

EXHIBIT 2

**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

**RESPONSES AND OBJECTIONS TO DEFENDANT T-MOBILE'S SUBPOENA TO
PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS**

PROPOUNDING PARTY: Defendant T-Mobile

RESPONDING PARTY: Third Party DISH Network Corporation

Pursuant to Rules 34 and 45 of the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the Northern District of Illinois, DISH submits these Objections and Responses to the Subpoena to Produce Documents, Information, Or Objects Or to Permit Inspection Of Premises In A Civil Action to DISH Network Corporation, dated November 18, 2024 (“Defendant’s Subpoena” or “T-Mobile’s Subpoena”) served by Defendant T-Mobile US, Inc. (“Defendant” or “T-Mobile”). To the best of its knowledge, information, and belief, DISH responds as follows:

OVERALL OBJECTIONS TO DEFENDANT T-MOBILE’S SUBPOENA

1. DISH objects to the Subpoena and the specific requests contained therein on the grounds that they are overly broad and unduly burdensome insofar as they seek documents created or exchanged prior to the public announcement of the Merger in April 2018 and subsequent DOJ and court approval in April 2020. DISH further objects that documents created or exchanged prior to the approval of the Merger are not relevant to the claims and defenses in this matter. Specifically, the Court in the above-captioned case has noted that “this case does not focus on the wisdom of the merger, but its consequences.” [ECF No. 114 at 5; *see also id.* at 40 (“Plaintiffs’ suit is focused on the effects of the merger, subject to those conditions, after it was effectuated in April 2020.”)]. Any search for or production of such documents would be unduly burdensome and disproportionate. *Uppal v. Rosalind Franklin Univ. of Med. & Sci.*, 124 F.Supp.3d 811, 815 (N.D. Ill. 2015) (finding that a subpoena requesting irrelevant information imposes an inherently undue burden).

2. DISH objects to the Subpoena on the grounds that the claims in this case are barred by *res judicata*. *Res judicata* bars claims that were litigated in a previous action where there is “(1) an identity of the causes of action; (2) and identity of the parties or their privies; and (3) a final judgment on the merits.” *Bell v. Taylor*, 827 F.3d 699, 706 (7th Cir. 2016) (internal

citations and quotation marks omitted). Whether there is an identity of a cause of action is determined by whether the lawsuits “arise out of a common core of operative facts.” *Id.* (internal citations and quotation marks omitted). Here, it is undisputed that this action and *New York v. Deutsche Telekom (AG)*, 19 Civ. 5434 (VM), decided in the United States District Court for the Southern District of New York, both arise out of T-Mobile US, Inc.’s acquisition of Sprint Corporation in 2020. *Compare* 439 F. Supp.3d 179, 186 (S.D.N.Y. 2020) (addressing a group of State Attorneys General “seeking to enjoin the proposed acquisition of Sprint by T-Mobile” due to claims that “the effect of the Proposed Merger would be to substantially lessen competition in the market for retail mobile wireless telecommunications services . . . in violation of Section 7 of the Clayton Act”) *with* Plaintiffs’ Class Action Complaint [ECF No. 1], ¶¶ 1, 7 (bringing complaint “under Section 7 of the Clayton Act” challenging “the merger of T-Mobile US, Incorporated (“T-Mobile”) and Sprint Corporation (“Sprint”)” and alleging that “Competition has declined precipitously as a result” of the merger.) Moreover, the Plaintiffs in this action were represented by their privies, the Attorneys General of their respective States, in the *New York* action. *See Oneida Nation v. Village of Hobart*, 968 F.3d 664, 688 (7th Cir. 2020) (“In the preclusion context, privity has come to be seen as a descriptive term for designating those with a sufficiently close identity of interests,” particularly where “the action was [] brought on behalf of the party against whom preclusion is sought) (cleaned up). As Illinois Attorney General Kwame Raoul explained after settling claims in the *New York* case, he “challenged T-Mobile’s merger with Sprint to protect Illinois consumers from the risks that come with decreased competition.” *Attorney General Raoul Announces Settlement with T-Mobile and Sprint in Merger Lawsuit*, available at <https://illinoisattorneygeneral.gov/dA/a6776919e0/202003-11%20SETTLEMENT%20WITH%20T%20MOBILE%20AND%20SPRINT%20IN%20MERG>

ER%20LAWSUIT.pdf (March 11, 2020). *Cf.* Mem. Op. and Order [ECF No. 63] (declining to transfer the instant litigation to S.D.N.Y. because one Plaintiff resides in the Northern District of Illinois and three other Plaintiffs are similarly Illinois citizens). Finally, the *New York* court reached a final determination on the merits, finding that the merger was “not reasonably likely to substantially lessen competition” in the “dynamic and rapidly changing” retail wireless industry and concluding that the “Plaintiff States have failed to prove a violation of Section 7.” 439 F. Supp.3d at 248. The Seventh Circuit has explained the importance of *res judicata* in “protect[ing] litigants from the expense and disruption of being haled into court repeatedly.” *Bell*, 827 F.3d at 708 (quoting *Palka v. City of Chicago*, 662 F.3d 428, 437 (7th Cir. 2011)). DISH objects and asserts that, as a non-litigant in the matter, *res judicata* takes on ever greater importance and should be applied to shield DISH from Defendant T-Mobile’s Subpoena and discovery requests related to claims that were already adjudicated by the Southern District of New York.

3. DISH objects to the Subpoena on the grounds that Defendant is estopped from seeking discovery into the legal issues surrounding DISH’s involvement in the Merger due to issue preclusion. Issue preclusion, or collateral estoppel, prevents reexamination of issues resolved in prior litigation and applies where “(1) the issue sought to be precluded [is] the same as that involved in the prior litigation; (2) the issue must have been actually litigated [in the prior litigation;] (3) the determination of the issue must have been essential to the final judgment; and (4) the party against whom estoppel is invoked must have been fully represented in the prior action.” *In re Calvert*, 913 F.3d 697, 701 (7th Cir. 2019) (quoting *Matrix IV, Inc. v. Am. Nat’l Bank & Trust Co. of Chi.*, 649 F.3d 539, 547 (7th Cir.2011)). The T-Mobile Subpoena is directed at issues already decided in the *New York* litigation: for example, Defendant propounds

four requests aimed at obtaining discovery regarding governmental proceedings or documents submitted to government agencies; meanwhile, the *New York* court devoted substantial analysis to “Federal Agency Review and DISH as a New Entrant,” 439 F.Supp.3d at 224-33. Indeed, many of the issues addressed by the T-Mobile Subpoena (and certainly all of the issues actually relevant to the underlying claims and defenses in this matter) were addressed by the *New York* court in that litigation. Issues regarding DISH’s entry into the relevant market, the sufficiency thereof in demonstrating a competitive impact on the relevant market; the likelihood of DISH’s success in the relevant market, and the timeliness of DISH’s transition to becoming an MNO were actually litigated and determined in the *New York* litigation. *See e.g., id.* Moreover, the *New York* court made clear that evidence regarding DISH’s participation in the relevant market introduced at trial was an essential element of the court’s conclusion that the “Plaintiff States had failed to prove” a Clayton Act violation. *Id.* at 248. Finally, DISH restates and incorporates its statement in Objection 2 above regarding the Plaintiffs’ representation by their State Attorneys General in the *New York* litigation and applies the same to this objection. Because the issue of DISH’s involvement in the Merger that is the subject of this action was already litigated and determined by the *New York* court, DISH objects that the considerable and wide-ranging discovery sought by the T-Mobile Subpoena should be deemed precluded.

