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

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL AT&T MOBILITY LLC

I. Introduction.

Nobody disputes that Plaintiffs' claims hinge on AT&T's and Verizon's pricing decisions following T-Mobile's acquisition of Sprint. Indeed, in T-Mobile's own words:

> *T-Mobile's* liability and *T-Mobile's* exposure depend significantly on the prices that have been independently set by non-parties, the reasons those non-parties elected to charge those prices, the quality of the services provided by non-parties, and the factors that impact non-party pricing, including changes in costs and demand.[1]

Likewise, nobody disputes the implication of those claims, if true: AT&T and Verizon have exploited the Merger to charge their customers—the plaintiff class—billions of dollars more than they otherwise would have. AT&T cannot plausibly claim disproportionality here. Thus, it attempts to paint a picture of out-of-control plaintiffs making extreme discovery demands and unwilling to compromise. Nothing could be less true: Plaintiffs would have been more than happy to negotiate the scope of custodians and search terms to minimize burden on AT&T and laser in, with AT&T's feedback, on only the most relevant documents. Instead, AT&T refused to negotiate either search terms or custodians for months, refusing to perform any electronic custodial searches. AT&T's proposal to restart negotiations after a preliminary, limited production will frustrate completion of discovery by the November 13, 2025 deadline. The Court should grant Plaintiffs' Motion to Compel.

II. AT&T Has Not Shown Undue or Disproportional Burden.

"Courts generally take an expansive view of discovery in antitrust cases."[2] AT&T relies heavily on its nonparty status to resist complying with Plaintiffs' Rule 45 subpoena, but courts apply the scope of discovery defined under Rule 26 with "equal force" under Rule 45.[3] AT&T's

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[1] Joint Submission Regarding Confidentiality Order, ECF No. 293 (emphasis added).

[2] *Linet Ams., Inc. v. Hill-Rom Holdings, Inc.*, 2025 WL 889480, at *1 (N.D. Ill. Mar. 17, 2025) (quoting *Kleen Prods. LLC v. Packaging Corp. of Am.*, 2012 WL 4498465 (N.D. Ill. Sept. 28, 2012).

[3] *Architectural Iron Workers' Loc. No. 63 Welfare Fund v. Legna Installers Inc.*, 2023 WL 2974083, at *4 (N.D. Ill. Apr. 17, 2023). "The scope of material obtainable pursuant to a Rule 45 subpoena is as broad as what is otherwise permitted under Rule 26(b)(1)." *In re: Subpoena Upon Nejame L., PA., a nonparty in an*

authority, *Rossman v. EN Engineering, LLC*, concerned nonparty discovery that *duplicated* information available through discovery of the parties.[4] Here, Plaintiffs do not seek discovery available elsewhere and they seek what both sides agree is core discovery to the litigation.

No Details. Thus, to resist production, AT&T must show that complying with Plaintiffs' subpoena would impose an undue burden.[5] It must provide details about "the time or expense involved in responding to the discovery request."[6] Instead, AT&T has provided hardly any information about the burden of running electronic searches, let alone the detailed and specific showing required under the law. It simply recites that it would not provide hit counts because "even collecting these [proposed] custodians' documents would be burdensome, amounting to over 8 terabytes of compressed data."[7] Really? How burdensome? What would it cost? How much time would it take? AT&T offers none of this information, despite the fact AT&T has a dedicated in-house e-discovery team, in addition to its outside counsel, who processed *over 96,000* subpoenas from July to December of 2024 alone.[8] Courts may consider a nonparty's resources when weighing a discovery request, and any reasonable estimate of AT&T's expense from its production will be negligible for a company with $122 billion in annual revenue.[9] Add to that the

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action pending in the U.S. Dist. Ct. for the N. Dist. of Illinois entitled First Farmers Fin. Litig., No. 16-CV-4619, 2016 WL 3125055, at *2 (N.D. Ill. June 3, 2016) (applying Rule 26(1) factors for material discoverable to a Rule 45 subpoena; citing *Chavez v. Hat World, Inc.*, No. 12-cv-5563, 2013 WL 1810137, at *2 (N.D. Ill. Apr. 29, 2013)).

[4] 467 F. Supp. 3d 586 (N.D. Ill. 2020).

