

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
STATE OF NEW YORK, STATE OF
WASHINGTON, STATE OF
CALIFORNIA, STATE of ILLINOIS,
COMMONWEALTH OF
MASSACHUSETTS, STATE OF OHIO,
and COMMONWEALTH OF
PENNSYLVANIA,

Plaintiffs,

v.

AT&T INC., T-MOBILE USA, INC., and
DEUTSCHE TELEKOM AG,

Defendants.

Civil No. 11-01560 (ESH)

STIPULATED SCHEDULING AND CASE-MANAGEMENT ORDER

In accordance with Fed. R. Civ. P. 16(b) and LCvR 16.4 and upon agreement of the parties, the Court hereby ORDERS as follows:

1. Service of and Response to the Complaint. In this action, counsel for the Defendants, acting on behalf of Defendants, have accepted service of the Complaint and have waived service of a summons. Defendants have already filed their answer to the Complaint.
2. Joinder and Amendments to the Pleadings. Without leave of Court, the parties may join additional parties within 7 days of entry of this Order, and amendments to the Complaint shall occur by 10 days after entry of this Order. Any answer to an amended complaint shall occur within 10 days of its filing.

3. Discovery Conference. The parties' prior consultations and submission of this stipulated Order relieve the parties of their duty under Fed. R. Civ. P. 26(f) to confer about scheduling and a discovery plan.

4. Initial Disclosures. Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be limited as follows:

A. Plaintiffs' initial disclosures: Under the terms and conditions set forth below, Plaintiffs shall

1. produce to Defendants within 10 days of the entry of this Order a list of all non-parties that received a Civil Investigative Demand or otherwise provided materials to the Plaintiffs in their investigation that preceded this lawsuit; Defendants reserve the right to seek a list of all persons interviewed or otherwise contacted by the Plaintiffs in the course of their investigation of the Proposed Acquisition; and

2. produce to Defendants, as soon as reasonably practicable and consistent with the timing for producing confidential information set forth in Paragraph 9 below, all documents, data, oral examination transcripts, depositions, statements, declarations, and affidavits, whether in hard-copy or electronic form, exchanged between Plaintiffs (including Plaintiffs' counsel) and any non-party (including the non-party's counsel) in the course of Plaintiffs' Investigation of the Proposed Acquisition (collectively, Plaintiffs' "Investigation Materials"). Plaintiffs shall produce these Investigation Materials regardless of whether those materials were received informally or through compulsory process, such as a subpoena or Civil Investigative Demand. Plaintiffs are not required to produce back to Defendants documents or other written materials originally received from Defendants. This Paragraph shall not be construed as requiring the

production of Plaintiffs' attorney work product, confidential attorney-client communications, communications with or information provided to any potentially or actually retained expert, communications subject to a common interest privilege, or materials subject to the deliberative process or any other governmental privilege.

B. Defendants' initial disclosures: Under the terms and conditions set forth below, Defendants shall produce to Plaintiffs, consistent with the timing for producing confidential information set forth in Paragraph 9 below, copies of all documents, data, oral examination transcripts, depositions, statements, declarations, and affidavits, whether in hard-copy or electronic form, exchanged between any Defendant (including Defendants' counsel) and any non-party (including the non-party's counsel) in the course of responding to Plaintiffs' Investigation of, or otherwise relating to, the Proposed Acquisition, including statements of support provided to Plaintiffs and/or the Federal Communications Commission (collectively Defendants' "Investigation Materials"). Notwithstanding the above, Defendants shall not at this time be required to produce emails or correspondence, including any attachments, soliciting support for the merger or other lobbying materials discussing or promoting the benefits of the merger, although Plaintiffs reserve the right to seek such materials in discovery. The Defendants are not required to produce back to the Plaintiffs documents or other written materials originally received from Plaintiffs. This Paragraph shall not be construed as requiring the production of Defendants' attorney work product, communications with or information provided to any potentially or actually retained expert, communications subject to a common interest privilege, or confidential attorney-client communications.

5. Discovery Period. The period for fact discovery shall begin on the date of the entry of this Order and shall be completed by [December 30, 2011/January 10, 2012].

