IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al., *Plaintiffs*, v. AT&T INC., et al., *Defendants*.	Case No. 1:11-cv-01560 (ESH) **Discovery Matter: Referred to Special Master Levie**

AT&T'S OPPOSITION TO SPRINT'S MOTION TO QUASH

Pursuant to Special Master Order No. 1 (Oct. 29, 2011) [Docket No. 68], attached as Exhibit A is a table delineating AT&T's modifications of its Rule 45 subpoena to limit the subpoena's burden on Sprint while ensuring that AT&T receives documents crucial to its defense. Sprint has not satisfied the "heavy burden" it must meet to be relieved of its obligation to comply with AT&T's narrowed requests. *Irons v. Karceski*, 74 F.3d 1262, 1264 (D.C. Cir. 1995) (per curiam).

Most of AT&T's requests simply seek a "refresh" of document categories already provided to the Department of Justice ("DOJ"). Sprint claims that bringing its production up to date would require the disclosure of an additional 440,000 pages of material. But Sprint makes no showing that an updated production would impose on it any particularized hardship not shared by the many other wireless service providers that have dutifully complied with AT&T and DOJ subpoenas. *See, e.g.*, *Call of the Wild Movie, LLC v. Does 1-1,062*, 770 F. Supp. 2d 332, 355 (D.D.C. 2011) (denying motion to quash where subpoenaed non-party claimed compliance would " 'overwhelm' its capacity and 'completely absorb [its] resources for many months' ").

To arrive at the figure of 440,000 pages, moreover, Sprint extrapolates from the size of its production to DOJ, which it claims totaled 2.2 million pages. Sprint, however, produced only 141,098 documents comprising 792,029 pages, along with various databases containing data that cannot meaningfully be measured in pages. Declaration of Steven F. Benz ("Benz Decl.") ¶ 10, attached hereto as Ex. B. Thus, even if one were to accept Sprint's questionable method of extrapolation, a refresh of Sprint's entire production would require Sprint to produce only an estimated 28,220 documents, or approximately 158,406 pages. AT&T, moreover, has limited its request for a refresh to 26 requests. Any resulting "burden" is appropriate in light of the scope of the case and the potential importance of the documents sought. *See West Bay One, Inc. v. Does 1-1,653*, 270 F.R.D. 13, 14 (D.D.C. 2010).

Sprint further claims that some documents generated since AT&T and T-Mobile announced their merger are likely to be privileged. But AT&T is not challenging Sprint's right to exclude privileged documents, and modern technologies greatly facilitate such segregation. AT&T is willing to discuss ways in which the burden of preparing a privilege log might be minimized, and it will abide by the procedures regarding inadvertently produced privileged documents provided in the federal rules. No precedent supports wholesale rejection of a subpoena because some responsive documents may be privileged.

Balanced against any modest burden that Sprint might bear is the extreme relevance of the information sought. Newly generated documents are among the materials most relevant and important to the issues in this case. Sprint is a strong and vibrant competitor as evidenced by events in the past six months – a fact that is critical to AT&T's defense of DOJ's claim that the challenged merger would dampen competition in the mobile wireless industry. For example, Sprint began selling the iPhone on October 14, 2011, and "reported its best ever day of sales"

with this launch. Benz Decl. Ex. 1. On October 26, Sprint announced that, in the third quarter of 2011, it achieved the highest total company wireless net subscriber additions in more than five years. *Id.*, Ex. 2. And Sprint has made a number of announcements in October about the future of its network, its path to LTE, and its relationship with Clearwire – all issues that bear directly on the competitive landscape issues underlying DOJ's claims. *Id.*, Ex. 3.

Finally, Sprint's argument that AT&T should be limited to documents that DOJ thought were relevant to its case and that Sprint provided to support the DOJ case is unpersuasive.[*] While DOJ served follow-up subpoenas on several other wireless service providers, it did not serve one on Sprint. That is no doubt because Sprint fully cooperated with the government and negotiated a production that would be beneficial to DOJ's case and continues to work with DOJ on its case. AT&T is entitled to obtain the information it needs to defend that case and to have that information be timely. Its modified requests are reasonable and well within the bounds of Rule 45 discovery.