4. DISH objects to T-Mobile’s Subpoena as largely duplicative of Plaintiffs’ Subpoena and therefore unnecessary and unduly burdensome on DISH. For example, of the 34 Requests in T-Mobile’s Subpoena, DISH’s two productions—and subsequent anticipated third production of Structured Data—are responsive to an overwhelming majority of these Requests. The additional new Requests from Defendant T-Mobile’s Subpoena are otherwise wholly irrelevant and are a fishing expedition to seek highly sensitive commercial information from a

direct competitor. For example, Request No. 26 of T-Mobile's Subpoena seeks the revenue, cost and profits associated with each wireless plan provided by Boost Mobile, when such specific details do not relate or pertain to the overall efficacy of DISH as a viable fourth competitor. Similarly, Request Nos. 10 and 11 seek information regarding DISH's spectrum holdings which, to the extent non-public, are not only irrelevant to any of the issues in the underlying litigation but are also highly commercially sensitive in light of the current state of the spectrum market. *See* Ltr. From Jeff Blum, DISH to Heather Johnson, T-Mobile (Apr. 23, 2024) produced at DISH00004986; *Cont. Auto. Sys., U.S., Inc v. Omron Auto. Elecs., Inc.*, No. 14 C 3731, 2014 WL 2808984, at *3 (N.D. Ill. June 20, 2014) (noting that, pursuant to Fed. R. Civ. P. 45, the court must quash a subpoena that requires disclosure of protected information and "courts presume that disclosure to a competitor is more harmful than disclosure to a non-competitor") (internal citations omitted).

5. DISH objects to T-Mobile's Subpoena on the grounds that it seeks highly sensitive, competitive commercial information that may violate the Firewall Procedures established in *United States of America et al. v. Deutsche Telekom AG et al*, 19-cv-02232-TJK (D.D.C.). Specifically, as directed by the United States and memorialized in the Final Judgment [ECF No. 139] (D.D.C. Oct. 23, 2023), in order to prevent anticompetitive behavior by precluding either party from obtaining competitive information from the other, T-Mobile and DISH were required to "implement and maintain reasonable procedures to prevent competitively sensitive information from being disclosed." *Id.* at 29-30, § 13. T-Mobile's refusal in this case to adopt a protective order that would prevent T-Mobile's in-house counsel from viewing DISH's confidential information is antithetical to both the spirit and the letter of the Final Judgment in addition to the well-established view of this Court that protection of competitor non-

party litigants generally requires a carve-out for Highly Confidential information that is not accessible to in-house designees. *See FTV c. Advocate Health Care Network*, 162 F.Supp.3d 666, 674 (N.D. Ill. 2016); *In re Delta Dental Antitrust Litig.*, No. 19 CV 6734, 2023 WL 8043400, at *6 (N.D. Ill. July 18, 2023). DISH cannot and will not produce any confidential information to T-Mobile unless and until T-Mobile accepts an outside-attorneys' only provision in the protective order in this case.

6. DISH objects to T-Mobile's Subpoena on the grounds that the numerosity and breadth of the requests are unduly burdensome on a non-party, in that Defendant T-Mobile seeks documents and information which are either publicly available or otherwise are already in the custody and control of Defendant T-Mobile. In determining whether the burden imposed by a subpoena on a non-party is "undue," courts heavily consider non-party status as a "significant factor" alongside whether the information requested is relevant, the requesting party's "substantial need" for the documents, the breadth of the requests, the time-period covered by the requests, the particularity of the requests, and the overall burden imposed, including whether "the requesting party had an opportunity to obtain the information through the normal discovery process, or the information sought is cumulative or duplicative of other discovery." *Little v. JB Pritzker for Governor*, No. 18 C 6954, 2020 WL 1939358, at *2 (N.D. Ill. Apr. 22, 2020). Defendant T-Mobile's Request contains the same if not overlapping and inclusive Requests as those sought by Plaintiffs. Instead of going to Plaintiffs—who have an obligation under the parties' protective order to share DISH's productions in response to the Plaintiffs' subpoena with T-Mobile—Defendant T-Mobile has served its own Subpoena which is cumulative and duplicative of the vast majority of Plaintiffs' Subpoena. Furthermore, T-Mobile has failed to ascertain whether the information sought is publicly available (such as through DISH's public

filings to the SEC). Fed. R. Civ. P. 26(b)(2); *In re Uber Tech., Inc. Passenger Sexual Assault Litig.*, No. 23-md-03084-CRB, 2024 WL 3416644, at *5 (N.D. Cal. July 14, 2024) (quashing subpoena requests where the requesting party made no effort to obtain documents from the public record); *Rossman v. EN Engineering, LLC*, 467 F.Supp.3d 586, 592 (N.D. Ill. 2020) (requiring requesting party to “exhaust other venues before targeting a non-party to the lawsuit”). Lastly, some of the information and documents sought by Defendant T-Mobile are under its own custody and control. Under the Transition Services Agreement used to facilitate the transition of Boost to DISH following the Merger, T-Mobile owned and operated the TSA platform in which Boost subscriber data was maintained until T-Mobile terminated the TSA in June 2023. Accordingly, the overwhelming majority of the information sought by Defendant T-Mobile up until June 2023 is within Defendant T-Mobile’s own custody and control.

OBJECTIONS TO DEFINITIONS

1. DISH objects to the definition of “RMWTS,” on the grounds that “services” is vague, undefined, and overly broad. DISH further objects to the subpoena’s definition of “retail mobile wireless telecommunications services” on the grounds that, as written, it exceeds the scope of the “Retail Cell Service Market” as defined in the Complaint. Specifically, the relevant market in the instant case “does not include plans for non-phone connected devices . . . and devices that are part of the so-called Internet of Things.” Compl. ¶ 27 [ECF No. 1]. DISH further objects to this definition of RMWTS to the extent T-Mobile’s Subpoena purports to differentiate the relevant market from the *New York* court’s determination regarding competition in the retail mobile wireless telecommunications service (“RMWTS”) market. *See* 439 F. Supp.3d at 193. DISH will interpret this terminology in a manner that is consistent with the *New York* court’s definition of the RMWTS market.

2. DISH objects to the definition of “Subscriber,” on the grounds that the term “services” is vague, undefined, overly broad, and, as written, could exceed the scope of the Retail Cell Service Market as defined in the Complaint. Specifically, the relevant market in the instant case “does not include plans for non-phone connected devices . . . and devices that are part of the so-called Internet of Things.” Compl. ¶ 27 [ECF No. 1]. Accordingly, DISH construes “services” as limited to plans for servicing cellular devices that have the unique “combination of voice and data capabilities, such as phone and video calls, text messages, mobile applications, and broad access to the Internet.” *Id.*

3. DISH objects to the definition of “document” or “documents” to the extent it purports to encompass information that is protected from disclosure by the attorney-client privilege, the work-product doctrine, and/or other applicable privileges or protections. DISH further objects that collection and production of “Hard-Copy Documents,” “sound recordings,” and certain “data compilations” would be unduly burdensome in light of the specialized collection and review procedures necessary for such materials, the paucity of relevant information that is likely to be found therein, and considering DISH’s non-party status.

