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 et al.,

Defendants.

Case No. 1:22-cv-03189

Hon. Thomas M. Durkin

DEFENDANT T-MOBILE US, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

Defendant T-Mobile US, Inc. respectfully moves under 28 U.S.C. § 1404(a) to transfer this action to the Southern District of New York for convenience and in the interest of justice.

Introduction

In April 2020, in Manhattan, T-Mobile and Sprint Corporation closed a historic pro-consumer merger. The merger was approved by key antitrust enforcers and regulators, including the Department of Justice Antitrust Division, the Federal Communications Commission, ten State Attorneys General, and the California Public Utility Commission, all of whom concluded—after lengthy review—that the deal would have significant procompetitive benefits in the form of higher-quality services and lower prices for mobile wireless consumers, as well as result in increased competition across the industry. The merger was also closely scrutinized in a high-profile antitrust action brought by a group of State Attorneys General in the Southern District of New York. Following a two-week bench trial, Judge Marrero rightly rejected the States' challenge,

disagreeing with their flawed position that the merger would result in less competition among market participants. Experience has proven both the regulators and Judge Marrero right: since the merger closed, vigorous competition has continued and consumers have started to realize the predicted procompetitive benefits. As the parties predicted in the litigation, AT&T and Verizon were forced to respond to the merger of T-Mobile and Sprint by greatly expanding and accelerating their plans to roll out 5G networks and investing tens of billions of dollars to acquire new spectrum to add to their networks. As a result, the quality of service for consumers is up, especially with the highly successful rollout of T-Mobile's 5G network; T-Mobile has introduced new, low-cost plans; and low-income, prepaid, and rural customers have all experienced significant improvements in their wireless services.

This lawsuit ignores all this history. Years too late, Plaintiffs seek to challenge the merger on fundamentally identical grounds as did the litigating States. In other words, Plaintiffs would have this Court serve as Monday Morning Quarterback to Judge Marrero, reassessing—and, as Plaintiffs would have it, overriding—his core legal and factual determinations relating to the long-term effects of the merger, including Dish Network Corp.'s ("DISH") 5G launch, T-Mobile's sustained low-cost post-merger service plans, and whether absent the merger Sprint could have survived as a standalone competitor (and if so, whether it would have dwindled to the scale of a regional operator). None of the decisions leading to those events have occurred or will occur in this District, one with *no connection* to either the merger or any allegedly anticompetitive conduct.

To the extent this case is going to proceed at all, the Court should transfer it under 28 U.S.C. § 1404(a) to the venue in which it should have been brought in the first place—the Southern District of New York. That District is not only the most convenient forum, given that it has the closest relationship to the material events (the merger was negotiated, signed, and closed there)

and is the home base of Verizon, a critical non-party whose conduct is challenged in the Complaint, whose customers are alleged to have been harmed by the conduct, and whose employees will doubtless have to testify should the case be permitted to proceed. It would also manifestly be more efficient and serve the interest of justice for the New York court that already heard relevant evidence and considered the issues to resolve this duplicative case. The action should be transferred.

Background

T-Mobile and Sprint announced their intention to merge over four years ago, on April 29, 2018. Compl. ¶ 4. Both companies "envisioned that the merged firm . . . would have comparable scale to its two largest competitors, AT&T and Verizon," and would maintain T-Mobile's "aggressive pro-consumer strategies." *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 196 (S.D.N.Y. 2020). Following the announcement, federal regulators began a searching assessment and ultimately approved the proposed merger.

The FCC examined the merger for more than a year to evaluate whether it would advance "the 'public interest, convenience, and necessity.'" Ex. 1 ¶ 4, Declaration of Rachel S. Brass ("Brass Decl."). On October 16, 2019, after T-Mobile and Sprint made commitments enforceable by the FCC until 2025 to divest Sprint's Boost business and to provide 5G service to specified populations at guaranteed speeds over three- and six-year timeframes, *id.* ¶¶ 25–27, 30–32, the FCC gave the merger its stamp of approval. The FCC concluded that the merger would "result in significant public interest benefits, including encouraging the rapid deployment of a new 5G mobile wireless network, and improving the quality of . . . services for American consumers." *Id.* ¶ 5. Then-Chairman Ajit Pai emphasized that the merger was "a unique opportunity to speed up the deployment of 5G throughout the United States and bring much faster mobile broadband to rural Americans. We should seize this opportunity." Ex. 2 at 2, Brass Decl. (quotation marks omitted).

