

**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**

**MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL FILING REGARDING
PROPOSED ORDERS GOVERNING TRIAL WITNESSES**

Defendants respectfully seek leave to submit a brief statement to correct a factual misstatement in Plaintiffs' Supplemental Statement Respecting Trial Witnesses (ECF No. 77). The misstatement appears in footnote 2 of Plaintiffs' statement, in which Plaintiffs assert that Defendants "already have extended to June" the termination date for the transaction. Pl. Mem. at 3 n.2. As explained in the attached memorandum, that is incorrect. Defendants seek to correct the record with respect to Plaintiffs' statement, which involves a material term of the transaction.

Dated: November 11, 2011

Respectfully submitted,

s/ Mark C. Hansen

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**SUPPLEMENTAL FILING REGARDING
PROPOSED ORDERS GOVERNING TRIAL WITNESSES**

Defendants respectfully submit the following brief statement to correct a factual misstatement in Plaintiffs' Supplemental Statement Respecting Trial Witnesses (ECF No. 77).

In that filing, Plaintiffs assert (at 3 n.2) that Defendants "already have extended to June" the termination date for the transaction — that is, the date after which, but prior to the closing date, either party to the transaction may abandon the transaction.¹ That is incorrect. Defendants have not extended the termination date for the transaction.

In making this claim, Plaintiffs cite to AT&T Inc.'s recent 10-Q filing, in which AT&T updated its guidance on its anticipated *closing* date for the transaction, which is different from the termination date in the Stock Purchase Agreement. In AT&T's 10-Q filing for the second quarter of 2011 — the last filing prior to the initiation of this lawsuit — AT&T stated that it "anticipate[d] closing the transaction by the end of the first quarter of 2012." AT&T Inc., Quarterly Report at 16 (Form 10-Q) (Aug. 5, 2011). In its recent 10-Q filing, AT&T notes the

¹ See Stock Purchase Agreement by and between Deutsche Telekom AG and AT&T Inc. § 7.2(a) (Mar. 20, 2011). That date is currently March 20, 2012, though the date may be extended if certain conditions are met.

Plaintiffs' lawsuit and the fact that a "trial date has been set for February 13, 2012." AT&T Inc., Quarterly Report at 17 (Form 10-Q) (Nov. 3, 2011). AT&T then states that it "anticipate[s] closing the transaction in the first half of 2012." *Id.* That updated guidance to the marketplace simply reflects the realities with respect to the closing date that AT&T recognizes follow from that trial date, such as the 4 to 6 week trial, the time required for the Judge to rule following the trial, and the time needed for remaining regulatory approvals.² Defendants, however, have not extended the termination date in the Stock Purchase Agreement.

² Plaintiffs also cite a Wall Street Journal article. But that article simply reports on the amended guidance in the 10-Q filing. It does not state that Defendants have extended the termination date for the transaction; they have not. *See* Greg Bensinger, *AT&T Sees Later Closing for T-Mobile Deal*, Wall St. J. Online (Nov. 4, 2011) ("AT&T said in a regulatory filing it expects to close the \$39 billion takeover of T-Mobile, a unit of Deutsche Telekom AG, by the end of next year's first half. It had originally expected the deal to close by the end of March.").

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s/ Mark C. Hansen

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2011, I caused the foregoing document 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:

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|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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