

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



In re

Subpoena Duces Tecum  
dated February 9, 2012

**PUBLIC**

File No 111-0163, Google Inc.

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**Samsung Telecommunications America, LLC's Request for Full Commission Review  
of its Petition to Limit Subpoena Duces Tecum, and Request for Hearing**

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Attorneys for Petitioner

Dated: June 26, 2012

## I. Introduction and Summary

Pursuant to 16 C.F.R. § 2.7(f), Samsung Telecommunications America, LLC (“STA”) hereby requests a rehearing by the full Federal Trade Commission (the “Commission”) of STA’s Petition to Limit the Subpoena Duces Tecum issued to STA on February 9, 2012 (the “Petition”). A copy of the Petition is attached as Exhibit A. STA respectfully requests that the full Commission reverse Commissioner Brill’s ruling (the “Initial Ruling”), which is attached as Exhibit B.<sup>1</sup>

STA also requests that the Commission issue a stay of the subpoena’s compliance date, currently set by the Initial Ruling as July 2, 2012, until such time as the Commission has reviewed the Petition and this request for review and has reached a final decision.

The subpoena to STA was issued as part of an ongoing investigation of Google, Inc.’s competitive activities, and STA is a non-party/non-subject of the investigation.

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The Petition stated its objections to specifications in the subpoena that are unnecessarily broad and vague, resulting in an undue burden on STA to respond. STA incorporates all of the

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<sup>1</sup> A copy of the Initial Ruling was received by STA on June 22, 2012 by Federal Express, and this request for full Commission review was filed timely thereafter.

evidence, authority, and arguments raised in the Petition, and accordingly requests that the full Commission review all of the issues raised in the Petition.

In this request, STA will provide additional discussion of some of these issues and the evidence presented, and provide additional explanation of why the Initial Ruling should be reconsidered by the full Commission. Although STA believes it offered sufficient evidence of vagueness and burdensomeness in its Petition, in response to concerns raised in the Initial Ruling, STA is providing additional evidence in support of the vagueness of and the burdens presented by the subpoena at issue.

STA has cooperated extensively with FTC staff and provided

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STA has also had one executive participate in an interview with Commission staff in an effort to reach some clarification and narrowing of the subpoena specifications, and has tendered additional persons for interviews.

STA has had numerous conversations with Commission staff seeking some clarification and limitation of terms in the subpoena, including primarily: (a) the undefined and ambiguous

terms “relating to Samsung’s business strategy” in specification 5 and “relating to Samsung’s consideration, development, or use of any product or service that competes with a Google Product or Service” in specification 10; (b) whether the use of the terms “agreement, including any waivers” and “agreements” in specifications 6, 7, 8, and 12 would include informal meetings of the mind which were never memorialized as a recognized agreement; and (c) the scope of the term “all documents” in specifications 3, 4, 5, 6, 7, 8, 9, 10, and 12 in connection with computerized searches using search terms. Because Commission staff had not addressed these issues in a reasonable way,<sup>2</sup> STA has not been able to identify with particularity the documents reasonably responsive to the subpoena, and felt compelled to file a petition to limit the subpoena.

STA stands ready to perform searches which are specific enough to focus on a finite, reasonable volume of documents. In fact, STA is continuing to produce responsive documents where such can be reasonably identified. On June 22, STA produced

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(This production had been undertaken after STA filed its Petition but before the Initial Ruling was issued.) Along with this production, counsel for STA again reiterated its willingness to look for additional documents if FTC staff will make more specific requests, as shown in the emails submitted with the Declaration of Gregory S. C. Huffman, which is attached as Exhibit C.

## **II. Argument and Authorities**

STA is requesting full Commission review of every issue raised in its Petition, and

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<sup>2</sup> Commission staff did agree to limit the definition of “Company” to STA itself, and not to include STA’s parent company in Korea, as recognized by the Initial Ruling. Ex. B, Initial Ruling at p. 2 and n. 16. Therefore, that issue will not be addressed in this request.

incorporates by reference that Petition in this Request. However, to avoid unnecessary repetition, only a few specific arguments and additional evidence will be addressed again in this request. For all of the issues raised and briefing thereupon, see Exhibit A.

STA has presented sufficient evidence of burdensomeness, especially considering the vagueness of specifications 5, 9, and 10. The Initial Ruling stated that STA needed evidence that “[t]ime must be taken from normal activities and resources must be committed to gathering the information necessary to comply” and “that compliance threatens to seriously impair or unduly disrupt the normal operations of its business.” Ex. B, Initial Ruling at p. 4.

STA is placed in an impossible position by the vague and indeterminately broad specifications of the subpoena. Without any clarification of complex and ambiguous terms like “relating to Samsung’s business strategy” and “relating to Samsung’s consideration, development, or use of any product or service that competes with a Google Product or Service on any mobile device or smart phone,” there is no clear way to identify responsive documents, much less count them *ex ante*. The unfocused terms used in the subpoena could be read to sweep in plainly irrelevant documents concerning the color and shape of the phone, selection of advertising agencies, marketing decisions, distributor relations, product promotions, resource deployment, logistics execution, etc.

STA believes

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If the Commission can identify what the discrete topics are, STA can go about trying to find responsive documents. Otherwise, STA is faced with the prospect of rummaging through millions of documents in the haystack without knowing for

what needle STA is really looking.

STA has provided ample evidence to justify a limiting of the subpoena. In its Petition, STA provided the declaration of Justin Denison, Chief Strategy Officer for STA, who explained that STA has approximately 300 different models of phones, and that, without additional guidance from the FTC, the broad requests would encompass so much of STA's data, communications, and day-to-day business documents that it would be impractical and extremely burdensome for STA to search for, collect, review and produce documents. *See* Ex. A, Petition at attachment 1 (Declaration of Justin Denison).

An additional declaration from Tim Sheppard, Vice President Finance and Operations for STA, is being submitted with this Petition as Exhibit D, and further establishes the vagueness of the specifications. Mr. Sheppard explains that

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Mr. Sheppard further explains that the requests for “all documents relating to Samsung’s business strategy” and “all documents relating to Samsung’s consideration, development, or use of any product or service that competes with a Google Product or Service” are requests that could possibly be read to encompass almost any document generated during the course of the entirety of STA’s business, which is the development and sale of mobile devices, and would therefore require gathering and review of all such documents. Ex. D, Sheppard Declaration ¶¶ 5–9. How many millions of dollars that cost would be depends on getting some definition from the Commission on what the scope of the undefined terms is.

The declaration also describes in more detail the burden on STA just to gather all of the information seemingly requested by the vague and broad language of specifications 5, 9, and 10.

Mr. Sheppard states that responding to these subpoena specifications would impose an undue burden on STA and would result in a severe disruption of its normal business operations. Ex. D, Sheppard Declaration ¶¶ 4–10.

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Requiring all these employees to suspend their normal business activities in order to review their documents (including electronic documents in emails and elsewhere) in order to comply with the subpoena would bring STA’s business activities to a halt. Ex. D, Sheppard Declaration ¶ 9.

It is not STA’s business operations that have resulted in the vagueness and burdensomeness of the subpoena, as the Initial Ruling suggests. Ex. B, Initial Ruling at p. 5. The burden is the result of FTC staff’s failure to recognize t

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and refusal to acknowledge that the wording of their specifications could be read to encompass almost every single document generated by STA, despite STA having offered employee interviews and additional information to assist the FTC in narrowing its requests.

Further, STA’s cases are not distinguishable, as the Initial Ruling also suggests. Ex. B, Initial Ruling at p. 5. A request for “all documents relating to” topics that could be read to

encompass virtually all of STA's business activities is no less broad than requests for "any information available" or all records that related "in any way" to identified topics. Further, the

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This additional evidence resolves any concerns expressed in the Initial Ruling regarding STA's "conclusory assertions." Ex. B, Initial Ruling at p. 7.

The unduly burdensome nature of the subpoena is exacerbated by the use of the word "all" in the specifications and staff's reiteration of the breadth of that term to the effect that "all" means "all." Given the necessity of using computer-search methods to retrieve electronically-stored information, no subpoenaed party can ever deliver "all" documents where search terms are used. All the subpoenaed party can do is make a reasonable effort by using search terms and parameters to locate requested documents.

Because of the vagueness of the subpoena's specifications, the resulting burden on STA to even attempt to comply with the subpoena, and the small likelihood of any relevant documents, STA's petition to limit these specifications should be granted.

### **III. Request for Hearing**

STA requests a hearing on the matters raised in its Petition and in this request for full Commission review, at which hearing Commission staff and STA's counsel can answer any further questions the Commission may have.

### **IV. Stay**

Given the enormous possible breadth of the subpoena and the countless hours and millions of dollars of expense which would be involved in compliance with the subpoena,



compliance should be stayed pending the Commission's decision and clarification of the specifications.


## **V. Conclusion**

For all these reasons, STA respectfully requests that the full Commission stay the date for compliance with the subpoena while the full Commission considers the issues raised in the Petition, and reverse the Initial Ruling and grant the Petition by limiting or clarifying the subpoena and modifying the subpoena's return date to provide a reasonable time for compliance, and for such other relief as may be just.

Dated: June 26, 2012

Respectfully submitted,

**THOMPSON & KNIGHT LLP**

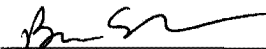
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**Certificate of Service and Regarding Electronic Copy**

This is to certify that on June 26, 2012, I caused the original and 12 copies of the foregoing document (and all attachments), along with a CD containing an electronic copy of the same, to be sent for delivery to the Office of the Secretary, Room H-113, 600 Pennsylvania Avenue, NW, Washington, DC 20580, on June 26, 2012, with a single copy also sent to Barbara Blank, 601 New Jersey Ave., NW, Room 6253, Washington, DC 20001. In addition, because this document (along with its attachments) contains information that is being designated as “confidential,” a redacted “public” version of this document is being provided along with 12 copies and a CD containing an electronic copy of the “public” document. I certify that all electronic copy being provided are the same as the paper original of the relevant document.

  
Brian W. Stoltz

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# **EXHIBIT A**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In re

Subpoena Duces Tecum  
dated February 9, 2012

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**PUBLIC**

File No 111-0163, Google Inc.

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**Petition of Samsung Telecommunications America, LLC to Limit Subpoena Duces Tecum**

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Attorneys for Petitioner

Dated: April 21, 2012

## I. Introduction and Summary of Petition

Pursuant to 16 C.F.R. § 2.7(d), Samsung Telecommunications America, LLC (“STA”) petitions the Federal Trade Commission (“FTC”) to limit the subpoena *duces tecum* issued to STA on February 9, 2012.<sup>1</sup> STA is not the subject of any investigation, but was instead subpoenaed as a third party in connection with the FTC’s ongoing investigation of Google.

As explained below, STA is not objecting to all aspects of the subpoena or seeking to quash it in its entirety. STA has in fact already produced documents responsive to a number of the specifications in the subpoena, and has been working with FTC staff to identify particular documents or categories of documents which would be of use to the investigation and to produce them to the FTC on a reasonable basis. STA even made one of its executives available to FTC staff for an interview, with the understanding that FTC staff would use the information gleaned from this interview to tailor the subpoena’s specifications to the particular devices, services, and features of interest to the investigation of Google. To date, however, FTC staff has not tailored the subpoena to avoid many of the specifications remaining on their face overly broad.

As the seeker of documents from a non-party/non-subject of the investigation, FTC staff has a responsibility to provide specific and tailored specifications for its subpoena that will yield identifiable documents and allow for a reasonable response. Without appropriately tailored specifications, compliance with the subpoena cannot be reasonably accomplished. The investigation of Google (and the resulting subpoena to STA) appears to be directed, at least in part, to Google’s activities in the market for products and services placed on smart phones. But STA sells a large number of phones (almost 300 different models over the last five years), with each having a distinct configuration customized to specific required mobile carrier specifications.

Each phone may also have dozens of different applications, such as a browsing function, mapping applications, social media applications, music applications, etc. This combination of hundreds of phones, combined with scores or even hundreds of possible applications per phone, leads to a staggering permutation of possible business decisions (at both the company level and at the consumer level) regarding whether Google or non-Google products, services, or applications are used. In addition, users may seek to customize their phones after purchase with countless other available downloadable applications, and this reality must be taken into account when configuring the phones. Without additional information from and tailoring by FTC staff, the subpoena is unreasonably broad and impractical to respond to. The subpoena is also unduly burdensome to STA as a third-party respondent considering STA's limited resources and the costs associated with compliance with the subpoena as written. Therefore, because staff has not agreed to further extend STA's deadline to petition to quash or limit the subpoena, STA files this petition and requests that the subpoena be limited and the date for compliance be extended as set forth herein.

## II. Background

STA understands that the FTC is investigating Google for alleged unfair methods of competition with respect to online or mobile search, search advertising, and "Internet-related goods or services." (See Exhibit A to Denison Decl., Resolution Authorizing Use of Compulsory Process in Nonpublic Investigation (last page attached to the subpoena).) In connection with this investigation, the FTC served a subpoena on STA seeking, *inter alia*, STA's sales and other information about every type of smart phone shipped by STA over the last five years; "all documents" relating to STA's "business strategy" pertaining to "any Google products

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<sup>1</sup> A copy of the subpoena is attached as Exhibit A to this petition (attached to the Declaration of Justin Denison). FTC staff previously agreed to extend the date for STA to petition to quash or limit the subpoena to April 23, 2012,

or services”; “all documents” relating to STA’s consideration, development, or use of any product or service that may compete with a Google product or service; all agreements between STA and Google or any service provider relating to the Android system or Google’s products or services; and all agreements for “search, search syndication, search advertising, and/or contextual advertising services.” (See Exhibit A.)

