

**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)

DECLARATION OF STEVEN F. BENZ IN SUPPORT OF MOTION TO COMPEL

Pursuant to 28 U.S.C. § 1746, I, Steven F. Benz, declare as follows:

1. I am an attorney with the law firm of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., counsel for AT&T Inc., which is a defendant in the matter of *United States v. AT&T Inc., et al.*, Case No. 1:11-cv-01560 (ESH). I have personal knowledge of the matters set forth herein. I make this declaration in support of AT&T's sur-reply in support of its motion to compel and its opposition to Sprint's motion to quash the subpoena AT&T served.

2. AT&T has completed a diligent review of all the Sprint documents and data that the Department of Justice ("DOJ") produced to AT&T on September 27, 2011, including: (a) approximately 140,000 ordinary course of business documents, such as power point presentations, word documents, excel spreadsheets, and email correspondence, and (b) data that appear to have been extracted from Sprint databases, such as its Ensemble Handset database, a database containing subscriber data, and Sprint's network database, called Siterra.

3. In the course of that review, AT&T carefully evaluated Sprint's production of documents in response to each request for production in AT&T's subpoena. In many cases,

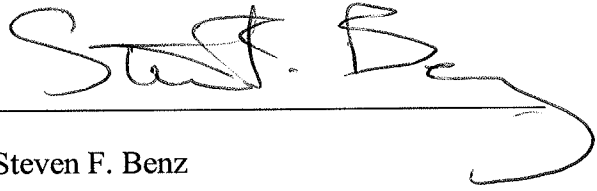
AT&T found that Sprint's production to DOJ sufficiently responded to AT&T's requests, and AT&T withdrew those requests as detailed in the table submitted in connection with its Opposition to Sprint's Motion to Quash (Dkt. No. 69-1). However, AT&T's review revealed that Sprint's past production to DOJ did not fully respond to all categories of requested documents. For example, Sprint's production did not appear to include documents from key custodians in the Business and Government group, or a sufficient amount of data from its subscriber databases.

4. Sprint now contends that it produced all 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 to DOJ only one year of subscriber data, not the three years AT&T requested. As a compromise proposal, AT&T requests that Sprint provide one additional year of subscriber data, going back to mid-2009.

5. In addition, Sprint did not produce files from the executives in charge of Boost Mobile (Andre Smith) or Virgin Mobile (David Trimble). AT&T does not dispute that Sprint produced documents containing the words "Boost Mobile," "Virgin Mobile," or "VMU" to DOJ, or that a number of the senior executives from which it collected documents have general or high level oversight over the Boost Mobile or Virgin Mobile brands. However, Sprint's production contains few documents describing the specific business plans or strategies for Boost Mobile and Virgin Mobile. These documents are likely to be found in the files of Mr. Smith or Mr. Trimble, the executives specifically devoted to Boost Mobile and Virgin Mobile. AT&T may want to depose those executives (something it cannot do without access to their documents).

6. AT&T seeks a supplemental or updated production on only 28 of its original 47 subpoena requests. *See* Dkt. No. 69-1. 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. Sprint, however, fails to acknowledge or 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. The documents sought by AT&T, moreover, are among the materials most relevant and critical to the issues in this case, given the extraordinarily dynamic nature of the industry and Sprint's key role in the industry. *See* 11/2/11 Benz Decl. Exs. 1-3. They will include documents concerning Sprint's recent launch of the iPhone on October 14, 2011, *id.*, Ex. 1; Sprint's October 26, 2011 announcement 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's numerous recent announcements 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. The documents sought will demonstrate that Sprint is a strong and vibrant competitor – 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.

EXECUTED on November 4, 2011.

A handwritten signature in black ink, appearing to read "Steven F. Benz". The signature is written in a cursive style with a long, sweeping tail that extends to the right and then curves downwards. A horizontal line is drawn across the page, starting from the left edge and ending under the signature.

Steven F. Benz