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, T-MOBILE US, INC., and SOFTBANK GROUP CORP. *Defendants.*	Case No. 1:22-cv-03189 Hon. Thomas M. Durkin

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

I. INTRODUCTION

Black's Law Dictionary defines "forum shopping" as "[t]he practice of choosing the most favorable jurisdiction or court in which a claim might be heard."[1] T-Mobile's motion demonstrates there is a party to this litigation seeking to forum-shop: T-Mobile. Rather than requesting transfer to a jurisdiction that would be convenient for witnesses and parties, T-Mobile seeks tactical advantage by moving the case to a judge who previously ruled in its favor in a district that regularly dismisses antitrust cases like this one on standing grounds. In service of this effort, T-Mobile hints at unidentified witnesses to the merger and overplays third-party individuals mentioned in documents cited in the complaint. The purported "location" of the merger is also a distraction. This case is about the nationwide anticompetitive *effects* of the merger, not breach of the merger agreement.

The plaintiffs are a general contractor, a flight attendant, a tugboat captain, a respiratory therapist, an operating engineer, and an insurance professional. They live and work in the Northern District of Illinois, the State of Illinois, or the State of Indiana. This District is the most convenient for them personally; it is also, given its central location and access to a major air transport hub, the single most convenient venue for all the parties and non-parties as a group. In addition, the liberal venue and jurisdictional terms of the Clayton Act reflect a Congressional mandate to give maximum deference to plaintiffs' choice of forum.[2] T-Mobile has failed to carry its heavy burden to disturb that choice. Its motion should be denied.

II. FACTUAL BACKGROUND

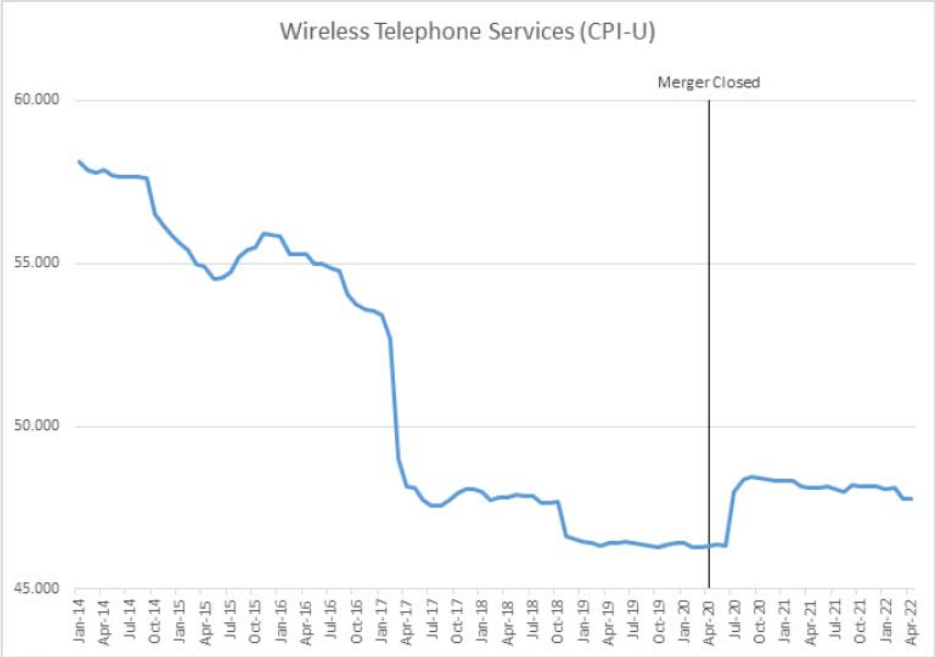
This case puts the Sherman Act and Clayton Act to exactly the use Congress intended: redressing consumers for the effects of a business combination that harmed them, the merger of T-Mobile US, Incorporated ("T-Mobile") and Sprint Corporation ("Sprint").[3] This merger not only consolidated the number of national mobile wireless carriers from four to three; it combined

[1] *Forum Shopping*, Black's Law Dictionary (11th ed. 2019).
[2] *See Tiger Trash v. Browning-Ferris Indus., Inc.*, 560 F.2d 818, 824 (7th Cir. 1977).
[3] *N. Sec. Co. v. United States*, 193 U.S. 197 (1904); *United States v. Union Pac. R.R. Co.*, 226 U.S. 61 (1912).

two fierce competitors into a single behemoth with reduced incentives to meaningfully compete against AT&T Incorporated ("AT&T") and Verizon Communications, Incorporated ("Verizon"). In a challenge joined by eighteen state Attorneys General, the trial court itself found that the merger would, presumptively, concentrate the market in ways that would reduce competition.[4] While the court ultimately found in favor of T-Mobile, it expressed considerable uncertainty about its ruling as: "Deciding such cases typically calls for a judicial reading of the future."[5]

