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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

IN RE TFT-LCD (FLAT PANEL)  
 ANTITRUST LITIGATION

Master Docket No. C M:07-01827 SI  
 Individual Case No. C 3:11-02591 SI

THIS DOCUMENT RELATES TO:

T-MOBILE U.S.A., I.N.C.,

Plaintiff,

v.

AU OPTRONICS CORPORATION,  
 ET AL.

Defendants.

**MOTION BY T-MOBILE USA,  
 INC. FOR ORDER  
 AUTHORIZING PLAINTIFF TO  
 SERVE DEFENDANTS  
 CHUNGHWA PICTURE TUBES  
 LTD. AND TATUNG COMPANY  
 THROUGH THEIR U.S.  
 COUNSEL PURSUANT TO FED.  
 R. CIV. P. 4(f)(3)**

[Declaration of Brooke A. M. Taylor  
 and [Proposed] Order filed  
 concurrently herewith]

Date: August 12, 2011  
 Time: 9:00 a.m.  
 Ct. Room: No. 10  
 Honorable Susan Illston

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1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that on August 12, 2011, at 9:00 a.m., or as soon thereafter as  
4 counsel may be heard, if the Court orders oral argument upon this Motion, in the United States  
5 Courthouse, 450 Golden Gate Avenue, Courtroom 10, San Francisco, California, Plaintiff, T-  
6 Mobile USA, Inc. (“T-Mobile”), will move this Court for an order, pursuant to Federal Rule of  
7 Civil Procedure 4(f)(3), authorizing Plaintiff to serve the following foreign defendants, via United  
8 States Mail through their respective U.S. counsel, with a summons, the Complaint, and the  
9 Supplementary Material enumerated in Civil Local Rule 4-2: (i) Chunghwa Picture Tubes Ltd.  
10 (“Chunghwa”) and (ii) Tatung Company (“Tatung”) (collectively the “Foreign Defendants”).

11 This Motion is made on the grounds that Defendants Chunghwa and Tatung (1) have been  
12 participating in the above-captioned Multi-District Litigation since 2009 and 2008 respectively,  
13 (2) have secured counsel in the United States who have made multiple appearances for  
14 Defendants, (3) have been served by other Plaintiffs in this litigation through their counsel  
15 pursuant to Court orders, and (4) have nevertheless refused to waive service of T-Mobile’s  
16 complaint in this action. This Motion is further made on the grounds that the time-consuming and  
17 expensive nature of service of process by execution of a letter rogatory necessitates the Court’s  
18 directing service of process by an alternative means and that service of process by delivering a  
19 summons and the Complaint to the Foreign Defendants’ counsel in the United States is  
20 permissible under Ninth Circuit case law.

21 This Motion is based on this Notice of Motion, the attached Memorandum of Points and  
22 Authorities, the supporting Declaration of Brooke A. M. Taylor, the pleadings, records, and  
23 papers already on file in this action and those filed herein, and such other evidence and oral  
24 argument as may be presented at the hearing on this Motion.  
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1 Dated: July 1, 2011

SUSMAN GODFREY LLP

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4 By: /s/ Brooke A.M. Taylor

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Attorneys for Plaintiff T-Mobile USA, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court has discretion under Rule 4(f)(3) of the Federal Rules of Civil Procedure to  
4 authorize alternative service of process on foreign defendants so long as the means chosen  
5 comports with due process and complies with international law. Indeed, this Court has already  
6 recognized that alternative service of process on certain Defendants—including the two at issue  
7 here—is appropriate in the multidistrict litigation proceeding pending before the Court and  
8 captioned *In re TFT-LCD Antitrust Litigation*, Case No. M:07-CV-1827-SI (the “MDL”), into  
9 which T-Mobile’s direct action was automatically transferred for pretrial proceedings. Because  
10 of the substantial difficulty, time, and expense that T-Mobile would face in serving the Foreign  
11 Defendants in Taiwan, and because the Foreign Defendants have had notice of and have  
12 participated in the MDL, the Court should grant T-Mobile’s request for such alternative service  
13 and permit T-Mobile to serve its Complaint on the Foreign Defendants via first class mail to their  
14 attorneys in the United States. In support of its Motion, T-Mobile states the following.

