

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

ANTHONY DALE, BRETT JACKSON,
JOHNNA FOX, BENJAMIN
BORROWMAN, ANN LAMBERT,
ROBERT ANDERSON, and CHAD
HOHENBERY on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

DEUTSCHE TELEKOM AG, and T-
MOBILE US, INC.,

Defendants.

Case No. 1:22-cv-03189

Hon. Thomas M. Durkin

Hon. Albert Berry, III

JOINT STATUS REPORT

Plaintiffs and Defendant T-Mobile US, Inc. (“T-Mobile”), together “the parties,” respectfully submit this Joint Status Report to update the Court on their discovery progress, following the procedure established by former Magistrate Judge Cole. ECF No. 199 (“Counsel should submit a joint status report every 2 months, signed by counsel, specifically detailing the progress of discovery for the reporting period, after the Court’s initial video status conference.”). Because certain developments and pending motions (addressed *infra*) have foreclosed the parties’ abilities to obtain critical discovery in this action, the parties respectfully request that the Court set a video status conference to discuss the same at the earliest time convenient to the Court.

I. Party Discovery

The parties reached a global compromise on Plaintiffs’ First and Second Sets of Requests for Production on March 20, 2025. For Plaintiffs’ Third Set of Requests for Production, the parties

will attempt to reach a compromise but Plaintiffs otherwise plan to file a motion to compel in June.

As of the date of this status report, T-Mobile has produced over 5.4 million documents to Plaintiffs consisting of more than 35.7 million pages and 1.3 million native files, all which total nearly 8 terabytes of data. T-Mobile made its first custodial production on December 31, 2024 and has produced over 1.3 million custodial documents since then. T-Mobile has nearly 250,000 additional documents prepared for production and, once served, will be substantially complete with its custodial ESI productions with only those files undergoing privilege review remaining. T-Mobile is finalizing production of outstanding data, which it anticipates completing shortly as soon as Plaintiffs' counsel confirms its position on a pending open item.

Plaintiffs completed production of Plaintiffs' documents on April 30, 2025.

II. Nonparty Discovery and Confidentiality Order Dispute

Plaintiffs and T-Mobile are continuing to negotiate with various nonparties regarding their responses to the parties' subpoenas. To date, T-Mobile has served 22 nonparty subpoenas and Plaintiffs have served 24 nonparty subpoenas, 22 of which overlap with T-Mobile's subpoenas.

Three fully-briefed disputes are pending the Court's resolution.

First, nonparties have thus far refused to produce even agreed-upon documents and data, including Verizon's and AT&T's structured data, due to the pending dispute about the confidentiality order. The proposed class members in this action are customers of AT&T and Verizon (not T-Mobile) who are seeking to recover part of the amounts they paid to AT&T and Verizon from T-Mobile. To fully and fairly litigate this action, the parties require the production of evidence that is exclusively in the possession of AT&T, Verizon, and other nonparties. For example, determining whether AT&T and Verizon increased quality-adjusted prices and, if so, whether those price increases were caused by the merger, requires discovery from AT&T and

Verizon. And impact and damages calculations for the proposed class members require an analysis of AT&T's and Verizon's structured data. These data sets are vast, and by Plaintiffs' estimation, may require a year to analyze. None of this work can begin until AT&T and Verizon (and other nonparties) produce their data, which they refused to do until the disputes concerning the confidentiality order are resolved.

The nonparties' motion to amend the confidentiality order was briefed in a joint submission to United State Magistrate Judge Cole (ret.) on April 17, 2025 (Dkt. 293), in accordance with a procedure previously submitted to and approved by the Court. (Dkts. 250, 251). On April 24, 2025, Judge Cole denied the motion without prejudice and stated that T-Mobile and the moving nonparties should "meet and confer over these issues, attempt to reach an agreement, and report back to the court in 30 days." (Dkt. 303). T-Mobile and the moving nonparties filed a status report on those negotiations on May 27, 2025, indicating that T-Mobile and the moving nonparties remain at impasse and that the issue is ripe for judicial resolution. (Dkt. 311).

