

EXHIBIT D

From: [Gary I. Smith, Jr.](#)
To: [Kevin Reiss](#); [Renner Walker](#); [Monica McCarroll](#); [Yin, Clifford](#)
Cc: [Swathi Bojedla](#); [Brendan P. Glackin](#); [Chan, Lin Y.](#); [Jose Roman Lavergne](#); [Shana Herman](#); [Hayden Dwyer](#); [Hazel Berkoh](#); [TMobile Merger AT](#)
Subject: RE: Dale v. Deutsche Telekom, No. 1:22-cv-03189 - Subpoena to DISH
Date: Thursday, May 22, 2025 11:17:15 PM
Attachments: [image004.png](#)
[image005.png](#)
[image366680.png](#)
[image053802.png](#)
[external.png](#)

Kevin,

This proposal is not made in good faith.

Procedurally, you represented that DISH would be testing all of Plaintiffs' search terms to allow us to evaluate DISH's claim of undue burden and refine the search terms if an undue burden was substantiated. Your Tuesday May 20, 2025 email declining to follow through on that past representation has prejudiced Plaintiffs and injected weeks of additional and unnecessary delay into this process.

Substantively, your representation that the terms you tested represent 308,491 (462,736 including your speculation as to the number of attachments) document "hits" is misleading and, even were it not, does not present an undue burden. In a case affecting hundreds of millions of class members claiming billions of dollars in damages, such a small review burden from a critical non-party like DISH is not undue; indeed, a proportional review burden for DISH would be many times larger than the one DISH estimates.

Your hit count numbers, however, are also substantially inflated, for at least three reasons. First, you have not performed any email threading. If there are twenty emails in a thread, your report counts those as twenty separate hits. The use of email threading would ensure that the thread is reviewed one time as a single document, rather than an inefficient piecemeal review of every lesser-included email in a thread separately. Second, you have not deduplicated your hits, meaning if the same email exists across five custodial files, your report counts those as five separate hits. Deduplication would ensure that that document is only reviewed one time as a single document. (More still, if five custodians are on the same email thread with twenty lesser included emails in the thread, your report would count that as 100 separate documents rather than the single document that would need to be reviewed.) Third, you ignore in your burden analysis that Plaintiffs offered to allow DISH to either (a) produce documents without a responsiveness review, meaning that the review burden is of DISH's own creation, or alternatively (b) omit from its responsiveness review any family members where the root document (the document hitting on the search term) was deemed non-responsive.

For these reasons, your estimate of 308,491 document hits that would need to be reviewed (which even if accurate, would not come close to presenting an undue review burden) is substantially inflated and unreasonable.

As a final effort to avoid impasse, Plaintiffs request that DISH hire a vendor that can perform a search term hit report with deduplicated unique hits broken out by term, using email thread technology, and provide hit reports by term for all of Plaintiffs search terms run across all of Plaintiffs' requested custodians for the entire requested 2018-2024 time period by Friday May 30, 2025. Plaintiffs ask that DISH agree to do so in writing by the close of business Tuesday, May 27, 2025. If Plaintiffs do not receive that commitment by Tuesday and the eventual report by Friday, Plaintiffs will inform the Court that Plaintiffs and DISH remain at impasse.

Regarding your request that Plaintiffs pay DISH to have a vendor substantiate DISH's claim of burden through appropriate hit reporting, Plaintiffs decline for the reasons set out in our motion papers. See, e.g., *Bilek v. Fed. Ins. Co.*, 344 F.R.D. 484, 493 (N.D. Ill. 2023); *Behrend v. Comcast Corp.*, 248 F.R.D. 84, 86 (D. Mass. 2008); Local Rule 37.2.

Gary

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From: Kevin Reiss <kreiss@redgravellp.com>

Sent: Monday, May 19, 2025 6:32 PM

To: Renner Walker <rwalker@hausfeld.com>; Monica McCarroll <MMcCarroll@redgravellp.com>; Yin, Clifford <cyin@coblentzlaw.com>

Cc: Gary I. Smith, Jr. <GSmith@hausfeld.com>; Swathi Bojedla <sbojedla@hausfeld.com>; Brendan P. Glackin <bglackin@lchb.com>; Chan, Lin Y. <lchan@lchb.com>; Jose Roman Lavergne <jlavergne@hausfeld.com>; Shana Herman <sherman@hausfeld.com>; Hayden Dwyer <wdwyer@hausfeld.com>; Hazel Berkoh <hberkoh@hausfeld.com>
Subject: RE: Dale v. Deutsche Telekom, No. 1:22-cv-03189 - Subpoena to DISH



Renner,

Thanks again for providing revised search terms. As previously discussed, DISH stands on its objections regarding the undue burden to DISH of custodial discovery. To that end, after evaluating Plaintiffs' revised terms, we determined that some remain too broad and target information that is not relevant and/or can be obtained from information that DISH either has already produced or said it would produce upon appropriate modification of the Confidentiality Order. Accordingly, DISH has declined to test them at this time. We would like to continue our efforts to reach a negotiated outcome here, however, so DISH ran a subset of Plaintiffs' revised search terms against certain custodians' email. A hit count report for that subset is attached. As a reminder, the numbers are for email only, the hit count for attachments is estimated, and the hit count is not deduplicated. More precise, deduplicated numbers are not available unless DISH incurs the burden and costs of exporting data to its vendor for hosting, processing, and deduplication. DISH stands on its objection that this burden would be undue.