Pre-merger, Sprint executives justified the merger internally on the basis that the reduction in competition might hypothetically support a $5 per-user revenue increase industry-wide worth billions of dollars of profits—including for Verizon and AT&T.[6] After the merger, Deutsche Telekom CEO Tim Höttges bragged, "It's harvest time."[7] The "harvest" unfolded as follows. Before the merger, the average price of a nationwide wireless plan decreased by approximately 6.3% per year; quality-adjusted prices consistently decreased as well.[8] Since the merger, that trend has reversed: All three carriers have begun raising prices, both through outright increases in plan prices as well as through increases in taxes, fees, and surcharges.[9] And, as shown below, quality-adjusted prices have inflated and stabilized as the three carriers compete less for subscribers in favor of profiting from existing customers.[10]

[4] *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 206 (S.D.N.Y. 2020).
[5] *Id.* at 186.
[6] Class Action Compl. ("Compl.") ¶ 44 (June 17, 2022), ECF No. 1.
[7] *Id.* ¶ 86.
[8] *Id.* ¶ 7.
[9] *Id.*
[10] *Id.*



Source: Bureau of Lab. Stats., *CPI for All Urban Consumers (CPI-U), Wireless Telephone Services in U.S. City Average, All Urban Consumers, Not Seasonally Adjusted (2012-2022)*, https://data.bls.gov/timeseries/CUUR0000SEED03?output_view=data (last visited Apr. 2022).

Soon after the merger was approved, T-Mobile also increased consumers' monthly payments for its device protection program.[12] T-Mobile has additionally exploited reduced competition by automatically enrolling its subscribers in a program that sells their data to advertisers.[13]

Promises to the trial court that DISH would be an aggressive competitor "from day one" have not been kept; DISH continues to be principally a "virtual" network operator reliant on resale access to the networks of other carriers.[14] T-Mobile also reneged on its buildout commitments to the California Public Utilities Commission, which ruled that "it appears that these false statements, omissions and/or misleading assurances and the related time references were intended to induce the Commission to approve the merger."[15]

III. ARGUMENT

T-Mobile fails to substantiate its claims of convenience and fails to show why rewarding

[11] *Id.* ¶ 80.
[12] *Id.* ¶ 89.
[13] *Id.*
[14] *Id.* at ¶ 226.
[15] *See also id.* ¶¶ 98–101.

those claims with a litigation advantage would be in the "interest of justice."

A. The Convenience Factors Strongly Favor the Northern District of Illinois.

"Section 1404(a) provides for transfer to a *more* convenient forum, not to a forum likely to prove equally convenient or inconvenient."[16] T-Mobile, "[a]s the party seeking transfer, . . . bear[s] 'the burden of establishing, by reference to particular circumstances, that the transferee forum is clearly more convenient.'"[17] Courts evaluating convenience "generally consider (1) the plaintiff's choice of forum, (2) the availability of and access to witnesses, (3) each party's access to and distance from resources in each forum, (4) the location of material events, and (5) the relative ease of access to sources of proof."[18] "Unless the balance of the factors 'is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed'" on the basis of convenience.[19]

Plaintiffs' Choice of Forum. All seven plaintiffs reside in or near the Northern District of Illinois and have chosen the venue that is most convenient for them.[20] "A plaintiff's chosen forum is entitled to substantial deference, particularly where, as in this case, the chosen forum is the plaintiff's home forum."[21] Furthermore, "a defendant's burden on a transfer motion is 'especially heavy in antitrust suits, where plaintiff's choice of forum is entitled to particular

[16] *Van Dusen v. Barrack*, 376 U.S. 612, 645–46 (1964) (emphasis added). T-Mobile does not dispute that venue is proper in the Northern District of Illinois under both Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) because T-Mobile transacts business within this District and this Court has personal jurisdiction over T-Mobile.
[17] *Nagle v. Hartford Life & Accident Ins. Co.*, No. 15-cv-6073, 2015 WL 9268420, at *2 (N.D. Ill. Dec. 21, 2015) (Durkin, J.) (citation omitted).
[18] *Id.* at *3.
[19] *Colorlab Cosmetics, Inc. v. Fairy Dust Ltd.*, No. 07 C 50094, 2008 WL 11517629, at *1 (N.D. Ill. Apr. 2, 2008) (quoting *In re Nat'l Presto Indus.*, 347 F.3d 662, 664 (7th Cir. 2003)); *Nat'l Presto*, 347 F.3d at 665.
[20] Four plaintiffs (Borrowman, Lambert, Anderson, and Hohenbery) reside in Illinois, with Ms. Lambert residing within the Northern District of Illinois itself. Three plaintiffs (Dale, Jackson, and Fox) reside in Indiana. Compl. ¶¶ 12–18; *see* Declaration of Brendan P. Glackin ("Glackin Decl.") ¶ 2.
[21] *AL & PO Corp. v. Am. Healthcare Capital, Inc.*, No. 14 C 1905, 2015 WL 738694, at *2 (N.D. Ill. Feb. 19, 2015).

respect.'"[22] This heavy burden reflects "the Congressional intent to liberalize the restrictive venue provision in Section 7 of the Sherman Act by enacting Section 12 of the Clayton Act."[23] By enacting this law, Congress specifically intended to: "reliev[e] persons injured through corporation violations of the antitrust laws from the often insuperable obstacle of resorting to distant forums for redress of wrongs done in the places of their business or residence."[24] Indeed, unlike defendants, plaintiffs' choice of forum receives so much deference they cannot be faulted for seeking the most advantageous jurisdiction possible.[25] Permitting plaintiffs to choose what they believe to be the best venue for enforcement of the law is part of the point.