For its part, the Department of Justice's Antitrust Division concurrently reviewed the merger to ensure it did not violate the federal antitrust laws, including Section 7 of the Clayton Act, one of the statutes invoked by Plaintiffs. T-Mobile, Sprint, the DOJ, and the Attorneys General of five States (later expanded through amendment to ten States) ultimately filed a proposed consent decree in federal court in which T-Mobile and Sprint consented to divest certain assets to DISH to facilitate its entry into the mobile wireless business. Ex. 3 at 6–18, Brass Decl. The DOJ and State AGs, in turn, determined the merger could proceed. *Id.* at 36. Subsequent to public notice and opportunity to comment under the procedures of the Tunney Act, the consent decree was approved as "in the public interest," 15 U.S.C. § 16(e), by the court on April 1, 2020, and remains enforceable until 2027. *See* Ex. 4, Brass Decl.; *United States v. Deutsche Telekom AG*, 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020).

In the meantime, on June 11, 2019, a group of State AGs parted with federal and state antitrust enforcers and filed suit in the Southern District of New York under Section 7 of the Clayton Act in an attempt to block the merger. *See* Compl. ("SDNY Compl."), *New York v. Deutsche Telekom AG*, No. 19-cv-5434 (S.D.N.Y. June 11, 2019). The State AGs alleged that the merger would "result in diminished competition, higher prices, and reduced quality and innovation." *Id.* ¶ 5. The case proceeded quickly, culminating in a highly publicized two-week bench trial in December 2019 before Judge Marrero.

That trial involved a "mega record[] of fact discovery" and "conflicting engineering, economic, and scholarly [expert] models." *Deutsche Telekom AG*, 439 F. Supp. 3d at 187. Judge Marrero exhaustively "[w]eigh[ed] the evidence in the trial record" and, in his decision issued two months after the trial, ruled in favor of the merger, rejecting the "States' objections on three essential points." *Id.* at 189. First, he disagreed that the new company would "pursue anticompetitive

behavior that" that would "yield higher prices or lower quality for wireless telecommunications services." *Id.* Instead, he expected that post-merger, new T-Mobile would become "a company reinforced with a massive infusion of spectrum, capacity, capital, and other resources, and chomping to take on its new market peers and rivals in head-on competition." *Id.* at 245. Second, he disagreed that "Sprint, absent the merger, would continue operating as a strong competitor"—a key plank of the States' case against the merger. *Id.* at 189. And third, he did "not credit" the States' evidence that DISH "would not enter the wireless services market as a viable competitor . . . [to] fill the competitive gap left by Sprint's demise." *Id.*

Shortly after Judge Marrero's decision, in early March 2020, T-Mobile and Sprint settled with twelve of the plaintiff State AGs. The merged company committed to providing low-cost plans to residents of those States and nationwide broadband access for educational purposes to qualifying households. Ex. 5 at 1–3, Brass Decl. In exchange, the States agreed not to appeal Judge Marrero's decision or publicly oppose the merger. *Id.* at 3–4. The parties agreed that any disputes arising out of the settlement would be heard in the Southern District of New York. *Id.* at 4. The agreement remains in force until April 2025. *Id.* at 6.

The merger closed on April 1, 2020. Compl. ¶ 5. Since then, just as Judge Marrero predicted, it has begun to bear the predicted procompetitive fruit. T-Mobile has rolled out its 5G network to great fanfare—even winning awards for its "contribution furthering the development of mid-band 5G."[1] Quality of services has increased industry-wide, with T-Mobile customers in particular enjoying the fastest average 5G download and upload speeds, most frequent 5G uptime, and greatest geographic connectivity of any network. *See* Ex. 6 at 4, Brass Decl.; *see also* Ex. 7

1 T-Mobile, *T-Mobile US Recognized for its Outstanding Contribution Furthering the Development of 5G* (Mar. 2, 2022), https://www.t-mobile.com/news/network/t-mobile-us-gti-award.

at 4, Brass Decl. ("T-Mobile took the top spot as the fastest and most consistent mobile operator in the U.S. during Q2 2022."). And T-Mobile has introduced several new plans targeted at low-income and prepaid customers priced at between $10 and $25 per month.[2] T-Mobile's newly expanded network capacity has even allowed it to offer home broadband service that is winning business from Verizon Fios and cable internet companies.[3] DISH, too, has hit FCC-imposed milestones for its own 5G network, and continues to offer Boost service.[4] Indeed, despite Plaintiffs' bald assertion that T-Mobile has "renege[d] on its commitments to regulators," Compl. at 46, the Complaint contains no factual allegations that T-Mobile violated any FCC merger order, any DOJ consent decree or court judgment, or any settlement with any government antitrust enforcer.

