

**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**

**DECLARATION OF TARA S. EMORY IN SUPPORT OF REPLY TO AT&T’S
OPPOSITION TO MOTION TO QUASH**

I, Tara S. Emory, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney with the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, attorneys for nonparty Sprint Nextel Corporation (“Sprint”). I have personal knowledge of the matters set forth herein, unless otherwise noted.

2. I make this declaration in support of nonparty Sprint’s Reply to AT&T’s Opposition to Sprint’s Motion to Quash the subpoena served by AT&T to Sprint on September 26, 2011.

DOCUMENT REQUESTS

3. The May 11, May 19, and June 2, 2011 correspondence attached to the Declaration of Steven F. Benz as Exhibits 4, 5, and 6 reflect some but not all of the U.S. Department of Justice’s (“DOJ”) inquiries to Sprint counsel regarding compliance with the Civil Investigative Demand (“CID”).

4. The May 11, 2011 letter set DOJ priorities but in no way limited Sprint's production. In discussions with DOJ to identify the priority requests on which Sprint would initially focus its responses, I informed DOJ that Sprint would respond to document requests without regard to priority topics. The reason for this approach is that a deferral could have required additional productions, and reviewing all of Sprint's documents more than once would have been extremely burdensome.

5. Because DOJ was aware that Sprint was working to comply with each document request under the CID, and because Sprint in fact produced the documents responsive to those requests, DOJ did not need to request those documents again in later communications with me.

6. AT&T has asked for a "refresh" to most of its requests. *See* Exhibit A to AT&T's Opposition to Sprint's Motion to Quash, Requests 3-4, 6-12, 14, 16, 18-19, 23, 29, 31, 33-35, 38, 40-43. Updating these requests would be extremely burdensome because the requests are very broad, would require extensive attorney hours, as explained below, and a substantial number of responsive documents would be subject to privilege given Sprint's participation in the DOJ and FCC merger investigations. *See* Sprint's Motion to Quash; Decl. of Tara L. Reinhart in Support of Motion to Quash ¶¶ 13-15.

7. AT&T's current position on several of its requests is to seek documents from additional "key custodians." *See* Exhibit A to AT&T's Opposition to Sprint's Motion to Quash, Requests 6-11, 22. Sprint already produced documents from key business executives across the company that are responsive to these requests. Further, requiring Sprint to identify and collect documents from additional custodians would be extremely burdensome because the requests are very broad, and compliance would require extensive attorney hours. AT&T has not explained its

need for additional custodians given that the Sprint production contains an enormous number of documents that are responsive to these requests.

8. As one example, AT&T now asks Sprint to supplement its DOJ production with documents from additional custodians related to Boost Mobile and Virgin Mobile, Sprint's prepaid wireless service brands. *See* Exhibit A to AT&T's Opposition to Sprint's Motion to Quash, Requests 6-11.

9. I caused a search of Sprint's DOJ production to be conducted for documents related to Boost Mobile and Virgin Mobile as follows:

- (a) A search for "Boost Mobile" returned 4,889 documents that contain the term; and
- (b) A search for "Virgin Mobile" or "VMU" returned 9,750 documents that contained one or both terms.

10. AT&T's current position on several other requests is to ask Sprint to supplement its DOJ production to "fully respond to the request," noting that "[t]hese documents were not called for by DOJ's CID as modified." *See* Exhibit A to AT&T's Opposition to Sprint's Motion to Quash, Requests 14, 22, 31, 33-35. In each instance, however, Sprint produced documents in response to one or more CID requests that also are responsive to the AT&T requests.

11. As one example, AT&T asks that Sprint supplement its DOJ production with additional documents that "fully address" the request for documents sufficient to show Sprint's research and development activities. *See* Exhibit A to AT&T's Opposition to Sprint's Motion to Quash, Request 14. Documents responsive to this request do not exist in one place at Sprint, but across the company's business segments. The key executives in each of these business segments are document custodians whose materials were produced to DOJ. Specifically, several of the custodians are senior executives with responsibility, respectively, for network operations, special

access, roaming, and product development (which includes devices, applications, and software). In addition, Sprint complied with Specification 6 of the DOJ CID, which included a request for research and development documents. Many documents responsive to other CID specifications, such as Specification 7, also are responsive to AT&T's Request 14. AT&T has not explained why the DOJ production is not "sufficient to show" Sprint's research and development efforts.

12. These are two examples, but, based on my involvement in the CID production, there are documents responsive to the other AT&T requests in the DOJ production. AT&T has not explained why the DOJ production is insufficient to satisfy its needs.

DATA REQUESTS

13. Attached as Exhibit 1 is true and correct copy of an email from counsel for DOJ, Kathleen O'Neill, to me dated June 1, 2011.

14. Attached as Exhibit 2 is a true and correct copy of an email from Kathleen O'Neill to me dated June 7, 2011.

15. In the May 19, 2011, letter relied on by AT&T, DOJ asked Sprint for information about its databases including exemplars and data dictionaries. The requests in the letter were framed in terms of DOJ's interests in types of data, not in terms of how Sprint maintains its data. The purpose was to identify data DOJ was interested in receiving, not to specify the scope of production of any data. Based on information Sprint provided in response to that letter, DOJ then required Sprint to make specific data productions.