T-Mobile argues that plaintiffs' choice of their home jurisdiction receives less deference because this is a class action. Here, all plaintiffs are located within or close to the Northern District of Illinois, and "unnamed class members presumably benefit from a class representative who is able to aggressively litigate their claims without significant inconvenience due to travel."[26] The case's status as a class action therefore weighs against transfer. T-Mobile's citations, on the other hand, stand for the unremarkable proposition that deference to a class action plaintiff's venue choice can be outweighed by other factors not present here.[27] This is not a case where a defendant is headquartered in the transferee forum.[28] Nor is it a case where the

[22] *Storm Mfg. Grp., Inc. v. Weather Tec Corp.*, No. CV 12-10849-CAS (FFMx), 2013 WL 12129620, at *4 (C.D. Cal. Apr. 15, 2013) (quoting *L.A. Mem'l Coliseum Comm'n*, 89 F.R.D. 497, 500 (C.D. Cal. 1981)); *see also Sunshine Cellular v. Vanguard Cellular Sys., Inc.*, 810 F. Supp. 486, 501 n.11 (S.D.N.Y. 1992); *Winder Indus., Inc. v. Smiths Indus., Inc.*, No. 81-111, 1981 WL 2096, at *7 (D.N.J. May 26, 1981).
[23] *Tiger Trash*, 560 F.2d at 824.
[24] *Id.* (quoting *United States v. Scophony Corp. of Am.*, 333 U.S. 795, 808 (1948)); *see also United States v. Brown Univ.*, 772 F. Supp. 241, 242 (E.D. Pa. 1991) (in "bringing an antitrust suit," "plaintiffs' choice of forum is entitled to heightened respect").
[25] "[P]laintiffs are ordinarily allowed to select whatever forum they consider most advantageous . . . ." *Atl. Marine Constr. Co. v. U.S. District Court*, 571 U.S. 49, 63 (2013).
[26] *AL & PO Corp.*, 2015 WL 738694, at *3 (declining to discount deference to plaintiff's choice of forum); *accord Taylor v. Midland Funding, LLC*, 94 F. Supp. 3d 941, 945 (N.D. Ill. 2015).
[27] *See* Def's Mem. Supp. of Mot. Transfer Venue ("Mot.") at 11–12 (Aug. 23, 2022), ECF No. 43.
[28] *Compare* Mot. at 12 (citing *Jaramillo v. DineEquity Inc.*, 664 F. Supp. 2d 908, 914 (N.D. Ill. 2009) (defendant headquartered in transferee forum); *Budicak, Inc. v. Lansing Trade Grp., LLC*, No. 18 C 4966, 2019 WL 3554165, at *3 (N.D. Ill. Aug. 5, 2019) (primary defendant resided in the transferee forum); *Simonoff v. Kaplan, Inc.*, No. 09 C 5017, 2010 WL 1195855, at *2 (N.D. Ill. Mar. 17, 2010) (defendant

tortious conduct occurred solely in the transferee forum.[29] And, nowhere in its papers does T-Mobile offer to stipulate to class treatment.[30]

Additionally, T-Mobile's use of section 1404(a) to gain a tactical advantage counts *against* its motion. Unlike plaintiffs, defendants are not permitted to pick their forum. Rather, "defendant forum shopping" is "an evil to be avoided."[31] Thus, a "[d]efendant['s] choice of forum is not ordinarily entitled to deference."[32] As the Supreme Court explained, "There is nothing . . . in the language or policy of § 1404(a) to justify its use by defendants to defeat the advantages accruing to plaintiffs who have chosen a forum which, although it was inconvenient, was a proper venue."[33]

First, T-Mobile may be seeking a litigation advantage based on a belief that it will benefit from transfer to a specific judge who ruled in its favor. A defendant's attempt to engineer transfer of a case to a specific judge who presided over related issues "is suspect" and the "plausible possibility that the defendant[] [is] using Section 1404(a) as a means of forum shopping *weighs against* granting the [] motion."[34] As one court observed:

> Of course, it is not the Southern District of Alabama as a whole that is familiar with the earlier matter, but rather one particular judge there. Transferring this case to another judge in that district would not seem to conserve any judicial resources at all. On the other hand, if a transfer would mean that the same judge who ruled in favor of the government in the earlier case would also hear this one, then concerns about forum shopping—which implicates the "systemic integrity"

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and "virtually every material witness" resided in the transferee forum); *Preston v. Am. Honda Motor Co.*, No. 17 C 3549, 2017 WL 5001447, at *3 (N.D. Ill. Nov. 2, 2017) (transferring to corporate defendant's home state where two "duplicative" class action cases implicating identical facts proceeded shortly prior to the filing of *Preston*)).

[29] *Sacca v. Wyo. Whiskey, Inc.*, No. 17-cv-08298, 2018 WL 11198064, at *3 (N.D. Ill. Feb. 7, 2018) (Durkin, J.) (granting transfer for an individual plaintiff and not in the class action context).