The attached hit count report identifies the following for the search terms DISH ran (cells shaded green): (1) the date range applied when running the search terms against email; (2) the names of the custodians against whose email the search term was run; (3) the email hit count; and (4) an estimate of the expected hit count when attachments are included.

For those search terms DISH ran, the following modifications were made:

- DISH stands on its objections regarding the irrelevance of pre-merger discovery. Therefore, DISH limited the time period for running searches to 4/1/2020-6/30/2024.
- DISH ran the search term *To/From/CC line: verizonwireless.com* as *to:*verizonwireless.com OR from:*verizonwireless.com OR cc:*verizonwireless.com*.
- DISH ran the search term *To/From/CC line: att.com* as *to:*att.com OR from:*att.com OR cc:*att.com*.

Even running the search terms in the cells shaded green yielded high hit counts. While the numbers are imprecise, we submit that these search terms are still too broad, contain too much overlap, and are poorly targeted. For the categories of information sought by Plaintiffs through the search terms in the cells shaded green, we encourage you to consider further targeting your searches for these categories of information by distilling each search into strings of no more than

one to two terms each. Additionally, we encourage you to consider coordinating with T-Mobile on appropriate search terms and custodians, as the prospect of continued disputes over custodial discovery with T-Mobile would be an obstacle to DISH reaching agreement with Plaintiffs. (We conferred with T-Mobile on Friday and suggested the same to them.)

We look forward to further discussions on Thursday.

Best regards,

KEVIN A. REISS

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From: Renner Walker <rwalker@hausfeld.com>

Sent: Friday, May 9, 2025 7:46 PM

To: Kevin Reiss <kreiss@redgravellp.com>; Monica McCarroll <MMcCarroll@redgravellp.com>; Yin, Clifford <cyin@coblentzlaw.com>

Cc: Gary I. Smith, Jr. <GSmith@hausfeld.com>; Swathi Bojedla <sbojedla@hausfeld.com>; Brendan P. Glackin <bglackin@lchb.com>; Chan, Lin Y. <lchan@lchb.com>; Jose Roman Lavergne <jlavergne@hausfeld.com>; Shana Herman <sherman@hausfeld.com>; Hayden Dwyer <wdwyer@hausfeld.com>; Hazel Berkoh <hberkoh@hausfeld.com>

Subject: [EXTERNAL] RE: Dale v. Deutsche Telekom, No. 1:22-cv-03189 - Subpoena to DISH

Kevin, Monica, and Cliff,

Thank you for the meet and confer today. Please see the attached revised search terms with modifications to address the syntax issues you raised this afternoon. We have added a column to identify the changes with greater specificity, but generally speaking we: (1) changed any AROUND connector greater than 20 to AROUND(20), (2) removed third AROUND connectors from some search strings, (3) removed certain terms like "DISH" from certain search term strings, and (4) further disaggregated the search term strings for Request No. 7 to help identify search terms generating high hit counts.

We look forward to receiving your revised hit count report.

Kind regards,

Renner

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From: Renner Walker <rwalker@hausfeld.com>

Sent: Thursday, May 8, 2025 5:24 PM

To: Kevin Reiss <kreiss@redgravellp.com>; Monica McCarroll <mmccarroll@redgravellp.com>; Yin, Clifford <cyin@coblentzlaw.com>

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Counsel,

While Plaintiffs maintain that our opening proposal on search terms and custodians is relevant and proportionate to the needs of the case, Plaintiffs attach a narrowed set of search terms for your consideration.

Plaintiffs have made four categories of changes throughout the search term proposal. First, Plaintiffs have replaced certain “AND” and “OR” connectors with proximity connectors. Second, Plaintiffs have eliminated entirely certain terms from individual search term strings. Third, Plaintiffs have reformulated certain search term strings because they were generating a high number of hits. This is primarily true of Request No. 20, but Plaintiffs also reformulated the search terms for Request Nos. 6, 13, 15 and 23. Plaintiffs are happy to discuss those reformulations further on our next meet and confer. Fourth, Plaintiffs have

disaggregated prior strings into series of narrower sub-strings, which will better isolate for further refinement the specific strings or terms generating high hit counts. Plaintiffs are still formulating a narrowed set of search terms for Mr. Ergen and will circulate search terms for Mr. Ergen separately; for present purposes, Plaintiffs propose these be run only across the other seven custodial files.

Cordially,

Renner

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