EXHIBIT K

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VIA ELECTRONIC MAIL

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Re: Subpoena to DISH in *Dale v. Deutsche Telekom AG,* No. 22-3189 (N.D. Ill) Response to November 4, 2024 Letter

Dear Mr. Brakefield:

We write to respond to your November 4, 2024 letter. We remain extremely surprised and disappointed by the antagonistic tone and contents of your letter and prior correspondences.

DISH is a non-party.[1] It has participated in several telephonic meet and confer discussions, made multiple document productions, agreed (at your request) to provide a data dictionary, and agreed (at your request) to provide both a data sample and a full set of structured data (upon the parties' entering into a data security agreement). None of that is nor can be disputed.

Your letter is full of statements that we believe are inaccurate. We have detailed many of them already in prior emails and feel it would be counterproductive to detail those or your other statements further.[2] Like you, we remain hopeful that the tone and accuracy of our conversations going forward will improve.

[1] "[N]on-party status is a significant factor to be considered in determining whether the burden imposed by a subpoena is undue" because non-parties have a "different set of expectations than parties." *United States ex rel. Tyson v. Amerigroup Illinois, Inc*., 2005 WL 3111972, at *4 (N.D. Ill. 2005); *Little v. JB Pritzker for Governor*, 2020 WL 1939358, at *2 (N.D. Ill. 2020) (*quoting HTG Capital Partners, LLC v. Doe(s),* 2015 WL 5611333, at *3 (N.D. Ill. 2015)). "While parties to a lawsuit must accept the invasive nature of discovery, non-parties experience an unwanted burden." *Little*, 2020 WL 1939358, at *2. "It is one thing to subject parties to the trials and tribulations of discovery – rightly regarded as 'the bane of modern litigation,' " but non-parties do not "have a horse in [the] race." *Robinson v. Stanley*, 2010 WL 1005736, at *3 (N.D. Ill. 2010) (*quoting Rossetto v. Pabst Brewing Co., Inc.*, 217 F.3d 539, 542 (7th Cir. 2000)).

[2] We do need to address one puzzling misstatement. You say that we incorrectly claimed that DISH was not a wireless company before the T-Mobile merger closed. Our statement was correct. We told you

The 20-page Subpoena, with 36 requests, many of which have numerous sub-parts, is overbroad, and not narrowly tailored to reflect DISH's status as a non-party and as a relatively new mobile carrier. Plaintiffs continually fail to address issues of proportionality or otherwise narrow down their requests,[3] and, when asked what Plaintiffs are actually looking for, simply point back to the Subpoena, state that the requests speak for themselves, and demand a response to each and every sub-part. This conduct runs afoul of your duty under Fed. R. Civ. P. 45(d)(1) to avoid imposing an undue burden on DISH as a non-party to your action. *See Rossman v. EN Engineering, LLC*, 467 F.Supp.3d 586, 590 (N.D. Ill. 2020) (bemoaning the "needlessly harsh" tactics of plaintiff's counsel and denying motion to compel documents pursuant to an overly broad non-party subpoena).

We have discussed many of your requests already. We have produced documents responsive to (among other requests) four requests (Request Nos. 1-4). We have responded that we believe that the Data Sample and the full structured data will provide a significant amount of the information requested in three other requests (Request nos. 21, 24 and 25). You have tabled discussion on 11 other requests (4, 18, 26-34). In our last meet and confer, we specifically discussed request nos. 35 and 36. As to those requests, your own clients (either named plaintiffs or putative class members) should have any responsive communications with DISH (if any exist), and you need to obtain them from your own clients before seeking them from a third party like DISH. Have you asked them if they exist? As to internal communications about your own clients or putative class members, if any such communications exist at all, we have no way of reasonably locating them. The burden of locating them is certainly not proportional to the needs of the case.

With regard to Request nos. 8 and 10, those requests seek documents related to "Affiliate MVNOs", which you have specifically defined (both in the original and amended subpoena) to refer to "mobile virtual network operators that provide service using leased facilities or leased capacity purchased from the T-Mobile US, Inc. or Sprint Corporation mobile networks," and *not* from DISH's or AT&T's networks.

You have asked us to provide additional information about the Monitoring Trustee Datasite. The Monitoring Trustee data site is maintained by datasite.com, a third-party neutral data-room provider. The Monitoring Trustee set up the datasite for the parties to the consent decree to provide documentation to the Monitoring Trustee. We have produced documents that would be

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that, before the T-Mobile and Sprint merger (in mid-2020), DISH was not a retail mobile wireless carrier and did not have retail mobile wireless customers. You have alleged the same. (Compl., ¶ 64 ("Enter DISH, a satellite television company that until that point had never operated a mobile wireless network."). Boost's acquisition of Ting Mobile in August 2020 and its acquisition of Gen Mobile in September 2021 both post-dated the merger at issue in this case.

[3] Despite your May 31 letter claiming to narrow the scope of your Requests, you continue to ask for "all" documents, with only a handful reflecting "sufficient." *See Craigville Telephone Co. v. T-Mobile USA, Inc.*, 2022 WL 17740419, at * 2 (N.D. Ill. Dec. 16, 2022) (noting that a non-party subpoena seeking "all documents" or "all communications" is "facially overbroad").

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found in that datasite already (including letters related to the CDMA shutdown). Any additional questions about the datasite should be directed to T-Mobile since, as you know, the Monitoring Trustee was appointed to oversee, among others, T-Mobile's compliance with the Final Judgment and Stipulation and Order.

To the extent that you seek direct access to the Monitoring Data Site (as you seem to suggest in your letter), that is improper. While Rule 34(a) allows a party "to inspect, copy, test, or sample" ESI, it "is not meant to create a routine right of direct access to a party's electronic information system." *Vega v. Chicago Park District*, 2014 WL 12959464, at * (N.D. Ill. Sept. 24, 2014). "Thus, courts have declined to find an automatic entitlement to access [of] an adversary's database." *Id.* (quoting *S.E.C. v. Strauss*, 2009 WL 3459204, at *12 n.3 (S.D.N.Y. Oct. 28, 2009)). That rule applies with even more force to a third party like DISH, which in any case does not have authority to grant such access in any case.

In prior discussions but not in your November 4 letter, you asked questions about what we have called DISH's DC Legal Team's Shared Drive. That is an on-premises Microsoft file share that has heavily restricted access and is used primarily by DISH's inhouse regulatory lawyers, including Hadass Kogan, Vice President and Associate General Counsel, Regulatory Affairs (whom I believe you mentioned on our call). Because DISH's regulatory legal team oversees all aspects of regulatory compliance beyond compliance with the T-Mobile Sprint Consent Decree, the vast majority of information on the file share includes privileged and irrelevant information. Furthermore, given the way the file share is maintained, we cannot run keyword searches of the contents of the documents in their native environment. However, DISH has reviewed the documents in the file share and produced materials relevant to the claims and defenses in your case responsive to Requests Nos. 1-5 and touching on other requests in your subpoena. This practice is consistent with longstanding discovery principles, as Judge Cole has already reminded you in this case. *See* Mem. Op. & Order [206], 2024 WL 4416761, at *3 ("Responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information") (quoting The Sedona Principles, Third Ed.: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 Sedona Conf. J. 1, 52 (2018)).

Very truly yours,

Clifford E. Yin

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