T-Mobile now moves to transfer this action to the Southern District of New York. Plaintiffs object to this motion. Brass Decl. ¶ 15.

Legal Standard

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." 28 U.S.C. § 1404(a). Transfer under § 1404(a) is appropriate if (1) venue is proper in both the transferor and transferee court, (2) transfer is for the convenience of the parties and witnesses, and (3) transfer is in the interest of justice. *See In re Ryze Claims Sols., LLC*, 968 F.3d 701, 707–08 (7th Cir. 2020); *Imperial Crane Servs.,*

2 T-Mobile, *T-Mobile Launches New Connect by T-Mobile Plans* (Mar. 21, 2022), https://www.t-mobile.com/news/offers/new-connect-by-t-mobile-plans.

3 Fierce Telecom, *T-Mobile says its FWA service is stealing subs from fiber, cable* (Feb. 3, 2022), https://www.fiercetelecom.com/broadband/t-mobile-says-its-fwa-service-stealing-subs-fiber-cable.

4 Dish Network, *DISH's Smart 5G™ Wireless Network is Now Available to Over 20 Percent of the U.S. Population* (June 15, 2022), https://about.dish.com/2022-06-15-DISHs-Smart-5G-TM-Wireless-Network-is-Now-Available-to-Over-20-Percent-of-the-U-S-Population.

Inc. v. Cloverdale Equip. Co., 2013 WL 5904527, at *5 (N.D. Ill. Nov. 4, 2013).

Whether transfer is "convenient" is governed by: "(1) plaintiff's choice of forum, (2) the situs of the material events, (3) the relative ease and access to sources of proof, (4) the convenience of the parties and (5) the convenience of the witnesses." *Knight v. Baxter Healthcare Corp.*, 2020 WL 6287404, at *1 (N.D. Ill. Oct. 27, 2020) (quotation marks omitted). Whether transfer is in the "interests of justice" is determined by "(1) docket congestion and likelihood to proceed to a speedy trial, (2) each court's relative familiarity with the relevant law, (3) the respective desirability of resolving controversies in each locale, and (4) the relationship of each community to the controversy." *George & Co. v. Target Corp.*, 2021 WL 2948910, at *5 (N.D. Ill. July 14, 2021).

Argument

The Court should transfer this case to the Southern District of New York. The case should and could have been brought there in the first place, and virtually every factor militates in favor of sending it there now. Literally zero of the allegations in the Complaint involves conduct in this District. Instead, most of the major events alleged occurred in the Southern District of New York. That is where the merger agreement, the main target of Plaintiffs' ire, was negotiated and signed. It is where the merger closed. And it is where critical non-parties whose conduct is put at issue, including Verizon, are based—and thus where many key non-party witnesses reside and work. Indeed, all the parties involved in the merger recognized the centrality and convenience of the Southern District of New York for any merger challenge, which is why they agreed that any disputes arising out of the merger would be heard there—and why the prior merger trial *was held* there. Given its close ties to the events in question, the Southern District of New York has a heightened local interest in hearing this case. It would also serve judicial economy for the same court that has already dedicated significant time and attention to the merger—including presiding

over a two-week bench trial—to hear this duplicative challenge.[5]

I. Plaintiffs could have brought this case in the Southern District of New York.

It is beyond dispute that Plaintiffs "might have [] brought" this action in the Southern District of New York. 28 U.S.C. § 1404(a). A "substantial part of the events" at issue occurred there, *id.* § 1391(b)(2), including the challenged merger itself, *see* Compl. ¶ 5; Ex. 12 § 1.3, Brass Decl.; *cf. Schwartz v. Nat'l Van Lines, Inc.*, 317 F. Supp. 2d 829, 834 (N.D. Ill. 2004) ("[T]o be 'substantial,' the events that occurred in the forum district must be a part of the historical predicate of the claim."). These same three defendants were already sued in that District in an antitrust suit challenging the same merger under the same statute for the same reasons. *See* SDNY Compl. ¶¶ 9, 16–17, 20; *Deutsche Telekom AG*, 439 F. Supp. 3d at 189 (issuing final judgment for defendants).