STA has been working with the FTC to identify relevant documents needed by the FTC, to prioritize certain documents or categories of documents, and to obtain reasonable time for the production, and has already begun to produce documents. (See Huffman Decl., ¶ 2; Denison Decl., ¶ 3, 5; Exhibit B to Huffman Decl.) Among other things, STA has produced its highly confidential and sensitive sales data regarding its mobile devices sold between 2007 and 2011, including the specific number of units sold per year and information about the phones’ operating systems. STA has likewise produced more detailed information about various specific model mobile devices. (Denison Decl., ¶ 3.)

The documents already produced show that STA has sold approximately 300 different types of phones during the time period identified by the FTC, with each phone having its own configuration of operating system and preloaded softwares and applications. (Denison Decl., ¶ 3.) There may be dozens of softwares and applications on any given phone, including browsing and search, email, games, maps, photo applications, task managers, mobile TV, entertainment applications (e.g., IMDb, music), shopping, social media, and many, many more. And, in any given category, Google may offer its own product or application that competes against other companies’ products or services. For example, Google is perhaps best known for its search tools, but it also offers social media, maps, photo, and various others functions or

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and thus this petition is timely filed.

applications. Countless applications are also available for free or at a cost to consumers, creating a constantly expanding list of products and services available to consumers for use on phones that may compete with Google offerings in some respect.

STA is committed to working with the FTC to produce additional reasonable and relevant documents and categories of documents required for the ongoing investigation of Google and on a reasonable schedule. To that end, and because the subpoenas' specifications are overbroad on their face and would require review of vast swaths of surely irrelevant documents generated in the day-to-day operation of STA's business, STA's initial production to the FTC identified the nearly 300 mobile devices STA has sold in the last five years, along with information about their operating systems, with the understanding that the FTC would then identify the specific devices and/or features it is interested in. (Denison Decl., ¶ 4; Huffman Decl., ¶ 2.) STA also made an executive available to answer questions from FTC staff about STA's operations, again with the understanding that FTC staff would use the information to identify a workable and reasonable protocol for STA to collect specific documents the FTC is interested in and a reasonable time to respond to the subpoena. (Denison Decl., ¶ 5; Huffman Decl., ¶ 3.)

STA has also been working with FTC staff to establish the protocols for a search of the electronic files (including emails) of seven custodians who may have additional documents or information relevant to the subpoena. [REDACTED], (see Exhibit C to Huffman Decl., April 11, 2012 letter from M. Westerman-Cherry), STA gathered approximately 450 GB of data encompassing approximately 1.8 million documents. [REDACTED]





immensely burdensome and expensive review of vast numbers of documents. (See Denison Decl., ¶ 3–5.) Thus, STA files this petition and requests that the subpoena be limited as set forth in STA’s general and specific objections set forth below.

### III. Argument and Authorities

#### A. Legal standard.

The FTC is authorized by statute to issue subpoenas and investigate alleged unfair methods of competition. See 15 U.S.C. § 45(a). However, an agency’s power to compel the production of documents and information has limits. As explained in *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950), “governmental investigation into corporate matters may be of such sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigative power.” And, when discovery is sought from a non-party by subpoena, the party serving the subpoena has a duty to take reasonable steps to avoid imposing undue burden or expense on the subject of the subpoena. See *Cont’l Datalabel, Inc. v. Avery Dennison Corp.*, No. 10-mc-10176-RGS, 2010 WL 2473154, at \*1 (D. Mass. June 15, 2010); *Heidelberg Americas, Inc. v. Tokyo Kikai Seisakusho, Ltd.*, 333 F.3d 38, 41 (1st Cir. 2003).

Courts applying the *Morton Salt* standard have consistently held that administrative subpoenas and other investigative demands must be “reasonable.” See, e.g., *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464,471 (2d Cir. 1996) (“the disclosure sought must always be reasonable”); *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978) (“the need for moderation in the subpoena’s call is a matter of reasonableness”); *FTC v. Texaco, Inc.*, 555 F.2d 862, 881 (“the disclosure sought shall not be unreasonable”). A subpoena that is “unduly burdensome or unreasonably broad” fails this test. See *Texaco, Inc.*, 555 F.2d at 882. In short, the FTC’s authority to request documents and information is tempered by the requirement that the requests be reasonable. See *Arthur Young & Co.*, 584 F.2d at 1031 (“while the

Commission is entitled to great freedom in conducting its investigations, it is not at liberty to act unreasonably”).

**B. General objections.**

STA objects to Definition I, which defines “Company,” “Samsung,” “you,” and “your” to include a host of other persons or entities besides Samsung Telecommunications America LLC (the actual subject of the subpoena). This definition is overly broad and renders the specifications to which it applies (if any) overly broad and unduly burdensome. Without in any way limiting the foregoing objection, STA specifically objects to this definition to the extent it, in conjunction with any specification, purports to require STA to produce documents in the possession and control of STA’s foreign parent company in Korea. STA is a separate legal entity from its foreign parent and does not have access to its foreign parent’s documents in the normal course of STA’s business (Denison Decl., ¶ 2), and therefore STA objects to producing such documents. *See Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.*, 223 F.R.D. 143 (D. Del. 2005); *Linde v. Arab Bank, PLC*, 262 F.R.D. 136 (E.D.N.Y. 2009). FTC staff has agreed that STA shall produce responsive documents only within its possession or control, (*see* email from M. Westerman-Cherry, March 2, 2012, included as part of Exhibit B), which documents do not include those of STA’s foreign parent located in Korea.

STA objects to the subpoena’s compliance date as unduly burdensome given the breadth of the specifications.

STA objects to the specifications to the extent they seek documents outside of STA’s possession, custody, or control.

STA objects to the specifications to the extent they seek documents protected by the attorney-client privilege, the work-product privilege, or any other applicable privilege,

protection, or exemption from disclosure.

STA objects to the verification to the extent it requires a statement that “all” documents have been produced rather than that “all documents found after reasonable effort” have been produced.

**C. Specific objections.**

In addition to the general objections noted above, which are incorporated below as if set forth in every specific objection, STA lodges the following specific objections to certain specifications in the subpoena. Subject to and without waiving these objections, STA has produced or will produce its documents reasonably responsive to the subject matter of the investigation as specified in the subpoena.

**Specification 1:** A current organization chart and the most recent telephone and other personnel directories for Samsung.

Responsive documents have been produced. To the extent this specification seeks additional documents, STA objects to this specification because it is overly broad and because it seeks documents that are neither relevant to the subject matter of the investigation, nor likely to lead to the discovery of relevant or admissible evidence.

**Specification 2:** Documents sufficient to show Samsung’s document retention and document destruction policies.

Responsive documents have been produced.

**Specification 3:** All documents produced in discovery (including without limitation discovery requests, responses, document productions, deposition transcripts, and correspondence among opposing counsel and communications with the Court), or filed or served by Samsung or any person, in connection with Skyhook Wireless, Inc. v. Google Inc.

STA will produce its own documents, if any, responsive to this specification. STA objects to the remainder of this specification because it seeks documents that are publicly available to the FTC and that are more easily obtainable from another source, including Google,

the subject of the FTC's investigation. STA is in the process of gathering the documents produced by STA in the Skyhook case.

**Specification 4:** All documents provided by Samsung to, or received by Samsung from, the European Commission in connection with any ongoing antitrust or competition-related inquiry relating to Google.

STA objects to this specification because it seeks documents that are irrelevant to, and outside the scope of, the subject matter of this investigation, the geographic scope of the subpoena, and the authorization for the subpoena and the use of investigatory compulsory process. STA further objects because this specification seeks documents that are more easily obtainable from another source, including Google, the subject of the FTC's investigation. STA is not a party to that inquiry and produced no documents there.

**Specification 5:** All documents relating to Samsung's business strategy for (i) placing the Android operating system on its mobile devices or smart phones, or (ii) pre-loading any Google Products or Services on its mobile devices or smart phones, including but not limited to: all strategic plans; business plans; marketing plans; advertising plans; pricing plans, technology plans, forecasts, strategies, and decisions; market studies; and presentations to management committees, executive committees, and boards of directors.

STA objects to this specification because it is overly broad and unduly burdensome, including because it requests "all" documents related to multiple topics. STA also objects because the specification's reference to "business strategy" is vague and fails to seek the requested documents with sufficient particularity. STA further objects to this specification because it seeks documents that are neither relevant to the subject matter of the investigation, nor likely to lead to the discovery of relevant or admissible evidence.

As a way of responding to this specification in a reasonable manner, STA has suggested that it search for high-level business planning or strategy presentations that address STA's "business strategy" for (a) launching smart phones and tablets with the Android operating system or (b) pre-loading Google Products and Services on STA mobile devices. STA further proposes

to exclude mere statements of the existence of Android and Google Products and Services on STA smart phones or tablets because such statement of fact do not relate to “business strategy.” STA has alternatively suggested that it search certain executive level custodians regarding smart phone content for documents [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

subject to the same exclusion as above.

**Specification 6:** All agreements, including any waivers, between Samsung and Google relating to the Android operating system, or to the pre-loading or placement of any Google Products or Services on Samsung’s mobile devices or smart phones.

STA objects to this specification because it is overly broad and unduly burdensome. STA further objects to this specification because it seeks documents that are neither relevant to the subject matter of the investigation, nor likely to lead to the discovery of relevant or admissible evidence. STA further objects to this request because it fails to seek the requested documents with sufficient particularity. STA has produced the formal agreements with Google and is willing to search for STA policies or procedures regarding the pre-loading or placement of Google Products or Services on STA’s smart phones or tablets that run on the Android operating system.

**Specification 7:** All agreements, including any waivers, between Samsung and Google relating to the pre-loading or placement of any Google Products or Services on Samsung’s mobile devices or smart phones employing any operating system other than the Android operating system.

STA objects to this specification because it is overly broad and unduly burdensome. STA further objects to this specification because it seeks documents that are neither relevant to the subject matter of the investigation, nor likely to lead to the discovery of relevant or

admissible evidence. STA further objects to this request because it fails to seek the requested documents with sufficient particularity. STA has produced the formal agreements with Google and is willing to search for STA policies or procedures regarding the pre-loading or placement of Google Products or Services on STA's smart phones or tablets that run on the Android operating system.

**Specification 8:** All agreements between Samsung and any wireless service provider, relating to the Android operating system, or to the pre-loading or placement of any Google Products or Services on Samsung's mobile devices or smart phones.

STA objects to this specification because it is overly broad and unduly burdensome. STA further objects to this specification because it seeks documents that are neither relevant to the subject matter of the investigation, nor likely to lead to the discovery of relevant or admissible evidence. STA further objects to this request because it fails to seek the requested documents with sufficient particularity. STA has produced the formal agreements with Google and is willing to search for STA policies or procedures regarding the pre-loading or placement of Google Products or Services on STA's smart phones or tablets that run on the Android operating system.

**Specification 9:** All documents relating to any policy, practice, contract or technological mechanism that restrains or restricts any person from licensing, removing, replacing, or modifying any Google Products or Services on Samsung's mobile devices or smart phones employing the Android operating system, including but not limited to, documents relating to Google's Compatibility Definition Document and Compatibility Test Suite.

STA objects to this specification because it is overly broad and unduly burdensome, including because it requests "all" documents related to multiple indefinite topics. STA further objects to this specification because it seeks documents that are neither relevant to the subject matter of the investigation, nor likely to lead to the discovery of relevant or admissible evidence. STA further objects to this request because it fails to seek the requested documents with sufficient particularity. STA has produced the formal agreements with Google and is willing to

search for STA policies or procedures regarding the pre-loading or placement of Google Products or Services on STA's smart phones or tablets that run on the Android operating system.

**Specification 10:** All documents relating to Samsung's consideration, development, or use of any product or service that competes with a Google Product or Service on any mobile device or smart phone employing the Android operating system.

STA objects to this specification because it is overly broad and unduly burdensome, including because it requests "all" documents related to multiple topics. STA further objects to the phrase "consideration, development, or use" as vague, ambiguous, overly broad and unduly burdensome. No reasonable limitation or scope is placed on these terms and they provide no clear rule indication of what amount of attention to a proposed or contemplated product or service by STA might constitute "consideration, development, or use" within the meaning of this specification. STA further objects to the phrase "competes with" as vague, ambiguous, overly broad and unduly burdensome, including because no limitation or scope is placed on this term. STA further objects to the use of the phrase "competes with" in conjunction with the phrase "mobile device or smart phone," which renders this specification vague, ambiguous, and overly broad because competition in these markets is constantly evolving and changing. STA further objects to this specification because it seeks documents that are neither relevant to the subject matter of the investigation, nor likely to lead to the discovery of relevant or admissible evidence. STA also objects because the specification fails to seek the requested documents with sufficient particularity.

As a way of responding to this specification in a reasonable manner, STA has suggested that it search STA that it search for high level presentations or summary documents that discuss alternatives to Google products and services. STA alternatively has suggested that it search certain executive level custodians regarding smart phone content for documents concerning the decision to use or not use any of various enumerated competing non-Google products or services



(e.g., MapQuest, Hotmail, etc.) on Android phones. In contrast, STA believes it would not be reasonable to search for “all documents” relating to the “use” of such non-Google products or services after a decision has been made to use a non-Google product or service on a given phone. STA should not have to search for and gather the various documents which may be generated in the course of the day-to-day implementation of the product or service.

**Specification 11:** Documents sufficient to show, separately for each year between 2007 and 2012: (i) each style of mobile device or smart phone shipped by Samsung; (ii) the operating system installed in each style of mobile device or smart phone; (iii) the software and applications pre-loaded onto each style of mobile device or smart phone; and (iv) the number of units of each style of mobile device or smart phone employing the Android operating system shipped by Samsung. If Samsung shipped more than one version of any style of mobile device or smart phone in any given year, provide documents sufficient to show the above-listed information for each version.