6. Written Discovery. All written discovery shall be served to permit timely responses to be served within the discovery period. Interrogatories shall be limited to 20 per side, including sub-parts. There will not be a limit on the number of requests for the production of documents that may be served by the parties. Requests for admission shall be limited to 50 per side, except for requests relating solely to the authentication or admissibility of documents, data, or other evidence. Parties shall respond to written discovery requests 20 days after service of the request. To the extent it is reasonably possible, parties shall produce documents within 20 days after service of the request but in no event, except for good cause shown, more than 30 days after service of the request. Notwithstanding the foregoing, to the extent that any discovery request relates to any office or agency of the U.S. Government other than the Antitrust Division or any office or agency of any Plaintiff State, it is understood that the Plaintiffs cannot guarantee that such agency or office will produce requested materials within 30 days, and that Plaintiffs will have no obligation other than making good-faith efforts with respect to such other agency or office. The Plaintiffs, further, reserve all rights to object to any such discovery, pursuant to the Federal Rules of Civil Procedure.

7. Depositions of Fact Witnesses. Absent good cause shown, depositions shall be limited to no more than 30 per side (excluding experts), plus depositions of the parties' designated witnesses as set forth in Paragraph 10 of this Order. A deposition of a party or non-party, taken pursuant to Fed. R. Civ. P. 30(b)(6), shall count as one deposition regardless of the number of witnesses produced to testify. Depositions taken for the sole purpose of establishing

the authenticity and admissibility of documents produced by any party or non-party do not count toward the limit of depositions.

Depositions of fact witnesses shall be no more than one (7 hour) day in length; however deposition of five fact witnesses employed by or otherwise affiliated with a party may extend to two days in length at the discretion of the noticing party. Party witnesses residing outside the United States shall be produced in Washington, D.C. for deposition. Employees of party witnesses will be made available for deposition upon five days' notice if reasonably possible, though the deposing party will make a good-faith effort to provide at least seven business days' notice. The parties and affected non-parties may stipulate to additional time for individual depositions. Absent agreement of the parties, the length of depositions provided for in this Scheduling Order may be modified only by order of this Court for good cause shown.

All depositions, including the depositions of Defendants' employees taken by Plaintiffs during Plaintiffs' investigation of the Proposed Acquisition, may be used for all purposes under Fed. R. Civ. P. 32 or Fed. R. Evid. 801(d)(2)(D). Depositions taken during the investigation of the Proposed Acquisition do not count toward the limit of depositions.

8. Nationwide Service of Trial Subpoenas. To assist the parties in planning discovery and in view of the geographic dispersion of potential witnesses in this action outside this District, the parties will be permitted, pursuant to 15 U.S.C. § 23, to issue trial subpoenas that may run into any other federal district requiring witnesses to attend this Court. The availability of nationwide service of process, however, does not make a witness who is otherwise "unavailable" for purposes of Fed. R. Civ. P. 32 and Fed. R. Evid. 804, available under those rules.

9. Discovery of Confidential Information. Discovery and production of confidential information shall be governed by the Protective Order that the parties are concurrently filing with the Court, after entry by the Court, and a copy of the Order shall be included with any discovery requests, notices, or subpoenas directed to non-parties.

Once entered by the Court, the Protective Order shall be provided by Plaintiffs to all non-parties that produced Investigation Materials during Plaintiffs' investigation of the Proposed Acquisition. The non-parties shall have 15 days after receipt of a copy of the Protective Order in which to review the Protective Order and designate Investigation Materials as confidential under the Protective Order. If any non-party determines that the Protective Order does not adequately protect its confidential Investigation Materials, it may, within 10 days after receipt of a copy of the Protective Order, seek additional relief from the Court. If a non-party seeks additional relief from the Court, the Investigation Materials for which additional protection has been sought will not be produced until the Court has ruled. Otherwise, no non-party Investigation Materials shall be produced to Defendants by Plaintiffs until 11 days after a non-party's receipt of a copy of the Protective Order unless, before then, the non-party that produced the Investigation Materials indicates that it is satisfied with the terms of the proposed Protective Order. In these circumstances, Plaintiffs shall produce to Defendants that non-party's Investigation Materials as soon as feasible. All materials so produced shall be treated as confidential under the Protective Order until the non-party has had an opportunity to designate its materials as confidential or the 15-day period noted above has elapsed.

Investigation Materials in possession of the Defendants shall be produced no later than fifteen days after entry of this Order.

