

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

UNITED STATES OF AMERICA,

Plaintiff

v.

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

Defendants

Civil No. 11-01560 (ESH)

SPRINT NEXTEL CORPORATION,

Plaintiff

v.

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

Defendants.

Civil No. 11-01600 (ESH)

**[PROPOSED] COORDINATED SCHEDULING ORDER
AND CASE MANAGEMENT PLAN**

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. This Order applies to Civil No. 1:11-cv-01560-ESH and Civil No. 1:11-cv-01600-ESH with the intention of coordinating all pre-trial proceedings. Any reference to the “parties” herein shall include all parties in the captioned cases.
2. Service of and Response to the Complaints. In this action, counsel for Defendants AT&T Inc., and AT&T Mobility LLC have accepted service of the complaints on behalf of the AT&T Defendants and have waived service of the summonses. Counsel for

Defendant T-Mobile USA, Inc., has agreed to accept service of the complaint and waive service of summons on behalf of T-Mobile, but has not yet returned an executed Waiver of Service of Summons form to Plaintiff Sprint. Counsel for Defendant Deutsche Telekom AG has not yet agreed to accept service of the complaint or to waive service of summons. On September 9, 2011, Defendants filed their Answer to the Plaintiff United States of America's ("DOJ") Complaints. No later than September 30, 2011, Defendants shall file their responses to Plaintiff Sprint's complaint, including any motions to dismiss. Plaintiff Sprint shall have 20 days to file an opposition, and the Defendants shall have 10 days thereafter in which to file a reply.

3. Joinder and Amendments to the Pleadings. Absent leave of the Court, the parties must join additional parties by September 30, 2011, and may amend the pleadings before October 7, 2011.

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

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

A. Plaintiff DOJ's Initial Disclosures. Under the terms and conditions set forth below, the DOJ shall:

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

2. produce to all other parties, as soon as reasonably practicable and consistent with the timing for producing confidential information set forth in Paragraph 10 below, all documents, data, oral examination transcripts, depositions, statements, declarations, and affidavits, whether in hard-copy or electronic form, exchanged between the DOJ (including DOJ counsel) and any party or non-party (including the party or non-party's counsel) in the course of the DOJ's Investigation of the Proposed Acquisition (collectively, the DOJ's "Investigation Materials"). The DOJ 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. The DOJ is not required to produce back to any party documents or other written materials originally received from that party. This Paragraph shall not be construed as requiring the production of the DOJ's 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. Plaintiff Sprint's Initial Disclosures. Under the terms and conditions set forth below, Sprint shall produce to all parties, consistent with the timing for producing confidential information set forth in Paragraph 10 below, copies of all documents, data, oral examination transcripts, depositions, statements, declarations, and affidavits, whether in hard-copy or electronic form, exchanged between Sprint (including Sprint's counsel) and any party or non-party (including the party or non-party's counsel) in the course of responding to the DOJ's Investigation of, or otherwise relating to, the Proposed Acquisition, including the solicitation of statements of support provided to the

DOJ and/or the Federal Communications Commission (collectively Sprint's "Investigation Materials"). This Paragraph shall not be construed as requiring the production of Sprint's 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.

C. Defendants' Initial Disclosures. Under the terms and conditions set forth below, Defendants shall produce to all Plaintiffs, consistent with the timing for producing confidential information set forth in Paragraph 10 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 party or non-party (including the party or non-party's counsel) in the course of responding to the DOJ's Investigation of, or otherwise relating to, the Proposed Acquisition, including the solicitation of statements of support provided to the DOJ 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 any Plaintiff documents or other written materials originally received from that Plaintiff. 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.

6. Discovery Period. The period for fact discovery shall begin on the date of the entry of this Order and shall be completed by January 10, 2012.

7. Written Discovery. All written discovery shall be served to permit timely responses to be served within the discovery period. Interrogatories shall be limited to 30 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 75 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, it is understood that Plaintiff DOJ cannot guarantee that such agency or office will produce requested materials within 30 days and Plaintiff DOJ will have no obligation other than making good-faith efforts with respect to such other agency or office. The DOJ, further, reserves all rights to object to any such discovery, pursuant to the Federal Rules of Civil Procedure.

8. 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 11 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 (seven-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 10-days notice if reasonably possible, though the deposing party will make a good-faith effort to provide at least 15 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 Order may be modified only by order of this Court for good cause shown.

All depositions, including the depositions of Defendants' employees taken by the DOJ during the DOJ's 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.

9. 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.

10. Discovery of Confidential Information. Discovery and production of confidential information shall be governed by the proposed Protective Order Concerning Confidentiality (“Sprint Protective Order”) that is being filed concurrently with the Court, as well as the Stipulated Protective Order Concerning Confidentiality entered by the Court in *United States v. AT&T Inc. et al.*, Civ. No. 1:11-cv-01560-ESH (Docket No. 24) (“DOJ Protective Order”), and a copy of the Orders shall be included with any discovery requests, notices or subpoenas directed to non-parties.

Once entered by the Court, the Orders shall be provided by the DOJ to all non-parties that produced Investigation Materials during the DOJ’s investigation of the Proposed Acquisition. The non-parties shall have 15 days after receipt of a copy of the Orders in which to review the Orders and designate Investigation Materials as confidential under them. If any non-party determines that the Orders do not adequately protect its confidential Investigation Materials, it may, within 10 days after receipt of a copy of the Orders, 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 until 11 days after a non-party’s receipt of a copy of the Orders unless, before then, the non-party that produced the Investigation Materials indicates that it is satisfied with the terms of the proposed Orders and has provided designations, if any, of its Investigation Materials under the terms of the Orders. In these circumstances, the DOJ shall produce to the parties 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 Plaintiff Sprint and the Defendants shall be produced no later than 15 days after entry of this Order.

11. 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.

12. 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 they will call in their respective case-in-chief and defense case by December 9, 2011. Each side shall identify all rebuttal experts by December 28, 2011.

Plaintiffs' case-in-chief expert reports will be delivered to Defendants by January 11, 2012. Defendants' expert reports on efficiencies of the merger will be delivered to Plaintiffs by January 11, 2012. Each side will deliver responsive expert reports to the other side by February 8, 2012. Each side's rebuttal reports permitted by Fed. R. Civ. P. 26(a)(2)(D)(ii) will be delivered to the opposing parties by February 22, 2012. Expert discovery, including each side'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 Defendants' counsel and its expert(s), DOJ and its experts, or Sprint and its 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 March 7, 2012. Depositions of each expert witness may extend to two days in length.

13. 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 party, noted with an asterisk ('*')) below:

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The serving party will telephone the other parties' 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 party shall copy and produce materials obtained in discovery from any non-party to the other parties, including, as applicable, each Defendant, Sprint, and the DOJ, within three business days after receipt by the party initiating the discovery request.

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

15. 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. 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. Text-only PowerPoint slides and demonstratives created in court need not be pre-disclosed to the opposing parties.

16. Trial Date. Date for the pre-trial conference and trial shall be set by the Court. Pre-trial proceedings shall be governed by this Court's standing pre-trial order and applicable local court rules. The parties shall be prepared to begin trial on March 19, 2012.

IT IS SO ORDERED.

DATED: September_____, 2011

Ellen S. Huvelle
UNITED STATES DISTRICT JUDGE