13 **II. FACTS**

14 On April 18, 2011, Plaintiff T-Mobile filed a Complaint for Damages in the Western  
15 District of Washington naming multiple defendants, including the Foreign Defendants, in an  
16 action alleging violations of Federal and State antitrust laws. (Declaration of Brooke A. M.  
17 Taylor (the “Taylor Declaration”) ¶ 3.) On May 31, 2011, T-Mobile’s individual action was  
18 transferred to this Court pursuant to Rule 7.1 of the Rules of Procedure of the United States  
19 Judicial Panel on Multidistrict Litigation and 28 U.S.C. § 1407. (*Id.*)

20 In an effort to serve all defendants, including Chunghwa and Tatung, in a timely and cost-  
21 effective manner, in April 2011, T-Mobile requested that all defendants waive service of a  
22 summons and the Complaint. Almost all of the defendants agreed to do so, but Chunghwa and  
23 Tatung did not. A Stipulation to this effect was filed with the Court and entered on June 23,  
24 2011. (Dkt. 25). In response to Plaintiff’s request that Chunghwa and Tatung waive service of a  
25 summons and the Complaint, on or about, May 26, 2011, Tatung and Chunghwa’s U.S. counsel  
26 indicated in a phone call that it is not authorized to accept service of the complaint on behalf of  
27 Foreign Defendants. (Taylor Decl. ¶ 4) Both of the Foreign Defendants have admitted in answers  
28 filed in this MDL that they are foreign corporations with headquarters in Taiwan. *See* Answer of  
Defendant Chunghwa Picture Tubes, Ltd. to ATS Claim, LLC’s First Amended Complaint ¶ 39

1 [MDL Docket No. 1483] (Chunghwa); Answer of Defendant Tatung Company to Nokia  
2 Corporation and Nokia Inc.'s First Amended Complaint for Damages and Injunctive Relief ¶ 43  
3 [MDL Docket No. 2553] (Tatung). Both of the Foreign Defendants have also appeared and  
4 participated in this MDL through United States counsel. (Taylor Decl. ¶¶ 5-6). Gibson, Dunn &  
5 Crutcher LLP ("Gibson Dunn") first appeared in the MDL on behalf of Chunghwa on January 9,  
6 2009, and has since answered complaints, provided declarations, petitioned the Court for an  
7 extension of time to answer or otherwise respond to complaints, joined defendants' original  
8 motion in opposition to ATS Claims, Inc.'s Motion to Serve Defendants through United States  
9 counsel, and participated in class settlement discussions on Chunghwa's behalf. (Taylor Decl. ¶  
10 5). The law firm of Baker & McKenzie LLP ("Baker") began representing Tatung America in the  
11 MDL on January 11, 2008, and has appeared as counsel for Tatung America in one of the  
12 individual actions comprising the MDL. Tatung America is the United States subsidiary of  
13 Tatung, and Baker represents both entities. (Taylor Decl. ¶ 6). Baker has submitted motions to  
14 dismiss, provided declarations, answered complaints, joined motions opposing class certification,  
15 and attended depositions on behalf of Tatung America. (*Id.*) Baker represents both Foreign  
16 Defendants in the instant case. By virtue of the Foreign Defendants' and their counsels'  
substantive involvement in the MDL, it is clear that the Foreign Defendants have had notice of T-  
Mobile's action against them.

### 17 **III. ARGUMENT**

18 T-Mobile should be allowed to serve the Foreign Defendants through their United States  
19 Counsel under Rule 4(f)(3). The Foreign Defendants are on notice of this litigation, as evidenced  
20 by the fact that they have participated substantively in this litigation through counsel after having  
21 been served by other plaintiffs in this action through counsel pursuant to this Court's orders. At  
22 this point in this case, there is no reason for T-Mobile to waste the time and money going through  
23 the complicated letters rogatory process to served the Foreign Defendants with notice of a lawsuit  
24 in which they are already participating. Serving the Foreign Defendant through their United  
25 States counsel comports with the Federal Rules of Civil Procedure and due process.

#### 26 **A. Legal Standard**

27 As this Court is already aware, Taiwan is not a signatory to the Hague Convention on the  
28

1 Service Abroad of Judicial and Extrajudicial Documents.<sup>1</sup> Furthermore, Taiwan is not a party to  
2 any other international agreements with the United States relating to service of process.<sup>2</sup> In the  
3 absence of an alternate method of effecting service, the primary method of effecting service of  
4 process in Taiwan is pursuant to a response to a letter rogatory, which can be a protracted and  
5 time consuming exercise.<sup>3</sup> However, the Federal Rules of Civil Procedure allow the Court to  
6 order an alternative method of service to avoid the cost and long delays of the letters rogatory  
process. Federal Rule of Civil Procedure 4(f) provides in relevant part:

7 Unless federal law provides otherwise, [a defendant] . . . may be served at a place  
8 not within any judicial district of the United States:

9 (1) by any internationally agreed means of service that is reasonably  
10 calculated to give notice, such as those authorized by the Hague Convention on  
the Service Abroad of Judicial and Extrajudicial Documents;

11 (2) if there is no internationally agreed means, or if an international agreement  
12 allows but does not specify other means, by a method that is reasonably calculated  
to give notice:

13 (A) as prescribed by the foreign country's law for service in that  
14 country in an action in its courts of general jurisdiction;