Responsive documents have been produced. To the extent this specification seeks additional documents, STA objects to this specification because it is overly broad and unduly burdensome.

**Specification 12:** All documents relating to any agreement entered into by Samsung for search, search syndication, search advertising, and/or contextual advertising services.

STA objects to this specification because it is overly broad and unduly burdensome. STA further objects to this specification because it seeks documents that are neither relevant to the subject matter of the investigation, nor likely to lead to the discovery of relevant or admissible evidence. STA further objects to this request because it fails to seek the requested documents with sufficient particularity. STA further objects to this request because it is vague and ambiguous. STA seeks further clarification on these terms prior to proposing alternatives to satisfy this request.

#### **IV. Conclusion**

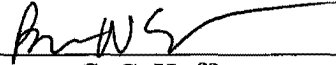
For all these reasons, STA respectfully requests that the FTC extend the date for compliance and objection to the subpoena so that STA and staff can confer and try to reach

agreement, or alternatively, to grant this petition; limit the subpoena issued to STA based on the objections set forth herein; and modify the subpoena's return date to provide a reasonable time for compliance.

Dated: April 21, 2012

Respectfully submitted,

**THOMPSON & KNIGHT LLP**


By:   
Gregory S. C. Huffman  
gregory.huffman@tklaw.com  
Nicole L. Williams  
nicole.williams@tklaw.com  
Brian W. Stoltz  
brian.stoltz@tklaw.com

1722 Routh Street, Suite 1500  
Dallas, Texas 75201-2533  
Telephone: 214-969-1700  
Facsimile: 214-969-1751

Attorneys for Petitioner  
Samsung Telecommunications America, LLC

**Statement of Conference**

This is to certify that counsel for petitioner STA has conferred with FTC staff in good faith to resolve by agreement the issue raised by this petition and have been unable to reach such agreement on the issues noted in this petition. STA has already produced, or agreed to produce, documents reasonably reasonable to a number of the specifications (including specifications 1, 2, 3, 7, 8, and 9 as set forth more fully above in the petition), and is continuing its efforts to respond to the subpoena as described in this petition and the supporting declarations. The undersigned conferred with FTC staff (Melissa Westerman-Cherry) on the dates and times shown in the emails attached to my declaration submitted in support of this petition; on a phone conference on April 9, 2012 at 3:45 p.m. (Dallas time), on April 10, 2012 at 3 p.m. (Dallas time), and on other calls over the past several months.

  
Gregory S. C. Huffman

### **Certificate of Service and Regarding Electronic Copy**

This is to certify that on April 21, 2012, I caused the original and 12 copies of the foregoing document (and all attachments), along with a CD containing an electronic copy of the same, to be sent for delivery to the Office of the Secretary, Room H-113, 600 Pennsylvania Avenue, NW, Washington, DC 20580, on April 23, 2012, with a single copy also sent to Barbara Blank, 601 New Jersey Ave., NW, Room 6253, Washington, DC 20001. I certify that the electronic copy is the same as the paper original copy.

  
\_\_\_\_\_  
Brian W. Stoltz

2855854

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In re	§	<b>PUBLIC</b>
	§	
	§	
Subpoena Duces Tecum	§	
dated February 9, 2012	§	File No 111-0163, Google Inc.
	§	
	§	
	§	

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**Index of Attachments**

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1. Declaration of Justin Denison (Public)
  - A. Exhibit A - Subpoena Duces Tecum
2. Declaration of Gregory S. C. Huffman (Public)
3. **Confidential** Copies of Exhibits to Declaration of Gregory S. C. Huffman
  - B. Exhibit B - Correspondence regarding response to subpoena
  - C. Exhibit C - Correspondence regarding deadline for subpoena response
4. Public Copies of Exhibits to Declaration of Gregory S. C. Huffman
  - B. Exhibit B - Correspondence regarding response to subpoena
  - C. Exhibit C - Correspondence regarding deadline for subpoena response
5. Declaration of Danny Thankachan (Public)

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In re	§	
	§	<b>PUBLIC</b>
	§	
Subpoena Duces Tecum	§	
dated February 9, 2012	§	File No 111-0163, Google Inc.
	§	
	§	
	§	

**Declaration of Justin Denison**

1. My name is Justin Denison. I am Chief Strategy Officer for Samsung Telecommunications America, LLC (“STA”). In my capacity with STA, I am familiar with and have personal knowledge of STA’s business operations, including the matters set forth herein regarding the subpoena *duces tecum* issued to STA by the Federal Trade Commission (“FTC”), dated February 9, 2012. A true and correct copy of the subpoena is attached as Exhibit A. The subpoena indicates that it has been issued as part of an FTC investigation of Google.

2. STA is based in Richardson, Texas, and markets a variety of personal and business communications products throughout North America, including wireless “smart” phones. STA is a separate legal entity from its parent company, which is based in South Korea. In the normal course of STA’s business, STA does not have access to its foreign parent’s documents or to documents of other affiliates of its foreign parent.

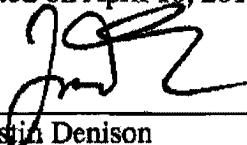
3. In response to the subpoena, STA has produced sales data regarding its mobile devices sold between 2007 and 2011, including the specific number of units sold per year and information about the phones’ operating systems. This data is competitively sensitive and highly confidential to STA. STA has also produced more detailed information about specific model

mobile devices.

4. STA has sold approximately 300 different models of phones over the last five years, with each phone having a distinct configuration customized to the relevant mobile carrier specifications. Without further tailoring from FTC staff, including more detailed information about which particular devices, features, and services are of interest to the FTC in connection with its Google investigation, it would be impractical and extremely burdensome for STA to search for, collect, review, and produce documents responsive to the broad categories specified in the subpoena as presently written.

5. STA made one of its executives available for an interview with FTC staff for questions about STA's operations and other issues relevant to the subpoena, with the understanding that FTC staff would use the information provided to tailor the specifications in the subpoena to the particular devices, services, and features of interest to the Google investigation. This interview occurred on April 5, 2012.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 10, 2012, in Richardson, Texas.

  
\_\_\_\_\_

Justin Denison





## SUBPOENA DUCES TECUM

<b>1. TO</b>  Samsung Telecommunications America, LLC c/o Richard C. Rosalez, Senior Legal Counsel, Litigation 1301 East Lookout Drive Richardson, TX 75082	<b>2. FROM</b>  <div style="text-align: center;"> <b>UNITED STATES OF AMERICA</b>  <b>FEDERAL TRADE COMMISSION</b> </div>
--	---

This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

<b>3. LOCATION OF HEARING</b>  Federal Trade Commission 601 New Jersey Avenue, NW Washington, DC 20580	<b>4. YOUR APPEARANCE WILL BE BEFORE</b> Melissa Westman-Cherry, Esq.
<b>5. DATE AND TIME OF HEARING OR DEPOSITION</b> March 9, 2012 at 5:00 pm	

<b>6. SUBJECT OF INVESTIGATION</b>  Google, Inc., File No. 111-0163 see attached Commission Resolution
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<b>7. RECORDS YOU MUST BRING WITH YOU</b>  See attached Definitions, Instructions and Specifications.
---

<b>8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN</b>  Melanie Sabo, Custodian Geoffrey Green, Deputy Custodian	<b>9. COMMISSION COUNSEL</b>  Melissa Westman-Cherry, 202-326-2338
---	--

<b>DATE ISSUED</b>  2/9/12	<b>COMMISSIONER'S SIGNATURE</b>  
----------------------------------	---

### GENERAL INSTRUCTIONS

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

#### TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

## SCHEDULE

For the purpose of this subpoena, the following definitions and instructions apply:

### DEFINITIONS

- I. **"Company," "Samsung,"** and **"you" or "your"** shall mean Samsung Telecommunications America, LLC, its directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures.
- II. **"Agreement," "contract,"** or **"license"** shall mean any oral, written, or implied contract, arrangement, understanding, or plan, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.
- III. **"And,"** as well as **"or,"** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any Specification in the Schedule all information that otherwise might be construed to be outside the scope of the Specification.
- IV. **"Any"** shall be construed to include **"all,"** and **"all"** shall be construed to include **"any."**
- V. **"Documents"** shall mean all written, recorded, transcribed, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated, or made, including, but not limited to, analyses, letters, telegrams, memoranda, reports, bills, receipts, telexes, contracts, invoices, books, accounts, statements, studies, surveys, pamphlets, notes, charts, maps, plats, tabulations, graphs, tapes, data sheets, data processing cards, printouts, net sites, microfilm, indices, calendar or diary entries, manuals, guides, outlines, abstracts, histories, agendas, minutes or records of meetings, conferences, electronic mail, and telephone or other conversations or communications, as well as films, tapes, or slides, and all other data compilations in the possession, custody, or control of the Company, or to which the Company has access. The term **"documents"** includes the complete original document (or a copy thereof if the original is not available), all drafts (whether or not they resulted in a final document), and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term **"other data compilations"** includes information stored in, or accessible through, computer or other information retrieval systems, together with instructions and all other material necessary to use or interpret such data compilations as set out in Attachment 1.2. If the name of the person or persons who prepared, reviewed, or received the document and the date of preparation, review, or receipt are

not clear on the face of any document, such information should be provided separately. Documents shall be produced in accordance with the instructions set out in Attachment 1.2.

- VI. **“Documents sufficient to show”** and **“documents sufficient to identify”** shall mean both documents that are necessary and documents that are sufficient to provide the specific information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents. A narrative response providing the requested information, along with documents sufficient to support the narrative response may also be submitted in lieu of all the underlying documents.
- VII. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**
- VIII. **“Google”** shall mean Google Inc., its directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures.
- IX. **“Google Products or Services”** shall mean products, services, websites, web pages, software, applications, or other content owned, operated, or managed by Google, including but not limited to: Google Android Marketplace, Google Mail, Google Maps, Google Navigation, Google Search, and YouTube.
- X. **“Person”** includes the Company, and shall mean any natural person, corporate entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity engaged in commerce.
- XI. **“Plan”** or **“plans”** shall mean any proposals, strategies, recommendations, analyses, reports, or considerations, whether or not precisely formulated, tentative, preliminary, finalized, authorized, or adopted.
- XII. **“Referring to,” “relating to,” “regarding”** or **“about”** shall mean, in whole or in part, constituting, containing, concerning, embodying, reflecting, discussing, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.

### INSTRUCTIONS

The response to this subpoena shall be submitted in the following manner:

1. **Modification of Specifications:** Unless modified by agreement as set forth below, each Specification of this subpoena *duces tecum* ("subpoena") requires a complete search of all the files of the Company as defined in Definition 1 above. If the Company believes that the scope of either the required search or the subpoena itself can be narrowed in any way that is consistent with the Commission's need for documents and information, the Company is encouraged to discuss such questions and possible modifications with the Commission representative identified in Instruction 16 of this subpoena. All such modifications to this subpoena must be agreed to in writing by the Commission through its delegated staff.
2. **Scope of Search:** Documents covered by this subpoena include all responsive documents in the Company's possession, custody, or control, including documents that its officers, directors, employees, agents, or representatives are holding, whether or not such documents are on the Company's premises. If any such person is unwilling to produce responsive documents, state individually as to each person: name, address, telephone number, and relationship to the Company.
3. **Applicable Time Period:** Unless otherwise stated, each Specification calls for all documents prepared, received, circulated, transmitted, or in use on or after January 1, 2007, and each Specification refers to each of the years during the relevant time period. Where data, rather than documents, is requested, it shall be provided separately for each year. All references herein to year refer to calendar year. If calendar year information is not available, supply the Company's fiscal year data indicating the twelve-month period covered, and provide the Company's best estimate of calendar year data.
4. **Continuing Obligation:** This subpoena shall be deemed continuing in nature so as to require production of all documents responsive to any Specification included in this subpoena produced or obtained by the Company up to fourteen (14) calendar days prior to the date of the Company's full compliance with this subpoena. Responsive documents generated after that date should be preserved so that they may be provided later if requested.
5. **Geographic Scope:** The geographic scope of each Specification is the United States unless otherwise indicated.
6. **Construction of Specifications:** In each Specification, the present tense shall be construed to include the past tense, and the past tense shall be construed to include the

present tense. The singular shall be construed to include the plural, and the plural shall be construed to include the singular.

7. **Document Identification:** Each document submitted shall be marked with document identification and consecutive document control numbers. The Company shall submit a master list showing all documents, identified by control number, the name of each person from whose files the document was obtained, and the Specification number to which the document responds. If any documents responsive to this subpoena have been previously supplied to the Commission, you may comply with this subpoena by identifying the document(s) previously provided either according to the document control number or, if no document control number was used, according to the name of the document, together with the page number and date, if any.
8. **Document Production:** Documents provided shall be complete and submitted as found in the Company's files, even if only a portion of the document relates to the specified subject matter (*e.g.*, documents are to be stapled together if they are fastened together in the files). With the exception of privileged material, do not mask or delete any portion of any document in any manner.
9. Documents supplied in response to one Specification or subpart need not be supplied again in response to another subsequent Specification or subpart. However, the responses should be clearly marked as to which Specification(s) or subpart(s) the document relates.
10. If documents responsive to the Specification no longer exist, but the Company has reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the Specification(s) to which they are responsive, and identify persons having knowledge of the contents of such documents.
11. **Incomplete Responses:** If the Company is unable to answer any Specification fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data shall be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.
12. **Claims of Privilege:** If any document called for by this subpoena is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this subpoena. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit,

together with the claim, a schedule of the items withheld stating individually as to each such item:

- a. the type, title, specific subject matter, and date of the item;
- b. the names, addresses, positions, and organizations of all authors and recipients of the item;
- c. the bates number(s) of the item; and
- d. the specific grounds for claiming that the item is privileged.