4. DISH objects to the definition of “concerning” to the extent it purports to extend such terminology beyond its ordinary meaning or seeks to impose unreasonable search and review obligations in connection with DISH’s response to this subpoena.

5. DISH objects to the definition of “DISH” on the grounds that it is overly broad and seeks information that is not relevant to the claims and defenses in this matter. DISH Network Corporation has numerous “parent” and “subsidiary” companies, many of which do not participate in the Retail Wireless Market, were not involved in decision-making related to the Merger, and do not have possession, custody, or control of relevant documents.

OBJECTIONS TO INSTRUCTIONS

1. DISH objects to Instruction 1 to the extent the Protective Order and ESI Production Protocol are broader than and exceed the parameters of the Federal Rules of Civil Procedure or provide inadequate protections to DISH. As a non-party to this action, DISH is not bound or limited by the terms of either the Protective Order or the ESI Production Protocol and, to the extent DISH produces documents, DISH reserves the right to seek greater confidentiality protections for highly confidential material and to produce ESI in reasonably usable formats in accordance with Fed. R. Civ. P. 45(e)(1).

2. DISH objects to Instruction 2 defining the relevant time period as January 1, 2017 to June 30, 2024 on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant to any claims or defenses in this matter insofar as it encompasses any timeframe prior to the approval of the Merger in April 2020.

RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

Documents Concerning Your compliance with the buildout and service deployment commitments made to the government in connection with the Merger.

RESPONSE TO DOCUMENT REQUEST NO. 1:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, and its objections to T-Mobile's definitions and instructions, and applies each to Document Request 1. DISH objects that, to the extent non-public, documents and information sought via this Request contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. As such, DISH will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH has also made numerous

public filings with the government related to its compliance with buildout and service deployment commitments. Such information is equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592. DISH further objects that this Request is overbroad insofar as it seeks documents “Concerning” DISH’s commitments and neither party can show any substantial need for such sensitive information as required by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2. Moreover, DISH objects that documents “Concerning” its commitments to the government but not actually submitted to government entities are likely protected from disclosure by the attorney-client privilege, the work-product doctrine, or other applicable privileges or protections.

Based on the foregoing Objections, DISH responds as follows: Much of the information sought via this Request is publicly available. To the extent it is not, DISH has already produced (as part of DISH’s first and second production to Plaintiffs’ Subpoena in this case) documents sufficient to show DISH’s compliance with its build-out and service deployment commitments to the FCC and DOJ including, but not limited to, documents submitted to the DOJ and to the Monitoring Trustee. DISH will produce the remainder of the quarterly reports it submitted to the Monitoring Trustee from May 2021 to June 2024, if and only when the Protective Order is modified to adequately address the Firewall Procedures established in the Final Judgment and DISH’s concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 2:

Documents Concerning any proposed or actual modifications, changes, or amendments to Your buildout and service deployment commitments made to the government in connection with the Merger.

RESPONSE TO DOCUMENT REQUEST NO. 2:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 2. As with Request 1, to the extent non-public, documents and information sought via this Request contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH has also made numerous public filings with the government related to modifications, changes, and amendments to its buildout and service deployment commitments. Such information is equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592. DISH also objects that information "Concerning" modifications, changes, or amendments to DISH's government commitments but not actually provided to government entities are likely protected from disclosure by the attorney-client privilege, the work-product doctrine, or other applicable privileges or protections.

Based on the foregoing Objections, DISH responds as follows: Much of the information sought via this Request is publicly available. To the extent it is not, DISH has already produced (as part of DISH's first and second production to Plaintiffs' Subpoena in this case) documents

sufficient to show DISH's build-out and service deployment commitments to the FCC and DOJ and any modifications, changes, or amendments thereto including, but not limited to, documents submitted to the DOJ and to the Monitoring Trustee. DISH will not produce additional documents in response to this Request.

DOCUMENT REQUEST NO. 3:

All correspondence (including filings, reports and other submissions) with the DOJ, FCC, Monitoring Trustee and any other federal or state regulatory agency Concerning the commitments made to the government by DISH and T-Mobile in connection with the Merger, as well as any supporting materials You referenced or relied on to prepare Your correspondence.

RESPONSE TO DOCUMENT REQUEST NO. 3:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 3. As with Requests 1 and 2, to the extent non-public, documents and information sought via this Request contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. Moreover, many of DISH's "filings" and "submissions" to the government are equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592. DISH also objects that "supporting materials [DISH] referenced or relied on" but not actually provided to government entities are likely protected from disclosure by the

attorney-client privilege, the work-product doctrine, or other applicable privileges or protections.

Based on the foregoing Objections, DISH responds as follows: Much of the information sought via this Request is publicly available. To the extent it is not, DISH has already produced (as part of DISH's first and second production to Plaintiffs' Subpoena in this case) correspondence, filings, and submissions to multiple government entities including but not limited to the FCC, DOJ, and the Monitoring Trustee. DISH will produce the remainder of the quarterly reports it submitted to the Monitoring Trustee from May 2021 to June 2024, if and only when the Protective Order is modified to adequately address the Firewall Procedures established in the Final Judgment and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 4:

Documents or Communications sufficient to show the terms of any arrangement between You and any entity other than T-Mobile for access to any network used in the provision of RMWTS, including Your network services agreement with AT&T referenced in Paragraph 97 of the Complaint.

RESPONSE TO DOCUMENT REQUEST NO. 4:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 4. DISH further objects that the terms of its Network Services Agreement with AT&T are exactly the type of highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such

information to T-Mobile's in-house personnel.

Based on the foregoing Objections, DISH responds as follows: DISH will produce its Network Services Agreement with AT&T if and only when the Protective Order is modified to adequately address the Firewall Procedures established in the Final Judgment and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 5:

Documents or Communications concerning the statement made by Charlie Ergen during DISH's 2021 4Q Results Earnings Call that the new deal between T-Mobile and DISH following the dispute concerning CDMA shutdown "improved the economics from a business perspective for [DISH], that it's improved integration into how the networks work together and there's a good spirit of cooperation between the teams. So it's going to be – it's a win-win for both companies."

RESPONSE TO DOCUMENT REQUEST NO. 5:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 5. DISH also objects to this Request on the grounds that Mr. Ergen's publicly made statement speaks for itself. To the extent the dispute between DISH and T-Mobile regarding the CDMA shutdown is relevant to the claims and defenses in the underlying litigation, DISH objects that the vast majority of such documents are in T-Mobile's possession, as the decision to shut down T-Mobile's CDMA network was made by T-Mobile. DISH further objects that significant information regarding the effect of the CDMA shutdown on DISH is publicly available or otherwise equally available to T-Mobile

through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossmann*, 467 F.Supp.3d at 592. Finally, DISH objects to this Request to the extent it calls for disclosure of information that is protected by the attorney-client privilege, the work-product doctrine, and any other applicable privileges and protections.

