EXHIBIT I

KIRKLAND & ELLIS LLP

Martin L. Roth, P.C.
To Call Writer Directly:
+1 312 862 7170
martin.roth@kirkland.com

333 West Wolf Point Plaza
Chicago, IL 60654
United States

+1 312 862 2000

www.kirkland.com

Facsimile:
+1 312 862 2200

November 15, 2024

Via E-Mail

Hill Brakefield
HAUSFELD
888 16th Street NW
Suite 300
Washington DC 20006
hbrakefield@hausfeld.com

Re: ***Anthony Dale, et al. v. Deutsche Telekom AG and T-Mobile US, Inc.***
(N.D. Ill. 22-cv-3189)
Subpoena to Non-Party AT&T

Dear Hill:

AT&T writes in response to your November 7, 2024, letter regarding enforcement of Plaintiffs' Subpoena to non-party AT&T (the "Subpoena"). The facially overbroad Subpoena includes ***36*** requests for documents and data containing more than ***80*** sub-parts, seeking information from a timespan of ***more than 13 years***, and concerning subjects, investigations, litigation, and other events that are far beyond the scope of the Action. These requests are demonstrably improper to ask of a ***non-party*** and fly in the face of Rules 26(b)(1) and 45(d)(1).

In a recent order denying Plaintiffs' Motion to Compel T-Mobile, the Court emphasized that discovery requests should be evaluated with an "with an eye toward 'proportionality,' which takes into consideration 'the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.'" ECF No. 206 at 3-4 (citations omitted). The Court also began by noting that "[t]he discovery rules are not a ticket to an unlimited, never-ending exploration of every conceivable matter that captures an attorney's interest. Parties are entitled to a reasonable opportunity to investigate the facts—and no more." *Id.* at 1 (citations omitted). Plaintiffs' November 7 letter fails to incorporate any of this important judicial guidance, which was written in the context of ***party*** discovery.

We are very disappointed by Plaintiffs' aggressive about-face after AT&T has been working in good faith with Plaintiffs for over ten months, since January 2024, to address Plaintiffs'

excessive Subpoena. AT&T timely served its response and objections to the Subpoena on January 31, 2024, and Plaintiffs did not begin conferring over these objections until March 12, 2024. During the March conference, Plaintiffs committed to sending a letter to narrow and refine many of their requests. Two months passed before that letter was sent on May 21, 2024. Believing the disagreements could be resolved expediently by further discussion rather than letters at two-month intervals, AT&T suggested meet and confers, which occurred on June 3, 2024, and September 6, 2024. At the September conference, Plaintiffs requested a letter from AT&T stating its current positions, which AT&T provided two weeks later on September 20, 2024. Plaintiffs did not send their current response until November 7, nearly seven weeks later, in which they demanded AT&T's response within one week, reversed several of their positions, and issued ultimatums—grinding months of productive discussion to a halt.

AT&T's September 20 letter provided constructive and fair proposals to resolve all the outstanding disagreements between Plaintiffs and AT&T, which would alleviate the need to burden the Court with further motion practice. Accordingly, AT&T strongly encourages Plaintiffs to reconsider their current unreasonable positions through the lens of AT&T's non-party status, the text of Rule 45(d)(1), and the Court's prior guidance. AT&T's current positions on the issues outlined in your letter are set forth below.

I. Pre-Merger Documents (Request Nos. 1-3 and Instruction No. 13).

As the Court reminded Plaintiffs last month: "It is imperative not to forget that this case is about what happened *after* the merger." ECF No. 206 at 10 (emphasis original) (string citing quotes from Plaintiffs admitting the same). Indeed, the Court denied Plaintiffs' Motion to Compel T-Mobile to produce documents from three custodians, in part, because those custodians "would seem to have far more to do with things leading into the merger and during all the vetting of the merger than with things *after* the merger." *Id.* (emphasis original). Nonetheless, Plaintiffs still contend AT&T's Pre-Merger documents are relevant.

The Court's decision supports AT&T's position. AT&T was not a party to the merger. Documents generated prior to the consummation of the merger are irrelevant, overly broad, and unduly burdensome. AT&T's pre-merger "'predictions'" about the consequences of the merger simply have no probative value in showing the merger's alleged "'actual anticompetitive effects.'" *Id.* (quoting Plaintiffs). Collecting such documents is therefore not proportionate to the needs of the case—especially given that AT&T is not a party to the Action.

