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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 San Francisco Division

FEDERAL TRADE COMMISSION,  
  
 Plaintiff,  
  
 v.  
  
 AT&T MOBILITY LLC, a limited liability  
 company,  
  
 Defendant.

Case No. 14-cv-04785-EMC

**JOINT STATEMENT AND ~~[PROPOSED]~~  
 ORDER REGARDING PHASED  
 DISCOVERY**

**Joint Statement and [Proposed] Order re Phased Discovery – 14-cv-04785-EMC**

1           The parties to the above-entitled action hereby submit this Joint Statement and  
2 [Proposed] Order Regarding Phased Discovery pursuant to the Court’s Order Denying  
3 Defendant’s Motion to Stay (Dkt. #89).

4 **I.     BACKGROUND**

5           On August 18, 2015, Defendant AT&T Mobility LLC (“AT&T”) filed a motion to stay  
6 proceedings pending resolution of an interlocutory appeal (“Motion to Stay”) (Dkt. #79). After  
7 briefing by AT&T and Plaintiff Federal Trade Commission (“FTC”), the Court heard oral  
8 argument on September 24, 2015. During the hearing, and by written order on September 25,  
9 2015 (Dkt. #89), the Court denied AT&T’s Motion to Stay but ordered that “the parties shall  
10 phase discovery, at least through the date of the next CMC,” set for January 21, 2016. The Court  
11 ordered that discovery shall proceed on the “go get” discovery requests discussed at the hearing,  
12 but not on the “monthly data” requests. The Court also ordered the parties to meet and confer as  
13 to how best to phase discovery of relevant custodians’ emails and other documents, including,  
14 for example, identifying the particular custodians whose documents shall be produced during this  
15 phase of discovery.

16 **II.    AGREEMENT ON PHASED DISCOVERY**

17           Having met and conferred, the parties have reached the following agreement:

18           A.     AT&T shall produce, to the extent such documents exist and are reasonably  
19 accessible, documents responsive to the following requests in the FTC’s First Set of Requests for  
20 Production of Documents and Other Tangible Things, as memorialized and limited in  
21 correspondence between the parties or in AT&T’s document responses and objections, otherwise  
22 known as the “go get” requests: 1-7, 11-12, 13(a), 13(p), 13(s), 13(t), 17-18, 20-23, 25-26, and  
23 29-32. The FTC reserves the right to request, after January 21, 2016, that request 13(u) be  
24 treated as a “go get” request, and AT&T reserves the right to challenge such a request.

25           B.     AT&T shall produce responsive non privileged or non attorney work product  
26 emails or other documents from the following custodians subject to the search terms and date  
27 ranges agreed to by the parties as of the date of this filing, as memorialized and limited in  
28 correspondence between the parties:

- 1                   1) Mark Collins
- 2                   2) Matthew Haymons
- 3                   3) Kristin Rinne
- 4                   4) David Christopher
- 5                   5) Andrew Wilson
- 6                   6) Maurice James
- 7                   7) Rick Fish
- 8                   8) Jill Root
- 9                   9) Kristin Nelson
- 10                  10) Dave Saska
- 11                  11) Bill Hogg
- 12                  12) Mitch Farber

13                   Upon review, to the extent any of the agreed upon search terms for the custodians above  
14 generate a disproportionately large volume of non-responsive documents, the parties agree to  
15 work cooperatively in good faith to revise or otherwise modify those search terms during this  
16 period.

17                   C.       The FTC shall produce responsive non privileged or non attorney work product  
18 documents responsive to the following requests in AT&T’s First Set of Requests for Production  
19 of Documents, as memorialized and limited in correspondence between the parties or in the  
20 FTC’s document responses and objections, otherwise known as the “go-get” requests: 1, 3-27,  
21 29-30, 32-36. Specifically, the FTC shall produce consumer complaints regarding AT&T’s  
22 throttling program received through the Consumer Sentinel Network, the Better Business  
23 Bureau, the Federal Communications Commission, and directly from consumers. The FTC shall  
24 produce any additional communications with AT&T consumers whom the FTC sought to or did  
25 interview, as well as an updated Rule 26(a) disclosure identifying by name and other contact  
26 information the 10-15 potential customer witnesses no later than January 14, 2016. The FTC  
27 will also produce consumer complaints concerning other companies’ throttling programs  
28 received through the Consumer Sentinel Network, subject to the search terms identified in

1 correspondence between the parties and with consumer names and contact information redacted.  
2 AT&T reserves the right to seek, after January 21, 2016, the consumer names and contact  
3 information of consumers who complained about other companies' throttling programs, and the  
4 FTC reserves the right to challenge such a request. The FTC will further produce documents  
5 from third parties responsive to AT&T's document requests as set forth in the FTC's Responses  
6 to AT&T Mobility LLC's First Set of Requests for Production of Documents. Finally, the FTC  
7 shall produce publicly available information from the FTC's website regarding the FTC's action  
8 against TracFone Wireless, Inc.

9 D. The parties shall produce the documents described in paragraphs A, B, and C on a  
10 rolling basis, and production shall begin promptly or as soon as practicable upon entry of a  
11 Protective Order. The parties shall endeavor in good faith to complete the production of all  
12 documents described in paragraphs A, B, and C by January 14, 2016. With respect to the  
13 documents described in paragraphs A and B, AT&T shall produce documents dated prior to June  
14 12, 2015. The FTC reserves the right to seek, after January 21, 2016, documents dated after June  
15 12, 2015, and AT&T reserves the right to challenge such a request. The production of  
16 documents described in paragraph B shall begin with production of documents from Mark  
17 Collins, Matthew Haymons, and Kristin Rinne.

18 E. Neither party waives any right to seek further discovery after January 21, 2016,  
19 with respect to the productions agreed to in paragraphs A, B, and C, or with regard to any  
20 Interrogatory Responses provided to date, or any document responses or objections provided to  
21 date.

22 F. Finally, the parties have agreed not to conduct depositions during this phase of  
23 discovery.  
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1 Dated: October 8, 2015

Respectfully submitted,

2                     /s/ Evan Rose

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25                     /s/ David L. Anderson

26 David L. Anderson

27 Attorneys for Defendant  
28 AT&T MOBILITY LLC

(The filer attests that concurrence in the filing of this document has been obtained from the other signatories.)

IT IS SO ORDERED.



Date: 10/13/15

HONORABLE EDWARD M. CHEN  
UNITED STATES DISTRICT JUDGE

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