16. As documented in Sprint's correspondence with DOJ, which has been produced to AT&T, Sprint produced information relevant to all of the data specifications in the CID. In cases where Sprint produced data that differed from the CID request, it did so after DOJ agreed that a

modification of the request was reasonable because the CID requested information that was not available or would have been too burdensome for Sprint to produce.

17. AT&T also relies on a June 2, 2011, letter. *See* Benz Declaration, Ex. 6. As described above, the letter did not affect Sprint's efforts to comply with document requests in the CID, as Sprint had already committed to DOJ that it would do so. Moreover, while this letter limited Sprint's need to provide data in the form it was initially requested by DOJ in the CID, it did not limit Sprint's requirement to comply with other data requests DOJ made to Sprint, both before and after the June 2 letter. Sprint worked with DOJ to provide DOJ with information about the types and forms of data contained in Sprint's databases, and based on that information, DOJ made specific requests for data from Sprint.

18. Unlike the general data requests included in the CID, which were modified by the June 2 letter, DOJ's later requests, which were not modified by the June 2 letter, reflect DOJ's considerations of the form in which Sprint keeps data and the burden its requests would impose on Sprint.

19. The June 1, 2011 and June 7, 2011 emails from Kathy O'Neill to me are examples of the data requests DOJ issued to Sprint that reflect such considerations. DOJ also issued other data requests to Sprint, and Sprint complied.

20. The June 1, 2011 email (the day before the June 2, 2011 letter) from Kathy O'Neill of DOJ to me includes requests for data related to subscribers, revenue, and Sprint's network. *See* Exhibit 1. These requests were not modified by the June 2, 2011 letter.

21. The June 7, 2011 email from Kathy O'Neill of DOJ to me requested detailed information about Sprint's active, deactivated, and planned cell sites. *See* Exhibit 2.

22. AT&T's current position on several data requests is to ask (1) that the DOJ data sets be "refreshed" and (2) that, to the extent DOJ accepted one year's worth of data, Sprint supplement with data from May 2009-April 2010. *See* Exhibit A to AT&T's Opposition to Sprint's Motion to Quash, Requests 18, 20-21, 40-41, 43.

23. AT&T's position is unduly burdensome because the new collections would require significant labor. Based on my involvement in the data collections and investigation into Sprint's efforts to comply with the CID's data requests, I estimate it would require approximately 200 Sprint employee man-hours to collect the data to update Sprint's CID database productions that AT&T wants "refreshed" and supplemented. These are hours in which Sprint employees would not be performing their ordinary job responsibilities.

PAGE COUNT OF PRODUCTION TO DOJ

24. I investigated the figures and assertions in paragraphs 10-12 of the Benz Declaration regarding the number of pages produced to DOJ by Sprint. Mr. Benz has understated the number of pages produced because he counted only the number of TIFF imaged pages, but omitted pages of documents that Sprint produced to DOJ in their native format without TIFF images, per DOJ specifications. If Sprint had produced full TIFF images of each of these produced native documents, the page count of the production would total 2,224,966 pages of TIFF images.

25. Regardless of whether Sprint provided a full TIFF image of each document that it produced fully in native format, each document was reviewed by an attorney. Therefore, I caused to be counted the number of pages in each document, including the equivalent number of TIFF image pages for documents produced in native format, to determine the total number of pages produced.

26. I confirmed that Sprint produced 138,954 business records to DOJ, representing 2,224,966 pages of content, all of which were reviewed by attorneys for responsiveness and privilege before being produced.

27. The page count included, in some but not all instances, two versions of a Power Point presentation.

28. The page count included the equivalent of 1,412,669 TIFF pages of Excel spreadsheets that were produced in their native form. Many of these are voluminous, but they were in the review set because they had been attached to custodian emails. As a result, they were reviewed.

29. Contrary to the Benz Declaration, the page count did not include the databases Sprint produced in response to data requests, including requests for revenue, customers, service plans, and network components.

ATTORNEY DOCUMENT REVIEW HOURS

30. Based on my involvement in the CID document review and additional investigation, I estimate that approximately 8,000 attorney hours were spent in making the production to DOJ, including hours spent on attorney review of the files, review for privileged documents and supervisory/oversight review.

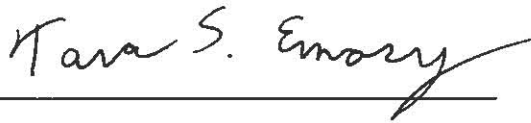
31. AT&T's current requests for a "refresh" would result in a review at least one-fifth the size of the CID review, based on the fact that the "refresh" seeks a broad array of topics over a relevant time period that is one-fifth of the period in the CID.

32. The review likely would exceed one-fifth of the actual volume of the CID review, however, given AT&T's request that Sprint supplement its production with additional documents

and files from new custodians. Increasing the number of custodians would substantially add to Sprint's burden.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 3rd day of November, 2011.

A handwritten signature in cursive script that reads "Tara S. Emory". The signature is written in black ink and is positioned above a solid horizontal line.

Tara S. Emory

EXHIBIT 1
(Filed Under Seal)

EXHIBIT 2
(Filed Under Seal)