For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial, and, if so, identify the anticipated litigation or trial upon which the assertion is based. If only some portion(s) of any responsive document is (are) privileged, all non-privileged portions of the document must be submitted. The addressee shall comply with the requirement of 16 C.F.R. § 2.8A(a) in lieu of filing a petition to limit or quash this subpoena solely for the purposes of asserting claims of privilege. 16 C.F.R. § 2.8A(b).

13. **Format of Production:** All documents provided in response to the subpoena must be produced in the format described in Attachment 1.2 and accompanied by the documentation described in Attachment 1.2.
14. **Document Retention:** All documentary materials used in the preparation of responses to the Specifications of this subpoena shall be retained by the Company. The Commission may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise. *See* 15 U.S.C. § 50. *See also* 18 U.S.C. § 1505.
15. **Completion of Response:** To furnish a complete response, the person supervising compliance with this subpoena must submit a signed and notarized copy of the attached verification form, Attachment 1.1, along with the responsive materials. The Company need not send a representative to testify with the documents, but the Commission reserves the right to have the Company provide a person to testify as to the adequacy of return at a later date.
16. **Staff Contact and Document Delivery:** Any questions the Company has relating to this subpoena should be directed to Barbara R. Blank at (202) 326-2523, or Melissa

Westman-Cherry at (202) 326-2338. The response to this subpoena should be directed to the attention of Barbara R. Blank, Attorney, and delivered between 9:00 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission, Bureau of Competition, 601 New Jersey Avenue, N.W., Room 6253, Washington, DC 20001. Hand delivery by courier will be acceptable, but please advise Ms. Blank in advance of hand delivery if a signature will be required.

17. The Company may comply with this subpoena by making a full return of all documents requested in this subpoena prior to the return date and by notifying Barbara R. Blank, at (202) 326-2523, not less than ten days prior to the formal return date, of the Company's intention to comply with this subpoena.
18. **Meet and Confer:** You must contact Barbara R. Blank at (202) 326-2523, or Melissa Westman-Cherry at (202) 326-2338, as soon as possible to schedule a meeting (telephonic or in person) to be held within ten (10) days after receipt of this subpoena in order to confer regarding your production of documents and/or information.
19. **Confidentiality:** All information submitted pursuant to this subpoena is subject to the confidentiality provisions of Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 57b-2(f), and Rule 4.10 of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 4.10.
20. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information of any individual, please redact the sensitive information or, if redaction is not appropriate, contact us to discuss encrypting any electronic copies of such material with encryption software such as SecureZip and provide the encryption key in a separate communication.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, debit card number, or nonpublic information concerning such individual's activities on Google.

**DOCUMENTS TO BE PRODUCED  
SPECIFICATIONS**

1. A current organization chart and the most recent telephone and other personnel directories for Samsung.
2. Documents sufficient to show Samsung's document retention and document destruction policies.
3. All documents produced in discovery (including without limitation discovery requests, responses, document productions, deposition transcripts, and correspondence among opposing counsel and communications with the Court), or filed or served by Samsung or any person, in connection with *Skyhook Wireless, Inc. v. Google Inc.*
4. All documents provided by Samsung to, or received by Samsung from, the European Commission in connection with any ongoing antitrust or competition-related inquiry relating to Google.
5. All documents relating to Samsung's business strategy for (i) placing the Android operating system on its mobile devices or smart phones, or (ii) pre-loading any Google Products or Services on its mobile devices or smart phones, including but not limited to: all strategic plans; business plans; marketing plans; advertising plans; pricing plans, technology plans, forecasts, strategies, and decisions; market studies; and presentations to management committees, executive committees, and boards of directors.
6. All agreements, including any waivers, between Samsung and Google relating to the Android operating system, or to the pre-loading or placement of any Google Products or Services on Samsung's mobile devices or smart phones.
7. All agreements, including any waivers, between Samsung and Google relating to the pre-loading or placement of any Google Products or Services on Samsung's mobile devices or smart phones employing any operating system other than the Android operating system.
8. All agreements between Samsung and any wireless service provider, relating to the Android operating system, or to the pre-loading or placement of any Google Products or Services on Samsung's mobile devices or smart phones.
9. All documents relating to any policy, practice, contract or technological mechanism that restrains or restricts any person from licensing, removing, replacing, or modifying any Google Products or Services on Samsung's mobile devices or smart phones



- employing the Android operating system, including but not limited to, documents relating to Google's Compatibility Definition Document and Compatibility Test Suite.
10. All documents relating to Samsung's consideration, development, or use of any product or service that competes with a Google Product or Service on any mobile device or smart phone employing the Android operating system.
  11. Documents sufficient to show, separately for each year between 2007 and 2012: (i) each style of mobile device or smart phone shipped by Samsung; (ii) the operating system installed in each style of mobile device or smart phone; (iii) the software and applications pre-loaded onto each style of mobile device or smart phone; and (iv) the number of units of each style of mobile device or smart phone employing the Android operating system shipped by Samsung. If Samsung shipped more than one version of any style of mobile device or smart phone in any given year, provide documents sufficient to show the above-listed information for each version.
  12. All documents relating to any agreement entered into by Samsung for search, search syndication, search advertising, and/or contextual advertising services.

**Attachment 1.1**

**VERIFICATION**

I personally supervised the preparation and assembly of this response on behalf of Samsung Telecommunications America, LLC., in accordance with the Definitions and Instructions set forth in Subpoena *Duces Tecum* issued in FTC File No. 111-0163. All copies submitted in lieu of originals are true, correct and complete copies of the original documents. This response is complete and correct to the best of my knowledge and belief.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ .

Notary Public

My Commission expires

**Attachment 1.2**

**PRODUCTION FORMS AND METHODS**

1. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director.
  - (a) Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:
    - (i) submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata; and
    - (ii) submit all documents other than those provided pursuant to subparts (a)(i) or (a)(iii) in image format with extracted text and metadata.
    - (iii) electronic format: documents stored in hard copy form may be submitted in image format accompanied by OCR.
  - (b) For each document submitted in electronic format, include the following metadata fields and information:
    - (i) for documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and SHA Hash value;
    - (ii) for emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);
    - (iii) for email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and SHA Hash value; and

- (iv) for hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.
  - (c) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use of such software or services when producing materials in response to this Request.
  - (d) Submit data compilations in Excel spreadsheet or in delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.
  - (e) Submit electronic files and images as follows:
    - (i) for productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data;
    - (ii) for productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats.; and
    - (iii) **All documents produced in electronic format shall be scanned for and free of viruses. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this Request.**
2. All documents responsive to this Request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
- (a) shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files, and shall not be shuffled or otherwise rearranged. For example:
    - (i) if in their original condition hard copy documents were stapled, clipped, or otherwise fastened together or maintained in file folders, binders, covers, or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers, or containers in order to be produced shall be identified in a

manner so as to clearly specify the folder, binder, cover, or container from which such documents came; and

- (ii) if in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;
- (b) shall be marked on each page with corporate identification and consecutive document control numbers;
- (c) shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);
- (d) shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents; and
- (e) shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Jon Leibowitz, Chairman**  
                                 **William E. Kovacic**  
                                 **J. Thomas Rosch**  
                                 **Edith Ramirez**  
                                 **Julie Brill**

**RESOLUTION AUTHORIZING USE OF  
COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION**

FILE NO. 111-0163

**Nature and Scope of Investigation:**

To determine whether Google Inc. may be engaging, or may have engaged, in any unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, by monopolizing, attempting to monopolize, or restraining competition in online or mobile search, search advertising, or Internet-related goods or services.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

**Authority to Conduct Investigation:**

Sections 6, 9, 10 and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1., *et. seq.* and supplements thereto.

By direction of the Commission.



Donald S. Clark  
Secretary

Issued: June 13, 2011

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In re

Subpoena Duces Tecum  
dated February 9, 2012

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§

**PUBLIC**

File No 111-0163, Google Inc.

**Declaration of Gregory S. C. Huffman**

1. My name is Gregory S. C. Huffman. I am an attorney at Thompson & Knight LLP and have been representing Samsung Telecommunications America, LLC (“STA”) in connection with the subpoena *duces tecum* issued to STA by the Federal Trade Commission (“FTC”), dated February 9, 2012 (which is attached as Exhibit A to the Declaration of Justin Denison). I am familiar with and have personal knowledge of STA’s efforts to respond to the subpoena.

2. STA has been working with FTC staff to identify relevant documents needed by the FTC, to prioritize certain documents or categories of documents, and to obtain a reasonable time for the production. True and correct copies of the correspondence reflecting these efforts is attached as Exhibit B.

3. On April 5, 2012, I participated in a teleconference with FTC staff in which an STA executive was interviewed about STA’s operations and other issues relevant to the subpoena. The purpose of making this STA executive available was so that FTC staff would be able to use the information provided to tailor the specifications in the subpoena to the particular devices, services, and features of interest to the Google investigation.

4. FTC staff extended STA's deadline to file any petition to quash or limit the subpoena through April 23, 2012, but staff has not agreed to any further extension. True and correct copies of the correspondence regarding the extension is attached as Exhibit C.



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 20, 2012, in Dallas, Texas.

  
\_\_\_\_\_  
Gregory S. C. Huffman

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In re

Subpoena Duces Tecum  
dated February 9, 2012

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File No 111-0163, Google Inc.

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Confidential Copies of Exhibits to Declaration of Gregory S. C. Huffman

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**REDACTED FROM  
PUBLIC VERSION OF  
PETITION**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In re

Subpoena Duces Tecum  
dated February 9, 2012

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**PUBLIC**

File No 111-0163, Google Inc.

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**Public Copies of Exhibits to Declaration of Gregory S. C. Huffman**

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**From:** Westman-Cherry, Melissa [MWESTMAN@ftc.gov]  
**Sent:** Tuesday, April 17, 2012 8:13 AM  
**To:** Huffman, Gregory  
**Cc:** Richard Rosalez; Green, Geoffrey; Nagle, Jennifer  
**Subject:** RE: Samsung

Greg,

Thanks for the update. My schedule is fairly flexible this week, so let me know when you are ready to discuss this further.

Thanks,  
Melissa

---

**From:** Huffman, Gregory [mailto:Gregory.Huffman@tklaw.com]  
**Sent:** Monday, April 16, 2012 8:15 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** Richard Rosalez  
**Subject:** Samsung

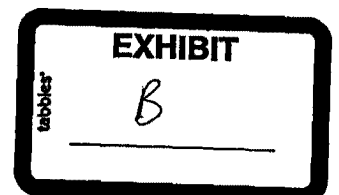
CONFIDENTIAL

We have been pulling documents in connection with the parameters we discussed initially last week. The initial population for review is running at approximately 350 GB of data, which would equate to roughly 600,000 to 750,000 documents. We have more runs to do on the population, but clearly we will need to discuss later this week refining the parameters.

I'll be back in contact when I have more definite information. Please feel free to call in the meantime with any questions.

Greg

Gregory Huffman  
Thompson & Knight LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201-2533  
214-969-1144 ofc  
[gregory.huffman@tklaw.com](mailto:gregory.huffman@tklaw.com)



4/20/2012

---

**From:** Westman-Cherry, Melissa [MWESTMAN@ftc.gov]  
**Sent:** Thursday, April 12, 2012 9:01 AM  
**To:** 'Richard Rosalez [LEGAL]'; Huffman, Gregory  
**Cc:** Green, Geoffrey; Nagle, Jennifer  
**Subject:** RE: Google Inc., FTC File No. 111-0163

Rich,

[REDACTED]

If you can provide us with specific information about (1) what various searches are producing, such as the number or type of documents produced by given search terms, and (2) the relevance and responsiveness of the returned documents and why STA believes that there is a burden, then we should be able to have a meaningful conversation about whether and how to edit the list.

Please let me know if, and when, STA would like to have such a discussion.

Best regards,  
Melissa

---

**From:** Richard Rosalez [LEGAL] [mailto:r.rosalez@sta.samsung.com]  
**Sent:** Wednesday, April 11, 2012 6:45 PM  
**To:** Westman-Cherry, Melissa; 'Huffman, Gregory'  
**Cc:** Green, Geoffrey; Nagle, Jennifer  
**Subject:** RE: Google Inc., FTC File No. 111-0163

Melissa,

[REDACTED]

As an example, I've referred to these massive spreadsheets that list and track carrier specifications and requirements. These spreadsheets are used to track the overall compliance of the device from feature lockdown to launch for thousands of aspects of the phones. [REDACTED]

[REDACTED]

[REDACTED] e, would result in a positive search hit. When I open the Samsung phones I carry, one has an Amazon Kindle preload and the other has an Amazon MP3 preload. That suggests to me that every email attaching the spreadsheets or other documents that track the status of these phones would be a positive hit and thus a document that reviewers would have to scrutinize. This is all a long way of saying that the list as comprised will produce a tremendous amount of hits for documents and emails that are not likely to be of interest, let alone the subject of the investigation. Can we please work together to narrow the list or agree to certain document exclusions so we can more effectively identify, review and produce the documents you have requested? Thank you.