[5] *In re: Subpoena Upon Nejame L., PA., a nonparty in an action pending in the U.S. Dist. Ct. for the N. Dist. of Illinois entitled First Farmers Fin. Litig.*, No. 16-CV-4619, 2016 WL 3125055, at *4 (N.D. Ill. June 3, 2016) (quoting *E.E.O.C. v. Konica Minolta Business Solutions U.S.A., Inc.*, 639 F.3d 366, 371 (7th Cir. 2011); citing *E.E.O.C. v. United Air Lines, Inc.*, 287 F.3d 643, 649 (7th Cir. 2002); *FTC v. Shaffner*, 626 F.2d 32, 38 (7th Cir. 1980)).

[6] *Papst Licensing GmbH & Co. KG v. Apple, Inc.*, 2017 WL 1233047, at *3 (N.D. Ill. Apr. 4, 2017) (Cole, M.J.).

[7] Decl. of Paula M. Phillips, ¶ 6 (ECF No. 282).

[8] AT&T, TRANSPARENCY REPORT 3 (Feb. 20, 2025), https://sustainability.att.com/ViewFile?fileGuid=26a13912-fe8b-429b-a517-76ab824fa104.

[9] AT&T, *AT&T Finishes 2024 Strong with Solid 4Q Results* (Jan. 27, 2025), https://about.att.com/story/2025/4q-earnings-2024.html.

fact that some portion of this revenue, by its own admission, came from the Merger. **AT&T CEO** John Stankey 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.'"[10] Absent details about cost and expense, the Court cannot weigh the burden against the other proportionality factors, such as "relevance" and "the need of the party for the documents[.]"[11] Some courts would hold that AT&T has thus "waived all of its objections based on undue burden and proportionality by failing even to attempt to explain and quantify the effort it would take to respond[.]"[12]

Relevance. And those other proportionality factors weigh in favor of compelling production. AT&T does not dispute the relevance of the core information Plaintiffs seek. Candid information about AT&T's pricing is not only relevant, it is, T-Mobile and Plaintiffs agree, "central to both class certification and merits issues in this case."[13] AT&T's limited relevance objections have no merit. AT&T objects that Plaintiffs have asked for documents pre-dating the Merger.[14] However, the state of the pre-Merger market plainly bears on the Merger's effects, as do the analyses and predictions of key market participants like AT&T.[15] AT&T takes particular issue with producing documents related to its attempted takeover of T-Mobile in 2011.[16] But not only does AT&T neglect to articulate any undue burden associated with re-producing these

[10] Compl. ¶ 107.
[11] *Papst Licensing GmbH & Co. KG v. Apple, Inc.*, 2017 WL 1233047, at *3 (N.D. Ill. Apr. 4, 2017) (Cole, M.J.).
[12] *Avenatti v. Gree USA, Inc.*, 2021 WL 1034392, at *4 (S.D. Ind. Mar. 17, 2021).
[13] Joint Submission Regarding Confidentiality Order, ECF No. 293 at 14 ("[T-Mobile's] competitors' documents and data are central to liability, damages, and class certification.").
[14] AT&T's Response ("ECF No. 282") at 11.
[15] U.S. Dep't of Justice & Federal Trade Comm'n, Horizontal Merger Guidelines (2023), http://ftc.gov/os/2010/08/100819hmg.pdf, Section 2.7 ("[t]he recent history and likely trajectory of an industry can be an important consideration when assessing whether a merger presents a threat to competition").
[16] ECF No. 282 at 12.

documents, it overlooks that information about attempted and consummated mergers, particularly those involving T-Mobile, will likely have synthesized information that is highly probative of the market's structure and competition among MNOs.[17] And, contrary to AT&T's suggestion, Plaintiffs' subpoena describes particular documents pertaining to "Plaintiffs' harm, the alleged wrongdoing by [T-Mobile], and the relationship between them."[18] AT&T's pricing decisions *are* the relationship between the Merger and the harm Plaintiffs suffered (*i.e.*, higher prices by AT&T). Plaintiffs' subpoena thus describes specific kinds of documents related to AT&T's pricing decisions for mobile wireless customers including documents about AT&T's pricing and market analysis, AT&T's network costs, capacity, and investment, and any external communications with AT&T's competitors.[19]

AT&T's reliance on *Uppal v. Rosalind Franklin University of Medicine & Science* is misplaced.[20] In that case, this Court acknowledged, "non-parties are not exempt from the basic obligation of all citizens to provide evidence."[21] It only granted the motion to quash because the discovery sought documents from a nonparty hospital where plaintiff had their medical residency which "ha[d] nothing to do with the defendant's charged wrongdoing" of violating a fiduciary duty to the plaintiff.[22] AT&T's pricing decisions, by contrast, have everything to do with this case.

