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

ANTHONY DALE, JOHNNA FOX, BENJAMIN BORROWMAN, ANN LAMBERT, ROBERT ANDERSON, and CHAD HOHENBERY, on behalf of themselves and all others similarly situated, Plaintiffs, v. T-MOBILE US, INC., Defendant.	Case No. 1:22-cv-03189 Hon. Thomas M. Durkin Hon. Jeffrey Cole

MOTION TO COMPEL AT&T MOBILITY LLC
TO PRODUCE DISCOVERY RESPONSIVE TO PLAINTIFFS' SUBPOENA

I. INTRODUCTION

This case concerns one of the most destructive (to competition) mergers in history. Combining T-Mobile and Sprint into one firm (the "Merger") created a much more concentrated market: three firms of roughly equivalent size now effectively control the U.S. retail wireless industry and its over $300 billion per year in revenues. The result has been as predicted: all three firms—T-Mobile, AT&T, and Verizon—have increased fees and costs to consumers and offered them less per dollar. A decade-long trend of falling prices has been decisively reversed. While AT&T and Verizon may have no liability for the Merger and its effects, they profited handsomely from it, and their over 200 million combined subscribers have quite literally paid the price.

This case asserts Sherman Act and Clayton Act claims against T-Mobile on behalf of those subscribers to recover what likely amounts to billions of dollars in damages. As such, it puts the pricing decisions of AT&T and Verizon front and center for purposes of discovery. Indeed, as the court evaluating the Merger observed, higher prices after a merger "do not just 'happen'"; rather, they "embody the actions taken, directly or indirectly, by decisionmakers in the relevant market."[1]

While AT&T has offered to produce a limited and curated set of hand-selected corporate documents, it has utterly refused to conduct a single search of a single custodian's files for responsive information, including for key information about its network, about its communications with DISH and T-Mobile, or even its pre-Merger production. Instead, it has asserted boilerplate objections—"irrelevant," "vague and ambiguous"—and unsubstantiated claims of burden and disproportionality. And while AT&T has agreed in principle to produce structured data, it has not committed to producing all of the data fields Plaintiffs requested to calculate the Merger's effects.

Plaintiffs therefore ask this Court to order AT&T to conduct custodial searches covering

[1] *See New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 245 (S.D.N.Y. 2020).

nineteen (19) Requests across only fifteen (15) key custodians—35 fewer than T-Mobile. This request cannot plausibly be characterized as unduly burdensome to a multi-billion-dollar firm like AT&T, or as disproportional to a case on behalf of 200 million+ consumers, including 100 million+ of AT&T's customers. This Court should grant the motion and compel production from AT&T.

II. BACKGROUND

In April 2018, T-Mobile announced a Merger with Sprint. Compl. ¶ 4. The retail wireless market at the time consisted of four mobile network operators ("MNOs"): Verizon and AT&T, each with approximately 100 million subscribers, T-Mobile (64 million) and Sprint (41 million). *Id.* ¶ 30. For the preceding decade, both T-Mobile and Sprint had positioned themselves as price-cutting, disruptive "mavericks." *Id.* ¶ 35. T-Mobile branded itself the "un-carrier" and, along with Sprint, spurred competition by lowering prices, improving quality, and adding new plan features to entice new subscribers. *Id.* ¶¶ 36–40. As a result, in the decade prior to the Merger, the nominal price of a nationwide wireless plan decreased every year by an average of 6.3%, including for millions of Verizon and AT&T subscribers. *See id.* ¶¶ 7, 30.

The Merger concentrated the market so much that it triggered a legal presumption that competition would be substantially reduced. *Id.* ¶ 51 & n.58. And worse yet, the Merger combined two growing mavericks into a single, much larger carrier operating on the same scale as AT&T and Verizon, reducing the incentive to compete even further. *Id.* ¶ 20. "[A]s Sprint itself put it when suing to block AT&T from acquiring T-Mobile in 2011, 'Verizon, AT&T's most significant competitor post-merger, would not have the incentive to constrain AT&T, and would have a substantially increased incentive to coordinate with AT&T rather than compete.'" *Id.* ¶ 57.[2] Nevertheless, a district court approved the Merger, accepting T-Mobile's claim that it would exploit

[2] (Quoting Compl. ¶ 3, *Sprint v. AT&T et al.*, No. 1:11-cv-01600 (D.D.C. Sept. 6, 2022), ECF No. 1).