Second and third, discovery disputes regarding two nonparties—AT&T and DISH—are pending before the Court. On March 21, 2025, Plaintiffs and T-Mobile each filed motions to compel nonparty DISH to produce documents responsive to their respective subpoenas. (Dkts. 253, 254). On the same day, Plaintiffs moved to compel AT&T to produce documents responsive to Plaintiffs' subpoena. (Dkt. 257). While the briefing of those motions was ongoing, on April 1, 2025, the Court directed the parties and nonparties to engage in additional discussions after the disputes are fully briefed and to provide a status update to the Court. (Dkt. 277). The parties, AT&T and DISH have filed all of their respective briefs, *see* Dkts. 275, 282, 283, 294, 295, 299, and engaged in additional post-briefing meet and confers as directed by Judge Cole.

With respect to Plaintiffs' motion to compel AT&T, Plaintiffs met and conferred with AT&T three times by videoconference on April 24, April 29, and May 6, 2025, but were unable to reach a resolution with AT&T. (See Dkt. 306). On May 8, 2025, Plaintiffs provided a status report indicating Plaintiffs and AT&T remain at impasse and that the issue is ripe for judicial resolution. (Dkt. 306). AT&T responded on May 8, 2025. (Dkt. 307).

With respect to the parties' motions to compel DISH, Plaintiffs have completed their meet and confers with DISH, while T-Mobile expects to complete their discussions in the near-term. Specifically, Plaintiffs met and conferred with DISH four times by videoconference on April 28, May 5, May 9, and May 22, 2025, but were unable reach a resolution on the disputes briefed in Plaintiffs' motion. (Dkt. 312). Accordingly, Plaintiffs provided a status report on May 30, 2025, indicating that Plaintiffs and DISH are at impasse and that Plaintiffs' motion to compel is ripe for judicial resolution. (Dkt. 312). DISH responded on June 3, 2025, agreeing. (Dkt. 313). T-Mobile and DISH have engaged in multiple rounds of meet and confers as well and have tentatively reached agreement on some disputes. T-Mobile expects to either resolve or reach impasse on the remainder within the next week. T-Mobile and DISH will submit a status report to the Court once that process is completed, at which point any remaining disputes would be ripe for resolution by the Court.

Negotiations with other nonparties are ongoing, and the parties are continuing to work to resolve or substantially narrow any disputes. For Verizon, Plaintiffs have agreed on the parameters of structured data productions and are continuing to meet and confer over other issues and do not have any disputes that require the Court's intervention at this time. Some nonparties—DISH, Best Buy Health, Charter, Consumer Cellular, Google, and SoftBank—have made initial productions of documents, and the parties are conferring with them on the remaining document requests.

Though other nonparties have not yet made any productions, they are engaging in good-faith negotiations to reach agreement on the scope of their document productions. Many of the nonparties are awaiting resolution of the pending confidentiality order issue, and the parties anticipate that further productions will occur once the confidentiality order issue is resolved.

III. Forthcoming Request to Extend Fact and Expert Discovery

The parties wish to apprise the Court of a forthcoming application to modify the existing fact and expert discovery schedules. In short, the current schedule is unworkable—including due to the above-detailed disputes regarding the confidentiality order, which have become a gating item for the completion of discovery—and the parties respectfully submit that extensions to the schedule are necessary.

