

PILLSBURY WINTHROP SHAW
PITTMAN LLP

Bruce A. Ericson #76342
Jacob R. Sorensen #209134
Marc H. Axelbaum #209855
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120
Tel.: (415) 983-1000
Fax: (415) 983-1200
Email: bruce.ericson@pillsburylaw.com

*Attorneys for Defendants BellSouth Corp.,
AT&T Corp., and AT&T Inc.*

[Additional counsel listed on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

NATIONAL SECURITY AGENCY
TELECOMMUNICATIONS RECORDS
LITIGATION

This Document Relates To:

McMurray v. Verizon Communications,
N.D. Cal No. C 09-0131 VRW

MDL Dkt. No. 06-1791-VRW

**STIPULATION AND [PROPOSED]
ORDER REGARDING NEW CASE AND
NOTICE OF DISMISSAL OF
DEFENDANT CELLCO PARTNERSHIP**

[Civil L.R. 6-2, 7-1(5), 7-12]

Courtroom: 6, 17th Floor
Judge: Hon. Vaughn R. Walker

RECITALS

Transfer of *McMurray* to this MDL

A. On July 10, 2008, Plaintiffs Rev. Joe McMurray, *et al.*, filed a complaint against Defendants Verizon Communications Inc. and Cellco Partnership (collectively, the “Verizon Defendants”); BellSouth Corporation, AT&T Corporation, and AT&T Inc. (collectively, the “AT&T Defendants”); George W. Bush, “individually in his executive capacity and as representative of the United States of America,” and the National Security Agency (collectively, the “Government Defendants”) in the United States District Court for the Southern District of New York in Case No. 1:08-6264.

B. On August 12, 2008, the Judicial Panel on Multidistrict Litigation (“JPML”) issued a Conditional Transfer Order (“CTO-7”) transferring this action to the U.S. District Court for the Northern District of California as part of MDL-1791, *In re National Security Agency Telecommunications Records Litigation*. On September 9, 2008, the Plaintiffs filed a motion to vacate CTO-7. The JPML considered the Plaintiffs’ motion without oral argument at its November 20, 2008 sitting.

C. On Dec. 19, 2008, the JPML ordered that this action be included in MDL No. 1791 for coordinated or consolidated pretrial proceedings. The JPML’s transfer order was filed with this Court on Dec. 23, 2008.

Timing of Duty to Respond in *McMurray*

D. Prior to transfer, the Verizon Defendants, AT&T Corporation and AT&T Inc. were served with the *McMurray* complaint on November 12, 2008. Accordingly, the original deadline for the Verizon Defendants, AT&T Corporation and AT&T Inc. to answer or otherwise respond was December 2, 2008. *See* Fed. R. Civ. P. 12(a)(1).

E. Defendant BellSouth Corporation was served with the *McMurray* complaint on November 14, 2008. Accordingly, the original deadline for BellSouth Corporation to answer or otherwise respond to it was December 4, 2008. *See id.*

F. The Government Defendants were served with the *McMurray* complaint on November 14, 2008. Accordingly, the deadline for the Government Defendants to answer or otherwise respond to it is January 12, 2009. See Fed. R. Civ. P. 12(a)(2).

G. The Verizon and AT&T Defendants informally agreed with the *McMurray* Plaintiffs to an extension of those defendants' respective deadlines to respond to the complaint while they were negotiating this Stipulation.

H. The parties have not previously requested an adjournment or an extension of time to respond to the *McMurray* complaint from any court.

Disposition of *McMurray* Before This Court

I. The parties have not been able to reach complete agreement regarding the appropriate posture of the *McMurray* complaint in the MDL, and each side reserves its right to bring the matter to the Court's attention.

J. Plaintiffs are agreeable to staying the obligations of all of the Defendants to answer or otherwise respond to the *McMurray* complaint for 65 days from the date of this stipulation in the interim, that is, until March 19, 2009.