"merger efficiencies" to compete, *to the benefit of customers of Verizon and AT&T*.[3]

Reality turned out differently: T-Mobile, AT&T, and Verizon dialed back competition to maximize profits. Even before the Merger closed, T-Mobile CEO John Legere "reported that as soon as the Merger agreement was signed, T-Mobile observed that AT&T and Verizon started to slow their aggressiveness in responding to prices." Compl. ¶ 81. Post-Merger, AT&T boasted to its investors how "a more normalized industry backdrop" post-Merger (meaning fewer real competitors and no mavericks) would permit "surgical price increases" to boost growth for AT&T. *Id.* ¶ 107. AT&T CEO John Stankey also boasted that, after the Merger, "he saw room" to raise prices and predicted that, in fact, "prices would rise across the telecom industry 'over the next several quarters.'" *Id.* (internal citation omitted). And then "on May 3, 2022, AT&T announced that it would be raising rates on older wireless plans by $6 per month for single-line users and as much as $12 per month for customers with multiple lines." *Id.* AT&T's price hikes have continued: AT&T "impos[ed] $10 and $20 monthly price hikes on users of older unlimited wireless plans starting in August 2024."[4] This "mark[ed] a notable shift in [AT&T's] pricing strategy."[5]

Verizon followed along. "Verizon publicly signaled the possibility of raising prices following AT&T's announcement." Compl. ¶ 108. "At Verizon's 2022 first quarter earnings call, CEO Hans Vestberg admitted the company is 'looking into what we can do with pricing.'" *Id.*

---

[3] *See Deutsche Telekom*, 439 F. Supp. 3d at 210, 217. The court also accepted T-Mobile's contention that divesting a small part of its business to DISH would position it to fully replace T-Mobile as a competitor in very short order. *Id.* at 231–32. That representation was almost immediately upended when T-Mobile prematurely shut down its 3G CDMA network that served the majority of DISH's subscribers before DISH could build out its own 5G network. *See* Compl. ¶¶ 90–101. "DISH therefore had to turn to AT&T—its supposed future competitor—as its main network partner," in a "10-year network-services agreement that gives DISH wholesale access to AT&T's network in exchange for at least $5 billion annually," effectively relegating it to being an MVNO ("mobile network virtual operator") *Id.* ¶ 97.

[4] John Brodkin, *AT&T Imposes $10 Price Hike on Most of Its Older Unlimited Plans*, ArsTechnica (June 18, 2024), https://arstechnica.com/tech-policy/2024/06/att-imposes-10-price-hike-on-most-of-its-older-unlimited-plans/.

[5] Akash, *Almost 200 Million Customers of AT&T in a Dilemma as Plan Price Hikes with Bigger Hotspot Benefits*, Gadget (Feb. 8, 2024), https://www.gadgetinsiders.com/wireless-carriers/att-plan-price-hikes/.

Throughout 2022, Verizon implemented "a bevy of price increases for its plans," including both prices and administrative fees.[6] And New T-Mobile has done the same, "increas[ing] prices for older phone plans . . . by $2 or $5 per line last year" and subscribers "will soon face [additional] price increases."[7] The new market structure can also been seen in customers' collective response: "[S]o far the price hikes haven't pushed US customers to look for service elsewhere. AT&T, T-Mobile and Verizon all reported historically low levels of churn [customers switching] in the first quarter, according to a recent report."[8] That's because consumers now have nowhere else to go.

On October 19, 2022, Plaintiffs subpoenaed AT&T for documents responsive to 36 Requests related to the Merger, the retail wireless market, and AT&T's wireless business. On January 31, 2024, AT&T served Responses and Objections. AT&T asserted boilerplate objections that the discovery is "irrelevant," as well as "vague and ambiguous, overly broad, unduly burdensome, unreasonably cumulative and duplicative of other requests, and not proportional to the needs of the case."[9] AT&T refused even to negotiate a response to Plaintiffs' subpoena during T-Mobile's interlocutory appeal.[10] Nevertheless, Plaintiffs sent AT&T a compromise proposal that narrowed many of Plaintiffs' Requests on May 21, 2024.[11] The parties met on September 6, during

---

[6] Eli Blumenthal, *T-Mobile Raises Rates on Select Legacy Plans, Here's the Deal*, CNET (May 26, 2024), https://www.cnet.com/tech/mobile/t-mobile-raises-rates-on-select-legacy-plans-heres-the-deal/.

[7] Patricia Battle, *T-Mobile Customers Threaten to Leave After Latest Warning*, TheStreet (Mar. 4, 2025), https://www.thestreet.com/technology/t-mobile-customers-threaten-to-leave-after-latest-warning.

[8] Mike Dano, *US Mobile Prices Sky High after T-Mobile's Sprint Buy - Report*, LightReading (May 14, 2024), https://www.lightreading.com/operations/us-mobile-prices-sky-high-after-t-mobile-s-sprint-buy-report.

[9] Decl. of Swathi Bojedla in Support of Pls.' Mot. To Compel (hereinafter "Bojedla Decl."), ¶ 3, Ex. B, at Response Nos. 1–3, 6–7, 10, 14–17 (pages 13–15, 18–19, 22, 26–29). AT&T's other responses offer a similar litany. *See id.* at Response Nos. 8–9, 11–13, 19–20, 23–24 (pages 20–21, 23–25, 30–31, 35–36).