Regards,  
-Rich

---

**From:** Westman-Cherry, Melissa [<mailto:MWESTMAN@ftc.gov>]  
**Sent:** Wednesday, April 11, 2012 4:15 PM  
**To:** 'Huffman, Gregory'  
**Cc:** Richard Rosalez [LEGAL]; Green, Geoffrey; Nagle, Jennifer  
**Subject:** RE: Google Inc., FTC File No. 111-0163

Greg,

[REDACTED]

Thanks,  
Melissa

---

**From:** Huffman, Gregory [<mailto:Gregory.Huffman@tklaw.com>]  
**Sent:** Tuesday, April 10, 2012 6:46 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** [r.rosalez@sta.samsung.com](mailto:r.rosalez@sta.samsung.com); Green, Geoffrey; Melman, Leslie R.; Nagle, Jennifer; Chiarello, Gustav  
**Subject:** Re: Google Inc., FTC File No. 111-0163

Our agreement on agreements was to obtain those agreements which the lead person in charge of the Google relationship could provide to us.

Rich, can you look over the list of custodians and let us know if any are not STA personnel, as we discussed on the phone?

We will be proceeding as we discussed.

Thanks,

Greg

---

**From:** Westman-Cherry, Melissa [<mailto:MWESTMAN@ftc.gov>]  
**Sent:** Tuesday, April 10, 2012 05:21 PM  
**To:** Huffman, Gregory  
**Cc:** Richard Rosalez [LEGAL] ([r.rosalez@sta.samsung.com](mailto:r.rosalez@sta.samsung.com)) <[r.rosalez@sta.samsung.com](mailto:r.rosalez@sta.samsung.com)>; Green, Geoffrey <[GGREEN@ftc.gov](mailto:GGREEN@ftc.gov)>; Melman, Leslie R. <[LMELMAN@ftc.gov](mailto:LMELMAN@ftc.gov)>; Nagle, Jennifer <[jnagle@ftc.gov](mailto:jnagle@ftc.gov)>; Chiarello, Gustav <[gchiarello@ftc.gov](mailto:gchiarello@ftc.gov)>  
**Subject:** Google Inc., FTC File No. 111-0163

Greg,

Please see the attached correspondence.

Very truly yours,

Melissa

Melissa Westman-Cherry, Esq.

4/20/2012

Anticompetitive Practices Division  
U.S. Federal Trade Commission  
202-326-2338  
[mwestman@ftc.gov](mailto:mwestman@ftc.gov)

---

**From:** Westman-Cherry, Melissa [MWESTMAN@ftc.gov]  
**Sent:** Wednesday, April 11, 2012 4:15 PM  
**To:** Huffman, Gregory  
**Cc:** Richard Rosalez [LEGAL] (r.rosalez@sta.samsung.com); Green, Geoffrey; Nagle, Jennifer  
**Subject:** RE: Google Inc., FTC File No. 111-0163  
**Attachments:** 2012-04-11 STA terms ltr.pdf

Greg,

[REDACTED]

Thanks,  
Melissa

---

**From:** Huffman, Gregory [mailto:Gregory.Huffman@tklaw.com]  
**Sent:** Tuesday, April 10, 2012 6:46 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** r.rosalez@sta.samsung.com; Green, Geoffrey; Melman, Leslie R.; Nagle, Jennifer; Chiarello, Gustav  
**Subject:** Re: Google Inc., FTC File No. 111-0163

Our agreement on agreements was to obtain those agreements which the lead person in charge of the Google relationship could provide to us.

Rich, can you look over the list of custodians and let us know if any are not STA personnel, as we discussed on the phone?

We will be proceeding as we discussed.

Thanks,

Greg

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Tuesday, April 10, 2012 05:21 PM  
**To:** Huffman, Gregory  
**Cc:** Richard Rosalez [LEGAL] (r.rosalez@sta.samsung.com) <r.rosalez@sta.samsung.com>; Green, Geoffrey <GGREEN@ftc.gov>; Melman, Leslie R. <LMELMAN@ftc.gov>; Nagle, Jennifer <jnagle@ftc.gov>; Chiarello, Gustav <gchiarello@ftc.gov>  
**Subject:** Google Inc., FTC File No. 111-0163

Greg,

Please see the attached correspondence.

Very truly yours,

Melissa

4/20/2012



Melissa Westman-Cherry, Esq.  
Anticompetitive Practices Division  
U.S. Federal Trade Commission  
202-326-2338  
[mwestman@ftc.gov](mailto:mwestman@ftc.gov)



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Melissa Westman-Cherry, Attorney  
Anticompetitive Practices  
Bureau of Competition  
(202) 326-2338  
mwestman@ftc.gov

April 11, 2012

**VIA E-MAIL**

Gregory Huffman, Esq.  
Thompson & Knight, LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201-2533  
Gregory.huffman@tklaw.com

Re: **Google Inc., File No. 111-0163**

Dear Greg:

Thank you for speaking with us yesterday regarding Samsung Telecommunications America's ("STA") submission of documents responsive to the Subpoena Duces Tecum ("Subpoena") dated February 9, 2012, in relation to the Commission Investigation, FTC File No. 111-0163. [REDACTED]

[REDACTED] in the files of custodians listed in my letter of April 10, 2012. Regarding requested custodian [REDACTED], there is reason to believe that [REDACTED] is an employee of Samsung Electronics Corp, and not STA. Therefore he can be removed from the list of custodians to be searched.

[REDACTED]

[REDACTED]

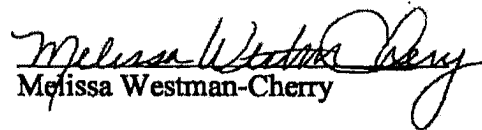


April 11, 2012



Nothing herein constitutes a modification or limitation of any of the Subpoena specifications. We will discuss full compliance with the subpoena following the production of documents produced by the April 23, 2012 deadline. If you have any questions regarding this letter, or the Subpoena, do not hesitate to contact me at (202) 326-2338.

Very truly yours,

  
Melissa Westman-Cherry

---

**From:** Westman-Cherry, Melissa [MWESTMAN@ftc.gov]  
**Sent:** Tuesday, April 10, 2012 6:50 PM  
**To:** Huffman, Gregory  
**Cc:** 'r.rosalez@sta.samsung.com'; Green, Geoffrey; Melman, Leslie R.; Nagle, Jennifer; Chiarello, Gustav  
**Subject:** Re: Google Inc., FTC File No. 111-0163

Greg,  
Your emails fairly reflect what STA represented that it intended to do by the deadline at the meet and confer today.

Thanks,  
Melissa

---

**From:** Huffman, Gregory [mailto:Gregory.Huffman@tklaw.com]  
**Sent:** Tuesday, April 10, 2012 07:03 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** r.rosalez@sta.samsung.com <r.rosalez@sta.samsung.com>; Green, Geoffrey; Melman, Leslie R.; Nagle, Jennifer; Chiarello, Gustav  
**Subject:** Re: Google Inc., FTC File No. 111-0163

Please advise ASAP if my emails do not accurately reflect our agreement on this initial stage. Otherwise, I will assume Samsung does not need to send out its petition this evening and that we can proceed.

Thanks.

Greg

---

**From:** Huffman, Gregory  
**Sent:** Tuesday, April 10, 2012 05:50 PM  
**To:** MWESTMAN@ftc.gov <MWESTMAN@ftc.gov>  
**Cc:** r.rosalez@sta.samsung.com <r.rosalez@sta.samsung.com>; GGREEN@ftc.gov <GGREEN@ftc.gov>; LMELMAN@ftc.gov <LMELMAN@ftc.gov>; jnagle@ftc.gov <jnagle@ftc.gov>; gchiarello@ftc.gov <gchiarello@ftc.gov>  
**Subject:** Re: Google Inc., FTC File No. 111-0163

On # 12, I also believe Gus agreed that our search methodology for 5, 9, and 10 was the way we would proceed.

Thanks

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Tuesday, April 10, 2012 05:21 PM  
**To:** Huffman, Gregory  
**Cc:** Richard Rosalez [LEGAL] (r.rosalez@sta.samsung.com) <r.rosalez@sta.samsung.com>; Green, Geoffrey <GGREEN@ftc.gov>; Melman, Leslie R. <LMELMAN@ftc.gov>; Nagle, Jennifer <jnagle@ftc.gov>; Chiarello, Gustav <gchiarello@ftc.gov>  
**Subject:** Google Inc., FTC File No. 111-0163

4/20/2012

Greg,

Please see the attached correspondence.

Very truly yours,

Melissa

Melissa Westman-Cherry, Esq.  
Anticompetitive Practices Division  
U.S. Federal Trade Commission  
202-326-2338  
[mwestman@ftc.gov](mailto:mwestman@ftc.gov)

4/20/2012

---

**From:** Westman-Cherry, Melissa [MWESTMAN@ftc.gov]  
**Sent:** Tuesday, April 10, 2012 6:53 PM  
**To:** 'r.rosalez@sta.samsung.com'; Huffman, Gregory  
**Cc:** Green, Geoffrey; Melman, Leslie R.; Nagle, Jennifer; Chiarello, Gustav  
**Subject:** Re: Google Inc., FTC File No. 111-0163

Hi Rich,  
I will try to determine whether we are referring to the same [REDACTED] tomorrow when I am back in the office.  
[REDACTED].

Thanks,  
Melissa

---

**From:** Richard Rosalez [LEGAL] [mailto:r.rosalez@sta.samsung.com]  
**Sent:** Tuesday, April 10, 2012 07:33 PM  
**To:** Huffman, Gregory <Gregory.Huffman@tklaw.com>; Westman-Cherry, Melissa  
**Cc:** Green, Geoffrey; Melman, Leslie R.; Nagle, Jennifer; Chiarello, Gustav  
**Subject:** RE: Google Inc., FTC File No. 111-0163

All,  
The following are STA employees: [REDACTED]  
[REDACTED] is a former STA employee. The system I can search shows a [REDACTED] as an STA employee. I have [REDACTED] as title and [REDACTED] as an email address for this [REDACTED]. Melissa can you please confirm if this is the right one if you have any of this information? There are many [REDACTED] at STA. Thank you.

Regards,  
-Rich

---

**From:** Huffman, Gregory [mailto:Gregory.Huffman@tklaw.com]  
**Sent:** Tuesday, April 10, 2012 5:46 PM  
**To:** MWESTMAN@ftc.gov  
**Cc:** Richard Rosalez [LEGAL]; GGREEN@ftc.gov; LMELMAN@ftc.gov; jnagle@ftc.gov; gchiarello@ftc.gov  
**Subject:** Re: Google Inc., FTC File No. 111-0163

Our agreement on agreements was to obtain those agreements which the lead person in charge of the Google relationship could provide to us.

Rich, can you look over the list of custodians and let us know if any are not STA personnel, as we discussed on the phone?

We will be proceeding as we discussed.

Thanks,  
Greg

4/20/2012

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Tuesday, April 10, 2012 05:21 PM  
**To:** Huffman, Gregory  
**Cc:** Richard Rosalez [LEGAL] (r.rosalez@sta.samsung.com) <r.rosalez@sta.samsung.com>; Green, Geoffrey <GGREEN@ftc.gov>; Melman, Leslie R. <LMELMAN@ftc.gov>; Nagle, Jennifer <jnagle@ftc.gov>; Chiarello, Gustav <gchiarello@ftc.gov>  
**Subject:** Google Inc., FTC File No. 111-0163

Greg,

Please see the attached correspondence.

Very truly yours,

Melissa

Melissa Westman-Cherry, Esq.  
Anticompetitive Practices Division  
U.S. Federal Trade Commission  
202-326-2338  
[mwestman@ftc.gov](mailto:mwestman@ftc.gov)



---

**From:** Huffman, Gregory  
**Sent:** Friday, April 06, 2012 5:14 PM  
**To:** Westman-Cherry, Melissa  
**Subject:** RE: Google Inc., FTC File No. 111-0163

CONFIDENTIAL

Melissa, I thought the purpose of the telephone interview was to give you input on which documents and situations you were interested in, and that we were then going to narrow. Please feel free to give me a phone call this weekend on my cell phone [REDACTED].

Thanks,

*Greg*

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Friday, April 06, 2012 9:32 AM  
**To:** Huffman, Gregory  
**Subject:** RE: Google Inc., FTC File No. 111-0163

Hi Greg,

I will put something together to present to Melanie. Could you provide me with an update as to the status of Samsung's production, including when you think we will receive additional documents and how much additional time you anticipate Samsung will need to substantially comply with the subpoena? I am available for the next hour or so, and then again after 2 p.m. today if it would be helpful to have a phone call. Just let me know.

Thanks,  
Melissa

---

**From:** Huffman, Gregory [mailto:Gregory.Huffman@tklaw.com]  
**Sent:** Thursday, April 05, 2012 6:15 PM  
**To:** Westman-Cherry, Melissa  
**Subject:** FW: Google Inc., FTC File No. 111-0163

CONFIDENTIAL

Melissa, can you send me another extension of the subpoena please. This one would expire on Monday, April 9.

Thanks,

*Greg*

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Friday, March 02, 2012 11:55 AM

4/20/2012

**To:** Huffman, Gregory  
**Subject:** RE: Google Inc., FTC File No. 111-0163

Greg,  
Please see the attached correspondence. And I apologize for the mix up with the countries. It is noted that Samsung's parent is located in Korea. Have a great weekend!

Thanks,  
Melissa

---

**From:** Huffman, Gregory [<mailto:Gregory.Huffman@tklaw.com>]  
**Sent:** Friday, March 02, 2012 12:22 PM  
**To:** Westman-Cherry, Melissa  
**Subject:** RE: Google Inc., FTC File No. 111-0163

CONFIDENTIAL

Melanie, I think this summary looks okay except we will need a paragraph saying that "In order to allow for further discussion of and hopefully to reach agreement on what documents will be produced after March 9, the date for compliance and date for petition to limit or quash are extended to April 9, 2012." You should also change the references from Japan to Korea.