However, rather than just stand on its objections, in an effort to compromise, AT&T has taken reasonable steps to avoid undue burden or expense while still providing (irrelevant) information to Plaintiffs—a duty that is supposed to be borne by *Plaintiffs* under Rule 45(d)(1). AT&T agreed to provide Plaintiffs with subscriber data from before the merger. Plaintiffs claim they need to look at the "state of the market before the merger" and, accordingly, AT&T has agreed

to provide subscriber data dating back to 2019 for such analysis. Without justification—and indeed without even seeing the data AT&T is offering to produce—Plaintiffs blindly maintain that this is not enough, and they demand AT&T's "strategic decisions about network deployment, pricing decisions, and competitive reviews" and "modeling and strategy discussions" from before the merger.

Despite the plain lack of relevance, AT&T sought compromise by repeatedly offering to produce what remains from AT&T's prior productions in government investigations and litigation leading up to the merger. As we explained, these materials consist of approximately 1,900 documents previously produced in 2018-2019 to the Department of Justice, the New York Attorney General, and defendants in the previous merger litigation, which include information in various categories Plaintiffs have requested, including 5G rollout and associated costs; spectrum purchases and consolidation; competitive analysis; anticipated potential impacts of the merger; and AT&T's pricing and plans. In the spirit of compromise and efficiency, AT&T offered to produce these materials if Plaintiffs would agree not to seek additional pre-merger documents from AT&T absent good cause.

This is a balanced, proportional approach that allows Plaintiffs access to pre-merger documents while alleviating the burden on AT&T, a non-party, to collect, search, and review additional documents. AT&T does not wish to quibble over Plaintiffs' shifting position regarding this offer. The fact remains AT&T has presented a fair, sensible solution and Plaintiffs apparently will not accept it despite the Court's clear guidance about the marginal relevance of such information.

II. Documents Sufficient to Show Certain Information Requested (Nos. 6, 9-15, 20, 23, 24).

Plaintiffs' Request Nos. 6, 9-15, 20, 23, and 24 on their face are overly broad, unduly burdensome, and disproportionate to the needs of the case, especially given that AT&T is not a party to the Action.[1] Even so, AT&T did not stand on its objections. Again, it offered a reasonable, proportional solution: to provide Plaintiffs with documents sufficient to show many categories of the information requested.[2] Plaintiffs' rejection of that offer and continued scorched-earth

[1] *See, e.g.,* Plaintiffs' Request Nos. 9 ("All documents, ESI, and communications related to spectrum auctions or spectrum purchases"), 15 ("All documents and ESI concerning Your pricing of retail mobile wireless service"); 20 ("All documents related to the practice of bundling of phones and/or other devices with service").

[2] AT&T's Sep. 20, 2024 Letter at 4-5 (offering AT&T's analysis of how spectrum acquisitions by T-Mobile impacted AT&T's sales and pricing, AT&T's analysis of its investment in 5G's impact on AT&T's sales and pricing, AT&T's costs of providing relevant services at a high-level, AT&T's analysis of the competitive impact of the Merger and shutdown of Sprint's networks, AT&T's Post-Merger analysis of its sales and pricing,

insistence that AT&T conduct full collections of numerous custodians' documents across several departments and engage in a broad search-term-based review is unduly burdensome, expensive, disproportionate, and exceeds the standards of Rule 45. It is emblematic of the "unlimited, never-ending exploration of every conceivable matter" the Court cautioned against. ECF No. 206 at 1.

Plaintiffs' extortionate threat to compel the identification of ***twenty*** custodians, unless AT&T identifies custodians so that Plaintiffs can hand-select a subset and then negotiate search terms, ignores the discovery principles the Court outlined in his October 4 Order. As the Court has explained, simply because Plaintiffs insist there are more "stones to be looked under, does not mean they get to look under every one of them." ECF No. 206 at 4. Further, the Court has noted that fifty custodians for a party is "frankly ... a lot" and that "it's *really* a lot when [the custodians] are essentially all of the requesting parties' choosing." *Id.* at 5 (emphasis original). Thus, *twenty* custodians from *a non-party* for Plaintiffs' choosing is extraordinary. Despite Plaintiffs' ultimatum—which is untethered from the Court's ruling and general principles governing discovery of non-parties—AT&T remains committed to resolving this dispute and to avoiding the waste of judicial resources. Accordingly, AT&T renews its offer contained in its September 20 letter to produce "go-get" documents sufficient to show certain information requested.

III. Requests To Be Narrowed (Nos. 7, 17).

Plaintiffs' positions regarding Request Nos. 7 and 17 are baffling. First, Request No. 7 seeks "[a]ll communications with DISH since January 1, 2018" regarding the merger, "any aspect of DISH or DISH's retail wireless customers' access to T-Mobile's wireless communications network," and "any terms" or amendments to the "Master Network Services Agreement"—an agreement between T-Mobile and DISH, to which AT&T is not a party. Plaintiffs represented during the parties' meet and confer on March 12—over 8 months ago—that Plaintiffs would refine this request so that the parties could engage on a solution. But again, Plaintiffs now have reversed course and refuse to budge.