Based on the foregoing Objections, DISH responds as follows: DISH has produced several documents concerning the CDMA shutdown in Production 1 in response to Plaintiffs' Subpoena. DISH will not produce additional documents in response to this Request.

DOCUMENT REQUEST NO. 6:

Documents and/or Structured data Concerning the amount You paid any entity other than T-Mobile for access to any network used in the provision of RMWTS, by month and geographical area (e.g., Zip Code, City, State, or applicable CMAs, MSAs or RSAs).

RESPONSE TO DOCUMENT REQUEST NO. 6:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 6. DISH further objects that the amount DISH pays for access to entities other than T-Mobile for access to networks used in the provision of RMWTS is exactly the type of highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this Request seeks irrelevant information and is overly broad and not proportional to the needs of the case insofar as it seeks information broken down by

geographical area, as the putative class in this litigation is defined on a nationwide basis.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's Digital Operator Platform ("DOP") developed by DISH to handle such data following the termination of the Transition Services Agreement. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to protect consumer data and restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request as well as its Network Services Agreement with AT&T if and only when the Protective Order is modified to adequately address the protection of consumer data, the Firewall Procedures established in the Final Judgment, and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 7:

Documents and/or structured data Concerning Your RMWTS customers' usage traffic, by month and geographical area (e.g., Zip Code, City, State, or applicable CMAs, MSAs or RSAs), on (a) Your own networks and (b) networks owned by other entities.

RESPONSE TO DOCUMENT REQUEST NO. 7:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 7. DISH further objects that its RMWTS customers' usage traffic is exactly the type of highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless

and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this Request seeks irrelevant information and is overly broad and not proportional to the needs of the case insofar as it seeks information broken down by geographical area, as the putative class in this litigation is defined on a nationwide basis. Additionally, DISH objects to this Request on the grounds that information concerning customers' usage traffic is subject to federal regulations that restrict disclosure of such information. *See, e.g.*, 47 U.S.C. § 222; 47 C.F.R. § 64.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to protect consumer data and restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request if and only when the Protective Order is modified to adequately address protection of consumer data, the Firewall Procedures established in the Final Judgment, and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 8:

Documents and/or structured data Concerning your network traffic load (i.e., data usage) compared to your mobile network capacity, by month and geographical area (e.g., Zip Code, City, State, or applicable CMAs, MSAs or RSAs).

RESPONSE TO DOCUMENT REQUEST NO. 8:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing

Document Requests, and applies each to Document Request 8. DISH further objects that information concerning its network traffic load compared to network capacity is exactly the type of highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this Request seeks irrelevant information and is overly broad and not proportional to the needs of the case insofar as it seeks information broken down by geographical area, as the putative class in this litigation is defined on a nationwide basis.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request if and only when the Protective Order is modified to adequately address the Firewall Procedures established in the Final Judgment and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 9:

Documents and/or structured data sufficient to show Your RMWTS coverage area (e.g., Your wireless coverage maps) by technology (e.g., 3G, LTE, 4G, 5G) and any changes thereto.

RESPONSE TO DOCUMENT REQUEST NO. 9:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing

Document Requests, and applies each to Document Request 9. To the extent non-public, documents and information sought via this Request, DISH objects that the documents and information contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. Moreover, documents sufficient to show DISH's wireless coverage maps are equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH, such as through DISH's publicly available filings with the FCC regarding its spectrum licenses and buildout commitments. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossmann*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: Much of the information sought via this Request is publicly available. To the extent it is not, DISH has already produced (as part of DISH's first and second production to Plaintiffs' Subpoena in this case) numerous documents sufficient to show its wireless coverage area, including but not limited to filings submitted to the Monitoring Trustee. DISH will produce the remainder of the quarterly reports it submitted to the Monitoring Trustee from May 2021 to June 2024, if and only when the Protective Order is modified to adequately address the Firewall Procedures established in the Final Judgment and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 10:

Documents Concerning spectrum auction, spectrum purchase or spectrum acquisition.

RESPONSE TO DOCUMENT REQUEST NO. 10:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 10. DISH further objects to this Request on the grounds that it exceeds the scope of permissible discovery under Fed. R. Civ. P. 26(b)(1). None of the claims or defenses in this case deal with DISH's participation (or non-participation) in any spectrum auction, spectrum purchase, or spectrum acquisition. To the extent the information or document sought is non-public, such information is highly commercially sensitive, particularly given the publicized disagreements between DISH and T-Mobile on the topic of spectrum over the last several years. *See* Ltr. From Jeff Blum, DISH to Heather Johnson, T-Mobile (Apr. 23, 2024) produced at DISH00004986. Rather, this Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the information as would be required by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2. To the extent at all relevant, DISH notes that any spectrum bids or purchases are public and readily available on FCC's website at <https://www.fcc.gov/auctions>. *See also* Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: The requested information is neither relevant to the litigation nor proportional to the needs of the case. Further, to the extent relevant, information regarding DISH's participation in spectrum auctions is publicly available with the FCC. DISH will not expend efforts to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 11:

Documents sufficient to show Your spectrum holdings and their deployment status and any changes thereto, including Documents sufficient to show Your current spectrum holdings, deployed spectrum and undeployed spectrum.

RESPONSE TO DOCUMENT REQUEST NO. 11:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 11. As explained in response to Request 10, this request exceeds the scope of permissible discovery under Fed. R. Civ. P. 26(b)(1) in that none of the claims or defenses in this case have any bearing on DISH's spectrum holdings and/or their deployment status. To the extent non-public, such information is highly commercially sensitive, particularly given the publicized disagreements between DISH and T-Mobile on the topic of spectrum over the last several years. *See* Ltr. From Jeff Blum, DISH to Heather Johnson, T-Mobile (Apr. 23, 2024) produced at DISH00004986. Rather, this Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the information as would be required by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2. To the extent at all relevant, DISH notes that information regarding DISH's spectrum licenses is publicly available through the FCC's Universal Licensing System: <http://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp>. *See also* Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: The requested information is neither relevant to the litigation nor proportional to the needs of the case. Further, to the extent relevant, information regarding DISH's participation in spectrum auctions is publicly available with the FCC. DISH will not expend efforts to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 12:

Documents Concerning Your option to purchase of 800 MHz Spectrum from T-Mobile pursuant to the parties' License Purchase Agreement and extensions thereto, including Documents Concerning Your decision not to exercise the purchase right by April 1, 2024.

RESPONSE TO DOCUMENT REQUEST NO. 12:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 12. To the extent the option to purchase 800MHz spectrum is relevant to the claims and defenses in the underlying litigation, DISH objects that the vast majority of such documents are in T-Mobile's possession, as the parties' License Purchase Agreement and extensions thereto were negotiated by T-Mobile. DISH further objects that significant information regarding DISH's option to purchase 800 MHz spectrum is publicly available or otherwise equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592. Finally, DISH objects to this Request to the extent it calls for disclosure of information that is protected by the attorney-client privilege, the work-product doctrine, and any other applicable privileges and protections.