On November 29, 2023, the Court entered a scheduling order setting the close of fact discovery for November 13, 2025, a deadline which has never been extended. Dkt. 123. Given the multiple, unforeseen intervening events that have since transpired, the parties cannot complete fact discovery by this date. Among other things, (1) discovery was not pursued during the pendency of T-Mobile’s Section 1292(b) petition to the Seventh Circuit for interlocutory review of the Court’s motion to dismiss order; (2) the need for judicial intervention to resolve nonparties’ proposed amendments to the existing confidentiality order, without which nonparties have largely refused to produce any documents, and (3) the need for judicial intervention to compel the production of certain critical nonparty discovery. Currently, less than five months remain before the close of fact discovery, but AT&T and Verizon, as well as multiple other nonparties, have not produced *any* documents or data. Others have made their willingness to produce documents contingent on entry of their proposed edits to the confidentiality order. The timing of when those productions will begin remains uncertain since the gating issue concerning the confidentiality order remains unresolved.

Further, the Court has permitted each side to take up to 90 depositions, but none have yet been scheduled given the lack of progress on critical nonparty document and data production while the confidentiality order dispute remains unresolved.

The parties anticipate bringing a joint motion to extend the schedule with specific deadlines once the Court has resolved the pending disputes concerning AT&T, DISH, and the confidentiality order.

IV. Joint Stipulation and Proposed Order Regarding Expert Discovery

On December 5, 2024, the parties submitted a joint stipulation and proposed order regarding expert discovery, which has not yet been entered as an order. Should the Court have any questions on the proposed order, the parties will be prepared to address them at the next status conference.

Dated: June 17, 2025

/s/ Gary I. Smith Jr.

Gary I. Smith Jr. (pro hac vice)
HAUSFELD LLP
580 California Street, 12th Floor
San Francisco, CA 94111
Phone: (267) 702-2318
gsmith@hausfeld.com

Swathi Bojedla (pro hac vice)
Jose Roman Lavergne (pro hac vice)
Shana R. Herman (pro hac vice)
HAUSFELD LLP
1200 17th Street N.W., Suite 600
Washington, D.C. 20036
Phone: (202) 540-7200
sbojedla@hausfeld.com
jlavergne@hausfeld.com
sherman@hausfeld.com

Renner K. Walker (pro hac vice)
HAUSFELD LLP
33 Whitehall St., 14th Floor
New York, NY 10004

Phone: (646) 357-1100
rwalker@hausfeld.com

Brendan P. Glackin (pro hac vice)
Lin Y. Chan (pro hac vice)
Nicholas W. Lee (pro hac vice)
Sarah D. Zandi (pro hac vice)
Jules A. Ross (pro hac vice)
Courtney J. Liss (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
jross@lchb.com
cliss@lchb.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, N.W. Suite 400 East
Washington, D.C. 20001
Phone: (202) 559-9740
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

/s/ Rachel S. Brass
Rachel S. Brass (pro hac vice)
Caeli A. Higney (pro hac vice)
GIBSON, DUNN & CRUTCHER LLP
One Embarcadero Center Suite 2600
San Francisco, CA 94111-3715
Phone: 415-393-8200
RBrass@gibsondunn.com
CHigney@gibsondunn.com

Jennifer Milici
WILMER CUTLER PICKERING HALE AND DORR
LLP
2100 Pennsylvania Ave N.W.
Washington, D.C. 20037
Telephone: (202) 663-6006
Jennifer.Milici@wilmerhale.com

Clifford C. Histed ARDC No. 6226815
Michael E. Martinez ARDC No. 6275452
K&L GATES LLP
70 West Madison Street Suite 3300
Chicago, IL 60602-4207
Phone: 312-807-4448
clifford.histed@klgates.com
michael.martinez@klgates.com

Counsel for T-Mobile US, Inc.

CERTIFICATE OF SERVICE

I certify that on June 17, 2025, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which will then send electronic copies to the registered participants as identified on the Notice of Electronic Filing (NEF).

Respectfully submitted,

/s/ Gary I. Smith, Jr.

Gary I. Smith Jr. (pro hac vice)
HAUSFELD LLP
580 California Street, 12th Floor
San Francisco, CA 94111
Phone: (267) 702-2318
gsmith@hausfeld.com
Counsel for Plaintiffs and the Proposed Class