Regarding Request No. 17, Plaintiffs' position is even more confusing where they claim to have narrowed this request, when in fact they have *expanded it* (revisions in red):

> All communications with Verizon or DISH~~, Sprint, T-Mobile, or any MVNOs~~ since January 1, 2017~~, or between T-Mobile and Sprint prior to April 1, 2020,~~ relating to ~~any of the following~~:
>
> a. the Transaction;

AT&T's analysis of product bundling's impact on AT&T's sales and pricing, and AT&T's analysis of speed tests since the Merger. Again, AT&T employed reasonable steps to get Plaintiffs responsive documents, while minimizing burden or expense).

b. retail mobile wireless plan pricing, including discounting;

c. the need or desire to acquire spectrum—whether via auction, purchase from a competitor, or via acquisition of another company—to compete with other mobile network operators;

d. analysis or projections of how spectrum acquisitions by AT&T would affect plan costs, or plan pricing for AT&T customers;

e. analysis or projections of how spectrum acquisitions by AT&T or other mobile network operators would affect plan costs for other mobile network operators, or plan pricing set by other mobile network operators;

f. the portion of customer plan costs AT&T attributes to capital expenditures related to spectrum acquisition;

g. rollout rates of services over time and region, including rollout of 5G;

h. quality of service—including download/upload speed, latency, and packet loss—of Your network, or comparisons of the quality of service on Your network to the quality of service on Verizon's, Sprint's, T-Mobile's, or DISH's networks;

i. prices charged to MVNOs for network access;

j. retail mobile wireless plan subscriber numbers, usage levels, and churn rates; or

k. joint technology investment or operations efforts with either company relating to mobile wireless telecommunications.

AT&T intended to work with Plaintiffs to resolve the disagreements concerning Request Nos. 7 and 17. However, given Plaintiffs' current refusal to narrow their requests—choosing instead to *expand* one of them—AT&T must stand on its objections. This is not a good-faith negotiation.

IV. Requests Concerning MVNO, Competitor Communications, and Customer Feedback (Nos. 8, 10, 14, 16, 19).

Plaintiffs' requests concerning MVNOs (Nos. 8, 10, 14, 16, 19) are irrelevant, vague and ambiguous, overly broad, unduly burdensome, and not proportional to the needs of the case. Plaintiffs' claims do not concern any of the arrangements between AT&T and its MVNOs. Plaintiffs seek AT&T's most competitively sensitive information concerning its MVNO business relations and strategy, but they cannot demonstrate any substantial need for it, much less a substantial need that can be met without undue hardship. Fed. R. Civ. P. 45(c)(3)(B). Plaintiffs' conclusory remarks "that MVNOs are part of the Retail Cell Service Market" and that their case is about the retail cell service market does not demonstrate relevance, let alone a substantial need.

The single paragraph of the complaint cited in Plaintiffs' letter does not demonstrate the relevance of (or substantial need for) AT&T's documents about its MVNOs. It merely establishes Plaintiffs' position regarding MVNOs' sales *to their own retail customers.* Even if these sales were relevant to the claims at issue, AT&T has no involvement in, control over, or visibility into the prices MVNOs set to their own retail customers.

Accordingly, providing what is some of AT&T's most sensitive business information for which there is no substantial need is certainly not proportional to the needs of the case. As the Court has ruled, Plaintiffs are not entitled to a lot of discovery on top of a lot of discovery "damn the burdens, costs, and judicial resources." ECF No. 206 at 6. AT&T has agreed to provide records sufficient to show its analysis of its sales and pricing in the Post-Merger landscape. That is more than sufficient for a non-party's obligations under Rule 45 given the shape of this case. AT&T stands on its objections.

V. Documents Concerning Named Plaintiffs (No. 35).

As you are aware, AT&T has previously agreed to conduct a reasonable search for and to produce non-privileged records sufficient to show Plaintiffs Anthony Dale, Benjamin Borrowman, and Ann Lambert's retail mobile plans with AT&T after April 1, 2020. While AT&T objects to the relevance of pre-Merger documents (see above), in the spirit of compromise, AT&T agrees to conduct a reasonable search for and produce Anthony Dale and Ann Lambert's billing statements from June 2018 through 2019 to the extent they exist.

Sincerely,

Martin Roth

Martin L. Roth P.C.