[30] *AL & PO Corp.*, 2015 WL 738694, at *3 ("[T]he class certification motion has not been briefed, and the court does not assume such a broad [nationwide] class will in fact ultimately be certified.").

[31] *United States v. Cinemark USA, Inc.*, 66 F. Supp. 2d 881, 889 (N.D. Ohio 1999) (citation omitted).

[32] *SEC v. RPM Int'l, Inc.*, 223 F. Supp. 3d 110, 116 (D.D.C. 2016).

[33] *Van Dusen*, 376 U.S. at 633–34.

[34] *Greater Yellowstone Coal. v. Bosworth*, 180 F. Supp. 2d 124, 130 (D.D.C. 2001) (emphasis added).

> that "[t]he district court . . . must weigh in the balance,"—would present themselves.[35]

T-Mobile's attempt to orchestrate transfer to a specific judge weighs against the motion.

Second, T-Mobile seeks to transfer the case away from the Seventh Circuit, which has the most clear case law on antitrust standing in this context, to the Second Circuit, where the issue is murky and more favorable to T-Mobile. In decisions such as *U.S. Gypsum Co. v. Indiana Gas Co.*[36] and *Loeb Industries Inc. v. Sumitomo Corp.*,[37] the Seventh Circuit has recognized that plaintiffs harmed by violations of the antitrust laws may have antitrust injury and standing even if they purchased from a non-defendant in the same market, or even in a different, related market. In *Loeb*, the Seventh Circuit extensively analyzed and explained a body of Supreme Court jurisprudence establishing that antitrust suits may be maintained between "plaintiffs and defendants not in privity with each other."[38] In this regard, the Seventh Circuit echoes the Areeda treatise, which advises that "purchasers from [] innocent suppliers [may] pay a monopoly overcharge just as certainly as if they had bought from the conspirators."[39] In its stay motion, T-Mobile claimed it intends to challenge standing; yet it never cited this authority.[40]

While other circuits recognize such standing as well, their jurisprudence is uniformly less developed.[41] And, certain districts are more unfavorable to such claims than others. T-Mobile

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[35] *Oceana v. Bureau of Ocean Energy Mgmt.*, 962 F. Supp. 2d 70, 78 (D.D.C. 2013) (citation omitted).
[36] 350 F.3d 623, 627 (7th Cir. 2003). *See also Sanner v. Bd. of Trade*, 62 F.3d 918, 929 (7th Cir. 1995).
[37] 306 F.3d 469, 474, 489 (7th Cir. 2002).
[38] *Id.* at 480–82 (discussing *Blue Shield of Va. v. McCready*, 457 U.S. 465 (1982), and collecting cases).
[39] Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 347 (5th ed. 2022) ("Areeda & Hovenkamp").
[40] Def.'s Mem. Supp. of Mot. Stay at 9–10 (Aug. 26, 2022), ECF No. 52.
[41] *See, e.g.*, *In re Am. Expr. Anti-Steering Rules Antitrust Litig.*, 19 F.4th 127, 143 (2d Cir. 2021) ("[I]t is not the appellants' status as umbrella plaintiffs [who purchased from non-defendants] or otherwise that resolves the antitrust standing question . . . ."); *Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC*, 22 F.4th 103, 117 (2d Cir. 2021) ("[T]he unique nature of the LIBOR conspiracy makes umbrella standing [for purchases from non-defendants] particularly inappropriate here."); *In re Processed Egg Prods. Antitrust Litig.*, 881 F.3d 262, 274–75 (3d Cir. 2018) (distinguishing *Mid-West Paper Prods. Co. v. Cont'l Group Inc.*, 596 F.2d 573, 274–76 (3d Cir. 1979), and finding purchasers of egg products that included both defendant's price-fixed eggs and eggs from non-conspirators had antitrust standing); *In re Lower Lake Erie Iron Ore Antitrust Litig.*, 998 F.2d 1144, 1168 (3d Cir. 1993) (steel company claimants who paid non-conspirator suppliers had standing); *In re Beef Indus. Antitrust Litig.*, 600 F.2d

seeks to transfer this case to *the most unfavorable district possible*, where courts routinely dismiss antitrust claims that arise from transactions with non-defendants, such as those brought by plaintiffs here.[42] T-Mobile could have, but did not, seek transfer to its home state of Washington;[43] courts in the Ninth Circuit and the Western District of Washington have recognized standing for purchasers from non-defendants.[44] All of these facts reinforce the deference due to plaintiffs' choice of venue.

Access to Witnesses and Sources of Proof. This factor is neutral or at worst does not outweigh the deference given plaintiffs' choice of forum. ***First***, the small number of witnesses T-Mobile has chosen to identify and those it vaguely claims are "yet to be identified" are wholly inadequate to carry T-Mobile's heavy burden.[45] T-Mobile primarily relies on the fact that the merger "occurred" in New York, but identifies zero New York witnesses who would give relevant testimony about those events. "Without [identification of, rather than allusions to the existence of witnesses], it is hard for the court to determine which forum is more convenient for

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1148, 1165–66 (5th Cir. 1979) (permitting claims by plaintiff sellers who did not sell directly to defendant conspirators); *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 691 F.2d 1335, 1340 (9th Cir. 1982) (explicitly limiting prohibition on claims for purchases from non-defendants to multi-tiered distribution chains and declining to decide whether such claims may be pursued in situations involving a single level of distribution).