Indeed, AT&T has manifestly failed to demonstrate that whatever burden it faces "exceed[s] the benefit of production of the material sought" by the subpoena.[23] *AT&T's production is essential*, for the reasons stated above. T-Mobile agrees that its liability and exposure

[17] U.S. Dep't of Justice & Federal Trade Comm'n, Horizontal Merger Guidelines (2023), http://ftc.gov/os/2010/08/100819hmg.pdf, Sections 2.7, 2.5.A.2., and 4.2.A.
[18] ECF No. 282 at 7 (citing Mem. Op. and Order, ECF No. 114 at 25).
[19] Pls. Amend. Subpoena, ECF No. 257-2.
[20] 124 F. Supp. 3d 811 (N.D. Ill. 2015) (Cole, M.J.). *See* ECF No. 282 at 11.
[21] *Id.* at 813.
[22] *Id.* at 815.
[23] *Architectural Iron Workers' Local No. 63 Welfare Fund*, 2023 WL 2974083, at *5.

"depend significantly on the prices that have been charged by non-parties, the reasons those non-parties elected to charge those prices, the quality of the services provided by non-parties, and the factors that impact non-party pricing, including changes in cost and demand."[24] AT&T's undefined claims of burden do not outweigh the benefit of its production in a case on behalf of hundreds of millions of its own wireless customers.

III. AT&T's Tactic Has Been and Is Delay.

AT&T hyperbolically characterizes the Requests as a "boundless fishing expedition" and Plaintiffs' proposed custodians and search terms as a "look everywhere" approach to discovery.[25] But Plaintiffs have repeatedly offered a different path to AT&T. After proposing search terms and custodians to AT&T on February 24, 2025, Plaintiffs repeatedly asked AT&T for feedback.[26] AT&T responded by insisting custodial searches—even of a single employee—were not an option. The first feedback Plaintiffs received on their proposal in fact came in AT&T's opposition brief. And even that consists of limited objections to the relevance of a few categories of documents and only one of Plaintiffs' fifteen proposed custodians: AT&T's CEO.[27]

Without any cooperation from AT&T, Plaintiffs had to do their own investigation into which custodians likely hold discoverable information. AT&T's CEO has more insight into AT&T's business than anyone and obviously possesses substantial documents and communications related to AT&T's pricing, market analysis, wireless network, and competitive intelligence, among other topics. AT&T offered no explanation of the time or expense involved with processing searches of its CEO or any of Plaintiffs' proposed custodians. As noted above, Plaintiffs provided AT&T with an initial proposal of search terms and custodians nearly two

[24] Joint Submission Regarding Confidentiality Order, ECF No. 293.
[25] ECF No. 282 at 9.
[26] Pls. February 24, 2025 Email re Subpoena to AT&T, ECF No. 257-12.
[27] ECF No. 282 at 9.

months ago. If AT&T simply wanted to manage its burden, and had proposed search terms and custodians in response to Plaintiffs, this entire briefing exercise might have been avoided.

But that would not have suited AT&T's ultimate goal and strategy: delay. "[P]rotracted discovery, [is] the bane of modern litigation."[28] Apparently, AT&T did not get that memo. Hence, AT&T proposes a two-stage approach wherein Plaintiffs will review 1,900 documents from the pre-Merger production and an unspecified number of other documents from a corpus of "tens of thousands" of documents it has collected based on employee interviews—facts it never related in meet-and-confer correspondence. AT&T proposes Plaintiffs review this production, identify its shortcomings, and then return to AT&T with requests for additional documents.

First, AT&T cannot categorically object to custodial searches. Plaintiffs are entitled to proportional custodial searches "designed to respond fully to document requests and to produce responsive, non-duplicative documents during the relevant period."[29] Furthermore, Plaintiffs' proposal of 15 custodians accounts for AT&T's nonparty status. By comparison, T-Mobile's 50 custodians have already produced more than five million documents.[30] And, ironically, when AT&T defended its attempted acquisition of T-Mobile, it obtained a court order compelling nonparty Sprint to produce *over 2.2 million* documents.[31] AT&T claims it only moved to compel after reviewing a first production from Sprint; but it neglects to inform the Court that that first production consisted of *2.6 million* responsive documents, not a curated production from a corpus in the "tens of thousands."[32] And, AT&T received a court order for an additional 2.2 million

