

**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. Albert Berry III

STIPULATION AND ORDER REGARDING EXPERT DISCOVERY

Plaintiffs Anthony Dale, Johnna Fox, Benjamin Borrowman, Ann Lambert, Robert Anderson, and Chad Hohenbery, and Defendant T-Mobile US, Inc., through their undersigned attorneys, hereby agree to a protocol for expert reports and expert discovery in the case captioned above (the “Action”), as follows:

1. This Stipulation and Order Regarding Expert Discovery (“Stipulation”) does not set or alter the time for any disclosure required by Federal Rule of Civil Procedure 26(a)(2)(B) or the timing of any deadlines set forth in any operative scheduling orders entered in this case.
2. To the extent that this Stipulation imposes limitations on discovery that would otherwise be available under the Federal Rules of Civil Procedure or this Court’s standing orders, the parties have agreed to those limitations to increase the efficiency of their dealings with experts and to minimize discovery disputes regarding experts. Neither the terms of this Stipulation nor the parties’ agreement to them shall be considered an admission by any party that any of the

information restricted from discovery by this Stipulation would otherwise be discoverable or admissible.

3. The parties will make all disclosures required by Federal Rule of Civil Procedure 26(a)(2), provided, however, that the term “considered” as used in Federal Rule of Civil Procedure 26(a)(2)(B)(ii) and 26(b)(4)(C)(ii) shall be interpreted as “relied upon” for purposes of this Action.

4. Except as set forth in Paragraph 5 below, and subject to sub-paragraphs (a) and (b) below, within three (3) business days of any party serving any expert report and/or expert summary under Rule 26, the party or parties proffering the expert witness shall produce: the facts, data or other information, relied on by the expert witness in forming the expert witness’s opinions.

- a. “Facts, data or other information relied on” shall include, but is not limited to, data sets and compilations, computerized regression analyses, reports, schedules, tables, figures, graphs, and charts the testifying expert relied on as a basis for his or her opinions, including information sufficient to replicate the expert witnesses’ analyses. “Facts, data or other information relied on” should be produced electronically (e.g., via email, disc, or FTP site) where feasible. Publicly available documents and information need not be produced absent a reasonable request, provided that their public locations are identified and accessible, and documents previously produced during discovery need not be produced if they are identified by Bates number. Data need not be re-produced if the party served with the report already possesses it, or if its publicly available, identified and accessible. Deposition transcripts and exhibits from this Action need not be reproduced so long as the names of deponents, dates of transcripts, and exhibit numbers relied upon are identified. This paragraph shall not preclude requests for copies of the publicly available materials that are not readily obtainable.
- b. All facts, data, and other information relied on shall be provided in a reasonably usable form, with any software and instructions required to read them, but no party need produce computer software or instructions that are reasonably and commercially available (e.g., Stata, Microsoft Word, Excel). In the event that a party’s expert utilizes propriety software that is not publicly available and is not practicable to copy, the party need not produce such software as long as the party promptly notified the receiving party of the issue in the ordinary course of discovery and provided timely and reasonable access as mutually agreed to by the parties or ordered by the Court.

5. Notwithstanding the discovery obligations in Paragraph 3 and 4 above, the parties will not seek to discover, and may not discover, the following:

- a. drafts of (i) expert reports, (ii) affidavits, (iii) declarations, (iv) written testimony, or (v) other written materials prepared in connection with this matter, including preliminary or intermediate calculations, computations, or other data runs, or other types of preliminary work created by, for, or at the direction of a testifying expert by consultants, counsel, other experts, and/or staff;
- b. written or oral communications or notes of discussions relating to drafts or final reports, affidavits, declarations, written testimony, or other written materials;
- c. any written or oral communications between (i) a testifying or non-testifying expert (including his or her assistants, staff, or agents) and a party's counsel (including in-house counsel) and any consultant retained in anticipation of litigation or for trial; (ii) a testifying or non-testifying expert and his or her staff, assistants, or agents; or (iii) a testifying or non-testifying expert (including his or her staff, assistants, or agents), and any other testifying or non-testifying expert retained by a party (including his or her staff, assistants, or agents);
- d. written or oral communications or other materials relating to the deposition of the expert;
- e. written or oral communications or other materials relating to interviews of or the potential retention of experts or consultants;
- f. work performed by non-testifying experts or consultants;
- g. notes, analyses, comments, or other writings prepared by or for a testifying expert in connection with this matter;
- h. the budgets, invoices, bills and related billing records, receipts, or time records of or concerning the testifying or non-testifying expert witnesses or consultants, their staff, assistants, colleagues, or associates, or their companies and/or organizations; however, an expert may be asked, and will be prepared to answer, reasonable questions about (i) the expert's and their staff's compensation related to this matter, (ii) the amount of time an expert or their staff has expended in preparing the expert's report, testimony and associated work, and (iii) the amount of money billed for the report, testimony and associated work; and
- i. any materials or information not subject to disclosure under the Rules, laws and any orders of the Court.

The absence of any categories of information or documents in this Paragraph is not, and shall not be construed as, an admission, concession or acknowledgement that such materials are discoverable.

6. The limitations contained in Paragraph 5 shall not apply to any communications, materials, documents, data sets, data runs, calculations, computations, or other forms of information or work upon which a testifying expert relies as a basis for any of his or her opinions or reports.

7. None of the materials addressed in Paragraph 5 needs to be listed on any privilege log. It is further stipulated that the parties and experts do not have any obligation to retain materials that are not required to be disclosed under this Stipulation.

8. No subpoenas (for depositions or documents) need be served on any testifying expert from whom a report or summary is provided. Instead, the party proffering such expert will (a) be responsible for producing all materials and information relied on by the expert as outlined above, and (b) make the expert available for deposition at a time or times mutually agreed to by the parties and consistent with the Court's scheduling orders.

9. The parties agree to comply with this Stipulation pending the Court's approval.

Dated: December 5, 2024

Respectfully submitted,

/s/ Lin Y. Chan

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APPROVED AND SO ORDERED.

Dated: 7/2/25


Hon. Albert Berry III
United States Magistrate Judge