[10] *See id.* ¶ 6. On November 2, 2023, the Court denied T-Mobile's motion to dismiss. ECF No. 114. On March 27, 2024, the Court granted T-Mobile permission to seek interlocutory appeal under 28 U.S.C. § 1292(b). ECF No. 176. Non-parties, including AT&T, stopped responding to Plaintiffs' requests to communicate as of the date of the Court's order. T-Mobile's application for interlocutory appeal was not denied until May 16, 2024, *id.* ¶ 7, Ex. D, and no non-party worked with Plaintiffs to resolve disputes or produce documents until the interlocutory appeal was denied.

[11] *Id.* ¶ 8, Ex. E.

which Plaintiffs proposed that, to address any claims of burden, Plaintiffs could negotiate custodians and search terms and requested a custodial proposal, organizational charts, and proposed search terms to do so.[12] On September 20, 2024, AT&T refused: AT&T agreed only to produce a narrow set of documents hand-selected by AT&T's counsel and responsive only to a limited number of requests.[13] On November 7, 2024, Plaintiffs proposed another compromise.[14] Plaintiffs narrowed several Requests, asked AT&T to identify custodians, and (again) invited AT&T to negotiate search terms and custodians. AT&T refused again on November 15, 2024.[15]

Plaintiffs therefore tried to identify relevant custodians on their own.[16] Plaintiffs provided AT&T a list of 15 proposed custodians as well as a list of search terms on February 24, 2025, as described below.[17] The parties held a final meet and confer on March 3, 2025 when AT&T again said it would not agree to any custodial searches and would not be countering Plaintiffs' proposal.[18] To this day, AT&T has never quantified the burden or expense of conducting custodial searches, through hit count reports, cost estimates, or otherwise. Thus, despite five telephonic meet and confers and more than a dozen substantive letters and emails, negotiations are at impasse.

III. LEGAL STANDARD

Rule 26 permits litigants to discover any "nonprivileged matter that is relevant to any party's claim or defense." "[R]elevance is construed broadly," a standard that "applies with equal

[12] *Id.* ¶ 14.

[13] *See id.* ¶ 15, Ex. G.

[14] *See id.* ¶ 16, Ex. H.

[15] *Id.* ¶ 17, Ex. I.

[16] *See id.* ¶ 22, Exs. K1 and K2.

[17] *Id.* ¶¶ 22–37.

[18] *Id.* ¶ 39.

force to nonparty discovery under Rule 45."[19] In determining scope, "the court should consider the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues."[20] If "the discovery sought appears relevant, the party opposing the subpoena bears the burden of proof to establish the discovery's lack of relevance by demonstrating that it is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure."[21] Likewise, "[u]ndue burden or expense, actual or potential, must be shown by a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements."[22] "Phrased differently, one claiming undue burden must do more than intone the phrase."[23] After all, "general objections" are "tantamount to not making any objection at all."[24] And any objections have less force in a case to enforce the antitrust laws, which "concern[] broad public interests transcending the private objectives of the parties."[25]

IV. ARGUMENT

The Court should compel AT&T to perform custodial searches for documents responsive

---

[19] *Architectural Iron Workers' Loc. No. 63 Welfare Fund v. Legna Installers Inc.*, 2023 WL 2974083, at *4 (N.D. Ill. Apr. 17, 2023) (citations and internal quotation marks omitted).

[20] *In re Subpoena Upon Nejame Law PA*, 2016 WL 3125055, at *4 (N.D. Ill. June 3, 2016) (internal quotation marks omitted) (denying motion to quash Rule 45 subpoena); *see also Motorola Sols., Inc. v. Hytera Commc'ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019) (Cole, M.J.) (discussing proportionality and identifying the relevant factors).

[21] *EEOC v. Heart of CarDon, LLC*, 339 F.R.D. 602, 607 (S.D. Ind. 2021) (quotation omitted).

[22] *Papst Licensing GMBH & Co. KG v. Apple, Inc.*, 2017 WL 1233047, at *3 (N.D. Ill. Apr. 4, 2017) (Cole, M.J.) (internal quotation marks omitted); *see also Breuder v. Bd. of Trustees of Cmty. Coll. Dist. No. 502*, 2020 WL 4676666, at *4 (N.D. Ill. Aug. 12, 2020) (burden is on objecting party); *In re Realpage, Inc.*, 2025 WL 800962, at *1 (M.D. Tenn. Mar. 7, 2025) (granting motion to compel because defendant's "burden arguments fail on its face because [defendant] presents *no* evidence in support of its assertions that it would be costly or time consuming to produce the relevant information" nor "any argument as to how its purported burden outweighs Plaintiffs' likely benefit of the requested information" and so defendant's "mere declaration that it is unduly burdensome to produce the requested information cannot absolve it from participating in the discovery process").