[42] *See, e.g.*, *FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.*, No. 16 Civ. 5263 (AKH), 2018 WL 4830087, at *6 (S.D.N.Y. Oct. 4, 2018); *Sonterra Cap. Master Fund, Ltd. v. Barclays Bank PLC*, 366 F. Supp. 3d 516, 545–48 (S.D.N.Y. 2018); *In re Platinum & Palladium Antitrust Litig.*, No. 1:14-cv-9391-GHW, 2017 WL 1169626, at *19–25 (S.D.N.Y. Mar. 28, 2017); *Sullivan v. Barclays PLC*, No. 13-cv-2811 (PKC), 2017 WL 685570, at *15–21 (S.D.N.Y. Feb. 21, 2017); *Ocean View Cap., Inc. v. Sumitomo Corp. of Am.*, No. 98 CIV. 4067(LAP), 1999 WL 1201701, at *4–7 (S.D.N.Y. Dec. 15, 1999); *Gross v. New Balance Athletic Shoe, Inc.*, 955 F. Supp. 242, 245–47 (S.D.N.Y. 1997); *Reading Indus. v. Kennecott Copper Corp.*, 477 F. Supp. 1150, 1157–61 (S.D.N.Y. 1979).

[43] Compl. ¶ 20.

[44] *See, e.g.*, *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. 11-cv-05514, 2016 WL 6246736, at *6 (N.D. Cal. Oct. 26, 2016) (purchasers from non-defendants had standing because "[t]he injuries that result from conspirators' impact *on the market* are directly caused by their collusive conduct regardless of the supplier that sells the good"); *In re Ariz. Dairy Prods. Litig.*, 627 F. Supp. 233, 236 (D. Ariz. 1985) (purchasers from "non-conspirator non-defendants" had standing); *In re Bristol Bay, Alaska, Salmon Fishery Antitrust Litig.*, 530 F. Supp. 36, 38–39 (W.D. Wash. 1981) (same).

[45] *See Brandon Apparel Grp., Inc. v. Quitman Mfg. Co. Inc.*, 42 F. Supp. 2d 821, 834 (N.D. Ill. 1999) ("[T]he court will not consider the convenience of unidentified witnesses."); Mot. at 9.

potential witnesses."[46] T-Mobile's mention of third-party witnesses, particularly Verizon, is also a red herring. For one thing, Verizon's executive leadership and corporate functions are in New Jersey; only Verizon's board of directors is in New York.[47] Because the focus of the case is on T-Mobile, the majority of witnesses will be party witnesses and experts, not third-party wireless carriers. In fact, during the state AG trial, *no* Verizon or AT&T witnesses were called.[48]

Second, to the extent that there will be any third-party witnesses, they "will be inconvenienced regardless of the forum because they are located throughout the country."[49] DISH is headquartered in Colorado[50] and AT&T is headquartered in Texas,[51] making Chicago, which is centrally located, significantly more convenient than New York.[52] Similarly, Charles Ergen, DISH Co-Founder and Chairman, resides in Littleton, Colorado, and AT&T's CEO John Stankey and Chief Operating Officer Jeff McElfresh both reside in Dallas, Texas.[53] To the extent any of these witnesses would give live testimony at trial, Illinois is more convenient than New York. The location of third-party witnesses, therefore, does not weigh heavily in the convenience analysis. And T-Mobile concedes that "most documentary evidence is produced electronically" and therefore easily accessed from any forum.[54]

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[46] *U.S. ex rel. Heathcote Holdings Corp. v. L'Oreal USA, Inc.*, No. 11 C 1921, 2011 WL 3511064, at *3 (N.D. Ill. Aug. 9, 2011).
[47] Headquarters & Contact Information, Verizon, https://www.verizon.com/about/our-company/verizon-corporate-headquarters (last visited Sept. 16, 2022).
[48] *See* Trial Tr., Vol. 1–11, *New York. v. Deutsche Telekom AG*, No. 19-5434 (S.D.N.Y. Dec. 10, 2020), ECF Nos. 378–98 (absence).
[49] *Ashley Furniture Indus., Inc., v. Packaging Corp. of Am.*, 275 F. Supp. 3d 957, 967 (W.D. Wis. 2017).
[50] *Contact Dish*, Dish Corp., https://www.dish.com/contact/ (last visited Sept. 16, 2022).
[51] *Investors*, AT&T, https://investors.att.com/resources/contacts#:~:text=208%20S.,Akard%20St.&text=Our%20main%20telephone%20number%20is,a%20San%20Antonio%20area%20code (last visited Sept. 16, 2022).
[52] *Network-1 Sec. Sols., Inc. v. D-Link Corp.*, 433 F. Supp. 2d 795, 802 (E.D. Tex. 2006) (where witnesses will come "from all over the country, and often the world," "centrally located" venue preferable to New York).
[53] Jay Miglionico, LinkedIn, https://www.linkedin.com/in/jmig (last visited Sept. 8, 2022); John Stankey, LinkedIn, https://www.linkedin.com/in/johnstankey (last visited Sept. 9, 2022); Jeff McElfresh, LinkedIn, https://www.linkedin.com/in/jeff-mcelfresh (last visited Sept. 9, 2022).
[54] Mot. at 12; *see also Nicks v. Koch Meat Co.*, 260 F. Supp. 3d 942, 957 (N.D. Ill. 2017) ("[G]iven the technological advancements in document production, [courts] often consider the location of documentary evidence a neutral factor.").

