UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF NEW YORK, STATE OF WASHINGTON, STATE OF CALIFORNIA, STATE of ILLINOIS, COMMONWEALTH OF MASSACHUSETTS, STATE OF OHIO, and COMMONWEALTH OF PENNSYLVANIA, *Plaintiffs*, v. AT&T INC., T-MOBILE USA, INC., and DEUTSCHE TELEKOM AG, *Defendants.*	Civil No. 11-01560 (ESH)

MEMORANDUM IN SUPPORT OF DEFENDANTS' PROPOSED SCHEDULE

Defendants respectfully request that the Court enter the dates Defendants propose in the scheduling order the parties have jointly submitted. The different dates proposed by the Parties are highlighted in paragraph 11 of the proposed order, with Plaintiffs' dates listed first, and Defendants' dates listed second.

Despite the Court's decision to set trial for a date five weeks earlier than the date Plaintiffs proposed, Plaintiffs have insisted that the key intermediate dates regarding experts that they originally proposed should be advanced by only six to eight days. Under Plaintiffs' newly proposed schedule, Defendants would be kept in the dark regarding the economic and other expert analysis underlying Plaintiffs' case until January 5, 2012, less than six weeks before trial is to begin. Defendants' own experts would have only 11 days to respond to the government's experts with responsive reports. And expert depositions would continue until January 30, 2012, pushing those depositions *after* the initial agreed-upon date for pre-filed testimony. This

proposal simply makes no sense and would allow the Plaintiffs, notwithstanding their burden of proof, to hide the ball until the last possible second.

Plaintiffs' proposed schedule is also unfair. Plaintiffs are trying to grant themselves the protracted schedule the Court already denied and to do so by squeezing the Defendants out of their opportunity to prepare a responsive case. Under Section 7 of the Clayton Act, Plaintiffs bear the burden of proving that the proposed merger between AT&T and T-Mobile will "substantially . . . lessen competition, or . . . tend to create a monopoly" in "any line of commerce . . . in any section of the country." 15 U.S.C. § 18. The government has insisted that *before* filing suit it had conducted "an exhaustive investigation" and "concluded that this merger violated the law."[1] Having concluded that its pre-suit investigation was sufficient to file a complaint alleging that the merger will harm competition, the government should, in all fairness, be required promptly to explain the basis for its claim, and to give Defendants an adequate opportunity to meet that case. Requiring Defendants to name their rebuttal experts weeks before they even see Plaintiffs' expert reports, and waiting to file opening expert reports until six weeks before trial, with rebuttal reports three weeks before trial, and expert depositions continuing up to the last business day before trial do not provide Defendants that opportunity.

It is particularly unworkable for the government to propose that expert depositions take place *after* pre-filed testimony is submitted. The parties should complete all discovery – including expert discovery – before any pre-filed testimony is submitted, as Defendants propose.

CONCLUSION

Defendants respectfully request that the Court enter the scheduling and case-management order with the dates in paragraph 11 proposed by Defendants.

[1] Transcript of Department of Justice Briefing, Department of Justice Lawsuit Seeking to Block AT&T's Acquisition of T-Mobile, Aug. 31, 2011.

Dated: September 23, 2011

Respectfully submitted,

/s/ Mark C. Hansen

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2011, I caused the foregoing Memorandum in Support of Defendants' Proposed Schedule to be filed using the Court's CM/ECF system, which will send e-mail notification of such filings to counsel of record. This document is available for viewing and downloading on the CM/ECF system.

/s/ Mark C. Hansen
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