[23] *Papst Licensing GMBH*, 2017 WL 1233047, at *3.

[24] *Fudali v. Napolitano*, 283 F.R.D. 400, 403 (N.D. Ill. 2012) (Cole, M.J.).

[25] *Associated Milk Dealers, Inc. v. Milk Drivers Union*, 422 F.2d 546, 552 (7th Cir. 1970).

to Plaintiffs' subpoena and to produce structured data in accordance with Plaintiffs' Requests.

A. Custodial Searches

1. Documents About AT&T's Pricing and Market Analysis

First, Plaintiffs have proposed custodial searches directly relevant to the central issue of this case: the predicted and actual effect of the Merger on AT&T's incentives to compete. Specifically, Plaintiffs seek documents about AT&T's evaluation of the Merger, its assessments of competition in the retail wireless market after the Merger, its pricing of its retail mobile wireless service, the features of its plans (and product bundles), and customer perceptions of AT&T and the retail wireless market (*see* Request Nos. 13–16, 19–20, 24).[26] Specifically, Request Nos. 13–15, 20, and 24 seek "documents and ESI related to competition in the [retail wireless] market" and the effects on competition in the retail wireless market from the Merger in particular (Request Nos. 13–14). They also seek information related to how AT&T competed in the retail wireless market, including AT&T's "pricing of retail mobile wireless service," its bundling of phones and other devices of service (*e.g.*, SMS messaging), and other documents concerning its "retail mobile wireless plans." (Request Nos. 15, 20, 24). Finally, these Requests seek documents "concerning trends or analysis of customer complaints or customer satisfaction either specific to [AT&T's] wireless mobile telecommunications services subscribers or market wide" (Request No. 19).

These requests are relevant in evaluating whether the Merger reduced competition in the retail wireless market and resulted in AT&T charging higher prices or otherwise reducing its competitive efforts (*e.g.*, network performance and bundling services). And documents pertaining to customer complaints and customer satisfaction are relevant to AT&T's subscriber churn rate,

[26] Plaintiffs narrowed Request Nos. 15–16 and 24. *See* Bojedla Decl., ¶ 8, Ex. E. For Request No. 15, Plaintiffs agreed to limit the scope of the Request to a discrete list of topics related to pricing. For Request Nos. 16 and 24, Plaintiffs agreed to limit the scope of the Requests to "documents sufficient to show" certain information about AT&T's retail mobile wireless plans (Request No. 24) and terms of its contracts with MVNOs (Request No. 16).

the retail wireless market, and competition between MNOs. Indeed, AT&T subpoenaed Sprint for many of the same documents when AT&T litigated its attempted acquisition of T-Mobile in 2011—and successfully obtained a court order enforcing its subpoena.[27]

AT&T does not seriously dispute the relevance of these categories of documents.[28] Instead, it asserts a burden objection and offers to "produce 'go-get' documents sufficient to show certain information" without any specifics given as to the nature of those cherry-picked documents.[29] To prove their claims under the Sherman Act and Clayton Act, Plaintiffs need to understand the reasons behind the "purposeful business choices made by [AT&T's] management calculated, affirmatively or by effect, to achieve those ends."[30] Plaintiffs' requested discovery into AT&T's competitive decision making is indispensable to resolving this litigation.

Furthermore, any burden or expense on AT&T (a company with outsized resources and a $196 billion market cap) does not outweigh the benefit of obtaining that discovery. While AT&T is a non-party, its cursory invocation of that status is unavailing under the "case-specific [burden] inquiry" because the applicable factors—the requested discovery's "relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed"—all weigh in favor of enforcing Plaintiffs' subpoena here. Indeed, courts have required non-parties to conduct search-term-based reviews in much smaller cases than this.[31]

---

[27] *See* Bojedla Decl., ¶¶ 41–42, Exs. M and N.

[28] AT&T is standing on a relevance objection with respect to Request No. 19. *See id.* ¶ 38, Ex. L. But that objection is limited "to the extent it seeks information from before the consummation of the merger (April 1, 2020), rather than information concerning 'conduct that took place afterward.'" *Id.* ¶ 3, Ex. B, at 31 (quoting ECF No. 63 at 9). As above, AT&T's temporal objection is without merit: Evaluating the effects of the Merger requires an understanding of the state of the retail wireless market *pre*-Merger as a basis for comparison to the state of the market post-Merger.

[29] *Id.* ¶ 38, Ex. L, at 3.

[30] *Deutsche Telekom*, 439 F. Supp. 3d at 245.

[31] *SPS Techs., LLC v. Boeing Co.*, 2019 WL 2409601, at *4 (N.D. Ill. June 7, 2019) (search of seven custodians).

