

## **EXHIBIT J**



February 14, 2025

Jose Roman Lavergne  
Associate

**VIA ELECTRONIC MAIL**

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**RE: Enforcement of Subpoena to AT&T in *Dale v. Deutsche Telekom AG*, Case No. 1:22-cv-03189 (N.D. Ill.)**

Dear Martin:

AT&T's November 15, 2024 letter ("AT&T's Letter") confirms that we are at an impasse on Plaintiffs' Requests from Subpoena.<sup>1</sup> While we hope that AT&T will reconsider, if AT&T intends to stand on its objections, Plaintiffs will promptly seek judicial enforcement of their Requests. Given the intervening time since our last discussions, this letter is intended to recap the status of our negotiations and lay out our final position that we would present to the Court absent agreement.

At bottom, AT&T fails to acknowledge the relevance of the Requests at issue, instead claiming that document production would be overly burdensome. But, as Plaintiffs have repeatedly explained, any claim of burden is properly addressed by engaging in good faith negotiations concerning the number of custodians and search terms used.

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

Request Nos. 1-3 involve governmental proceedings and litigation. Request No. 1 seeks documents and ESI produced by AT&T or received from government investigations concerning the T-Mobile and Sprint merger. Request No. 2 seeks documents and ESI produced by AT&T in the states' pre-merger case. Request No. 3 seeks documents and ESI produced by AT&T from government investigations concerning potential or attempted mergers between AT&T and Sprint/T-Mobile. These requests are relevant in evaluating the post-merger anticompetitive effects by analyzing the state of the market before and after the merger.<sup>2</sup>

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<sup>1</sup> Plaintiffs sent AT&T a separate letter on structured data on January 31, 2025.

<sup>2</sup> See also Plaintiffs' November 7, 2024 letter ("Plaintiffs' Letter"), at 1 ("Furthermore, strategic decisions about network deployment, pricing decisions, and competitive reviews occur months before changes occur. AT&T's modeling and strategy discussions before the merger consummated would have considered the different possible scenarios for Sprint's future and speak directly to the competitive decisions AT&T made after the merger.")

Plaintiffs will abstain from moving on these requests if AT&T agrees to produce “what remains from AT&T’s prior productions in government investigations and litigation leading up to the merger,” *see* AT&T’s Letter, at 3, and agrees to produce responsive documents between AT&T’s last production (which appears to be August 2019) and when the merger closed (April 2020).

**Request Nos. 6, 9-15, 20, 23, 24**

Request No. 6 involves non-party access to AT&T’s network. Request No. 6 seeks communications and documents regarding the planned shutdown of Sprint’s 3G CDMA network and Sprint’s LTE network. This request is relevant in evaluating how “the competitive landscape shifted” for the MNOs after the merger. Compl. at 3.

Request Nos. 9-12 involve AT&T’s network. Request No. 9 seeks “documents, ESI, and communications related to spectrum auctions or spectrum purchases, or spectrum acquisition.” Request Nos. 10-11 seek internal assessments, documents, and ESI related to 5G. Request No. 12 seeks documents and ESI “related to the cost of providing service, including the cost of 5G rollout, as well as all internal models that analyze cost.” These requests are relevant in evaluating whether the effects of the merger (i.e., price increases) were caused, for example, by the shift from 4G to 5G.

Request Nos. 13-15 involve AT&T’s merger and market analysis. Request No. 13 seeks “documents and ESI related to competition in the retail mobile wireless market[.]” Request No. 14 seeks documents and ESI concerning the effects on competition for retail mobile wireless service from the Sprint and T-Mobile merger. Request No. 15 seeks “documents and ESI concerning [AT&T’s] pricing of retail mobile wireless service.” These requests are relevant in evaluating whether the merger reduced competition in the retail mobile wireless market and resulted in AT&T charging higher prices.

Request Nos. 20, 23, and 24 involve AT&T’s network, coverage, and retail plan information. Request No. 20 seeks documents related to bundling phones and other devices of service (e.g., SMS messaging). Request No. 23 seeks documents concerning “data, inputs, metrics, and results from any internal network speed test run” by AT&T. Request No. 24 seeks documents concerning AT&T’s “retail mobile wireless plans[.]” These requests are relevant in evaluating the effect of the merger on competitive efforts (e.g., network performance and bundling services) by MNOs, including AT&T.