Thanks,

*Greg*

---

**From:** Westman-Cherry, Melissa [<mailto:MWESTMAN@ftc.gov>]  
**Sent:** Friday, March 02, 2012 10:27 AM  
**To:** Huffman, Gregory  
**Subject:** Google Inc., FTC File No. 111-0163

Dear Greg,

This email confirms our discussion yesterday regarding the subpoena issued by the Federal Trade Commission to Samsung Telecommunications America ("STA") in connections with our investigation of Google, Inc., File No. 111-0163.

You represented that by March 9, 2012, the current subpoena return date, STA would produce documents responsive to Specifications 1, 2 and 11. With respect to subpart (iii) of Specification 11, STA at this time will only provide the manual for Samsung's Galaxy device. The FTC reserves its right to obtain additional documents responsive to this subsection based on review of the documents provided by STA. STA will provide responsive documents on a rolling basis.

You further represented that STA does not have access to documents located in Samsung's Japanese offices. We agreed that STA will produce responsive documents in its possession or control. If the FTC determines that documents relevant to this investigation are likely located in Japan, the FTC may ask STA for assistance in trying to obtain those documents. We understand that it is STA's position that it cannot compel the provision of Samsung documents located outside of its US offices.

Based on these representations, I will recommend an extension of time for STA's compliance with the Subpoena. While only Assistant Director Sabo has the authority to grant the extension, I fully expect a reasonable extension to be granted. This email does not constitute an extension of the time for compliance or a modification of the subpoena.

With respect to your question regarding Specification 3, I cannot disclose what documents the FTC has obtained thus far in this investigation. However, I can represent that we do need STA to provide documents responsive to this specification, and believe that such documents will not be duplicative of documents obtained in this investigation thus far.

Please advise if you believe I have misstated any part of our discussion, and feel free to contact me with any questions or concerns.

Best regards,  
Melissa

Melissa Westman-Cherry, Esq.  
Anticompetitive Practices Division  
U.S. Federal Trade Commission  
202-326-2338  
[mwestman@ftc.gov](mailto:mwestman@ftc.gov)

---

**From:** Westman-Cherry, Melissa [MWESTMAN@ftc.gov]  
**Sent:** Thursday, April 05, 2012 8:27 AM  
**To:** Huffman, Gregory  
**Cc:** Richard Rosalez [LEGAL] (r.rosalez@sta.samsung.com)  
**Subject:** RE: Samsung

Hi Greg,

I just wanted to double check on your agreeing to allow the states to participate in the call. Do you have any objection to more than one or two participants? I have approximately 8 state reps who want to sit in. They will very likely just listen and not ask any questions. Let me know Samsung's preference, and I will communicate it to the states.

Thanks,  
Melissa

---

**From:** Huffman, Gregory [mailto:Gregory.Huffman@tklaw.com]  
**Sent:** Tuesday, April 03, 2012 3:02 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** Richard Rosalez [LEGAL] (r.rosalez@sta.samsung.com)  
**Subject:** RE: Samsung

No objection here, but let's try to keep the interview limited to 30-45 minutes please.

Greg

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Tuesday, April 03, 2012 12:51 PM  
**To:** Huffman, Gregory  
**Cc:** Richard Rosalez [LEGAL] (r.rosalez@sta.samsung.com)  
**Subject:** RE: Samsung

Hi Greg,  
Would Samsung object to having one or more representatives from our multi-state Attorneys General group on the call tomorrow afternoon? The participating states have been calling in to our interviews. We can limit it to one or two people if that would make [REDACTED] more comfortable. (My apologies if I am misspelling his name).

Thanks,  
Melissa

---

**From:** Huffman, Gregory [mailto:Gregory.Huffman@tklaw.com]  
**Sent:** Monday, April 02, 2012 4:56 PM  
**To:** Westman-Cherry, Melissa  
**Subject:** Samsung

Melissa, can you give me a call please when you have a chance?

Thanks

Gregory Huffman  
Thompson & Knight LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201-2533  
214-969-1144 ofc  
[gregory.huffman@tklaw.com](mailto:gregory.huffman@tklaw.com)

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Friday, March 02, 2012 10:27 AM  
**To:** Huffman, Gregory  
**Subject:** Google Inc., FTC File No. 111-0163

Dear Greg,

This email confirms our discussion yesterday regarding the subpoena issued by the Federal Trade Commission to Samsung Telecommunications America (“STA”) in connections with our investigation of Google, Inc., File No. 111-0163.

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FTC has obtained thus far in this investigation. However, I can represent that we do need STA to provide documents responsive to this specification, and believe that such documents will not be duplicative of documents obtained in this investigation thus far.

Please advise if you believe I have misstated any part of our discussion, and feel free to contact me with any questions or concerns.

Best regards,  
Melissa

Melissa Westman-Cherry, Esq.  
Anticompetitive Practices Division  
U.S. Federal Trade Commission  
202-326-2338  
[mwestman@ftc.gov](mailto:mwestman@ftc.gov)

---

**From:** Huffman, Gregory  
**Sent:** Tuesday, February 28, 2012 9:08 AM  
**To:** Westman-Cherry, Melissa; Richard Rosalez [LEGAL] (r.rosalez@sta.samsung.com)  
**Subject:** RE: Google Inc., FTC File No. 111-0163

I'll give you a call this morning. Thanks

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Tuesday, February 28, 2012 8:53 AM  
**To:** Richard Rosalez [LEGAL] (r.rosalez@sta.samsung.com); Huffman, Gregory  
**Subject:** Google Inc., FTC File No. 111-0163

Gentlemen,

I received messages from both of you in the past few days. I apologize for not responding more quickly but I have been out of the office a bit Friday and yesterday dealing with some personal business. Do either or both of you have time to talk today? I am available after 11:30 Eastern time with the exception of 2 to 3 pm. Let me know if there is a time that works for you.

Thanks,  
Melissa

Melissa Westman-Cherry, Esq.  
Anticompetitive Practices Division  
U.S. Federal Trade Commission  
202-326-2338  
[mwestman@ftc.gov](mailto:mwestman@ftc.gov)



---

**From:** Richard Rosalez [LEGAL] [r.rosalez@sta.samsung.com]  
**Sent:** Tuesday, January 24, 2012 11:17 AM  
**To:** Westman-Cherry, Melissa  
**Cc:** Huffman, Gregory; Nagle, Jennifer  
**Subject:** RE: Availability for a call next Tuesday

Thank you, Melissa. I will do my best to move this along. Please note that a full slate of other obligations this week and early next week may make it difficult for me if I am unable to reach these individuals or those I had identified on my end. Given that we identified different groups of people, could you possibly share the Samsung internal email or provide a date so that we might search for it to understand what might be at issue? Thank you.

Regards,  
-Rich

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Friday, January 20, 2012 4:57 PM  
**To:** Richard Rosalez [LEGAL]  
**Cc:** 'Gregory.Huffman@tklaw.com'; Nagle, Jennifer  
**Subject:** RE: Availability for a call next Tuesday

Hi Rich,  
These are the individuals that we discussed-

[REDACTED]

We identified this additional information about the last two:

[REDACTED] Assistant Manager

Phone: [REDACTED]

Email: [REDACTED]

[REDACTED] Principal Engineer

Phone: [REDACTED]

Email: [REDACTED]

Have a great weekend,  
Melissa

---

**From:** Richard Rosalez [LEGAL] [mailto:r.rosalez@sta.samsung.com]  
**Sent:** Friday, January 20, 2012 4:10 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** 'Gregory.Huffman@tklaw.com'; Nagle, Jennifer

**Subject:** RE: Availability for a call next Tuesday

Melissa,

Could you please forward the names you mentioned on the call? It would be very helpful if I have it right. As an example, I searched for someone not long ago and there were approximately 20 people with the same name. Thanks for your time and Greg and I will be in touch.

Regards,  
-Rich

---

**From:** Westman-Cherry, Melissa [<mailto:MWESTMAN@ftc.gov>]  
**Sent:** Saturday, January 14, 2012 4:46 PM  
**To:** Richard Rosalez [LEGAL]  
**Cc:** 'Gregory.Huffman@tklaw.com'; Nagle, Jennifer  
**Subject:** Re: Availability for a call next Tuesday

That works for us. We look forward to speaking to you then.

Thanks,  
Melissa

---

**From:** Richard Rosalez [LEGAL] [<mailto:r.rosalez@sta.samsung.com>]  
**Sent:** Friday, January 13, 2012 05:02 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** 'Gregory.Huffman@tklaw.com' <[Gregory.Huffman@tklaw.com](mailto:Gregory.Huffman@tklaw.com)>; Nagle, Jennifer  
**Subject:** RE: Availability for a call next Tuesday

Melissa,

I'm sorry that today moved so fast and I did not reach out earlier. How about 3:30 PM EST / 2:30 PM CST on Tuesday? I can circulate a dial-in number later. Thanks.

Regards,  
-Rich

---

**From:** Westman-Cherry, Melissa [<mailto:MWESTMAN@ftc.gov>]  
**Sent:** Thursday, January 12, 2012 7:38 PM  
**To:** Richard Rosalez [LEGAL]  
**Cc:** 'Gregory.Huffman@tklaw.com'; Nagle, Jennifer  
**Subject:** Re: Availability for a call next Tuesday

Hi Rich. I am available on Tuesday from 9:30 am and on. Let me know what time works best for your schedule and we should be able to accommodate you.

I am copying my colleague Jen Nagle on this email. She is working with me on this matter and I can introduce you guys to her on Tuesday.

Thanks for reaching out. I look forward to speaking with you.

Thanks,  
Melissa

**From:** Richard Rosalez [LEGAL] [<mailto:r.rosalez@sta.samsung.com>]  
**Sent:** Thursday, January 12, 2012 06:17 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** Huffman, Gregory <[Gregory.Huffman@tklaw.com](mailto:Gregory.Huffman@tklaw.com)>  
**Subject:** Availability for a call next Tuesday

Melissa,

Are you available for a brief call with Samsung Telecommunications America regarding the Google matter?  
Please let me know your availability. Thank you.

Regards,  
-Rich

---

**From:** Richard Rosalez [LEGAL] [r.rosalez@sta.samsung.com]  
**Sent:** Thursday, January 12, 2012 5:18 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** Huffman, Gregory  
**Subject:** Availability for a call next Tuesday

Melissa,

Are you available for a brief call with Samsung Telecommunications America regarding the Google matter?  
Please let me know your availability. Thank you.

Regards,  
-Rich



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Melissa Westman-Cherry, Attorney  
Anticompetitive Practices  
Bureau of Competition  
(202) 326-2338  
mwestman@ftc.gov

April 10, 2012

**VIA E-MAIL**

Gregory Huffman, Esq.  
Thompson & Knight, LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201-2533  
Gregory.huffman@tklaw.com

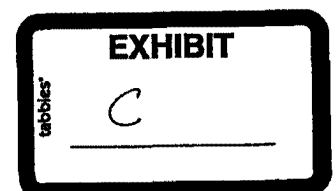
Re: **Google Inc., File No. 111-0163**

Dear Greg:

This letter confirms my understanding of discussions today regarding Samsung Telecommunications America's ("STA") submission of documents responsive to the Subpoena Duces Tecum ("Subpoena") dated February 9, 2012, in relation to the Commission Investigation, FTC File No. 111-0163. STA has agreed to:

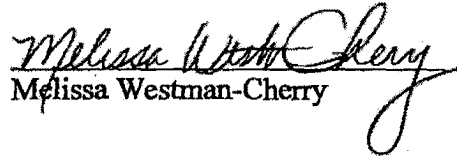
1. Provide all documents responsive to Specification 3.
2. Determine whether STA possesses documents responsive to Specification 4, and if so, provide all such documents.
3. [REDACTED]  
[REDACTED] ng custodians, if they [REDACTED] A: [REDACTED]  
[REDACTED]  
and [REDACTED]
4. Identify and provide all "formal" or "informal" agreements responsive to Specifications 6, 7 and 8.
5. Determine whether STA possesses documents responsive to Specification 12, and if so, provide all such documents.

In light of the foregoing commitments, the Commission agrees to extend the date for full compliance with the Subpoena, and the deadline to file any petition to quash or limit the Subpoena, until April 23, 2012. This does not constitute a modification of the Subpoena specifications.

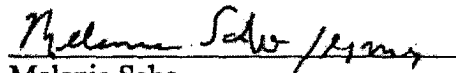


If you have any questions regarding this letter, or the Subpoena, do not hesitate to contact me at (202) 326-2338.

Very truly yours,

  
Melissa Westman-Cherry

Approved:

  
Melanie Sabo



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Melissa Westman-Cherry, Attorney  
Anticompetitive Practices  
Bureau of Competition  
(202) 326-2338  
mwestman@ftc.gov

April 9, 2012

**VIA E-MAIL**

Gregory Huffman, Esq.  
Thompson & Knight, LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201-2533  
Gregory.huffman@tklaw.com

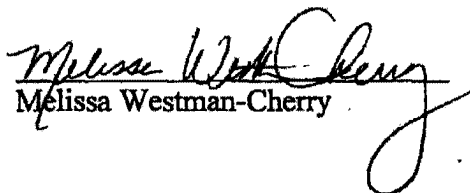
**Re: Google Inc., File No. 111-0163**

Dear Greg:

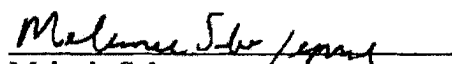
This letter confirms our discussion today regarding Samsung Telecommunications America's ("Samsung") submission of documents responsive to the Subpoena Duces Tecum ("Subpoena") dated February 9, 2012, in relation to the Commission Investigation, FTC File No. 111-0163. Samsung has agreed to participate in a meet and confer discussion tomorrow, April 10, 2012 at 4 p.m. EDT. In order to facilitate this meeting, the Commission agrees to extend the date for full compliance with the Subpoena, and the deadline to file any petition to quash or limit the Subpoena, until April 11, 2012 at 5 p.m.