AT&T's objection is not supported by "a particular and specific demonstration of fact" and is instead merely the kind of "stereotyped and conclusory statements" this Court has found insufficient.[32] With respect to claims of burden regarding custodial searches specifically, AT&T's failure to substantiate burden by conducting hit count analyses of Plaintiffs' search terms for Plaintiffs' requested custodians is dispositive.[33] As for AT&T's offer to produce only the documents it chooses, a self-serving collection of documents, likely engineered to paint a picture of AT&T as a tough competitor, will not provide Plaintiffs or the jury a fair answer to the question of whether AT&T exploited a less competitive post-Merger market.

Plaintiffs would have welcomed input from AT&T on the custodians most likely to have this information. In the absence of any input from AT&T, Plaintiffs have identified the following 15 custodians (which parallel roles held by the 50 custodians agreed-to by T-Mobile):

- **John Stankey**, AT&T's CEO. Stankey announced price hikes post-Merger, which contributed to AT&T stock hitting a "five-year high." *See* Bojedla Decl., ¶ 23.
- **Chris Sambar**, former President and Executive Vice President at AT&T Network, who "played a crucial role" for AT&T's wireless business, where his work was "instrumental to advancing 5G." *Id.* ¶ 24.
- **Jeff McElfresh**, AT&T's COO, was "[r]esponsible for the AT&T's transition to a software-defined and future 5G network." *Id.* ¶ 25.
- **F. Thaddeus Arroyo**, currently AT&T's Chief Strategy and Development Officer, "oversees corporate strategy" and previously oversaw "both of AT&T's prepaid wireless brands – AT&T PREPAID and Cricket Wireless – with a combined base of more than 16.5 million customers." *Id.* ¶ 26.
- **Jenifer Robertson**, currently AT&T's Executive Vice President & General Manager for AT&T Mass Markets, has "profit & loss responsibility for AT&T's wireless and consumer wireline businesses, delivering more than $90B in annual revenue – AT&T's largest revenue stream" and her roles also include "technology planning and corporate strategy."

[32] *See Papst Licensing GMBH*, 2017 WL 1233047, at *3.

[33] *See In re Outpatient Med. Ctr. Emp. Antitrust Litig.*, 2023 WL 4181198, at *11 (N.D. Ill. June 26, 2023) (objector must "provide[] hit counts for searches run with each of the proposed terms regardless of whether it believe[s] the terms [are] appropriate" and "share[] hit counts on more restrictive searches to allow [the requestor] to modify specific search terms and parameters that produced a large number of hits, including potentially numerous irrelevant hits").

Id. ¶ 27.

- **Yigal Elbaz**, AT&T's Senior Vice President and Network Chief Technology Officer, "oversees the global mobile and fixed network technology direction for AT&T, which includes the design of the company's 5G infrastructure." *Id.* ¶ 28.

- **Mo Katibeh**, former Head of Network Infrastructure & Build, "oversaw the company's aggressive expansion of its fiber network and its nationwide 5G deployment" *Id.* ¶ 29.

- **Pascal Desroches**, AT&T's Senior Vice President and Chief Financial Officer, "oversee[s] the financial strategy for AT&T's $122 billion connectivity business" and "has spearheaded the company's significant cost transformation efforts . . . and overseen historic levels of 5G and fiber investment." *Id.* ¶ 30.

- **Kellyn Smith Kenny**, AT&T's Chief Marketing & Growth Officer, boasts of a "razor-sharp customer insight" and is "responsible for accelerating customer acquisition, increasing customer lifetime value, and strengthening AT&T's premium position." *Id.* ¶ 31.

- **Melissa Arnoldi**, AT&T's Executive Vice President for Consumer Operations, "oversaw 185M customer touchpoints annually, spanning contact centers, field operations, and billing operations" and boasts that she "achieved industry-leading churn." *Id.* ¶ 32.

- **Valerie Vargas**, AT&T's Senior Vice President, Content Creation & Advertising, AT&T Inc., is tasked with "improv[ing] customer retention" and "[o]verse[ing] all AT&T Retail Merchandising" at "5400 retail stores." *Id.* ¶ 33.

- **David Christopher**, former AT&T Executive Vice President & General Manager, "led industry leading growth and lowest churn" at AT&T. *Id.* ¶ 34.

- **Kelly King**, former AT&T Executive Vice President for Sales & Distribution, who "head[ed] up AT&T's 5G go-to-market strategy" and "ha[d] profit and loss responsibility for all [AT&T's] postpaid wireless products, including product marketing, pricing, promotions, retention, and forecasting as well as device strategy." *Id.* ¶ 35.

- **Ali Kilani**, AT&T's Director of Marketing, designs and implements "multi-billion-dollar budget marketing strategies aimed at increasing subscribers and revenue." *Id.* ¶ 36.

- **Dan Colquitt**, AT&T's Lead Strategic Pricing Manager, manages "consumer pricing," "creat[es] pricing proposals" and "[a]ssess[es] impact of new pricing proposals." *Id.* ¶ 37.

