## IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR AN ORDER DIRECTING A PROVIDER OF ELECTRONIC COMMUNICATION SERVICE TO DISCLOSE RECORDS TO THE GOVERNMENT

No. 08-4227

## MOTION FOR PERMISSION TO FILE VOLUME II OF <u>THE APPENDIX UNDER SEAL</u>

AND NOW comes Appellee, by Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Robert L. Eberhardt, Assistant United States Attorney, and respectfully moves this Court for permission to file under seal Volume II of the Appellant's Appendix for the following reasons:

1. This appeal concerns an ex parte Application under 18 U.S.C. 2703 (d), which was filed under seal in the District Court.

2. Without revealing the contents of the Application, the Government can identify the documents as the redacted Application and affidavit that was provided to amici in the court below.

3. The Government's Brief relies on the Application.

4. Volume II of the Appendix which consists of the redacted Application, is being filed under seal simultaneously with this motion.

WHEREFORE, based on the foregoing and for reasons stated, the United States of America requests permission to file the requested document under seal.

Respectfully submitted,

MARY BETH BUCHANAN United States Attorney

/s/ Robert L. Eberhardt ROBERT L. EBERHARDT Assistant United States Attorney

## **CERTIFICATE OF SERVICE**

I hereby certify that the following are filing user and will be served electronically by the Notice of Docketing Activity:

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DATED: February 13, 2009