II. The weight of the convenience factors strongly supports transfer to the Southern District of New York.

The convenience factors weigh firmly in support of transfer to the Southern District of New York. First, the convenience of the witnesses strongly favors transfer. This is "often the most important factor in determining whether to grant a motion to transfer." *Mgmt. Registry, Inc. v. Batinich*, 2018 WL 1586244, at *4 (N.D. Ill. 2018). The convenience of non-party witnesses is given greater weight than the convenience of party witnesses. *Hirst v. SkyWest, Inc.*, 405 F. Supp. 3d 771, 778 (N.D. Ill. 2019). A party moving for transfer must "'clearly specify the key witnesses to be called and make at least a generalized statement of what their testimony' will include." *Id.* (quoting *Heller Fin., Inc. v. Midwhey Powder Co.*, 883 F.2d 1286, 1293 (7th Cir. 1989)).

[5] It is no barrier to transfer that two of the defendants here have yet to be served. *See Rivers v. Union Pac. R.R.*, 2017 WL 379447, at *3 (M.D. La. Jan. 26, 2017) ("A federal court may consider a transfer motion before all of the parties are joined."); *Hanover Ins. Co. v. Paint City Contractors, Inc.*, 299 F. Supp. 2d 554, 556 n.1 (E.D. Va. 2004) ("Service of process on all named defendants is not a prerequisite to the court's power to transfer." (citing *Internatio–Rotterdam, Inc. v. Thomsen*, 218 F.2d 514, 516 (4th Cir. 1955))).

Here, many relevant non-party witnesses reside or work in the Southern District of New York. Non-party Verizon, central to the Complaint, is headquartered there. Compl. ¶¶ 12–18 (identifying Plaintiffs); ¶ 122 ("AT&T and Verizon have charged higher prices for nationwide wireless plans than they would have [without the merger]."); *see* Ex. 8 at 1, Brass Decl. Verizon's conduct will accordingly be the subject of extensive testimony by Verizon witnesses in this case.[6]

As one example, Plaintiffs allege that Verizon "reduced its competitive efforts after the merger," citing statements made by Verizon's Chief Financial Officer, Matthew D. Ellis, regarding Verizon's pricing decisions. Compl. ¶ 82. Mr. Ellis's testimony will be necessary to explore these issues of Verizon's prices and broader competitive efforts. Similarly, Plaintiffs cite a press release with statements from Verizon's Chairman and Chief Executive Officer, Hans Vestberg, regarding Verizon's network strategy and performance. *Id.* ¶ 83. Mr. Vestberg's testimony will be necessary to examine whether and how Verizon's network strategy was affected by the T-Mobile merger, as well as to further illuminate pricing decisions, *id.* ¶ 108. Several other Verizon executives will likely have testimony critical to Plaintiffs' allegations involving Verizon's alleged increase in prices and strategy around plan offerings, including Diego Scotti (the Chief Marketing Officer), Rima Qureshi (the Chief Strategy Officer), and Manon Brouillette (CEO of Verizon Consumer Group). Ex. 9 at 1, 3, Brass Decl. Other lower-level Verizon management yet to be identified may also testify about Verizon's corporate strategy and competitive efforts. The Southern District of New York will be significantly more convenient for all of these witnesses.

Witnesses from Altice USA, Inc., based in New York, Ex. 10 at 2, Brass Decl., may also have to testify. Core to Plaintiffs' case is that Sprint could have remained a viable competitor in

[6] To the extent some of these witnesses may work at Verizon's secondary headquarters across the river in New Jersey, Ex. 8 at 1, Brass Decl., the Southern District of New York is still significantly more convenient for them than this District.

the market absent the merger. Compl. ¶¶ 59–62. This was also a central issue in the case before Judge Marrero, where the States relied in large part on an argument that Sprint could "fill coverage gaps through densification partnerships with [regional providers] like Altice." *Deutsche Telekom AG*, 439 F. Supp. 3d at 217–24. At minimum, the same Altice witness that testified in that case, Chief Operating Officer Abdelhakim Boubazine, *id.* at 200, would also have to testify in this case to address Altice's partnership with Sprint and its effect on Sprint's competitive viability. The Southern District of New York will be more convenient for him as well.