Convenience of the Parties. Illinois is far more convenient to *both* parties. First, all plaintiffs reside within driving distance of Chicago.[55] Should this case go to New York, plaintiffs would be substantially burdened by having to fly to attend pre-trial hearings or trial.[56]

Second, defendant T-Mobile is located in Washington, about one thousand miles closer to Chicago than New York.[57] Most of defendants' witnesses from the merger challenge trial are far from New York, located instead in Washington, Florida, Colorado, Kansas, Germany, and California.[58] Moreover, O'Hare airport, a hub for United Airlines, is more convenient for out-of-state witnesses than any of the tristate area airports.[59] For instance, T-Mobile executives flying from Washington have their pick of twelve direct flights from Seattle to Chicago per day, and can enjoy shorter flight times.[60] Softbank and DT executives, located in Japan and Germany, will have the same access to flights to O'Hare as they otherwise would to New York.[61] And for those witnesses located out-of-state, plaintiffs anticipate that "the parties will be able to cooperate on the location of depositions . . . to ensure that they are mutually convenient to both parties."[62]

Furthermore, courts generally "presume that witnesses who are parties' employees and paid experts will appear at trial voluntarily and therefore are less concerned about the burden that

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[55] Compl. ¶¶ 12–18.
[56] Glackin Decl. ¶ 2.
[57] T-Mobile US, Inc., Current Report (Form 8-K), at 1 (Sept. 8, 2022), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001283699/47343720-9afc-474b-9908-b35a094cbd0b.pdf.
[58] Glackin Decl. ¶ 3.
[59] *Airports and terminal maps*, United, https://www.united.com/ual/en/us/fly/travel/airport/maps.html (last visited Sept. 16, 2022).
[60] *Direct Flights from Seattle to Chicago*, FlightsFrom.com, https://www.flightsfrom.com/SEA-ORD (last visited Sept. 16, 2022).
[61] *Direct Flights from Tokyo to Chicago*, FlightsFrom.com, https://www.flightsfrom.com/NRT-ORD (last visited Sept. 13, 2022); *Direct Flights from Tokyo to Chicago*, FlightsFrom.com, https://www.flightsfrom.com/HND-ORD (last visited Sept. 13, 2022); *Direct Flights from Tokyo to New York*, FlightsFrom.com, https://www.flightsfrom.com/NRT-JFK (last visited Sept. 13, 2022); *Direct Flights from Tokyo to New York*, FlightsFrom.com, https://www.flightsfrom.com/HND-JFK.
[62] *Nicks*, 260 F. Supp. 3d at 957 (denying transfer).

appearing at trial might impose on them."[63] T-Mobile has not met its heavy burden of demonstrating that New York is a far more convenient forum for this litigation than Illinois.

The Location of Material Events. New York does not have a more meaningful nexus to the material events. T-Mobile's focus on the negotiation of the merger is yet another red herring.[64] Mergers between multinational corporations with executives strewn across the globe do not "occur" in one marked location. Tellingly, T-Mobile does not identify a single "negotiation" witness residing in New York who it claims would have relevant testimony. Indeed, T-Mobile fails to mention that nearly half of the relevant board of directors meetings discussing the merger were conducted telephonically, with parties calling in from around the world.[65] Furthermore, T-Mobile also fails to discuss the many in-person meetings conducted in cities other than New York, including Tokyo and Bellevue, the site of T-Mobile's headquarters.[66] Instead, this case centers on the *nationwide effects* of a merger that reduced the number of national wireless carriers from four to three.[67] Those effects—supracompetitive pricing and consumer harm—were decided, implemented, and felt nationwide. "[W]here a case involves

