

**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 SUR-REPLY IN RESPONSE TO SPRINT'S MOTION TO QUASH**

AT&T submits this sur-reply to answer the three questions posed by the Special Master's request dated November 3, 2011.

**1. AT&T has completed a thorough review of all of the documents Sprint produced.**

Before it filed its opposition to Sprint's motion to quash, AT&T completed a diligent review of the entire Sprint production to the Department of Justice ("DOJ"). *See* Declaration of Steven F. Benz ¶ 2 ("Benz Decl."). Based on that review, AT&T tailored its requests to seek only those categories of documents that (a) Sprint had not produced and (b) were critical to AT&T's efforts to prepare its case for trial.\*

**2. Sprint did not produce documents from key custodians at Boost and Virgin Mobile.**

AT&T does not dispute Sprint's contention that documents in its production contain the words "Boost Mobile," "Virgin Mobile," or "VMU." But none of those documents was produced from the executives in charge of Boost Mobile (Andre Smith) and Virgin Mobile (David Trimble). *See* Benz Decl. ¶ 4. Mr. Smith and Mr. Trimble are likely to have highly relevant documents reflecting Boost Mobile's and Virgin Mobile's specific business plans and marketing strategies, and AT&T may want to depose those executives (something it cannot do

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\* Sprint contends that it produced research and development documents from its top network executives despite DOJ's deferral of that information. *See* 11/2/11 Benz Decl. ¶ 18. Based on Sprint's representation, AT&T will consider Sprint's obligation to produce documents in response to RFP 14 satisfied. Sprint, however, produced only one year of subscriber data, not the three years AT&T requested. AT&T as a compromise proposal requests that Sprint provide one additional year of subscriber data, going back to mid-2009.

without access to their documents). Those documents and related testimony are critical to AT&T's efforts to show that the competitive marketplace is significantly different from the way it is portrayed by DOJ. *See id.* ¶ 5.

**3. The “refresh” documents sought from Sprint are critical to AT&T’s defense.**

AT&T seeks a supplemental or updated production of 28 requests. *See* Dkt. No. 69-1. In its reply, Sprint asserts that it spent 8,000 hours to respond to DOJ's Civil Investigative Demand (“CID”) and claims that its “refresh” would take at least 20% of that time. Even crediting Sprint's estimate, it fails to take into account the facts that AT&T's requests are substantially narrower than DOJ's CID and that Sprint's prior experience would likely make the updated review process more efficient.

In any event, whatever burden Sprint might incur is outweighed by AT&T's need for the information sought. Sprint's recent documents are among the materials most relevant and important to the issues in this case because of the extraordinarily dynamic nature of the industry, Sprint's key role in that industry, and Sprint's recent developments. *See* 11/2/11 Benz Decl. Exs. 1-3. Without the updates, Sprint's document production will not accurately reflect the current (or future) state of competition. The high relevance of the most recent documents is further supported by the fact that DOJ too has sought updated productions from non-parties that produced in response to CIDs. Sprint has not met its heavy burden to demonstrate that the subpoena should be quashed.

AT&T respectfully requests that Sprint's motion to quash be denied and that Sprint be compelled to produce the documents identified in the table filed as Docket No. 69-1 without further delay. Cooperation from non-parties is absolutely essential to the preparation of AT&T's defense in the limited time available before trial. If Sprint is allowed simply to refuse to produce documents in response to a proper and reasonable subpoena (and to refuse even to negotiate over the scope of the subpoena), other non-parties will follow suit and AT&T will be deprived of its right to defend against DOJ's allegations.

Dated: November 4, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 4, 2011, I caused the foregoing AT&T's Sur-Reply in Response 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

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