10. Witness Lists. On or before October 14, 2011, the parties shall negotiate the timing, method, manner, and content of the exchange of witness lists. Preliminary witness lists shall be exchanged at the earliest possible time to ensure adequate opportunity for each side to depose any witness on the opposing side's witness list if that witness has not already been deposed in this case. Despite the limitation on the number of depositions that each side may take, each side shall have the right to depose any witness on the opposing side's witness list if that witness has not already been deposed in this case, even if the limitation on depositions is exceeded.

11. Expert Witness Disclosures and Depositions. Expert-related discovery will be governed by Fed. R. Civ. P. 26, except as modified by this Order. Each side shall identify all experts that it will call in its respective case-in-chief and defense case by [October 21, 2011/ December 9, 2011]. Each side shall identify all rebuttal experts by [November 11, 2011/December 28, 2011].

Plaintiffs' case-in-chief expert reports will be delivered to Defendants by [November 1, 2011/January 11, 2012]. Defendants' expert reports on efficiencies of the merger will be delivered to Plaintiffs by [November 1, 2011/January 11, 2012]. Both sides will deliver responsive expert reports to the other side by [November 15, 2011 /February 8, 2012]. Rebuttal reports permitted by Fed. R. Civ. P. 26(a)(2)(D)(ii) will be delivered by [December 1, 2011/February 22, 2012]. Expert discovery, including each party's expert reports, shall comply with the requirements of Fed. R. Civ. P. 26(a)(2), except that neither side must preserve or produce in discovery the following documents or materials:

- a. Any form of oral or written communication or correspondence between any of Defendant's counsel and its expert(s) or the Plaintiffs and their expert(s), between testifying and non-testifying experts, or between testifying experts.

- b. Written communication or correspondence between an expert(s) and the expert's staff
- c. Expert's notes, except to the extent that the notes reflect facts or assumptions relied upon by the expert in the opinions contained in his or her final report.
- d. Drafts of expert reports.
- e. Data formulations, data runs, or any database-related operations not relied upon by the experts in the opinions contained in his or her final report.

Depositions of each side's experts will be conducted only after exchange of all of the above-referenced reports and must be completed by **[December 30, 2011/March 7, 2012]**.

Depositions of each expert witness may extend to two days in length.

12. Service of Pleadings and Discovery on Other Parties. Service of all pleadings, discovery requests, including Rule 45 subpoenas for testimony or documents, and delivery of all correspondence in this matter will be made by email to the following individuals designated by the parties (including principal designees for each side, noted with an asterisk (*)) below:

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For Defendants T-Mobile USA, Inc., and Deutsche Telekom AG:

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The serving party will telephone the other side's principal designees when the materials are sent to alert them that the materials are being served. Any party's principal designee served by email shall promptly confirm receipt. Electronic delivery with confirming receipt shall be treated in the same manner as hand delivery for purposes of calculating discovery response times under the Federal Rules. However, email service that is delivered after 6:00 pm EST, shall be treated as if it was received the following business day.

Each side shall copy and produce materials obtained in discovery from any non-party to the other side, including, as applicable, each Defendant and Plaintiff United States, within three business days after receipt by the party initiating the discovery request.

13. Privilege Issues. By separate order, the Court may designate a magistrate or appoint a special master to review and rule on disputes pertaining to the Defendants claims of privilege for documents listed in logs that they produced during the Investigation.

14. Exhibit Lists. On or before December 2, 2011, the parties shall negotiate the timing, method, and manner of the exchange of exhibit lists, as well as a process for stipulating to the authenticity and admissibility of proposed exhibits.

15. Demonstrative exhibits, other than those to be used by experts, do not need to be included on exhibit lists, but unless otherwise agreed or ordered, need to be served on all counsel of record at least 48 hours before any such exhibit may be introduced, or otherwise used, at trial. (1) Text-only powerpoint slides and (2) demonstratives created in court, need not be pre-disclosed to the opposing party.

16. Trial Date. Date for the Pretrial conference and trial shall be set by the Court. Pretrial proceedings shall be governed by this Court's standing pretrial order and applicable local court rules. The parties shall be prepared to begin trial on [January 16, 2012/March 19, 2012].

IT IS SO ORDERED.

DATED: September _____, 2011

Ellen S. Huvelle
UNITED STATES DISTRICT JUDGE