Based on the foregoing Objections, DISH responds as follows: DISH has produced several documents concerning the option to purchase 800 MHz spectrum from T-Mobile in its first and second productions in response to Plaintiffs' Subpoena. DISH will not produce additional documents in response to this Request.

DOCUMENT REQUEST NO. 13:

Documents Concerning T-Mobile's auction of its 800 MHz Spectrum that You declined to purchase from T-Mobile, including documents concerning Your plans to participate in the auction as well as related communications with any federal or state regulatory agency, including the DOJ.

RESPONSE TO DOCUMENT REQUEST NO. 13:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 13. To the extent T-Mobile's purported "re-auction" of 800MHz spectrum is relevant to the claims and defenses in the underlying litigation, DISH objects that the vast majority of such documents are in T-Mobile's possession, as it was ultimately T-Mobile's decision to "re-auction" that spectrum to the exclusion of DISH. DISH further objects that significant information regarding DISH's plans to participate in T-Mobile's purported "auction" of 800 MHz spectrum is publicly available or otherwise equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592. Finally, DISH objects to this Request to the extent it calls for disclosure of information that is protected by the attorney-client privilege, the work-product doctrine, and any other applicable privileges

and protections.

Based on the foregoing Objections, DISH responds as follows: DISH has produced several documents concerning T-Mobile's purported "auction" of 800 MHz spectrum in its first and second productions in response to Plaintiffs' Subpoena, including but not limited to communications with various governmental entities. DISH will not produce additional documents in response to this Request.

DOCUMENT REQUEST NO. 14:

Documents sufficient to show the type of voice technology (e.g., CDMA, UMTS, VoLTE, VoIP) and data technology (e.g., LTE, NR, EDGE) used by You, including any difference in technology used for different locations and any changes thereto.

RESPONSE TO DOCUMENT REQUEST NO. 14:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 14. To the extent non-public, documents and information sought via this Request contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. Moreover, documents sufficient to the type of voice technology and data technology used by DISH in its 5G Network are equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH, such as through DISH's publicly available filings with the FCC and/or filings made by EchoStar Corp. with the SEC. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*,

2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: Much of the information sought via this Request is publicly available. To the extent it is not, DISH has already produced (as part of DISH's first and second production to Plaintiffs' Subpoena in this case) documents sufficient to show the type of voice technology and data technology used by DISH in its 5G Network. DISH will not produce additional documents in response to this Request.

DOCUMENT REQUEST NO. 15:

Documents sufficient to show:

- a. Your actual or planned costs and investments in building and maintaining a 5G network;
- b. Your actual or planned rollout of 5G services, including the dates on which You started or anticipate providing 5G services in different geographic areas;
- c. Current availability of 5G services in different geographic areas;
- d. Quality and performance of Your 5G services as measured by You in the ordinary course of business;
- e. Subscriptions to any plans that offer 5G services by month and geographical area (e.g., Zip Code, City, State, or applicable CMAs, MSAs or RSAs); and
- f. Services, features and other benefits that are available exclusively on 5G services for each plan that you offered during the relevant time period.

RESPONSE TO DOCUMENT REQUEST NO. 15:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 15. To the extent non-public, documents and information sought via this Request contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless

and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this Request seeks irrelevant information and is overly broad and not proportional to the needs of the case insofar as it seeks information broken down by geographical area, as the putative class in this litigation is defined on a nationwide basis. Moreover, many of the documents sought in this request are not only publicly available but also publicly marketed by DISH. For example, DISH publicizes its consumer rate plans, the features thereof, and the availability of its 5G Network. Further, DISH makes regular public filings with the FCC regarding its investment in building its 5G network, its rollout of 5G services, and the quality of its 5G Network. There are therefore myriad ways for Defendant to obtain information through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: Some of the information sought via this Request is publicly available. To the extent it is not, DISH has already produced (as part of DISH's first and second production to Plaintiffs' Subpoena in this case) a significant amount of information responsive to this request, including but not limited to public and non-public filings submitted by DISH to the FCC, DOJ, and the Monitoring Trustee. DISH is also currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP that will contain information responsive to this request. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data as well as the remainder of the quarterly reports it submitted to the Monitoring Trustee from May 2021 to June 2024, if and

only when the Protective Order is modified to adequately address the Firewall Procedures established in the Final Judgment and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 16:

Documents Concerning the basis, factors, or methodology for determining Your RMWTS pricing (including the base price, taxes, fees, administrative charges, other surcharges, penalties, discounts, promotions, refunds, credits or any other adjustments to the base price) for each plan that you offered during the relevant time period.

RESPONSE TO DOCUMENT REQUEST NO. 16:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 16. DISH further objects that this Request exceeds the scope of permissible discovery under Fed. R. Civ. P. 26(b)(1). In particular, the Plaintiffs allege that their harms arise because "AT&T and Verizon have charged higher prices for nationwide wireless than they would have" if the Merger had not occurred. Compl. [1] at ¶¶ 122, 133. DISH's RMWTS pricing, particularly that for "each plan [DISH] offered during the relevant time period," has no bearing on any of Plaintiffs' claims. Moreover, the basis, factors, and methodology that DISH uses to determine its pricing strategies for consumer wireless plans constitute highly sensitive commercial and trade-secret information. This Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the information as would be required by Fed. R. Civ. P. 45(d). *JB Pritzker*

for Governor, 2020 WL 1939358, at *2. To the extent relevant, the pricing for DISH's consumer plans is publicly available and can be obtained through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: The requested information is neither relevant to the litigation nor proportional to the needs of the case. However, DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP, which may contain some information responsive to this request. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request if and only when the Protective Order is modified to adequately address the Firewall Procedures established in the Final Judgment and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile. DISH will not expend efforts beyond its production of Structured Data to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 17:

Structured data Concerning Your RMWTS churn rates by month, geographical area (e.g., Zip Code, City, State, or applicable CMAs, MSAs or RSAs), technology (e.g., 3G, LTE, 4G, 5G) and the RMWTS plan you offered.

RESPONSE TO DOCUMENT REQUEST NO. 17:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its

objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 17. DISH further objects that, to the extent non-public, information concerning its churn rates is exactly the type of highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this Request seeks irrelevant information and is overly broad and not proportional to the needs of the case insofar as it seeks information broken down by geographical area, as the putative class in this litigation is defined on a nationwide basis. Moreover, DISH publicly reports information regarding customer churn in filings made to the SEC. And to the extent this Request seeks information from the TSA period, the data responsive is in T-Mobile's possession; not DISH's. Therefore, the information requested can be obtained through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossmann*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request if and only when the Protective Order is modified to adequately address the Firewall Procedures established in the Final Judgment and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile. DISH will not

otherwise expend efforts to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 18:

Documents Concerning factors that drive RMWTS consumers' purchase and churn decisions, including any switching studies or data.