If you have any questions regarding this letter, or the Subpoena, do not hesitate to contact me at (202) 326-2338.

Very truly yours,

  
Melissa Westman-Cherry

Approved:

  
Melanie Sabo  
Assistant Director



Bureau of Competition

Melissa Westman-Cherry  
Attorney

Direct Dial  
(202)326-2338

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

March 2, 2012

**VIA EMAIL**

Gregory Huffman  
Thompson & Knight LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201-2533  
gregory.huffman@tklaw.com

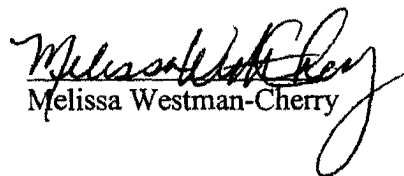
**Re: Google Inc., File No. 111-0163**

Dear Gregory:

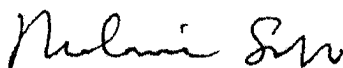
Based on our discussions today by email and telephone, laying out a proposed plan for identifying and producing documents responsive to the Subpoena Duces Tecum ("Subpoena") in the above-referenced matter, the Commission agrees to extend the date for full compliance with the Subpoena served on Samsung Telecommunications America, ("STA"), dated February 9, 2012, until April 9, 2012. In addition, the deadline to file any petition to quash or limit the Subpoena will also be extended until April 9, 2012, to allow further discussions regarding documents to be produced. Should STA require additional time to fully comply with the Subpoena, an extension will be discussed prior to April 9, 2012.

Please do not hesitate to contact me if you have any questions regarding the subpoena production or this deadline extension.

Very truly yours,

  
Melissa Westman-Cherry

Approved:

  
Melanie Sabo



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

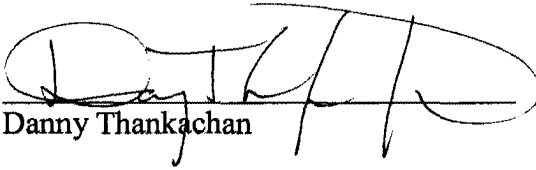
In re	§	
	§	<b>PUBLIC</b>
	§	
Subpoena Duces Tecum	§	
dated February 9, 2012	§	File No 111-0163, Google Inc.
	§	
	§	
	§	

**Declaration of Danny Thankachan**

1. My name is Danny Thankachan. I supervise the litigation support department at Thompson & Knight LLP, which is representing Samsung Telecommunications America, LLC (“STA”) in connection with the subpoena *duces tecum* issued to STA by the Federal Trade Commission (“FTC”), dated February 9, 2012. I am familiar with and have personal knowledge of the facts set forth in this declaration.

2. In working with STA to respond to the subpoena, we have received approximately 450 GB of data [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] in an attempt to cull the data further for review. Of the first 550,000 documents processed and searched in this manner, approximately 361,000 met initial [REDACTED] criteria. Extrapolating to the full data set which we estimate to contain over 1.8 million documents, we estimate there will be at least 1,000,000 documents that are responsive to the initial paired search protocol. Assuming a review rate of 500 documents per day, it would take 2,000 man-days to review these documents.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 20, 2012, in Dallas, Texas.

  
Danny Thankachan

# **EXHIBIT B**



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

June 18, 2012

**REDACTED PUBLIC  
VERSION**

**BY E-MAIL AND COURIER DELIVERY**

Gregory S. C. Huffman  
Nicole L. Williams  
Brian W. Stoltz  
Thompson & Knight LLP  
1722 Routh Street, Suite 1500  
Dallas, TX 75201-2533

Re: *Petition of Samsung Telecommunications America, LLC  
To Limit Subpoena Duces Tecum, File No. 111 0163*

Dear Messrs. Huffman and Stoltz and Ms. Williams:

On April 23, 2012, the Federal Trade Commission ("FTC" or "Commission") received the above Petition filed by Samsung Telecommunications America, LLC ("Samsung"). This letter advises you of the Commission's disposition of the Petition, effected through this ruling by Commissioner Julie Brill, acting as the Commission's delegate.<sup>1</sup>

For the reasons explained below, the Petition is denied. You may request review of this ruling by the full Commission.<sup>2</sup> Any such request must be filed with the Secretary of the Commission within three days after service of this letter ruling.<sup>3</sup> The timely filing of a request for review by the full Commission shall not stay the return dates established by this ruling.<sup>4</sup>

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<sup>1</sup> See 16 C.F.R. § 2.7(d)(4).

<sup>2</sup> 16 C.F.R. § 2.7(f).

<sup>3</sup> *Id.* This ruling is being delivered by e-mail and courier delivery. The e-mail copy is provided as a courtesy, and the deadline by which an appeal to the full Commission would have to be filed should be calculated from the date on which you receive the original letter by courier delivery.

<sup>4</sup> *Id.*

## I. INTRODUCTION

In 2011, in connection with an investigation of Google, Inc., the FTC issued a resolution authorizing its staff to use compulsory process

[t]o determine whether Google Inc. may be engaging, or may have engaged, in any unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, by monopolizing, attempting to monopolize, or restraining competition in online or mobile search, search advertising, or Internet-related goods or services.<sup>5</sup>

On February 9, 2012, in furtherance of the investigation, the Commission issued a third-party subpoena *duces tecum* (“subpoena”) to Samsung.<sup>6</sup> Samsung manufactures and sells mobile phones and devices, many of which are installed with Google’s Android operating system as well as other mobile applications and services developed by Google and Google’s competitors. The subpoena required Samsung to provide the requested documents no later than March 9, 2012.<sup>7</sup>

On or about March 1, 2012, Samsung asked, and received, an extension of the return date to April 9, 2012, conditioned on Samsung producing documents responsive to Specifications 1, 2, and 11, no later than Monday, March 9.<sup>8</sup> FTC staff also agreed to obviate the requirement that Samsung obtain and produce documents from its corporate parent in Korea.<sup>9</sup>

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<sup>5</sup> Petition of Samsung Telecomm. of America, LLC, to Limit Subpoena Duces Tecum, File No. 111-0163, Google, Inc., Att. 1, Exh. A (Apr. 21, 2012) [hereinafter Petition].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at Att. 4, Ex. B (E-mail from Gregory Huffman to Melissa Westman-Cherry (Mar. 2, 2012, 12:22 PM); *id.* at Att. 4, Ex. C (Letter from Melissa Westman-Cherry to Gregory Huffman (Mar. 2, 2012)).

<sup>9</sup> *Id.* at Att. 4, Ex. B (E-mail from Melissa Westman-Cherry to Gregory Huffman (Mar. 2, 2012, 10:27 AM); E-mail from Melissa Westman-Cherry to Gregory Huffman (Mar 2, 2012, 11:55 AM)).

On April 5, 2012, Samsung requested a second extension of the return date.<sup>10</sup> In subsequent discussions regarding the need for the extension, Samsung for the first time also asked staff to limit the required response in several respects.<sup>11</sup> Specifically, with regard to Specifications 5, 9, and 10,

[REDACTED]

<sup>12</sup> Samsung also asked staff to accept other limitations, including foregoing a search for informal agreements between Samsung and Google, and restated its request for an extension of the return date.

FTC staff accepted some of Samsung's proposals, modified the subpoena pursuant to 16 C.F.R. § 2.7(c), and extended the return date to April 23, 2012.<sup>13</sup> On April 11, 2012,

[REDACTED]

On April 11, [REDACTED] Samsung claimed that their proposed search was going to be unduly burdensome.<sup>15</sup> On April 20, 2012, based on the results of the searches it had performed to date, Samsung requested a third extension of time. When staff declined a further extension, Samsung filed the instant petition.

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<sup>10</sup> *Id.* at Att. 4, Ex. B (E-mail from Gregory Huffman to Melissa Westman-Cherry (Apr. 5, 2012, 6:15 PM)).

<sup>11</sup> *Id.* at Att. 4, Ex. C (Letter from Melissa Westman-Cherry to Gregory Huffman (Apr. 10, 2012)).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, at Att. 4, Ex. B (Letter from Melissa Westman-Cherry to Gregory Huffman (Apr. 11, 2012)).

<sup>15</sup> *Id.*, at Att. 4, Ex. B. (E-mail from Melissa Westman-Cherry to Gregory Huffman (Apr. 11, 2012, 4:15 PM); E-mail from Richard Rosalez to Melissa Westman-Cherry and Gregory Huffman (Apr. 11, 2012, at 6:45 PM)).

## II. ANALYSIS

Samsung's petition lodges objections to each of the specifications in the subpoena. Among these objections, Samsung claims the specifications: (1) are overly broad or unduly burdensome; (2) seek information not relevant to the investigation or not likely to lead to the discovery of relevant evidence; and (3) include vague terms or fail to seek documents with sufficient particularity.<sup>16</sup> For the following reasons, these objections fail.

### A. Samsung has not supported its claims of undue burden and overbreadth.

We conclude that Samsung has failed to support its claims that the subpoena is overly broad and unduly burdensome. As the courts have clearly stated, “[a]ny subpoena places a burden on the person to whom it is directed. Time must be taken from normal activities and resources must be committed to gathering the information necessary to comply.”<sup>17</sup> Thus, the recipient of process bears the burden of demonstrating that this burden is undue.<sup>18</sup> Specifically, a recipient of FTC investigative process must show that compliance threatens to seriously impair or unduly disrupt the normal operations of its business.<sup>19</sup> Likewise, investigative process is not unreasonably broad where the breadth

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<sup>16</sup> Samsung objects generally that the subpoena calls for documents in the possession, custody, and control of its corporate parent in Korea, and goes on to assert that it cannot access these documents and therefore should not have to produce them. FTC staff has already agreed that Samsung need not obtain documents from its Korean parent. *Id.* at Att. 4, Ex. B (E-mail from Melissa Westman-Cherry to Gregory Huffman (Mar. 2, 2012, 10:27 AM); E-mail from Melissa Westman-Cherry to Gregory Huffman (Mar 2, 2012, 11:55 AM)). As this issue has been resolved, we need not address it here.

<sup>17</sup> *FTC v. Shaffner*, 626 F.2d 32, 38 (7th Cir. 1980); *accord FTC v. Texaco*, 555 F.2d 862, 882 (D.C. Cir. 1977).

<sup>18</sup> *Texaco*, 555 F.2d at 882; *In re Nat'l Claims Serv., Inc.*, 125 F.T.C. 1325, 1328-29 (1998). See also *EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 476 (4th Cir. 1986); *FTC v. Standard American, Inc.*, 306 F.2d 231, 235 (3d Cir. 1962) (recipients of subpoena must show unreasonableness of the Commission's demand and make a record to show the “measure of their grievance rather than [asking the court] to assume it.”) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 654 (1950); *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 217-18 (1946)).

<sup>19</sup> *Shaffner*, 626 F.2d at 38; *Texaco*, 555 F.2d at 882.

of the inquiry is commensurate with the magnitude or complexity of a recipient's business operations.<sup>20</sup>

Here, Samsung offers essentially three arguments to support its claim of burden.<sup>21</sup> First, noting that the subpoena calls for information about mobile phones, Samsung states that it manufactured over 300 different models of mobile phone during the period in question, each with a distinct configuration of software, and that collecting information related to each phone would be unduly burdensome.<sup>22</sup> Second, [REDACTED] may yield more than one million "hits" of possibly responsive documents that would have to be reviewed and produced.<sup>23</sup> Third, Samsung offers a declaration from a litigation support supervisor, who states that this review of the documents identified will require 2000 days of review time, assuming that a single reviewer reviews 500 documents per day (1 reviewer times 500 documents/per day times 2,000 days = 1 million documents).<sup>24</sup>

These arguments do not establish that the subpoena is overly broad or unduly burdensome. Samsung has not provided facts or details, such as reliable estimates of the costs of compliance, to support these claims. Instead, Samsung's objections to the specifications appear premised on the fact that they may result in many potentially

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<sup>20</sup> *Texaco*, 555 F.2d at 882.

<sup>21</sup> The cases Samsung cites for the proposition that requests that ask for "all documents" are overly broad and unreasonable are inapposite. In *McKinley v. F.D.I.C.*, 807 F. Supp. 2d, 1 (D.D.C. 2011), the request at issue was directed to the FDIC under FOIA. The request did not ask for "all documents" but rather "any information available." *Id.* at 6-77. The court found that such requests for records that relate "in any way" did not enable FDIC staff to identify responsive records with reasonable effort. *Id.* In this case, however, FTC staff has not asked Samsung for documents that relate to subjects "in any way."

For the same reason, *Judicial Watch, Inc. v. Ex-Im Bank*, 108 F. Supp. 2d 19, 27-28 (D.D.C. 2000) is also inapposite. In *Judicial Watch*, the request at issue asked for contacts between two individuals and "companies, entities, and/or persons related or doing or conducting business *in any way* with the People's Republic of China." *Id.* at 26 (emphasis added). None of the requests in the FTC's subpoena to Samsung is similarly broad.

<sup>22</sup> Petition, *supra* note 5, at 3-4.

<sup>23</sup> *Id.*, at 5.