We continue to be at an impasse on these Requests. AT&T ignores that it is not an ordinary non-party here, where Plaintiffs are AT&T’s customers and thus AT&T has unique, relevant information relevant to their claims. On AT&T’s offer on go-get documents, Plaintiffs have no issue with AT&T collecting and producing documents that AT&T has identified as responsive to Plaintiffs’ requests. However, go-get documents alone will not suffice to capture relevant, responsive documents for this request, and AT&T has articulated no burden to conducting custodial searches. Plaintiffs will abstain from moving on these requests if AT&T agrees to identify custodians with responsive documents to Plaintiffs’ requests from the date of AT&T’s last production in government investigations and litigation leading up to the merger (which appears to

be August 2019) to December 31, 2023, organizational charts sufficient to evaluate AT&T's custodians, and a search term proposal for custodial searches.

### **Request Nos. 7, 17**

Request Nos. 7 and 17 involve AT&T's communications with Verizon or DISH regarding, *inter alia*, the Sprint and T-Mobile merger. Plaintiffs allege that the merger led to AT&T and Verizon slowing down their competitive efforts and raising prices on Plaintiffs. AT&T's communications with Verizon or DISH are relevant to showing, for example, AT&T's knowledge that DISH would fail to pose a competitive threat in the relevant market.

To clarify one point in your letter, as a result of our meet and confers and as a show of good faith, Plaintiffs have attempted to narrow Request No. 17 by describing the specific subcategories of documents concerning spectrum acquisition that they would accept as sufficient to satisfy the Request. We are disappointed that AT&T's letter characterizes this as a broadening of the Request simply because it lists out those specific subcategories but hope this clarification resolves the issue. That said, if AT&T does not understand how this Request has been narrowed, please let us know and we are happy to talk you through the narrowing.

AT&T's Letter, once again, does not address how targeted search terms would not address AT&T's (as-yet-unsubstantiated) burden concerns. For example, for Request No. 17, Plaintiffs provided clarifications and narrowed the request to cover communications between AT&T and Verizon or DISH, terms which could be used to narrow any custodial searches. *See* Plaintiffs' Letter, at 3. Plaintiffs will abstain from moving on these requests if AT&T agrees to identify custodians with responsive documents to Plaintiffs' requests from the date of AT&T's last production in government investigations and litigation leading up to the merger (which appears to be August 2019) to December 31, 2023, organizational charts sufficient to evaluate AT&T's custodians, and a search term proposal for custodial searches.

### **Request Nos. 8, 10, 14, 16, 19 (MVNO, Competitor Communications, and Customer Feedback)**

Request No. 8 involves non-party access to AT&T's network. Request No. 8 seeks AT&T's communications with affiliate MVNOs regarding, *inter alia*, the Sprint and T-Mobile merger. Request No. 10 involves AT&T's network by seeking internal assessments related to 5G. Request Nos. 14, 16, and 19 involve the merger and market analysis. Request No. 14 seeks documents and ESI concerning the effects on competition for retail mobile wireless service from the Sprint and T-Mobile merger. Request No. 16 seeks documents and ESI concerning service for MVNOs. Request No. 19 seeks documents on customer complaints or customer satisfaction with AT&T's mobile telecommunications services or market wide effect.

Plaintiffs offered clarifications in Plaintiffs' Letter, at 4, for Request Nos. 8, 10, 14, and 16. AT&T's formulaic objection ("irrelevant, vague and ambiguous, overly broad, unduly burdensome, and not proportional to the needs of the case") are arguably the equivalent to no objection at all. *See* AT&T's Letter, at 5. AT&T cannot escape the fact that Plaintiffs' Complaint says the relevant market "includes MVNO sales to their customers, for purposes of economic

analysis those subscribers should be attributed to the MNOs whose networks they use.” Compl. at 10-11. The relationship between AT&T and MVNOs is relevant in analyzing the effects of the merger. Once again, AT&T provides no clarification in its letter on whether or not AT&T has responsive documents to these requests. AT&T must confirm in writing whether it lacks responsive documents.

Regarding AT&T’s offer to produce records sufficient to show its analysis of its sales and pricing in the post-merger landscape, Plaintiffs have no issue with AT&T collecting and producing documents that AT&T has identified as responsive to Plaintiffs’ requests. However, as with other requests and in the absence of any substantiated claims of burden, Plaintiffs cannot agree to go-get alone. Plaintiffs will abstain from moving on these requests if AT&T agrees to identify custodians with responsive documents to Plaintiffs’ requests from the date of AT&T’s last production in government investigations and litigation leading up to the merger (which appears to be August 2019) to December 31, 2023, organizational charts sufficient to evaluate AT&T’s custodians, and a search term proposal for custodial searches.

Please let us know by Friday, February 21 which of Plaintiffs’ offers AT&T accepts, so we can narrow our disputes for motion practice. Pursuant to Local Rule 37.2, please provide AT&T’s availability by Friday, February 21 to consult in good faith to hopefully resolve our differences and reach an agreement.

Best regards,

/s/ Jose Roman Lavergne  
Jose Roman Lavergne