RESPONSE TO DOCUMENT REQUEST NO. 18:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 18. To the extent non-public, documents and information sought via this Request contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects to this Request on the basis that it seeks information that is not relevant to any of the claims and defenses in this matter and therefore exceeds the scope of permissible discovery under Fed. R. 26(b)(1). Documents from DISH regarding consumers' purchase and churn decisions have no bearing on any alleged anticompetitive effects from the Merger. Further, as a competitor in the RMWTS industry, Defendant T-Mobile presumably has its own switching studies or data regarding consumers' purchase and churn decisions and can show no substantial need for any such documents from DISH. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3; *JB Pritzker for Governor*, 2020 WL 1939358, at *2.

Based on the foregoing Objections, DISH responds as follows: The requested

information is neither relevant to the litigation nor proportional to the needs of the case. To the extent relevant, there is no substantial need to receive any such documents from DISH or to subject DISH to non-party discovery burdens. DISH will not expend efforts to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 19:

Structured data Concerning porting of telephone numbers used by Your subscribers, including the RMWTS provider to and/or from which the number is ported.

RESPONSE TO DOCUMENT REQUEST NO. 19:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 19. DISH further objects that non-public data related to customer porting is exactly the type of highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. Additionally, DISH objects to this Request on the grounds that information concerning customers' porting is subject to federal regulations that restrict disclosure of such information. *See, e.g.*, 47 U.S.C. § 222; 47 C.F.R. § 64.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to protect consumer data and restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same

Structured Data in response to this Request if and only when the Protective Order is modified to adequately address the protection of consumer data, the Firewall Procedures established in the Final Judgment, and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 20:

Documents Concerning Your marketing and promotion efforts for Your RMWTS plans, including Your marketing and promotion messages and strategies, the effects of Your marketing and promotion efforts on driving Subscribers from other RMWTS plans to Your plans, any price changes in anticipation of or in response to the entry or the expansion of other RMWTS providers.

RESPONSE TO DOCUMENT REQUEST NO. 20:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 20. DISH also objects to this Request on the basis that it seeks information that is not relevant to any of the claims and defenses in this matter and therefore exceeds the scope of permissible discovery under Fed. R. 26(b)(1). Documents concerning DISH's marketing and promotion efforts for RMWTS plans have no bearing on any alleged anticompetitive effects from the Merger. DISH has already produced thousands of pages of discovery documenting its viability as a competitor in the RMWTS market. This Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the information as would be required

by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2. To the extent at all relevant, DISH's marketing promotions are, by definition, publicly available and therefore can be obtained through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: The requested information is neither relevant to the litigation nor proportional to the needs of the case. To the extent relevant, DISH's marketing is publicly available through various sources including the Boost Mobile website and at select authorized retailers. DISH will not expend efforts to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 21:

Documents Concerning Your plans to expand or grow Your RMWTS business, including Documents Concerning any potential or planned partnership(s) with any other entity to expand or grow Your RMWTS business.

RESPONSE TO DOCUMENT REQUEST NO. 21:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 21. DISH further objects that non-public data related to its plans for expanding or growing its RMTWS business is exactly the type of highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel.

Based on the foregoing Objections, DISH responds as follows: DISH has already produced, in its second production in response to Plaintiffs' Subpoena, several documents and communications made to the FCC and Monitoring Trustee regarding DISH's plans to expand and grow its RMWTS business. DISH will produce the remainder of the quarterly reports it submitted to the Monitoring Trustee from May 2021 to June 2024, if and only when the Protective Order is modified to adequately address the Firewall Procedures established in the Final Judgment and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 22:

Documents sufficient to show the impact of Your decision to sell DISH TV and Sling to DirectTV on Your RMWTS business, including any analyses of the impact of the sale on Your ability to invest in, or obtain financing for, Your RMWTS business.

RESPONSE TO DOCUMENT REQUEST NO. 22:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 22. DISH further objects to this Request on the grounds that it exceeds the scope of permissible discovery under Fed. R. Civ. P. 26(b)(1). None of the claims or defenses in this case deal with DISH's lines of business involving television let alone the potential transaction referenced in this Request which was terminated by DirecTV in November 2024. This Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the

information as would be required by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2.

Based on the foregoing Objections, DISH responds as follows: The information sought in this Request is neither relevant nor proportional to the needs of the case. It is also highly commercially sensitive and Defendant T-Mobile has failed to make any showing of substantial need. DISH will not expend efforts to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 23:

Documents sufficient to identify all RMWTS plans offered by You during the relevant time period, either on a prepaid or postpaid basis, and the terms of the plans and any changes thereto, including:

- a. Name or shorthand descriptions associated with the plan, both public and internal;
- b. Plan pricing (including base plan price; fees; taxes; other surcharges; charges for mobile devices, device protection, or insurance; promotions; discounts; rebates; subsidies or any other adjustments to the base price).
- c. Bundled packages offered with the plan, such as bundles that include internet services, cable or pay television services, streaming services, or phones and/or other mobile devices.
- d. Plan features and terms (e.g., services included in the plan; whether the plan is prepaid or postpaid; number of lines; limits on usage; network quality attributes such as download/upload speed; network type; limits on services or support based on the type of device such as iPhone or Android).
- e. Limits on the availability of the plan based on geography and/or time.
- f. The dates and details Concerning any changes to the plan.

RESPONSE TO DOCUMENT REQUEST NO. 23:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its

objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 23. To the extent non-public, documents and information sought via this Request contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this Request seeks irrelevant information and is overly broad and not proportional to the needs of the case insofar as it seeks information broken down by geographical area, as the putative class in this litigation is defined on a nationwide basis. Moreover, DISH publicizes the terms of its RMWTS plans for consumers, including plan pricing and plan features. Such information is therefore equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP, which will contain information responsive to this Request. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to protect consumer data and restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request if and only when the Protective Order is modified to adequately address protection of consumer data, the Firewall Procedures established in the Final Judgment, and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile. Beyond

providing Structured Data, DISH will not otherwise expend efforts to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 24:

Documents Concerning Your decision to launch new RMWTS plans and/or retire RMWTS plans, including Your promotional efforts to move subscribers from existing RMWTS plans to new RMWTS plans.

RESPONSE TO DOCUMENT REQUEST NO. 24:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 24. DISH also objects to this Request on the basis that it seeks information that is not relevant to any of the claims and defenses in this matter and therefore exceeds the scope of permissible discovery under Fed. R. 26(b)(1). Documents concerning DISH's decision to launch or retire RMWTS plans have no bearing on any alleged anticompetitive effects from the Merger. DISH has already produced thousands of pages of discovery documenting its viability as a competitor in the RMWTS market. This Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the information as would be required by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2. To the extent at all relevant, DISH's promotional efforts regarding its RMWTS plans are, by definition, publicly available and therefore can be obtained through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P.

26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: The requested information is neither relevant to the litigation nor proportional to the needs of the case. To the extent relevant, DISH's promotional efforts regarding its RMWTS plans are publicly available through various sources including commercial advertising, the Boost Mobile website, and select authorized retailers. DISH will not expend efforts to search, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 25:

Structured data Concerning subscriptions to each RMWTS plan offered by You, broken down by month and geographical area (e.g., Zip Code, City, State, or applicable CMAs, MSAs or RSAs), including, for each RMWTS plan:

- a. The number of existing and new Subscribers.
- b. Subscriber retention rate.
- c. The revenue, cost and profits associated with each RMWTS plan.