<sup>24</sup> *Id.*, Att. 5.



responsive documents. But the volume of potentially responsive documents is not dispositive of the question whether a subpoena is unduly burdensome.<sup>25</sup> The searches may have resulted in many “hits,” but ultimately it is Samsung’s responsibility to show that the burden of compliance rises to the high threshold set by cases such as *Texaco* and Samsung has not offered solid evidence – or even alleged – that compliance here meets that standard.<sup>26</sup> Moreover, given the magnitude and complexity of the company’s operations and the breadth of its product line, there is nothing unusual about the possibility that the subpoena potentially calls for many documents related to a large number of mobile devices.<sup>27</sup>

**B. Samsung has not shown that the information requested is irrelevant to this administrative investigation.**

Samsung has also objected to several specifications on the grounds they fail to seek information relevant to the subject matter of the investigation, or are not likely to lead to the discovery of relevant or admissible evidence.<sup>28</sup> As such, Samsung seems to argue that the requirements of the subpoena do not comport with the requirements applicable to discovery requests propounded under the Federal Rules of Civil Procedure.<sup>29</sup>

However, the Federal Rules of Civil Procedure do not apply to agency investigations. “Unlike a discovery procedure, an administrative investigation is a proceeding distinct from any litigation that may flow from it.”<sup>30</sup> As the D.C. Circuit and

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<sup>25</sup> *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513-14 (4th Cir. 1996) (“[A] subpoena is not unduly burdensome merely because it requires production of a large number of documents . . .”). *See also F.D.I.C. v. Garner*, 126 F.3d 1138, 1145-46 (9th Cir. 1997) (enforcing subpoena that called for over one million documents where recipients failed to demonstrate the requests were unduly burdensome).

<sup>26</sup> *See, e.g., Texaco*, 555 F.2d at 882.

<sup>27</sup> *Texaco*, 555 F.2d at 882.

<sup>28</sup> *See, e.g.,* Petition, *supra* note 5, at 8-10.

<sup>29</sup> One such example is Samsung’s claim that the subpoena calls for irrelevant evidence, or evidence that is not reasonably likely to lead to the discovery of relevant or admissible evidence. These objections are premised on Fed. R. Civ. P. 26(b)(1), which addresses the scope of discovery in a civil action.

<sup>30</sup> *Linde Thomsen Langworthy Kohn & Van Dyke, P.C. v. Resolution Trust Corp.*, 5 F.3d 1508, 1513 (D.C. Cir. 1993) (citing *EEOC v. Deer Valley Unified Sch. Dist.*, 968 F.2d 904, 906 (9th Cir. 1992); *EEOC v. Univ. of Notre Dame du Lac*, 551 F. Supp. 737, 742

other courts have recognized, “[t]he standard for judging relevancy in an investigatory proceeding is more relaxed than in an adjudicatory one . . . . The requested material, therefore, need only be relevant to the *investigation* – the boundary of which may be defined quite generally, as it was in the Commission’s resolution here.”<sup>31</sup> Agencies thus have “extreme breadth” in conducting their investigations,<sup>32</sup> and “in light of [this] broad deference . . . , it is essentially the respondent’s burden to show that the information is irrelevant.”<sup>33</sup>

Samsung’s conclusory assertions<sup>34</sup> do not satisfy this standard. As stated in the Commission’s investigatory resolution, the purpose of the investigation is to determine whether Google is engaged in “unfair methods of competition” by, *inter alia*, monopolizing, attempting to monopolize, or restraining competition in online or mobile search, search advertising, or Internet-related goods or services. Samsung is a manufacturer of mobile devices that are used by consumers for online or mobile search, for using Internet-related goods and services, and on which consumers receive search advertising. Thus, information about the relationship between Google and Samsung as it relates to those topics is plainly relevant to this investigation, and Samsung has offered nothing to challenge this conclusion.

**C. The subpoena specifications are not vague and identify the requested documents with sufficient particularity.**

Samsung also objects to Specifications 5 and 10 on the grounds that they include terms that Samsung finds vague, such as “business strategy,” “consideration, development and use,” or “competes with.” Samsung claims that it cannot identify which documents might be responsive to these requests.

Samsung has not shown that these terms have multiple meanings that make it difficult to determine which documents are responsive. Terms such as “business strategy,” or “consideration, development and use” are commonly employed by

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(N.D. Ind. 1982), *rev’d on other grounds*, 715 F.2d 331 (7th Cir. 1983)).

<sup>31</sup> *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992) (emphasis in original; internal citations omitted) (citing *FTC v. Carter*, 636 F.2d 781, 787-88 (D.C. Cir. 1980); *Texaco*, 555 F.2d at 874 & n.26)).

<sup>32</sup> *Linde Thomsen*, 5 F.3d at 1517 (citing *Texaco*, 555 F.2d at 882).

<sup>33</sup> *Invention Submission Corp.*, 965 F.2d at 1090 (citing *Texaco*, 555 F.2d at 882); *accord FTC v. Church & Dwight Co., Inc.*, 756 F. Supp. 2d 81, 85 (D.D.C. 2010).

<sup>34</sup> *See, e.g.*, Petition, *supra* note 5, at 8-13.

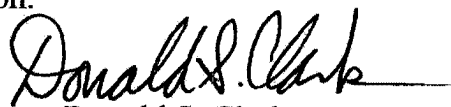
companies of Samsung's size and complexity. In particular, we expect that Samsung, a global manufacturer of mobile devices, understands the term "competes with" in the context of mobile products and software. Furthermore, these terms appear in the subpoena in the context of specifications that contain additional guidance as to the limits and scope of the requests. For example, specification 5 includes examples of responsive documents, such as "strategic plans, business plans, marketing plans, advertising plans, pricing plans, technology plans, forecasts, strategies, and decisions; market studies; and presentations to management committees, executive committees, and boards of directors."<sup>35</sup> Instead, it appears that Samsung objects to these terms because they call for many responsive documents, but, as discussed above, without more, this is not a proper basis for an objection.<sup>36</sup> For these reasons, Samsung's claim that the subpoena terms are vague or insufficiently particular fails.

### III. CONCLUSION AND ORDER

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** Samsung Telecommunications America LLC's Petition to Limit Subpoena Duces Tecum be, and it hereby is, **DENIED**; and

**IT IS FURTHER ORDERED THAT** all other responses to the specifications in the subpoena *duces tecum* must now be produced on or before July 2, 2012. Pursuant to Rule 2.7(c), 16 C.F.R. § 2.7(c), staff has the authority to determine the terms of satisfactory compliance, including allowing Petitioner to abide by previously-reached agreements to limit the production of documents and information responsive to the subpoena *duces tecum*.

By direction of the Commission.

  
Donald S. Clark  
Secretary

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<sup>35</sup> *Id.*, Att. 1, Ex. A, at 7.

<sup>36</sup> *Carolina Food Processors, Inc.*, 81 F.3d at 513-14.

# **EXHIBIT C**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In re

Subpoena Duces Tecum  
dated February 9, 2012

§  
§  
§  
§  
§  
§  
§  
§

File No 111-0163, Google Inc.

**Declaration of Gregory S. C. Huffman**

1. My name is Gregory S. C. Huffman. I am an attorney at Thompson & Knight LLP and have been representing Samsung Telecommunications America, LLC (“STA”) in connection with the subpoena *duces tecum* issued to STA by the Federal Trade Commission (“FTC”), dated February 9, 2012. I am familiar with and have personal knowledge of STA’s efforts to respond to the subpoena.

2. Attached to this declaration are true and correct copies of emails dated May 3, 2012, May 18, 2012, and June 22, 2012 between myself and FTC staff. Portions of these emails consisting of a link and password to a secure website where documents were uploaded have been redacted.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 26, 2012, in Dallas, Texas.



\_\_\_\_\_  
Gregory S. C. Huffman

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**From:** Huffman, Gregory  
**Sent:** Thursday, May 03, 2012 4:50 PM  
**To:** Westman-Cherry, Melissa  
**Cc:** Melman, Leslie R.; Kappler, Burke; Green, Geoffrey; Nagle, Jennifer  
**Subject:** RE: Google Inc., FTC File No. 111-0163

CONFIDENTIAL

Melissa, in response to the subpoena served by the FTC on Samsung Telecommunications America, LLC ("STA") in connection with the above referenced investigation of Google, r

**REDACTED**

6/26/2012

**REDACTED**

I still think a phased approach makes sense. You now have in hand a large number of documents as to the  
I believe that a reasonable approach on the

therefor. I assume that these documents would cover much of the intended scope of the investigation.

I welcome your thoughts.

Regards,

*Greg*

---

**From:** Westman-Cherry, Melissa [mailto:MWESTMAN@ftc.gov]  
**Sent:** Friday, April 27, 2012 3:11 PM  
**To:** Huffman, Gregory  
**Cc:** Melman, Leslie R.; Kappler, Burke; Green, Geoffrey; Nagle, Jennifer  
**Subject:** Google Inc., FTC File No. 111-0163

Dear Greg,

Please see the attached correspondence.

Very truly yours,  
Melissa

Melissa Westman-Cherry, Esq.  
Anticompetitive Practices Division  
U.S. Federal Trade Commission  
202-326-2338  
[mwestman@ftc.gov](mailto:mwestman@ftc.gov)

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**From:** Huffman, Gregory  
**Sent:** Friday, May 18, 2012 3:51 PM  
**To:** Westman-Cherry, Melissa; Kappler, Burke  
**Subject:** Samsung Telecommunications America LLC

CONFIDENTIAL

I'm just following up on my May 3rd email to see if you have any comments or suggestions.

Thanks,

*Greg*

Gregory Huffman  
Thompson & Knight LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201-2533  
214-969-1144 ofc  
[gregory.huffman@tklaw.com](mailto:gregory.huffman@tklaw.com)

6/26/2012



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**From:** Huffman, Gregory  
**Sent:** Friday, June 22, 2012 3:51 PM  
**To:** Melissa Westman-Cherry (mwestman@ftc.gov)  
**Cc:** Kappler, Burke  
**Subject:** RE: Google Inc., FTC File No. 111-0163

CONFIDENTIAL

Melissa, in response to the subpoena served by the FTC on Samsung Telecommunications America, LLC ("STA") in connection with the above referenced investigation of Google,

**REDACTED**

**REDACTED**

If you have any specific requests you wish us to address, please let me know. STA is willing reasonably to produce further documents if it is provided more specific guidance.

Regards,

6/22/2012

*Greg*

Gregory Huffinan  
Thompson & Knight LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201-2533  
214-969-1144 ofc  
[gregory.huffinan@tklaw.com](mailto:gregory.huffinan@tklaw.com)

6/22/2012

# **EXHIBIT D**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In re §  
§  
§  
Subpoena Duces Tecum §  
dated February 9, 2012 § File No 111-0163, Google Inc.  
§  
§  
§

**Declaration of Tim Sheppard**

1. My name is Tim Sheppard. I am Vice President, Finance and Operations at Samsung Telecommunications America, LLC (“STA”). I am familiar with and have personal knowledge of the facts set forth in this declaration.

2. I understand that the Federal Trade Commission (“FTC”) is conducting an investigation of Google’s competitive activities in online or mobile search, search advertising, or Internet-related goods or services, and that in the course of this investigation the FTC has issued a subpoena to STA.

3. STA sells mobile devices which may include systems and applications that consumers can use for mobile searching, for Internet-related goods and services, and on which advertising can be received.

**REDACTED**

4. STA has been attempting to comply with the subpoena and has already produced to the FTC. However, collecting the

full range of documents which could be read to be called for by the subpoena (under the unclarified specifications) would impose an undue and heavy burden on STA and would result in a severe disruption of its normal business operations.

5. For example, the subpoena requests “all” documents relating to STA’s “business strategy” for placing the Android system on mobile devices or for pre-loading any Google products or services on mobile devices. The term “business strategy” is not specifically defined, and this is problematic because STA sells hundreds of different types of mobile devices and it is continually engaged in the process of considering, planning for, developing, troubleshooting, and implementing the placement of operating systems and specific applications (including both Google and Google-competitor applications) on its devices, and then marketing and selling the devices. The undefined request for “business strategy” documents is impossibly vague. Almost any document generated during the course of this business could be read to at least “relate” to STA’s business of developing and then marketing and selling mobile devices that are pre-loaded with operating systems and applications. That is STA’s business. Therefore, the request for “business strategy” documents, as described in the subpoena, could be read to describe a massively broad swath of the documents that STA routinely generates in the course of its day-to-day business which would undoubtedly have no relevance to or bearing on the activities of Google.

6. The subpoena’s request for “all” documents relating to STA’s “consideration, development, or use” of any product or service that “competes” with a Google product or service on an Android device is problematic for the same reasons. This request does not allow STA to identify the requested documents with any reasonable particularity, but instead could be read to describe a massively broad swath of the documents that STA routinely generates in the course of

its day-to-day business which would undoubtedly have no relevance to or bearing on the activities of Google.

7. If the subpoena, in asking for “all agreements,” seeks understandings beyond those in written formal contracts, those requests could be read to describe a massively broad swath of the documents that STA routinely generates in the course of its day-to-day business, again which would undoubtedly have no relevance to or bearing on the activities of Google.

8. Complying with the subpoena’s requests for documents relating to “business strategy,” “consideration, development, or use,” and “all agreements” would be an undue burden and seriously impair and unduly disrupt the normal operations of STA in at least three ways.

**REDACTED**

9.

Because of the way the specifications are written, the vast majority of STA employees could conceivably be interpreted to have documents that at least “relate” to some aspect of STA’s “business strategy,” “consideration, development, or use” of products or services that could compete with a Google product or service, and understandings beyond those set forth in written formal contracts. Requiring all these employees to suspend

their normal business activities in order to review their documents (including electronic documents in emails and elsewhere) in order to comply with the subpoena would bring those business activities to a halt.

10. Third, the volume of documents that could be read to be encompassed in the undefined requests in the subpoenas undoubtedly number in the millions. The time for STA personnel or lawyers to review such documents would be in the millions of dollars. How many millions of dollars would depend on whatever interpretation is put on the various undefined terms in the subpoena.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 26, 2012, in Richardson, Texas.



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Tim Sheppard