

1 PILLSBURY WINTHROP SHAW
PITTMAN LLP

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

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

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9 [Additional counsel listed on signature page]

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In re:
14 NATIONAL SECURITY AGENCY
15 TELECOMMUNICATIONS RECORDS
16 LITIGATION

MDL Dkt. No. 06-1791-VRW

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

17 This Document Relates To:
18 *McMurray v. Verizon Communications,*
19 N.D. Cal No. C 09-0131 VRW

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

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

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1 **RECITALS**

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3 **Transfer of McMurray to this MDL**

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

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

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

20 **Timing of Duty to Respond in McMurray**

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

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

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

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

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

9 **Disposition of *McMurray* Before This Court**

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

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

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17 **STIPULATION**

18 Plaintiffs and Defendants hereby stipulate as follows:

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

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

25
26 **DISMISSAL**

27 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiffs hereby dismiss
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1 Defendant Cellco Partnership from this action without prejudice.

2 Dated: January 13, 2009.

3 CARL J. MAYER
4 MAYER LAW GROUP LLC
5 66 Witherspoon Street – Suite 414
6 Princeton, NJ 08542

7 BRUCE I. AFRAN
8 10 Braeburn Drive
9 Princeton, NJ 08540

10 STEVEN E. SCHWARZ
11 THE LAW OFFICES OF STEVEN E. SCHWARZ
12 2461 W. Foster Ave., #1W
13 Chicago, IL 60625

14 By _____ /s/ Bruce I. Afran
15 Bruce I. Afran
16 *Attorneys for Plaintiffs*

17 PILLSBURY WINTHROP SHAW PITTMAN LLP
18 BRUCE A. ERICSON
19 JACOB R. SORENSEN
20 MARC H. AXELBAUM
21 50 Fremont Street
22 Post Office Box 7880
23 San Francisco, CA 94120-7880

24 SIDLEY AUSTIN LLP
25 DAVID W. CARPENTER
26 DAVID L. LAWSON
27 BRADFORD A. BERENSON
28 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

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~~[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.