RESPONSE TO DOCUMENT REQUEST NO. 25:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 25. DISH further objects that, to the extent non-public, information regarding subscriptions to RMWTS plans offered by DISH constitute highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this

Request seeks irrelevant information and is overly broad and not proportional to the needs of the case insofar as it seeks information broken down by geographical area, as the putative class in this litigation is defined on a nationwide basis. DISH further objects that this Request exceeds the scope of permissible discovery under Fed. R. Civ. P. 26(b)(1) insofar as it seeks revenue, cost, and profit information on a plan-by-plan basis. As DISH has explained, documents concerning DISH's particular RMWTS plans have no bearing on any alleged anticompetitive effects from the Merger. DISH has already produced thousands of pages of discovery documenting its viability as a competitor in the RMWTS market. This Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the information as would be required by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2. Moreover, DISH publicly reports information regarding overall subscriber numbers and subscriber retention in its submissions to the SEC. Such information is equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP, which will contain information responsive to this Request. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to protect consumer data and restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request if

and only when the Protective Order is modified to adequately address protection of consumer data, the Firewall Procedures established in the Final Judgment, and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile. DISH will not otherwise expend efforts to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 26:

Documents sufficient to show the total number of existing and new Subscribers for each RMWTS plans offered by You, broken down by month and geographical area (e.g., Zip Code, City, State, or applicable CMAs, MSAs or RSAs).

RESPONSE TO DOCUMENT REQUEST NO. 26:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 26. DISH further objects that, to the extent non-public, information regarding the total number of existing and new subscribers to RMWTS plans offered by DISH constitutes highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this Request seeks irrelevant information and is overly broad and not proportional to the needs of the case insofar as it seeks information broken down by geographical area, as the putative class in this litigation is defined on a nationwide basis. DISH also objects that this Request exceeds the scope of permissible discovery under Fed. R. Civ. P. 26(b)(1) insofar as it seeks detailed subscriber information on a plan-by-plan basis. As DISH has

explained, documents concerning DISH's particular RMWTS plans have no bearing on any alleged anticompetitive effects from the Merger. DISH has already produced thousands of pages of discovery documenting its viability as a competitor in the RMWTS market. This Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the information as would be required by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2. Moreover, DISH publicly reports information regarding overall subscriber numbers and subscriber retention in its submissions to the SEC. Such information is equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP, which will contain information responsive to this Request. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to protect consumer data and restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request if and only when the Protective Order is modified to adequately address protection of consumer data, the Firewall Procedures established in the Final Judgment, and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile. DISH will not otherwise expend efforts to search, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 27:

Structured data Concerning Your RMWTS Subscribers (other than data concerning Subscribers for whom T-Mobile provided retail billing services), including, for each Subscriber:

- a. Non-identifying information about the Subscriber such as location (e.g., Zip Code, City, State, or applicable CMAs, MSAs or RSAs); account or subscriber number; whether the subscriber is an individual or an entity; the duration of the Subscriber's subscription to Your services, including the date when the Subscriber's subscription started; demographic information relevant to the prices paid by the subscriber (e.g., whether the subscriber is part of a group eligible for certain promotions or plans such as students, teachers, AARP members, or first responders);
- b. Information about service purchased by the Subscriber, including the plan purchased and any changes thereto, number of lines purchased, bundled services purchased or any add-on features purchased;
- c. Information about the device used by the Subscriber, including the make and model of the device, whether the device was purchased through You or supplied by the Subscriber, and any device related services purchased such as insurances, warranties or protection plans;
- d. Monthly usage information, including talk, text and data usage, and the type of network and technology used (3G, LTE, 5G, etc.);
- e. Information about the actual payments made by the Subscriber each month, broken down by base plan price, taxes, fees, charges and surcharges, penalties, discounts, refunds, credits or any other applicable adjustments;
- f. Information about any charges, promotions, discounts, subsidies or credits that are not reflected in the Subscriber's monthly payments, such as any one-time charges or credits;
- g. The cost of providing RMWTS services to the Subscriber each month;
- h. The dates and details Concerning any changes to the Subscriber's services.

RESPONSE TO DOCUMENT REQUEST NO. 27:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing

Document Requests, and applies each to Document Request 27. DISH further objects that the detailed subscriber information sought via this Request is exactly the type of highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this Request seeks irrelevant information and is overly broad and not proportional to the needs of the case insofar as it seeks information broken down by geographical area, as the putative class in this litigation is defined on a nationwide basis. Additionally, DISH objects to this Request on the grounds that it is unduly burdensome to the extent it purports to call for DISH to create documents that do not already exist and/or to create Structured Data that DISH does not maintain in the ordinary course of business. Additionally, DISH objects to this Request on the grounds that much of the information DISH's customers sought herein is subject to federal regulations that restrict disclosure of such information. *See, e.g.*, 47 U.S.C. § 222; 47 C.F.R. § 64.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP, which will contain information responsive to many of the categories in this Request. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to protect consumer data and restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request if and only when the Protective Order is modified to adequately address protection of consumer data, the Firewall Procedures established in the Final Judgment, and DISH's concerns that highly sensitive competitive information be shielded from in-house

personnel at T-Mobile.

DOCUMENT REQUEST NO. 28:

Documents sufficient to explain the meaning of the data responsive to any of these Requests, including any data dictionaries, field codes, and other codes or descriptions.

RESPONSE TO DOCUMENT REQUEST NO. 28:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 28. DISH objects to this Request on the grounds that it is unduly burdensome to the extent it purports to call for DISH to create documents that do not already exist. DISH also objects that "data dictionaries" for DISH proprietary systems such as the DOP constitute highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH further objects to this Request to the extent it purports to impose obligations that exceed those set forth in Fed. R. Civ. P. (e)(1) with respect to the production of ESI in reasonably usable formats.

Based on the foregoing Objections, DISH responds as follows: In connection with its negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP, DISH prepared several documents to assist Plaintiffs and their counsel in interpreting a select data sample. DISH has already provided some of those documents to T-Mobile's outside counsel in connection with this Request. DISH will produce additional documents explaining its Structured Data in response to this Request if and only when the

Protective Order is modified to adequately address the protection of consumer data, the Firewall Procedures established in the Final Judgment, and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile.

DOCUMENT REQUEST NO. 29:

Documents and/or structured data Concerning network speed tests for Your network, whether conducted by You or a third party, during the relevant time period.

RESPONSE TO DOCUMENT REQUEST NO. 29:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 29. DISH further objects that information concerning network speed tests for DISH's 5G network constitutes highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel.

Based on the foregoing Objections, DISH responds as follows: DISH was required to perform FCC-monitored drive testing of its 5G network in order to confirm compliance with its buildout commitments. DISH has already produced documents containing those results in its second production in response to Plaintiffs' Subpoena.

DOCUMENT REQUEST NO. 30:

Documents and/or structured data Concerning the costs of providing services to Your Subscribers, broken down by the type of costs (direct, indirect, overhead, SG&A) and by month.