AT&T respectfully requests that Sprint's motion to quash be denied and that Sprint be compelled to produce the documents requested in the attached table without further delay. A Proposed Order is attached.

[*] Sprint's reliance on the CID to demonstrate what it previously produced ignores the modifications that DOJ made in which it deferred significant portions of the CID. *See* Benz Decl. Exs. 4-6.

Dated: November 2, 2011

Respectfully submitted,

/s/ Steven F. Benz

Mark C. Hansen, D.C. Bar # 425930
Michael K. Kellogg, D.C. Bar # 372049
Steven F. Benz, D.C. Bar #428026
Kellogg, Huber, Hansen, Todd,
Evans & Figel, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, DC 20036
(202) 326-7900

Wm. Randolph Smith, D.C. Bar # 356402
Kathryn D. Kirmayer, D.C. Bar # 424699
Shari Ross Lahlou, D.C. Bar # 476630
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 624-2500

Richard L. Rosen, D.C. Bar # 307231
Donna E. Patterson, D.C. Bar # 358701
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
(202) 942-5000

Counsel for AT&T Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2011, I caused the foregoing AT&T's Opposition to Sprint's Motion To Quash 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. A copy of the foregoing also shall be served via electronic mail on:

Special Master	The Honorable Richard A. Levie ralevie@gmail.com rlevie@jamsadr.com JAMS 555 13th Street, NW, Suite 400 West Washington, DC 2004 Tel. (202) 533-2056 *With two hard copies by hand-delivery
United States of America	Claude F. Scott, Jr., claude.scott@usdoj.gov Hillary B. Burchuk, hillary.burchuk@usdoj.gov Lawrence M. Frankel, lawrence.frankel@usdoj.gov Matthew C. Hammond, matthew.hammond@usdoj.gov US Department of Justice Antitrust Division 450 5th Street, NW, Suite 7000 Washington, DC 20001 Joseph F. Wayland, joseph.wayland@usdoj.gov US Department of Justice 950 Pennsylvania Avenue, NW, Suite 3121 Washington, DC 20530 Tel. (202) 514-1157
State of California	Quyen D. Toland, quyen.toland@doj.ca.gov Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102
State of Illinois	Robert W. Pratt, rpratt@atg.state.il.us Illinois Office of the Attorney General 100 West Randolph Street Chicago, IL 60601 Tel. (312) 814-3722

State of Massachusetts	William T. Matlack, william.matlack@state.ma.us Michael P. Franck, michael.franck@state.ma.us Massachusetts Office of the Attorney General 1 Ashburton Place 18th Floor Boston, MA 02108 Tel. (617) 963-2414
State of New York	Richard L. Schwartz, richard.schwartz@oag.state.ny.us Geralyn J. Trujillo, geralyn.trujillo@ag.ny.gov Matthew D. Siegel, matthew.siegel@ag.ny.gov New York Attorney General's Office Antitrust Bureau 120 Broadway Suite 2601 New York, NY 10271 Tel. (212) 410-7284 Fax (212) 416-6015
State of Ohio	Jennifer L. Pratt, jennifer.pratt@ohioattorneygeneral.gov Office of the Attorney General Antitrust Division 150 E. Gay St 23rd Floor Columbus, OH 43215
State of Washington	David M. Kerwin, davidk3@atg.wa.gov Washington State Attorney General 800 Fifth Avenue Seattle, WA 98104 Tel. (206) 464-7030

Non-Party Sprint Nextel Corp.	Steven C. Sunshine, steven.sunshine@skadden.com Gregory B. Craig, gregory.craig@skadden.com Tara L. Reinhart, tara.reinhart@skadden.com Skadden, Arps, Slate, Meagher & Flom LLP 1440 New York Avenue, NW Washington, DC 20005 Tel. (202) 371-7000 James A. Keyte (PHV), james.keyte@skadden.com Matthew P. Hendrickson (PHV), matthew.hendrickson@skadden.com Skadden, Arps, Slate, Meagher & Flom LLP 4 Times Square New York, NY 10036 Tel. (212) 735-3000

/s/ *Steven F. Benz*
Steven F. Benz