Next, as to the situs of material events, courts routinely transfer cases when "there is little to no nexus between [plaintiff's chosen] district and the operative facts" alleged in a complaint. *J&L Mgmt. Corp. v. Arcelormittal Wierton, Inc.*, 2008 WL 5082980, at *3 (N.D. Ill. Nov. 25, 2008). It is not sufficient for Plaintiffs to rely on purported nationwide harm because "the material events inquiry focuses on the location of actions creating the injury, not the location of the injury itself." *See George & Co.*, 2021 WL 2948910, at *3. And in considering corporate decision-making that leads to material events, courts in this District routinely look to corporate headquarters as the appropriate location to determine materiality. *Cf., e.g.*, *FTC v. Fortune Hi-Tech Mktg., Inc.*, 2013 WL 1858598, at *3 (N.D. Ill. May 1, 2013) ("[D]ecisions regarding the business would have been made at the Defendants' corporate headquarters.").

Far from serving as the situs of material events, the Northern District of Illinois has no meaningful nexus to this case. All of the material events occurred outside of the District, most of them in the Southern District of New York. For instance, Plaintiffs' allegations center on the merger and its alleged negative consequences. *See, e.g.*, Compl. ¶ 122 ("The Defendants' merger agreement has substantially reduced actual and potential competition in the sale of retail mobile wireless telecommunications services."). That merger occurred in the Southern District of New

York. The relevant parties met in Manhattan over a period of months to negotiate the merger. Brass Decl. ¶ 14; *see* Ex. 13 at 67–76, Brass Decl. At the conclusion of negotiations, on April 29, 2018, the parties signed the merger agreement. Ex. 13 at 76, Brass Decl. The agreement designates the Southern District of New York as the sole forum for disputes arising from the transaction. Ex. 12 § 10.14, Brass Decl. Following final approval from all relevant regulators and Judge Marrero, the parties gathered once again in Manhattan to close the deal. Compl. ¶ 5; Ex. 12 § 1.3, Brass Decl. In stark contrast, not a single event relevant to the merger occurred in this District.

The alleged post-merger conduct by T-Mobile, Verizon, and AT&T did not occur in the Northern District of Illinois, either. Verizon is headquartered in the Southern District of New York, Ex. 8 at 1, Brass Decl., and its corporate decisions alleged in the Complaint are presumed to have been made there, not here, *see Fortune Hi-Tech Mktg.*, 2013 WL 1858598, at *3. T-Mobile is based in Bellevue, Washington, and AT&T is based in Dallas, Texas, both hundreds of miles from this District. Ex. 11 at 2, Brass Decl.; Compl. ¶ 20. And to the extent any supposed negative effects of the merger might be felt here, that is irrelevant to the material events inquiry. *See George & Co.*, 2021 WL 2948910, at *3. That makes Plaintiffs' allegations regarding T-Mobile's retail locations in this District (Compl. ¶ 20) irrelevant to the transfer analysis. Put simply, the Complaint does not identify a single material post-merger event in this District. Because "none of the material events giving rise to this lawsuit" occurred here, this factor weighs heavily in favor of transfer. *Abbott Labs. v. Teva Pharm. USA, Inc.*, 2008 WL 11399700, at *5 (N.D. Ill. Nov. 12, 2008) (transferring case given plaintiffs' "attenuated interest in proceeding in this district"); *cf. Waters v. Leidos, Inc.*, 2022 WL 657055, at *2 (N.D. Ill. Mar. 4, 2022) (noting location of material events is particularly "important" when, as here, "it differs from the plaintiff's choice of forum").

The fact that Plaintiffs chose to file suit in this District should not be given any weight.