[28] Min. Entry, ECF No. 231 (citing *Rossetto v. Pabst Brewing Co. Inc.*, 217 F.3d 539, 542 (7th Cir. 2000)).
[29] *Kleen Prods. LLC v. Packaging Corp. of Am.*, 2012 WL 4498465 (N.D. Ill. Sept. 28, 2012); *see also DeGeer v. Gillis*, 755 F. Supp. 2d 909, 919 (N.D. Ill. 2010) (the court approved searches of more than 18 custodians).
[30] Joint Status Report, ECF No. 292.
[31] *United States v. AT&T Inc.*, No. 1:11-cv-1560 (D.D.C. Nov. 6, 2011), ECF No. 75.
[32] *AT&T*, No. 11-1560, ECF No. 75.

documents simply because Sprint's prior production was "six months old" and AT&T wanted a "refresh" of Sprint's production.[33]

Second, AT&T's proposal would omit the internal communications in Plaintiffs' Requests related to core issues including the Merger and AT&T's pricing decisions, market analysis, and spectrum strategy.[34] This is not "speculation."[35] Without custodial searches, AT&T's production will miss unvarnished assessments of the Merger and its impact on competition. Such evidence plays a key role in merger cases. Some of the most impactful evidence in the Merger trial came from text messages exchanged between Sprint's Chief Marketing Officer Sole-Rafols and Claure, its CEO, about the Merger's effect on the pricing of AT&T and Verizon. In those text messages, Sole-Rafols boasted that the Merger would lead to price increases in the whole market and lamented: "But the most interesting thing is that **this value, assuming the same market share for all, is exactly the same for AT&T** and VZ, that is, it will also end up accommodating plus $5 ARPU [average revenue per user] **in a three-player scenario**."[36] He then noted that **AT&T** and Verizon "**do not pay anything** for this, **the benefit of a consolidated market**."[37] Finally, Sole-Rafols texted that they would not disclose this effect to regulators, stating, "**Obviously, for reg. reasons, this cannot be raised** in this way . . . ."[38] These kinds of candid assessments, by design, will only be found in text messages and emails.

Third, AT&T's approach would lead to inexcusable delay. A (foreseeably) deficient production will return the parties to square one. Plaintiffs will undoubtedly be forced to move to

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[33] *Id.*
[34] *See* Request Nos. 1, 3, 4, 5, 6, 7, 8, 9, 17, 36.
[35] ECF No. 282 at 10.
[36] Trial Tr. at 79, *New York v. Deutsche Telekom*, No. 19-cv-5434 (VM) (S.D.N.Y. Dec. 9, 2019) (emphasis added).
[37] *Id.* at 80 (emphasis added).
[38] *Id.* (emphasis added).

compel *again*. How does this comport with the fact discovery deadline of November 13, 2025? It does not. AT&T hopes to run out the clock, and avoid producing this information at all. The fact that T-Mobile supports AT&T's approach to discovery is far from reassuring and should give the Court pause.[39] T-Mobile obviously lacks standing or any legitimate reason to dispute Plaintiffs' subpoena to AT&T.[40] Indeed, contradictorily, T-Mobile has sought to enforce a subpoena for custodial searches against DISH.[41] Why these two contradictory positions? Occam's razor offers the answer: T-Mobile believes it might obtain useful information from DISH, but believes custodial searches from AT&T will only support Plaintiffs' case. Furthermore, T-Mobile's endorsement of AT&T's "wait and see" approach carries little weight given its own evident disinterest in discovery from AT&T, compared with Plaintiffs' diligence in issuing an early subpoena and then trying to negotiate compliance in five telephonic meet and confers conducted over many months.

Fourth, AT&T's refusal to explain its burden or engage meaningfully with Plaintiffs on how to manage it repudiates the principles of good faith cooperation that should underpin civil discovery. AT&T, ironically, cites *The Sedona Principles*.[42] Plaintiffs agree that *The Sedona Principles* offer a useful roadmap for cooperative discovery. That map that manifestly does not include the road traveled here by AT&T.[43] If AT&T genuinely wanted to leverage its expertise to make discovery efficient, as contemplated by *The Sedona Principles*, it should have spoken up

[39] ECF No. 282 at 8.
[40] *Uppal v. Rosalind Franklin Univ. of Medicine & Sci.,* 124 F. Supp. 3d 811 (N.D. Ill. 2015) (Cole, M.J.) (a party lacks standing to challenge subpoenas issued to nonparties).
[41] T-Mobile's Mot. to Compel DISH ("ECF No. 255") at 10.
[42] Order, ECF No. 206 at 5 (Local Rule 37.2 is about compromise); *The Case for Cooperation*, 10 Sedona Conf. J. 339, 354 (2009) ("[C]ounsel may not use his superior information as to the location or nature of responsive documents to thwart good faith discovery requests by refusing to engage cooperatively to identify . . . the search terms likely to produce responsive documents.").
[43] *The Sedona Principles, Third Edition*, 19 Sedona Conf. J. 1, 30-31 (2018).

