinez
ARDC No. 6275452
Brian J. Smith
ARDC No. 6321543
K&L GATES LLP
70 West Madison Street
Suite 3300
Chicago, IL 60602-4207
Phone: 312-807-4448
clifford.histed@klgates.com
michael.martinez@klgates.com
brian.j.smith@klgates.com

Josh Krevitt (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue

New York, NY 10166-0193
Phone: 213-351-4000
JKrevitt@gibsondunn.com

Theodore J. Boutrous, Jr. (*pro hac vice*)
Daniel G. Swanson (*pro hac vice*)
Rodney J. Stone (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Phone: 213-229-7000
TBoutrous@gibsondunn.com
DSwanson@gibsondunn.com
RStone@gibsondunn.com

Rachel S. Brass (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
One Embarcadero Center, Suite 2600
San Francisco, CA 94111-3715
Phone: 415-393-8200
RBrass@gibsondunn.com

Counsel for Defendant T-Mobile US, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2025, I electronically filed a copy of the foregoing through the Court's CM/ECF system, which will send notifications of the filing to all counsel of record.

/s/ Rachel S. Brass

Rachel S. Brass