Every requested custodian is likely to have responsive documents. Top-level C-suite custodians (including Stankey, Sambar, McElfresh, Desroches, Robertson, Elbaz, Arroyo, and Katibeh) likely discussed the effects of the Merger on the retail wireless market and how AT&T would be able to compete in it—including through increased investment in network infrastructure,

5G, and spectrum, as well as pricing and bundling of plans relative to the other MNOs. Other custodians are responsible for marketing, customer acquisition and retention, or pricing (King, Kilani, and Colquitt), and boast about achieving AT&T's "industry-leading churn" rates (Arnoldi and Christopher), "improv[ing] customer retention" (Vargas), or providing unique "customer insight" and "increasing customer lifetime value" (Kenny).

2. Discovery about AT&T's network (Request Nos. 6, 8–12, 23)

Second, Plaintiffs also seek discovery about AT&T's network. (Request Nos. 6, 8–12, 23).[34] This includes information about spectrum (Request No. 9), internal assessments related to 5G (Request Nos. 10–11), the results from any "internal speed test run" by AT&T (Request No. 23), and the costs of providing service (Request No. 12). T-Mobile is expected to argue the Merger accelerated the build out of its own 5G network. Request Nos. 6, 8, and 16 seek information regarding non-party access to AT&T's network, including communications with affiliate MVNOs (who pay to access AT&T's network) regarding, *inter alia*, the Merger (Request Nos. 8 and 16) and communications and documents regarding the shutdown of Sprint's 3G CDMA and LTE networks (Request No. 6), which forced DISH to enter a $5 billion-a-year contract with AT&T. These categories of documents will show how the competitive landscape shifted after the Merger, and will show that MVNOs who "rent" network access do not constrain the prices of T-Mobile, AT&T, and Verizon.

[34] Plaintiffs narrowed Request Nos. 6 and 8–12. *See* Bojedla Decl., ¶ 8, Ex. E. For Request No. 12, Plaintiffs agreed to limit the scope of the Request to "documents to sufficient to show" AT&T's "cost of providing retail mobile wireless service," including costs attributed to, *inter alia*, each generation of service offered (*e.g.*, 3G, 4G, 5G), costs of installing hardware, purchasing or leasing 5G spectrum or cell towers, monthly maintenance costs for each network (e.g., 4G and 5G), and "any modeling of projections or changes to the costs identified in this Request." For Request Nos. 6 and 9–11, Plaintiffs agreed to limit the scope of the Request from "all documents" concerning a subject to particularized lists of certain discrete sub-topics or types of documents. For Request No. 8, Plaintiffs agreed to limit the scope of the Request from "All communications with any affiliate MVNO relating to any [topic of a list of topics]" to Communications with an affiliate MVNO regarding any of the following: (1) concerns that the Transaction would impact network speed or reliability, or cause service disruptions; or (2) complaints that the Transaction impacted network speed, or reliability, or caused service disruptions."

The requested document custodians are likely to possess responsive documents about AT&T's network, including 5G deployment. This includes not only CEO **Stankey**, who will have a holistic view of AT&T, but **Desroches** (who has "overseen historic levels of 5G . . . investment"), **Sambar** (whose work was "instrumental to advancing 5G"), **McElfresh** (who was responsible for the transition to 5G), **Elbaz** (who "oversees the global mobile and fixed network technology direction for AT&T, which includes the design of the company's 5G infrastructure"), **King** (who "head[ed] up AT&T's 5G go-to-market strategy"), **Katibeh** (who "oversaw the company's … nationwide 5G deployment"), and Arroyo (who "oversees corporate strategy").

With a limited exception,[35] AT&T does not dispute the relevance of these documents; rather, it repeats its unsubstantiated claims of burden and demands, again, that Plaintiffs accept a cherry-picked set of self-serving materials in lieu of custodial searches.[36]

3. Documents Produced in the Pre-Merger Investigation and Litigation

Request Nos. 1–3 seek documents AT&T produced or received during pre-Merger investigations and litigation concerning the Merger—or in connection with AT&T's previous attempted mergers with Sprint or T-Mobile. Contrary to AT&T's relevance objections, AT&T's pre-Merger assessments of the post-Merger retail wireless market, as well as its plans for its own post-Merger competitive activities (inclusive of its plans in connection with any of AT&T's attempted mergers), are "probative" of whether the Merger had "anticompetitive effects."[37] The documents Plaintiffs seek in Request Nos. 1–3 are also relevant in evaluating the anticompetitive

[35] AT&T disputes the relevance of MVNOs. *See* Bojedla Decl., ¶ 38, Ex. Q. Plaintiffs agree: because MVNOs rent network access from the main carriers, they do not competitively constrain them. T-Mobile, however, disagrees.

[36] *Id.* ¶ 38, Ex. L, at 3.

