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 Cellco Partnership d/b/a Verizon Wireless

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

16 APPLE INC., a California corporation,
 17 Plaintiff,
 18 vs.
 19 SAMSUNG ELECTRONICS CO., LTD., a
 Korean business entity; SAMSUNG
 20 ELECTRONICS AMERICA, INC., a New
 York corporation; SAMSUNG
 21 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 22 Defendants.
 23

CASE NO. 11-CV-01846-LHK
**AMICUS CURIAE CELLCO
 PARTNERSHIP'S REPLY IN SUPPORT
 OF ITS MOTION FOR LEAVE TO FILE
 AN AMICUS CURIAE BRIEF**

Date: October 13, 2011
 Time: 1:30 pm
 Courtroom 8, 4th Floor
 Judge: Hon. Lucy H. Koh

1 Third-party Verizon Wireless moved for leave to file an *amicus* brief to inform the Court
2 of the potential adverse effects on the public interest of Apple’s proposed preliminary injunction.
3 Apple opposed that motion and, in the alternative, requested an opportunity to submit a
4 substantive response on October 6. Verizon Wireless takes no position on Apple’s request for a
5 response. Rather, Verizon Wireless’s only interest is to ensure that the Court is made aware of the
6 full impact that an injunction on Samsung’s next-generation devices would have on third parties
7 and U.S. consumers.

8 As Apple’s opposition admits, “Samsung’s own opposition briefing devoted little space” to
9 the public-interest issues relevant to a preliminary injunction motion. Apple’s Opp’n To
10 Cellco/Verizon Wireless’s Mot. For Leave to File Amicus Curiae Br., ECF No. 262 at 1 (Sept. 27,
11 2011) (“Opp’n”). Rather than count against Verizon Wireless’s motion for leave to file an *amicus*
12 brief, this point strongly reinforces the importance of considering Verizon Wireless’s arguments
13 because they may not be adequately addressed by the parties. And as Apple’s opposition states,
14 Verizon Wireless “‘uniquely’ possesses factual information that supports its positions.” *Id.* The
15 Court should have the benefit of that information in analyzing the harm to the public interest.¹ *See*
16 *Roper Corp. v. Litton Sys., Inc.*, 757 F.2d 1266, 1269 n.2 (Fed. Cir. 1985) (requiring that each
17 factor for a preliminary injunction be considered). Apple’s arguments to the contrary lack merit.

18 Apple first argues the “Federal Rules of Civil Procedure do not provide for a non-party’s
19 submission of *amicus* briefs in district courts.” Opp’n at 1. But this Court has not only allowed
20 *amicus* briefs, it has held repeatedly that leave to file *amicus* briefs is freely granted. *See, e.g.*,
21 *Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D.
22 Cal. 2003) (“District courts frequently welcome *amicus* briefs from non-parties concerning legal
23 issues that have potential ramifications beyond the parties directly involved or if the *amicus* has
24 unique information or perspective that can help the court beyond the help that the lawyers for the

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26 ¹ For the same reasons, Verizon Wireless supports *amicus curiae* T-Mobile USA, Inc.’s
27 separate motion for leave to file a brief in this case. *See* Mot. For Leave to File Br. of *Amicus*
28 *Curiae* T-Mobile USA, Inc., ECF No. 263 (Sept. 28, 2011).

1 parties are able to provide.”) (internal quotation marks omitted); *NGV Gaming, Ltd. v. Upstream*
2 *Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (same); *Infinion Techs. N. Am.*
3 *Corp. v. Mosaid Techs., Inc.*, C 02-5772 JFRS, 2006 WL 3050849, at *3 (N.D. Cal. Oct. 23, 2006)
4 (same).

5 Apple next argues that Verizon Wireless’s brief should have complied with Federal Rule
6 of Appellate Procedure 29(e), which requires an *amicus* brief to be filed within 7 days of the
7 principal brief that it supports. Opp’n at 1. But this case presents an entirely different situation
8 than an appellate case. Appellate briefs are publicly available,² enabling potential *amici* to review
9 and decide whether to file a brief within those 7 days. In this case, Samsung lodged its
10 preliminary injunction opposition under seal. *See* Samsung’s Stipulated Administrative Mot. To
11 File Under Seal, ECF No. 175 (Aug. 22, 2011). Apple has filed a declaration in support of
12 keeping Samsung’s brief confidential. *See* Decl. of Cyndi Wheeler, ECF No. 194 (Aug. 30,
13 2011). Thus, Verizon Wireless has never been able to review Samsung’s opposition brief. It
14 would make no sense to impose a deadline based on the filing of a brief that Verizon Wireless
15 cannot read. In any event, the schedule of briefing before appellate courts has little applicability to
16 a compressed preliminary injunction briefing schedule.

17 Finally, Apple claims that it is prejudiced because it would need discovery to respond to
18 Verizon Wireless’s brief. *See* Opp’n at 1. But Verizon Wireless relied solely on publicly
19 available information in support of its brief. Additionally, Apple was provided with a version of
20 the *amicus* brief as early as September 9, 2011. It is unclear what discovery Apple would need to
21 respond to publicly available information that it has known about for weeks.

22 In sum, Verizon Wireless respectfully submits that its *amicus* brief may aid the Court in
23 considering the effect Apple’s proposed injunction will have on the U.S. economy and millions of
24 consumers. Verizon Wireless’s request should be granted.

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26 ² While a party may keep information confidential in appellate briefs, a redacted public version
27 must be concurrently filed with the confidential brief. *See* Fed. Cir. Rule 28(d)(2). A redacted
28 version of Samsung’s opposition brief has not been filed in this case.

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September 29, 2011

/s Melinda M. Morton

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