STIPULATION

Plaintiffs and Defendants hereby stipulate as follows:

1. The Plaintiffs, the Verizon Defendants, the AT&T Defendants, and the Government Defendants hereby stipulate that no Defendant need answer or otherwise respond to the complaint in this action until March 19, 2009.

2. By entering into this Stipulation, neither Plaintiffs nor Defendants waive any procedural or substantive defenses, rights or objections, including, but not limited to, the right to challenge personal jurisdiction over any particular Defendant.

DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiffs hereby dismiss

Defendant Cellco Partnership from this action without prejudice.

Dated: January 13, 2009.

CARL J. MAYER
MAYER LAW GROUP LLC
66 Witherspoon Street – Suite 414
Princeton, NJ 08542

BRUCE I. AFRAN
10 Braeburn Drive
Princeton, NJ 08540

STEVEN E. SCHWARZ
THE LAW OFFICES OF STEVEN E. SCHWARZ
2461 W. Foster Ave., #1W
Chicago, IL 60625

By /s/ Bruce I. Afran

Bruce I. Afran

Attorneys for Plaintiffs

PILLSBURY WINTHROP SHAW PITTMAN LLP
BRUCE A. ERICSON
JACOB R. SORENSEN
MARC H. AXELBAUM
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120-7880

SIDLEY AUSTIN LLP
DAVID W. CARPENTER
DAVID L. LAWSON
BRADFORD A. BERENSON
EDWARD R. McNICHOLAS
1501 K Street, N.W.
Washington, D.C. 20005

By /s/ Marc H. Axelbaum

Marc H. Axelbaum

*Attorneys for Defendants BellSouth Corp.,
AT&T Corp., and AT&T Inc.*

WILMER CUTLER PICKERING HALE AND
DORR LLP
RANDOLPH D. MOSS (pro hac vice)
SAMIR C. JAIN # 181572
BRIAN M. BOYNTON # 222193
CATHERINE M.A. CARROLL (pro hac vice)
1875 Pennsylvania Ave, N.W.
Washington, DC 20006

Tel.: (202) 663-6000
Fax: (202) 663-6363
Email: randolph.moss@wilmerhale.com

MUNGER, TOLLES & OLSON LLP
HENRY WEISSMANN # 132418
SUSAN R. SZABO # 155315
AIMEE A. FEINBERG # 223309
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071
Tel.: (213) 683-9100
Fax: (213) 683-5150
Email: henry.weissmann@mto.com

By /s/ Randolph D. Moss
Randolph D. Moss
*Attorneys for Verizon Communications Inc. and
Cellco Partnership*

GREGORY G. KATSAS
Assistant Attorney General, Civil Division
JOHN C. O'QUINN
Deputy Assistant Attorney General
DOUGLAS N. LETTER
Terrorism Litigation Counsel
JOSEPH H. HUNT
Director, Federal Programs Branch
ANTHONY J. COPPOLINO
Special Litigation Counsel
ALEXANDER K. HAAS
PAUL G. FREEBORNE
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Rm. 6102
Washington, D.C. 20001
Tel.: (202) 514-4782
Fax: (202) 616-8460
Email: tony.coppolino@usdoj.gov

By /s/ Anthony J. Coppolino
Anthony J. Coppolino
Attorneys for the United States

DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, MARC H. AXELBAUM, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from each of the other signatories listed above.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on January 13, 2009, at San Francisco, California.

/s/ Marc H. Axelbaum
Marc H. Axelbaum

~~[PROPOSED]~~ ORDER

Pursuant to the foregoing Stipulation and Notice of Dismissal, and good cause appearing, IT IS HEREBY ORDERED that:

No party need answer or otherwise respond to the complaint in *McMurray v. Verizon Communications*, N.D. Cal No. C 09-0131 VRW, until March 19, 2009.

IT IS HEREBY FURTHER ORDERED that Defendant Cellco Partnership is dismissed from this action without prejudice.

PURSUANT TO STIPULATION AND NOTICE, IT IS SO ORDERED.

Dated: Jan 21, 2009.

