

A. In the late evening on Sunday, August 22, 2010, after the elapse of only one business day, plaintiffs' counsel emailed ATTM's counsel and asked about scheduling a conference call to discuss plaintiffs' discovery requests before a Court conference that plaintiffs represented was scheduled for August 25, 2010. Exhibit B.

On August 23, 2010, ATTM's counsel responded that ATTM was in the process of considering the requests. Exhibit C. ATTM's counsel further stated that ATTM would meet and confer with plaintiffs regarding any issues with its responses, but that in accordance with this Court's prior directive,¹ ATTM did not believe a Court conference should be held until the parties had completed those efforts, and did not understand that an August 25 conference actually had been scheduled. *Id.* Recognizing that plaintiffs' position was that they needed ATTM's discovery responses before filing their oppositions to ATTM's motions to compel arbitration, ATTM's counsel therefore proposed to extend the briefing schedule on its motions to compel arbitration and motions to dismiss (and conveyed its understanding that counsel for Apple Inc. ("Apple") was likewise agreeable to extending the briefing schedule on Apple's motions to dismiss) such that plaintiffs' oppositions would be due 30 days after receiving ATTM's discovery responses from ATTM and the defendants' replies would be due 21 days after receiving plaintiffs' oppositions. *Id.*

On August 24, 2010, plaintiffs' counsel responded by stating that plaintiffs needed to know – only three business days after serving ATTM with 72 discovery requests – whether

¹ See Transcript of March 12, 2010 Status Conference (Exhibit D) at 11-12 (“You sit down and confer with them, say, This is the discovery we think we need related to these motions. Maybe they’ll agree with at least some of your discovery. I suspect they will. *And to the extent you can’t agree*, then you come to me and we’ll have a hearing and I’ll decide what discovery you get.”) (emphasis added).

ATTM intended to object to those requests or provide the requested information. Exhibit E. Plaintiffs' counsel's letter posits only two choices – either agree to provide all of the discovery requested or object to all of the discovery requested. There is, of course, a wide middle ground. Plaintiffs' counsel also indicated that the proposed briefing schedule was agreeable. *Id*

ATTM's counsel responded by reiterating that given that only three business days had elapsed since it had received the discovery requests, ATTM was not yet in a position to tell plaintiffs what its discovery responses or objections would be but that ATTM was approaching the discovery in good faith. Exhibit F.

Plaintiffs then submitted a letter to the Court acknowledging that ATTM had agreed to answer discovery but had been “silent” regarding plaintiffs' request to discuss any issues regarding the scope of plaintiffs' discovery requests. Exhibit G. Plaintiffs stated that they nonetheless hoped the Court would consider objections as to the scope of discovery on August 25, even though ATTM had not yet provided any such objections and the Court had not scheduled an August 25 status conference. A few hours later, plaintiffs filed their motion asking the Court to schedule a status conference to discuss plaintiffs' discovery requests to ATTM.

At this point, only four business days have elapsed since plaintiffs served ATTM with the arbitration-related discovery requests, and ATTM is considering the requests. ATTM believes that the parties should follow the procedure set out in the Rules and directed by the Court, under which ATTM will provide its responses, then if plaintiffs have issues with those responses the parties will meet and confer to attempt to resolve them, and then if the parties are unable to achieve resolution, the Court can promptly schedule a conference to address any issues.

CONCLUSION

Accordingly, ATTM respectfully requests that the Court deny plaintiffs' motion for status conference at this time.

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/s/ Kathleen Taylor Sooy

Kathleen Taylor Sooy

Tracy A. Roman

CROWELL & MORING LLP

1001 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Telephone: (202) 624-2651

Facsimile: (202) 628-5116

Email: ksooy@crowell.com

troman@crowell.com

Gary J. Russo

JONES, WALKER, WAECHTER, POITEVENT,

CARRER, DENEGRE LLP

600 Jefferson Street, Suite 1600

Lafayette, Louisiana 70501

Telephone: (337) 262-9000

Facsimile: (337) 262-9001

Email: grusso@joneswalker.com

Attorneys for Defendant AT&T Mobility LLC