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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

	)	MDL NO. 06-1791 VRW
	)	
IN RE:	)	<b>VERIZON'S ADMINISTRATIVE</b>
	)	<b>MOTION TO EXCEED OTHERWISE</b>
NATIONAL SECURITY AGENCY	)	<b>APPLICABLE PAGE LIMITS IN ITS</b>
TELECOMMUNICATIONS	)	<b>MOTION TO DISMISS PLAINTIFFS'</b>
RECORDS LITIGATION	)	<b>MASTER CONSOLIDATED COMPLAINT</b>
	)	
This Document Relates To:	)	<b>[Civ. L.R. 7-11]</b>
	)	
ALL CASES	)	Filed concurrently:
	)	
	)	1. Declaration of John A. Rogovin
	)	
	)	

1 Pursuant to Civil Local Rule 7-11, Verizon<sup>1/</sup> respectfully moves for leave to exceed  
2 otherwise applicable page limitations for its brief in support of its Motion To Dismiss Plaintiffs’  
3 Master Consolidated Complaint (“Motion To Dismiss”).

4 The Master Complaint is sprawling in scope. It seeks many billions of dollars in statutory  
5 damages, and is comprised of 10 claims, many of which include numerous subclaims under federal  
6 statutes and the Constitution, as well as under the consumer protection and surveillance laws of all  
7 50 states. Plaintiffs’ claims are not only broad, but their subject matter—alleged surveillance to  
8 protect the nation against terrorist attacks—concerns public policy and legal issues of the highest  
9 order.

10 Verizon requires a minimum of 95 pages to present the reasons that the Master Complaint  
11 should be dismissed. Verizon emphasizes that its motion will address arguments not previously  
12 presented to the Court by AT&T or the government. Only a portion of its brief (approximately 15  
13 pages) will address the state-secrets doctrine, and then only to address points that were not fully  
14 developed in the *Hepting* case. The major portion of Verizon’s brief (approximately 80 pages) will  
15 set forth other grounds for dismissal, not raised in *Hepting*, which involve extremely important,  
16 complex, and novel issues of constitutional law and statutory interpretation. Absent the requested  
17 extension, Verizon would be unable to present all of these grounds completely. Verizon recognizes  
18 that this is an unusual request, but this is an extraordinary case and this request is necessary to  
19 permit Verizon the opportunity fully to present the threshold issues.

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22 <sup>1/</sup> “Verizon” refers to Verizon Northwest Inc., Verizon Maryland Inc., MCI Communications  
23 Services, Inc., Cellco Partnership, and Verizon Wireless (VAW) LLC. Verizon Communications  
24 Inc., Verizon Global Networks Inc., MCI, LLC, and Verizon Wireless Services LLC intend to file a  
25 separate motion to dismiss for lack of personal jurisdiction and thus do not join in this motion.  
26 Several cases consolidated in this proceeding purport to name Verizon Wireless, LLC or MCI  
27 WorldCom Advanced Networks, LLC as defendants, but no such entities exist. Additional Verizon  
28 entities are mentioned in Plaintiffs’ Master Consolidated Complaint Against MCI Defendants and  
Verizon Defendants (MDL Dkt. No. 125) (“Master Consolidated Complaint”), but Plaintiffs have  
taken the position that the master complaint is solely an “administrative device” that is not “intended  
to change the rights of the parties” (Master Consol. Compl. ¶ 2), and have not amended the  
underlying complaints to add the newly named entities or served the newly named entities.

1 Verizon sought but was unable to obtain the consent of Plaintiffs to this motion. *See* Decl. of  
2 John A. Rogovin in Support of Verizon’s Administrative Motion To Exceed Otherwise Applicable  
3 Page Limitations in its Motion To Dismiss Plaintiffs’ Master Consolidated Complaint ¶ 3.

4  
5 **ARGUMENT**

6 The majority of Verizon’s brief will address the reasons that the Master Complaint must be  
7 dismissed for failure to state a claim. Neither AT&T nor the government briefed these issues in  
8 *Hepting*. Many of the arguments Verizon intends to raise will present significant questions of  
9 constitutional and statutory interpretation raised by this unique case that courts previously have not  
10 had occasion to address.

11 For example, Verizon intends to show that if the Stored Communications Act (“SCA”) were  
12 construed as prohibiting Verizon from communicating truthful information to the Government for  
13 the purpose of assisting the government in protecting the country from terrorist attack, the Act would  
14 violate Verizon’s rights under the free speech and petition clauses of the First Amendment. Verizon  
15 will also explain why Article II and separation-of-powers principles require that the SCA be  
16 interpreted not to restrict the disclosure of call records for foreign intelligence and national security  
17 purposes. Verizon will demonstrate why the SCA can and must be construed not to apply to the  
18 communications alleged in the Master Complaint, which do not constitute a “divulge[nce]” of  
19 records, and which would have been authorized by the existence of a serious “emergency” and the  
20 protection of the “rights or property” of the provider, among other reasons. It also intends to address  
21 (among other things) the proper sphere of state authority in national security matters, the merits of  
22 Plaintiffs’ “consumer protection” claims, the scope and application of Title III, the Foreign  
23 Intelligence Surveillance Act, and sections 605 and 222 of the Communications Act.

24 Verizon will also argue that the Government’s anticipated assertion of the state-secrets  
25 privilege requires dismissal of all claims against Verizon. Verizon is mindful of this Court’s prior  
26 rulings in *Hepting*, as well as the briefing that the Court will receive from the Government. Verizon  
27 will focus its state-secrets arguments on issues that were not the principal focus of briefing in the  
28 *Hepting* case. For example, Verizon intends to explain in detail why separation-of-powers concerns

1 and other reasons require that the Court make a prospective judgment *now* as to whether the state-  
2 secrets privilege will prevent Plaintiffs from establishing a prima facie case and/or deprive Verizon  
3 of evidence that would be relevant to its ability to defend itself.

4 In light of the broad and complicated claims brought by Plaintiffs, and Verizon's intention to  
5 brief a broad range of threshold issues of this important case, Verizon requests that it be granted an  
6 extended page limit. Verizon does not make this request lightly and will endeavor to address the  
7 many substantial issues presented by this extraordinary case as succinctly as possible. We  
8 respectfully submit that the proposed number of pages is necessary for Verizon to defend itself  
9 adequately in this matter and to place a number of the central issues before the Court.

10 **CONCLUSION**

11 For the foregoing reasons, Verizon respectfully asks that the Court grant Verizon leave to file  
12 a brief in support of its consolidated Motion To Dismiss not to exceed 95 pages in length.

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14 Dated: March 19, 2007

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22 By: /s/ John A. Rogovin

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