The import of that choice is "greatly discounted in class actions," particularly nationwide class actions. *Jaramillo v. DineEquity, Inc.*, 664 F. Supp. 2d 908, 914 (N.D. Ill. 2009). This is because "if class certification occurs, the named Plaintiffs' choice of venue will not be the home venue for all plaintiffs and any venue selected is bound to be inconvenient to some plaintiffs." *Id.*; *see Budicak, Inc. v. Lansing Trade Grp., LLC*, 2019 WL 3554165, at *3 (N.D. Ill. Aug. 5, 2019) ("Courts in this district have consistently held that a plaintiff's choice of forum is afforded less deference when the plaintiff represents a class."). Plaintiffs here seek to represent just such a nationwide class. Compl. ¶ 110. Any remaining force to their choice gives way because "none of the conduct complained of occurred in the forum selected." *Sacca v. Wyo. Whiskey, Inc.*, 2018 WL 11198064, at *3 (N.D. Ill. Feb. 7, 2018) (Durkin, J.) (stating that a "plaintiff's choice of forum . . . has minimal value" in such circumstances) (quotation marks omitted); *cf. Preston v. Am. Honda Motor Co.*, 2017 WL 5001447, at *3 (N.D. Ill. Nov. 2, 2017) (discounting choice of forum in putative nationwide class action where no events occurred there and only connection was "incidental Illinois residencies" of named plaintiffs). Plaintiffs' choice of forum should be disregarded.

The remaining two factors—convenience of the parties and ease of access to evidence—are, at worst, neutral. Convenience of the parties considers "the parties' residences and their ability to bear the expense of litigating in each forum." *McCain Foods Ltd. v. J.R. Simplot Co.*, 2017 WL 3432669, at *4 (N.D. Ill. Aug. 9, 2017). While large corporations like T-Mobile are generally presumed to be capable of litigating in any district, *see Courtesy Caribbean v. Aquilar*, 1995 WL 549127, at *3 (N.D. Ill. Aug. 31, 1995), the same is true of nationwide classes, *see Simonoff v. Kaplan, Inc.*, 2010 WL 1195855, at *2 (N.D. Ill. Mar. 17, 2010). As for access to relevant evidence, "[m]ost documentary evidence today is produced electronically" and easily accessed from any forum. *Tavistock Rest. Grp. v. Zurich Am. Ins. Co.*, 2021 WL 1614519, at *6 (N.D. Ill. Apr.

26, 2021). Neither of these factors cut against transfer to the Southern District of New York.

III. The interest-of-justice factors strongly support transfer to the Southern District of New York.

Every interest-of-justice factor supports transfer to the Southern District of New York.[7] First, and most importantly, transfer would support judicial economy. When evaluating a transfer motion, courts should "consider the level of familiarity of each court with the facts and circumstances surrounding the controversy" so as to prevent "two different courts [from being forced to] familiarize themselves with the controversy." *Jaramillo*, 664 F. Supp. 2d at 915–16; *see also Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 221 (7th Cir. 1986) ("Related litigation should be transferred to a forum where consolidation is feasible.").

Here, Judge Marrero in the Southern District of New York has very recently presided over a federal antitrust challenge to the merger at issue in this case on the same theories that Plaintiffs present now. *Compare* Compl. ¶¶ 122–23 (alleging that the merger "has substantially reduced actual and potential competition in the sale of retail mobile wireless telecommunications services" and that the merger has "inflat[ed] prices . . . above what they would be without the merger"), *with* SDNY Compl. ¶ 104 (alleging that "[c]ompetition in retail mobile wireless telecommunications will be lessened substantially" and that "[p]rices . . . are likely to be higher than they otherwise would be"). Judge Marrero is thus "fully familiar with the law" at issue "and [the] facts" that would be presented. *Gen. Elec. Co. v. R Squared Scan Sys., Inc.*, 1990 WL 7186, at *3 (N.D. Ill. Jan. 12, 1990). He has heard the arguments, reviewed the evidence, and made factual and legal

7 Plaintiffs indicated at a meet-and-confer for this motion their position that in antitrust cases the interest of justice had favored transfer *only* where there was a first-filed antitrust case or pending patent case in the transferee district. This bizarre argument finds no support in the caselaw. *See, e.g.*, *Budicak, Inc.*, 2019 WL 3554165, at *4 (applying standard § 1404(a) factors to Sherman Act case and concluding that "the interest-of-justice factors weigh[] in favor of transfer[]" to forum with no pending related case); *Roboserve, Ltd. v. Tom's Foods, Inc.*, 1987 WL 14703, at *3 (N.D. Ill. July 21, 1987) (same).

determinations directly relevant here in allowing the merger to proceed. "Judicial economy would not be served by requiring [this Court] to retrace the steps" Judge Marrero has already taken. *Id.*; *see Rosen v. Spirit Airlines, Inc.*, 152 F. Supp. 3d 1055, 1065 (N.D. Ill. 2015) ("[I]t would be inefficient for two Courts to invest the time learning the facts common to both [cases].").