during the *five telephonic meet-and-confers* during which it refused to negotiate custodians or search terms in any respect. Indeed, *The Sedona Principles* mandates that requesting and producing parties negotiate "search terms and retrieval parameters and techniques . . . at an early meet and confer session."[44] Instead, AT&T asks Plaintiffs to accept a hand-selected production collected via a procedure only opaquely disclosed for the first time in its opposition to this motion.

IV. Communications with Competitors Are Relevant in Antitrust Cases.

AT&T's suggestion that communications among competitors are irrelevant ignores the allegations in the Complaint, the antitrust law on the coordinated effects of mergers, and common sense.[45] AT&T claims "Plaintiffs do not allege any link between the alleged post-merger price increases and communications between AT&T and its competitors or business partners."[46] AT&T has not produced those communications, to which Plaintiffs do not otherwise have access. Furthermore, AT&T ignores the plain language of Plaintiffs' complaint which alleges the Merger enabled the remaining MNOs to better coordinate prices.[47] If their wireless carrier has been talking to its competitors about the market, the class has a right to know. And if AT&T has not been talking with its competitors, then complying with this request should present virtually no burden.

AT&T also questions the relevance of external communications and agreements with mobile virtual network operators ("MVNO") because MVNOs are outside the alleged relevant

[44] *Nat'l Day Laborer Org. Network v. U.S. Immigr. & Customs Enf't Agency*, 877 F. Supp. 2d 87, 109 (S.D.N.Y. 2012) ("There is a 'need for careful thought, quality control, testing, and cooperation with opposing counsel in designing search terms or 'keywords' to be used to produce emails or other electronically stored information.'").

[45] U.S. Dep't of Justice & Federal Trade Comm'n, Horizontal Merger Guidelines (2010), http://ftc.gov/os/2010/08/100819hmg.pdf, Section 7 ("coordinated interaction can involve the explicit negotiation of a common understanding of how firms will compete or refrain from competing."); *see also FTC v. Rag-Stiftung*, 436 F. Supp. 3d 278, 313 (D.D.C. 2020).

[46] ECF No. 282 at 13.

[47] Compl. ¶ 57 ("It was therefore apparent to all involved that the merger stood to increase the danger of coordinated pricing in the market").

market.[48] T-Mobile, however, plans to put this matter at issue in the case: T-Mobile has subpoenaed over 15 nonparty MVNOs and contends "MVNOs do undoubtedly compete with MNOs in some ways and evidence of MVNOs' competitiveness may bear on the overarching competitive analysis in other ways."[49]

V. AT&T Should Produce Structured Data Beginning in 2015.

Plaintiffs originally requested structured data going back to January 1, 2010. On February 21, 2025, AT&T agreed "to produce data kept in the ordinary course of business and that is reasonably accessible to it from January 1, 2018."[50] When Plaintiffs responded with an offer to accept a start date of January 1, 2015 as a compromise,[51] AT&T neither responded nor raised the subject at the next meet-and-confer. Instead, AT&T waited until now to claim structured data prior to 2018 is unavailable "in the records AT&T maintains in the ordinary course of business."[52]

The qualifier—"in the ordinary course of business"—matters. If the data exists in storage but would require some cost or effort to produce, AT&T should have said so. Once again, it has refused to give the first hint of what that burden would be—probably because it is minimal. Rather than benefit from its own delay and obfuscation, AT&T should produce any structured data to which it has access going back to January 1, 2015.

VI. CONCLUSION

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

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[48] ECF No. 282 at 14.
[49] ECF No. 255 at 5 (quoting *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 199 (S.D.N.Y. 2020)) (internal quotations omitted).
[50] Decl. of Swathi Bojedla in Support of Pls.' Mot. To Compel, ECF No. 257-1, ¶ 5.
[51] Decl. of Renner Walker in Support of Pls.' Mot. To Compel, ¶ 4.
[52] Decl. of Paula M. Phillips, ECF No. 282, ¶ 6.

Dated: April 18, 2025

/s/ Brendan P. Glackin

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CERTIFICATE OF SERVICE

I, Brendan P. Glackin an attorney, hereby certify that the foregoing document was electronically filed on April 18, 2025, and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

Respectfully submitted,

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