15 (B) as the foreign authority directs in response to a letter rogatory or  
16 letter of request; or

17 (C) unless prohibited by the foreign country's law, by:

18 (i) delivering a copy of the summons and of the complaint to  
the individual personally, or

19 (ii) using any form of mail that the clerk addresses and sends to  
20 the [defendant] and that requires a signed receipt; **or**

21 (3) by other means not prohibited by international agreement, as the court

22  
23 <sup>1</sup> See Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial  
Matters, Status Table, available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=17](http://www.hcch.net/index_en.php?act=conventions.status&cid=17). (Taylor Decl.  
Exh. A)

24  
25 <sup>2</sup> See U.S. Department of State, Bureau of Consular Affairs, Taiwan Judicial Assistance,  
[http://travel.state.gov/law/judicial/judicial\\_669.html](http://travel.state.gov/law/judicial/judicial_669.html) (last visited June 19, 2011) (noting that Taiwanese law – and not  
26 any international agreements – governs service of process in Taiwan). (Taylor Decl. Exh. B)

27 <sup>3</sup> *Id.*



1 orders.

2 Fed. R. Civ. P. 4(f) (emphasis added).

3 Because, as noted above, Chunghwa is a foreign corporation located principally in  
4 Taiwan, and because no international agreement exists between Taiwan and the United States  
5 governing service of process, Plaintiff cannot serve Chunghwa under Federal Rule of Civil  
6 Procedure 4(f)(1). The letters rogatory process in Rule 4(f)(2) is a long and drawn out process.  
7 In fact, this Court has already recognized that an attempt to effect service of process in Taiwan  
8 pursuant to a letter rogatory required nearly seven months' time. (Order Regarding Defendant  
9 Nexgen Mediatech Inc.'s Motion to Dismiss for Insufficient Service of Process; Quashing  
10 Service, and Granting Direct Purchaser Plaintiffs' Motion to Serve Nexgen Through Its Counsel  
11 Under Fed. R. Civ. P. 4(f)(3) entered on November 19, 2008 in the LCD Flat Panel MDL  
12 Proceeding [Docket No. 725], at 4). The U.S. Department of State has likewise observed that the  
13 process of executing a letter rogatory may require one or more years.<sup>4</sup>

14 In lieu of the letters rogatory process, Rule 4(f)(3) authorizes the Court to allow service  
15 of process through "other means not prohibited by international agreement." Authorizing an  
16 alternative means of service of process pursuant to Federal Rule of Civil Procedure 4(f)(3) is  
17 "commit[ted] to the sound discretion of the district court." *Rio Props., Inc. v. Rio Int'l Interlink*,  
18 284 F.3d 1007, 1016 (9th Cir. 2002). The alternative method of service, however, (1) must not  
19 be prohibited by international agreement, and (2) must "comport with constitutional notions of  
20 due process." *Id.*

21 To comport with constitutional notions of due process, the method of service "must be  
22 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency  
23 of the action and afford them an opportunity to present their objections.'" *Id.* at 1016-17  
24 (quoting *Mullaine v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The Court of  
25 Appeals for the Ninth Circuit has held that service by delivering a summons and the complaint to  
26 a defendant foreign corporation's domestic counsel located in the United States is reasonably  
27 calculated to apprise the defendant of the pendency of the action and, therefore, comports with  
28 constitutional notions of due process where the defendant's United States counsel is in contact

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<sup>4</sup> See U.S. Department of State, Bureau of Consular Affairs, Preparation of Letters Rogatory,  
[http://travel.state.gov/law/judicial/judicial\\_683.html](http://travel.state.gov/law/judicial/judicial_683.html) (last visited June 19, 2011). (Taylor Decl. Exh. C)

1 with the defendant, and the defendant's United States counsel knows of the defendant's legal  
2 positions. *Rio Props., Inc.*, 284 F.3d at 1017. Plaintiff's proposed method of service meets the  
3 requirements of Rule 4 and due process.

4 **B. Serving the Foreign Defendants Through Their United States Counsel Will**  
5 **Satisfy Due Process.**

6 Both of the Foreign Defendants have been participating actively in this MDL through their  
7 United States counsel. Since January 2009, Gibson Dunn has repeatedly appeared as counsel for  
8 Chunghwa in the LCD Flat Panel MDL Proceeding. (Taylor Decl. ¶ 5). Baker has been  
9 appearing for Tatung America, Tatung's United States subsidiary, since January 2008, and now  
10 represents Tatung. (*Id.* ¶ 6) Having substantively participated in MDL 1827 on behalf of the  
11 Foreign Defendants for many months, the United States counsel of the Foreign Defendants have  
12 essentially represented to this Court that they are in regular contract with the Foreign Defendants  
13 and are familiar with their legal positions in the LCD Flat Panel MDL Proceeding and related  
14 actions. Thus, under Ninth Circuit case law, service by delivering a summons, the Complaint,  
15 and the Supplementary Material to United States counsel for the Foreign Defendants is  
16 reasonably calculated, under the circumstances of this action, to apprise the Foreign Defendants  
17 of the pendency of the action and, accordingly, comports with constitutional notions of due  
18 process.