Courts in this Circuit routinely transfer in these circumstances, where another court is presiding or has recently presided over a closely related case. *See, e.g.*, *Connor v. Kotchen*, 2019 WL 1298585, at *7 (S.D. Ind. Mar. 21, 2019) (transferring case where even if "not strictly 'related litigation'" to case in transferee district, "it is at least collateral litigation, and the [transferee] court is best positioned to situate the former in the context of the latter"); *Palmucci v. Twitter, Inc.*, 2018 WL 11221296, at *2 (N.D. Ill. June 14, 2018) (transferring case where transferee district "is already adjudicating two closely related cases" and had "recently dismissed" others and thus had "presumed resulting familiarity with th[e] area of law"); *Preston v. Am. Honda Motor Co.*, 2017 WL 5001447, at *7–8 (N.D. Ill. Nov. 2, 2017) (transferring case where "judicial economy counsels in favor of relying on [transferee judge's] greater familiarity with the factual and discovery issues implicated by [plaintiff's] claims," even though earlier cases had recently been dismissed); *CNH Am. LLC v. Int'l Union*, 2009 WL 357920, at *5 (E.D. Wis. Feb. 12, 2009) (transferring case where "judge who presided over [a related case] for the past six years has extensive familiarity with the facts of the case and the applicable law"). The same should be done here.

Moreover, "the interest of justice is better served when a forum contains a community that has a strong desire to resolve a particular dispute and that has an invested stake in the matter such that the venue is closer to the action." *Craik v. Boeing Co.*, 37 F. Supp. 3d 954, 963–64 (N.D. Ill. 2013). The Southern District of New York and the community residing there have a strong local interest in this litigation. Most of the allegedly wrongful acts occurred there—the merger itself,

as well as Verizon's post-merger conduct, *see* Compl. ¶¶ 81–85, 108. This Court frequently transfers cases to the district with the greatest relationship to the action. *See, e.g.*, *Waters*, 2022 WL 657055, at *4 ("[T]he Eastern District of Virginia has a greater relationship to the controversy because the allegedly wrongful acts occurred primarily in that district."); *Sickman v. Asset Recovery Sols., LLC*, 2015 WL 1911431, at *3 (N.D. Ill. Apr. 27, 2015) ("[T]he material events of this action occurred in Texas, providing Texas with a greater interest in this case.").

Finally, the relative congestion of the dockets in the Northern District of Illinois and the Southern District of New York also favors transfer. "To evaluate the speed at which a case will proceed, courts look to two statistics: (1) the median number of months from filing to disposition for civil cases and (2) the median number of months from filing to trial for civil cases." *Campbell v. Campbell*, 262 F. Supp. 3d 701, 711 (N.D. Ill. 2017) (quotation marks omitted). The median time from filing to disposition for civil cases is 5.8 months in the Southern District of New York, and 7.4 months in the Northern District of Illinois. The median time from filing to trial in civil cases is 39.4 months in the Southern District of New York, and 53.8 months in the Northern District of Illinois.[8] Based on these statistics, the Northern District of Illinois is "slightly more congested" than the Southern District of New York, *George & Co.*, 2021 WL 2948910, at *5, and this factor supports transfer.

Conclusion

The totality of the circumstances heavily favors transfer. The Southern District of New York is the more convenient forum in which the interest of justice will be served most efficiently. T-Mobile respectfully asks the Court to transfer venue under 28 U.S.C. § 1404(a).

8 *See* U.S. Courts, U.S. District Courts—National Judicial Caseload Profile (Mar. 31, 2022), https://www.uscourts.gov/sites/default/files/fcms_na_distprofile0331.2022.pdf.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2022, I electronically filed a copy of the foregoing through the Court's CM/ECF system, which will send notifications of the filing to all counsel of record.

/s/ Josh Krevitt
Josh Krevitt