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[63] *Abbott Labs v. Church & Dwight, Inc.*, No. 07 C 3428, 2007 WL 3120007, at *4 (N.D. Ill. Oct. 23, 2007).
[64] Mot. at 10–11.
[65] Brass Decl. Supp. of Def.'s Mot. Transfer Venue, Ex. 13 at 64–65, 68–74 (Aug. 23, 2022), ECF No. 44.
[66] In June 2018, John Legere attended a Senate Judiciary Committee regarding the merger in D.C.; on September 19, 2018, John Legere and Tim Hoettges met in Greece amidst merger negotiations; on January 29, 2020, John Legere and Timm Hottges participated in the DT keynote in Germany; in May 2018, Anil Kapoor (T-Mobile VP of Network Technology) met with her team and a group of economists at Compass Lexecon to develop the "Montana model" of network congestion used by T-Mobile to justify merger efficiencies; and in January 2018, Sprint executives met with Masayoshi Son to discuss possible business combinations for Sprint in Tokyo. *See* C. Scott Brown, *Analysis: John Legere Stands Tall at Senate Judiciary Committee Meeting*, Android Auth. (June 29, 2018), https://www.androidauthority.com/john-legere-t-mobile-sprint-hearing-881472/; John Legere (@JohnLegere), Twitter (Sept. 19, 2018 12:01 PM), https://twitter.com/JohnLegere/status/1042488751845335040?s=20&t=NxddIG-ttsoXmhDY5sOMnA; John Legere (@JohnLegere), Twitter (Jan. 29, 2020 8:43 AM), https://twitter.com/JohnLegere/status/1222560923543490560?s=20&t=NxddIG-ttsoXmhDY5sOMnA; Trial Tr., Vol. 2 at 1516, *New York. v. Deutsche Telekom AG*, No. 19-5434 (S.D.N.Y. Dec. 10, 2020), ECF No. 380; Trial Tr., Vol. 7 at 1341–42, *New York. v. Deutsche Telekom AG*, No. 19-5434 (S.D.N.Y. Dec. 17, 2019), ECF No. 390.
[67] Compl. ¶¶ 1, 110, 122, 129–130.

national implications, the case cannot be considered the type of purely localized controversy that would warrant transfer to the local district court."[68]

T-Mobile cites to a Lanham Act case for the proposition that "the material events inquiry focuses on the location of actions creating the injury, not the location of the injury itself."[69] But intellectual property cases "generally focus on the 'activities of the alleged infringer, its employees, and its documents; therefore, the location of the infringer's place of business is often the critical and controlling consideration.'"[70] Again, T-Mobile does not seek transfer to its place of business; nor does T-Mobile identify specific witnesses, evidence or events connected to the merger that can only be accessed in New York.

B. Maintaining the Action in Illinois Is in the Interest of Justice.

The "interest of justice" "focuses on the efficient administration of the court system, rather than the private considerations of the litigants."[71] "For this element, courts look to factors including (1) docket congestion and likely speed to trial, (2) each court's relative familiarity with the relevant law, and (3) the respective desirability of resolving controversies in each locale."[72] Here, all three factors are either neutral or favor the Northern District of Illinois.

The Northern District of Illinois Is Less Congested. Contrary to T-Mobile's claim, court congestion weighs in favor of the Northern District of Illinois. T-Mobile relies on obsolete data from the National Judicial Caseload Profile.[73] By contrast, the June 2022 data for the median time from filing to trial show a difference of only *four* months between New York and

[68] *Friends of Earth v. Haaland*, No. 21-2317 (RC), 2022 WL 185196, at *6 (D.D.C. Jan. 20, 2022) (citations omitted).
[69] Mot. at 10 (citing *George & Co. LLC v. Target Corp.*, No. 20 C 6219, 2021 WL 2948910, at *3 (N.D. Ill. July 14, 2021)).
[70] *H.B. Sherman Mfg. Co. v. Rain Bird Nat'l Sales Corp.*, 979 F. Supp. 627, 630 (N.D. Ill. 1997) (citation omitted); *see also Kjaer Weis v. Kimsaprincess Inc.*, 296 F. Supp. 3d 926, 931 (N.D. Ill. 2017) ("Several courts in this district have identified the situs of material events in a trademark infringement suit as the location 'where the allegedly infringing products are designed, manufactured and marketed.'").
[71] *Vandeveld v. Christoph*, 877 F. Supp. 1160, 1169 (N.D. Ill. 1995); *Nagle*, 2015 WL 9268420, at *3.
[72] *Nagle*, 2015 WL 9268420, at *3.
[73] Mot. at 15 (citing Mar. 31, 2022 data).

Illinois (44.4 vs. 48.69), not 14.4 months.[74] Illinois in fact has *fewer* pending cases per judge (547) than New York (667).[75] Similarly, the number and percentage of civil cases over three years old is *significantly lower* in Illinois (2,126; 21.7%) than in New York (3,617; 26.3%).[76] Moreover, the number of antitrust class actions filed in the Northern District of Illinois (129) between 2009 and 2022 is also *substantially lower* than in the Southern District of New York (235).[77] This factor *favors* the Northern District of Illinois.[78]

Both Districts Are Equally Familiar with Federal Antitrust Law. Courts in both venues are equally familiar with federal antitrust law.[79] Moreover, federal district courts are presumed equally experienced with federal law.[80] This Court has substantial familiarity with federal antitrust law, having presided over the *In re Broiler Chicken* MDL, in addition to many antitrust cases. But, of course, T-Mobile does not propose that this case should be transferred to the Southern District of New York in general. Rather, as discussed above, it wants transfer to a particular judge, which compromises the integrity of the courts.[81] This counts against transfer.[82]

T-Mobile argues that because Judge Marrero presided over the pre-merger challenge, he is more familiar with the facts.[83] T-Mobile does not cite a single specific ruling or decision by Judge Marrero as support for this broad proposition. Furthermore, this factor turns on "each