19 Furthermore, this Court has already authorized service of process on Taiwanese  
20 companies, including both Chunghwa and Tatung, through their domestic counsel in this action.  
21 *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, Master Docket No. C M:07-01827 SI,  
22 Order Regarding Defendant Nexgen Mediatech Inc.'s Motion to Dismiss for Insufficient Service  
23 of Process; Quashing Service; and Granting Direct Purchaser Plaintiffs' Motion to Serve Nexgen  
24 Through Its Counsel Under Fed. R. Civ. P. 4(f)(3) [Docket No. 725]; *ATS Claim, LLC v. Epson*  
25 *Elecs. Am., Inc., et al.*, Individual Case No. C 09-1115 SI, Order Granting Defendants' Motions  
26 to Dismiss Plaintiff's Complaint, with Leave to Properly Serve Domestic Defendants and to  
27 Amend the Complaint; and Granting Plaintiff's Motion to Serve Certain Taiwanese Defendants  
28 [Individual Docket No. 70]; *AT&T Mobility LLC, et al. v. AU Optronics, et al.*, Individual Case  
No. C 3:09-04997 SI, Order Granting Plaintiff's Motion to Serve Chunghwa Picture Tubes  
Through its U.S. Counsel [Individual Docket No. 42]; *Nokia Corp. v. AU Optronics Corp., et al.*,  
Individual Case No. C 09-5609 SI, Order Granting Plaintiff's Motion to Serve Defendants

1 Chunghwa Picture Tubes and Tatung Company Through Their U.S. Counsel [Individual Docket  
2 No. 32]; *TracFone Wireless, Inc. v. AU Optronics Corp., et al.*, Individual Case No. C 10-03205  
3 SI, Order Granting Plaintiff's Motion to Serve Defendant Chunghwa Picture Tubes Through its  
4 U.S. Counsel [Individual Docket No. 16]; *see also, In re Cathode Ray Tube (CRT) Antitrust*  
5 *Litig.*, No. 07-5944, 2008 U.D. Dist. LEXIS 111384, at \*31-32 (N.D. Cal. Sept. 3, 2008).

6 Because service of process by delivering a summons, the Complaint, and the  
7 Supplementary Material to the Foreign Defendants' United States Counsel is not prohibited by  
8 international agreement and comports with constitutional notions of due process, this means of  
9 service is permissible under Ninth Circuit case law. Accordingly—and in light of the time-  
10 consuming and expensive nature of service of process by executing a letter rogatory—the Court  
11 may and should direct Plaintiff to effect service of process upon The Foreign Defendants through  
12 their counsel in the United States.

13 **C. Allowing T-Mobile to Serve the Foreign Defendants Through Their United**  
14 **States Counsel Will Facilitate Timely Discovery, Save Costs, and Prevent**  
15 **Further Delay in This Action.**

16 As the Court is aware, discovery is already moving forward in MDL 1827. Certain  
17 depositions have already been taken and counsel are moving forward with additional discovery.  
18 T-Mobile intends to coordinate its discovery with the class counsel and other Direct Action  
19 Plaintiffs to facilitate orderly and timely discovery. Coordinating that discovery will be  
20 considerably easier and more efficient the sooner the Foreign Defendants are served. Until they  
21 are served, T-Mobile cannot initiate discovery against the Foreign Defendants. Given the  
22 protracted and expensive nature of effecting service of process in Taiwan, it could be 2012 before  
23 the Foreign Defendants would even be required to answer the Complaint. Any witnesses deposed  
24 by other plaintiffs in the meantime may need to be redeposed for non-duplicated but plaintiff  
25 specific issues. The scope and complexity of the discovery and motion practice in this case  
26 necessitate the Court's intervention, and the Court should issue an order authorizing T-Mobile to  
27 serve the Foreign Defendants by delivering the requisite documents to their United States  
28 Counsel.

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**IV. CONCLUSION**

For the foregoing reasons, T-Mobile respectfully requests that the Court grant this Motion for an order authorizing T-Mobile to serve upon Defendants Chunghwa and Tatung a summons, the Complaint, and the Supplementary Material set forth in Civil Local Rule 4-2 by delivering these documents to Chunghwa's and Tatung's domestic counsel in the United States, pursuant to Federal Rule of Civil Procedure 4(f)(3).

Dated: July 1, 2011

SUSMAN GODFREY L.L.P.

By: /s/ Brooke A.M. Taylor

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/s/ Brooke A. M. Taylor  
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