[37] *See Sidibe v. Sutter Health*, 103 F.4th 675, 693, 697 (9th Cir. 2024); *see also DPWN Holdings (USA), Inc. v. United Air Lines, Inc.*, 2019 WL 1515231, at *17 (E.D.N.Y. Feb. 21, 2019) (anticompetitive conduct "must be viewed in light of the conduct that occurred *before and during*" the damages period, as the earlier period "provides color to much of the post-discharge period evidence").

effects of the Merger as they help show a comparison of the market before and after the Merger.

Documents that AT&T previously produced in response to a subpoena *about the same Merger* easily meet the broad relevance standard. Indeed, AT&T has offered to make a partial reproduction of its pre-Merger productions (1,900 documents, about which AT&T provided no detail).[38] The attempt to limit this discovery makes no sense; making an electronic copy of the entire set will cost the same (or virtually the same) amount.

AT&T should also be required to re-produce documents concerning *AT&T's* previous attempts to consolidate the retail wireless market through, for example, an attempted merger with T-Mobile in 2011 (which was ultimately blocked by regulators). AT&T's previous merger attempts will shed light on whether it intended to behave competitively following T-Mobile's Merger with Sprint.[39] Beyond its relevance objection to these documents, AT&T failed to substantiate its other boilerplate objections ("vague and ambiguous, overly broad, unduly burdensome, unreasonably cumulative and duplicative of other requests, and not proportional to the needs of the Above-Captioned Action") beyond its initial responses,[40] which is insufficient.[41] An objecting party's "burden cannot be met by a reflexive invocation of 'the same baseless, often abused litany' that the requested discovery is 'vague, ambiguous, overly broad, unduly burdensome' or that it is 'neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.'"[42]

4. <u>AT&T's communications with Verizon or DISH about the Merger</u>

Finally, Request Nos. 7 and 17 involve AT&T's communications with Verizon or DISH

---

[38] Bojedla Decl., ¶ 38, Ex. L, at 2.

[39] For context, during AT&T's failed anticompetitive bid to acquire T-Mobile in 2011, Sprint produced over 2.6 million pages of documents as a non-party. *See id.* ¶ 42, Ex. N, at 3, 9, 13.

[40] *See id.* ¶ 3, Ex. B; *id.* ¶ 38, Ex. L.

[41] *Papst Licensing GMBH*, 2017 WL 1233047, at *3.

[42] *Burkybile v. Mitsubishi Motors Corp.*, 2006 WL 2325506, at *6 (N.D. Ill. Aug. 2, 2006) (Cole, M.J.).

regarding, *inter alia*, the Merger. A central allegation in Plaintiffs' Complaint is 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 retail wireless market. AT&T's communications with Verizon and DISH regarding the Merger are also probative of the Merger's impact on AT&T's efforts to compete with other MNOs on price and quality. While any of the requested custodians may have communicated with Verizon or DISH, communications by Stankey, Sambar, McElfresh, Desroches, Arroyo, Elbaz, Katibeh, or Robertson are especially likely to be significant since those persons would possess key strategic information.

Communications with horizontal competitors would ordinarily be considered highly relevant in an antitrust case. AT&T does not dispute relevance but raises the same unsubstantiated objections.[43] Furthermore, AT&T's objections are best addressed by negotiating narrowly tailored search terms targeting relevant documents. Plaintiffs proposed search terms; AT&T responded that it would not provide a counteroffer on custodians or search terms.

B. Structured Data

The Court should also compel AT&T to produce structured data responsive to Plaintiffs' subpoena (Request Nos. 21–22, 24–25, and 28). First, although AT&T has committed to producing *some* structured data and provided two data samples, AT&T has not committed to producing structured data for all relevant elements and topics Plaintiffs requested.[44] Not only did the first data sample not include key information like the original contract terms, features, and price for subscribers who were already AT&T customers at the start of the data period, several elements

[43] Bojedla Decl., ¶ 3, Ex. B; *id.* ¶ 38, Ex. L; *Papst Licensing GMBH*, 2017 WL 1233047, at *3.

[44] On March 11, 2025, AT&T provided a second data sample, evidently from a different data set. Plaintiffs' experts are evaluating that data sample, but AT&T has not confirmed it contains the full scope of data Plaintiffs requested, and AT&T has *still* never committed to produce the requested data fields to the extent that they exist.

were *not* produced as part of data samples, including, by way of example:

- Original and current contract price, features and plan characteristics (e.g., contract type, data allowance, high speed data access, terms of 5G access, entertainment access);
- Whether the subscriber is on a prepaid or postpaid plan; monthly overage quantities for each subscriber's data, SMS, MMS and voice usage;
- Monthly breakdowns of the subscriber's recurring charges versus overage charges;
- Allowances for data, SMS, MMS and voice usage, including but not limited to data caps or throttling thresholds;
- An indicator for whether the subscriber terminated the contract in the present month; and
- Subscribers' census block group identifiers (or, in the alternative, their addresses).[45]

Despite Plaintiffs asking AT&T multiple times to confirm it would produce "all available data," including the omitted fields, AT&T has not provided an answer in more than a month.