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[74] U.S. Dist. Cts., National Judicial Caseload Profile (June 30, 2022), https://www.uscourts.gov/sites/default/files/fcms_na_distprofile0630.2022_0.pdf.
[75] *Id.*
[76] *Id.*
[77] Joshua P. Davis & Rose Kohles, *2021 Antitrust Annual Report: Class Action Filings in Federal Court*, Univ. S.F. L. Res. Paper 7 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4117930.
[78] *See Gelco Corp. v. Major Chevrolet, Inc.*, No. 01 C 9719, 2002 WL 31427027, at *7 (N.D. Ill. Oct. 30, 2002) (comparing N.D. Ill. and S.D.N.Y., "[t]hese statistics merely demonstrate that the differences between the districts' management of their respective dockets are inconsequential").
[79] Davis, *supra* note 77 (hundreds of antitrust cases filed in both venues).
[80] *See CoStar Realty Info., Inc. v. CIVIX-DDI, LLC*, No. 12 C 4968, 2012 WL 5077728, at *3 (N.D. Ill. Oct. 18, 2012) ("Both potential venues here are federal district courts applying federal law, and the generalist nature of such courts suggests that they have equal capability in applying federal law.").
[81] *See Cinemark*, 66 F. Supp. 2d at 889; *Greater Yellowstone*, 180 F. Supp. 2d at 130 ("[D]efendants' request to transfer this case to a specific judge is suspect.").
[82] *See Oceana*, 962 F. Supp. 2d at 78; *Friends of the Earth*, 2022 WL 185196, at *6; *Greater Yellowstone*, 180 F. Supp. 2d at 130.
[83] Mot. at 13–14; *Nagle*, 2015 WL 9268420, at *3.

court's relative familiarity with the relevant *law*," not the facts.[84] Familiarity with the facts becomes relevant only if "two cases involving precisely the same issues are *simultaneously pending* in different District Courts."[85] T-Mobile's cases only concern related actions that were either pending or very recently dismissed.[86] T-Mobile itself highlights that the case before Judge Marrero ended years ago, and does not claim it has any preclusive effect, nor could it.

The state Attorneys General case and this case also differ in a key respect. The state case was a pre-acquisition, public enforcer challenge that centered on *predictions* by the judge about the anticompetitive consequences of the merger.[87] By contrast, this case is a post-acquisition, private class action challenge that will be tried to the jury on the basis of its actual anticompetitive effects.[88] For instance, the court in the prior case relied heavily on a "Montana Model" of network congestion offered by defendants to predict the merger's efficiencies, which might lead to lower costs and prices.[89] But in a retrospective case the efficiencies analysis falls away: the actual pricing data tells the tale. In all, ten days of trial testimony were spent making predictions about the merger. But here, in each instance, both parties will rely on real-world historical evidence to support their positions, not "a judicial reading of the future."[90]

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[84] *Nagle*, 2015 WL 9268420, at *3 (emphasis added).
[85] *Cont'l Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960) (emphasis added).
[86] *See Preston*, 2017 WL 5001447, at *1–2, 7 (claims before transferor court "duplicative" of two cases before the transferee court, one that was voluntarily dismissed a year earlier and another dismissed by the transferee court within the past six months); *Rosen v. Spirit Airlines, Inc.*, 152 F. Supp. 3d 1055, 1063–65 (N.D. Ill. 2015) (consolidation with related pending action before the transferee court); *CNH Am. LLC v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, No. 08-C-720, 2009 WL 357920, at *5 (E.D. Wis. Feb. 12, 2009) (same); *Palmucci v. Twitter, Inc.*, No. 18 CV 1165, 2018 WL 11221296, at *2 (N.D. Ill. June 14, 2018) (same with two pending cases); *Gen. Elec. Co. v. R Squared Scan Sys., Inc.*, No. 89 C 8604, 1990 WL 7186, at *3 (N.D. Ill. Jan. 12, 1990) (same). T-Mobile's citation to *Connor v. Kotchen*, No. 1:18-CV-01118-SEB-DML, 2019 WL 1298585, at *7 (S.D. Ind. Mar. 21, 2019), is unavailing because it held that a scientific expert's suit against the law firms that retained him and later refused to pay him after parts of his testimony were excluded was "collateral litigation" to the case the expert was retained in, which is factually inapplicable to this situation. *Id.* at *1, 7.
[87] *See* Areeda & Hovenkamp ¶ 990c1.
[88] *Id.*
[89] *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d at 213.
[90] *Id.* at 186.

Local Interest Does Not Weigh in Favor of Transfer. New York has no greater intrinsic interest in this case than Illinois. This case alleges nationwide harm by a company based in Washington.

IV. CONCLUSION

T-Mobile has utterly failed to carry its heavy burden to justify disturbing plaintiffs' chosen venue. For the foregoing reasons, T-Mobile's Motion should be denied.

Dated: September 19, 2022

/s/ Brendan P. Glackin

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CERTIFICATE OF SERVICE

I, Brendan P. Glackin, an attorney, hereby certify that this **Plaintiffs' Opposition to Defendant T-Mobile US, Inc.'s Motion to Transfer Venue Under 28 U.S.C. § 1404(a)** was electronically filed on September 19, 2022 and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

Respectfully submitted,

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