RESPONSE TO DOCUMENT REQUEST NO. 30:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 30. DISH further objects that, to the extent non-public, information regarding the costs of providing services to DISH subscribers constitutes highly confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH also objects that this Request exceeds the scope of permissible discovery under Fed. R. Civ. P. 26(b)(1) because detailed breakdowns of DISH's costs of providing services to its subscribers have no bearing on any alleged anticompetitive effects from the Merger. DISH has already produced thousands of pages of discovery documenting its viability as a competitor in the RMWTS market. This Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the information as would be required by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2. Moreover, DISH publicly reports information regarding specific costs associated with its retail wireless business in its submissions to the SEC. Such information is equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: DISH is currently in

negotiations with Plaintiffs to provide date-limited Structured Data for Boost subscribers taken from DISH's DOP, which may contain information incidentally responsive to this Request. Any agreement to produce Structured Data will be subject to additional confidentiality protections in order to protect consumer data and restrict any access to T-Mobile in violation of the Final Judgment's Firewall Procedures. DISH will produce the same Structured Data in response to this Request if and only when the Protective Order is modified to adequately address protection of consumer data, the Firewall Procedures established in the Final Judgment, and DISH's concerns that highly sensitive competitive information be shielded from in-house personnel at T-Mobile. DISH will not otherwise expend efforts to search for, collect, review, or produce records in response to this Request.

DOCUMENT REQUEST NO. 31:

Documents and/or structured Data Concerning the costs incurred or investments made by You to build, improve or maintain Your RMWTS offerings, including but not limited to the investments made to improve the quality of Your networks (e.g., 2G, 3G, 4G, 4G LTE, 5G).

RESPONSE TO DOCUMENT REQUEST NO. 31:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 31. To the extent non-public, documents and information sought via this Request contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH has also made numerous public filings with the

government related to costs incurred and investments made to improve the quality of its 5G network. Such information is equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: Some of the information sought via this Request is publicly available through submissions to the SEC by DISH and EchoStar Corp. To the extent it is not, DISH has already produced (as part of DISH's first and second production to Plaintiffs' Subpoena in this case) correspondence, filings, and submissions to multiple government entities including but not limited to the FCC, DOJ, and the Monitoring Trustee, containing information responsive to this Request. DISH will not expend efforts to search, collect, review, or produce additional records in response to this Request.

DOCUMENT REQUEST NO. 32:

Documents and/or structured Data Concerning the gross and net profits on Your RMWTS business, broken down by month, including any profit-sharing agreements or promotional partnerships with third parties (e.g., streaming platforms or cell phone manufacturers implicated in any promotions offered by network operators).

RESPONSE TO DOCUMENT REQUEST NO. 32:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 32. To the extent non-public, documents and information sought via this Request contain DISH's confidential commercial information that is subject to Firewall Procedures set forth in the Final Judgment. DISH

therefore will not produce documents to Defendant T-Mobile in response to this Request unless and until an appropriate protective order is in place to prevent disclosure of such information to T-Mobile's in-house personnel. DISH has also made numerous public filings with the government related to gross and net profits attributable to DISH's retail wireless business. Such information is equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: Some of the information sought via this Request is publicly available in submissions to the SEC by DISH and EchoStar Corp. To the extent it is not, DISH has already produced (as part of DISH's first and second production to Plaintiffs' Subpoena in this case) correspondence, filings, and submissions to multiple government entities including but not limited to the FCC, DOJ, and the Monitoring Trustee, containing information responsive to this Request. DISH will not expend efforts to search for, collect, review, or produce additional records in response to this Request.

DOCUMENT REQUEST NO. 33:

Documents and/or structured data Concerning the Customer Lifetime Value for Your RMWTS Subscribers, including the methodology and inputs (prices, churn, customer acquisition costs, discount rate, etc.) used by You to calculate such value, and any periodic updates thereto.

RESPONSE TO DOCUMENT REQUEST NO. 33:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 33. DISH also objects that this Request exceeds the scope of permissible discovery under Fed. R. Civ. P. 26(b)(1) because

detailed breakdowns of DISH's calculation of Customer Lifetime Value for its RMWTS customers have no bearing on any alleged anticompetitive effects from the Merger. DISH has already produced thousands of pages of discovery documenting its viability as a competitor in the RMWTS market. This Request appears to be an improper attempt to leverage non-party discovery procedures to obtain sensitive information from a commercial competitor without any bearing on the merits of the litigation. *Omron Auto. Elecs.*, 2014 WL 2808984, at *3. T-Mobile therefore cannot show that it has any "substantial need" for the information as would be required by Fed. R. Civ. P. 45(d). *JB Pritzker for Governor*, 2020 WL 1939358, at *2. Moreover, DISH publicly reports information regarding value attributable to its retail wireless customers in its submissions to the SEC. Such information is equally available to T-Mobile through more convenient, less burdensome, and less expensive methods than imposing non-party discovery obligations on DISH. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossmann*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: Some of the information sought via this Request is publicly available in submissions to the SEC by DISH and EchoStar Corp. To the extent it is not, DISH has already produced (as part of DISH's first and second production to Plaintiffs' Subpoena in this case) correspondence, filings, and submissions to multiple government entities including but not limited to the FCC, DOJ, and the Monitoring Trustee, containing information responsive to this Request. DISH will not expend efforts to search, collect, review, or produce additional records in response to this Request.

DOCUMENT REQUEST NO. 34:

All Documents and Communications produced to, provided to, transmitted to or received from Plaintiffs and/or their agents, representatives, attorneys, accountants, or anyone else acting

or purporting to act on their behalf or at their direction Concerning the Action.

RESPONSE TO DOCUMENT REQUEST NO. 34:

DISH restates and incorporates its overall objections to T-Mobile's Subpoena, its objections to T-Mobile's definitions and instructions, and its objections to all foregoing Document Requests, and applies each to Document Request 34. DISH further objects that all of the information sought via this Request can be obtained through sources that are more convenient, less burdensome, and less expensive than issuing a subpoena to a non-party, including obtaining those documents from Plaintiffs themselves. Fed. R. Civ. P. 26(b)(2); *In re Uber Tech.*, 2024 WL 3416644, at *5; *Rossman*, 467 F.Supp.3d at 592.

Based on the foregoing Objections, DISH responds as follows: Defendant T-Mobile can obtain any documents responsive to this request from Plaintiffs and their counsel. DISH is not an appropriate recipient of this Request as a non-party to this litigation.

DATED: January 21, 2025

COBLENTZ PATCH DUFFY & BASS LLP

By: 

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is One Montgomery Street, Suite 3000, San Francisco, CA 94104-5500.

On January 21, 2025, I served true copies of the following document(s) described as

**RESPONSES AND OBJECTIONS TO DEFENDANT T-MOBILE'S
SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS**

on the interested parties in this action as follows:

Rachel S. Brass
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RBrass@gibsondunn.com

Attorney for Plaintiff, Anthony Dale

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mdallas@coblenzlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 21, 2025, at San Francisco, California.



Melissa Dallas