Moreover, AT&T is objecting to producing data for the entirety of even the *narrowed* time period Plaintiffs requested (January 1, 2015 to the present) as a compromise.[46] That full scope of structured data is essential for Plaintiffs' experts to be able to compare AT&T's prices and services before the Merger to its prices and services after the Merger. T-Mobile will argue that other factors (*e.g.*, the advent of 5G) explain the widespread price hikes AT&T and Verizon adopted. Assessing whether that is so requires structured data from at least January 1, 2015 to the present.

V. CONCLUSION

For the foregoing reasons, Plaintiffs' motion to compel should be granted.

[45] Plaintiffs seek structured data for subscribers' census block groups (or, in the alternative, addresses) for both subscriber-level data and churn data. A "census block" is "the smallest geographic area for which the Bureau of the Census collects and tabulates decennial census data"; a "census block group" is "a combination of census blocks" and "the next level above census blocks in the geographic hierarchy." *Census Blocks and Block Groups*, Census.gov, https://www2.census.gov/geo/pdfs/reference/GARM/Ch11GARM.pdf. Census block group data will help Plaintiffs' experts assess the impact of the Merger on the retail wireless market. Accordingly, the Court should compel AT&T to produce structured data at the census block group level, if data exists at that level. If AT&T does not maintain data at the census block group level, Plaintiffs respectfully request that the Court compel AT&T to produce addresses for each subscriber, which can serve as a proxy for Census Block Group level data.

[46] *See* Bojedla Decl., ¶ 40.

Dated: March 21, 2025

/s/ Brendan P. Glackin

Brendan P. Glackin (*pro hac vice)*
Lin Y. Chan (*pro hac vice*)
Nicholas W. Lee (*pro hac vice*)
Sarah D. Zandi (*pro hac vice*)
Courtney J. Liss (*pro hac vice*)
Jules A. Ross (*pro hac vice*)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-
3339 Phone: (415) 956-1000
bglackin@lchb.com
lchan@lchb.com
nlee@lchb.com
szandi@lchb.com
cliss@lchb.com
jross@lchb.com

Gary I. Smith Jr. (*pro hac vice*)
HAUSFELD LLP
580 California Street, 12th Floor
San Francisco, CA 94111
Phone: (415) 633-1908
gsmith@hausfeld.com

Swathi Bojedla (*pro hac vice*)
HAUSFELD LLP
888 16th Street NW, Suite 300
Washington, D.C. 20006
Phone: (202) 540-7200
sbojedla@hausfeld.com

Renner Walker (*pro hac vice*)
HAUSFELD LLP
33 Whitehall Street, 14th Floor
New York, NY 10004
Phone: (646) 357-1100
rwalker@hausfeld.com

Eric L. Cramer (*pro hac vice*)
Jeremy Gradwohl (*pro hac vice*)
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Phone: (415) 215-0962
Phone: (215) 715-3256
ecramer@bm.net
jgradwohl@bm.net

Robert Litan (*pro hac vice*)
BERGER MONTAGUE PC
1001 G St, NW Suite 400 East
Washington, D.C. 20001
Phone: (202) 559-9745
rlitan@bm.net

Joshua P. Davis (*pro hac vice*)
Kyla Gibboney (*pro hac vice*)
Julie Pollock (*pro hac vice*)
BERGER MONTAGUE PC
505 Montgomery Street, Suite
625 San Francisco, CA 94111
Phone: (415) 689-9292
jdavis@bm.net
kgibboney@bm.net
jpollock@bm.net

Interim Co-Lead Class Counsel for Plaintiffs and the Proposed Class

Kenneth N. Flaxman ARDC No. 830399
Joel Flaxman ARDC No. 6292818
LAW OFFICES OF KENNETH N. FLAXMAN P.C.
200 S Michigan Ave., Suite 201
Chicago, IL 60604
Phone: (312) 427-3200
jaf@kenlaw.com
knf@kenlaw.com

Interim Liaison Counsel for Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

I, Brendan P. Glackin an attorney, hereby certify that the foregoing document was electronically filed on March 21, 2025, and will be served electronically via the Court's ECF Notice system upon the registered parties of record. Additionally, the foregoing document was also served via email on the below Counsel for AT&T Mobility LLC:

Martin L. Roth (rothm@kirkland.com);
Jordan Ludwig (JLudwig@crowell.com);
Amie Marie Bauer (amie.bauer@kirkland.com);
Molly Kelley (molly.kelley@kirkland.com);
Ahmad Al Dajani (AAlDajani@crowell.com); and
Aidan Martin (aidan.martin@kirkland.com).

Respectfully submitted,

/s/ Brendan P. Glackin

Brendan P. Glackin