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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 In re:

18 NATIONAL SECURITY AGENCY
19 TELECOMMUNICATIONS RECORDS
20 LITIGATION

21 This Document Relates To:

22 *Hepting, et al. v. AT&T Corp., et al.*,
23 No. C-06-0672-VRW

MDL Dkt. No. 06-1791-VRW

**AT&T'S RESPONSE TO
AUGUST 14, 2006 ORDER IN *HEPTING,*
ET AL. v. AT&T CORP., ET AL.
(DKT. NO. 366)**

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

1 Defendant **AT&T CORP.** and specially appearing Defendant **AT&T INC.**
2 (collectively, “AT&T”) file this response (“Response”) to the Court’s August 14, 2006
3 Order in *Hepting, et al. v. AT&T Corp., et al.*, No. C-06-0672-VRW (*Hepting* Dkt. 336),
4 which requested that the parties in that action apprise the Court of (i) recent developments
5 in the petitions by AT&T and the United States for permission to appeal under 28 U.S.C.
6 § 1292(b) and (ii) the status of transfers to MDL 06-1791 (N.D. Cal.).

7 **I. PETITIONS FOR PERMISSION TO APPEAL.**

8 On July 31, 2006, AT&T and the government filed in the Ninth Circuit petitions for
9 permission to appeal this Court’s July 20, 2006 Order (*Hepting* Dkt. No. 308) denying the
10 government’s and AT&T’s motions to dismiss. *See* App. Case Nos. 06-80109, 06-80110
11 (U.S.C.A. 9th Cir.). On August 9, 2006, Plaintiffs filed a response to the petitions, and
12 filed a cross-petition of their own, seeking permission to appeal this Court’s ruling that the
13 state secrets privilege prevented them from conducting discovery regarding AT&T’s
14 alleged provision of call record data to the government. As of the filing of this Response,
15 the Ninth Circuit has not acted on the pending petitions.

16 AT&T notes that an appeal from the August 17, 2006 Order of the Honorable Anna
17 Diggs Taylor granting a permanent injunction in *ACLU v. NSA*, Case No. 06-10204 (E.D.
18 Mich.) is pending in the U.S. Court of Appeals for the Sixth Circuit.¹ AT&T is not a
19 defendant in that case.

20 **II. TRANSFER OF CASES TO MDL 06-1791.**

21 **A. Initial Transfer Order.**

22 On August 8, 2006, the Judicial Panel on Multidistrict Litigation (“Panel”) issued an
23 Initial Transfer Order (“ITO”) transferring to this Court sixteen actions previously pending
24 outside the Northern District of California. The Panel subsequently vacated the ITO as to
25 one of the sixteen actions when it learned that the Honorable William J. Haynes, Jr.

26
27 ¹ The Honorable Garr M. King issued an Opinion and Order in *Al-Haramain Islamic*
28 *Foundation, Inc. v. Bush*, Case No. 06-274 (D. Ore.), on September 7, 2006. AT&T is
not a defendant in that case.

1 dismissed the action filed in the Middle District of Tennessee (*Kathryn Potter v. BellSouth*
 2 *Corp.*, M.D. Tenn. No. 3:06-469). MDL Dkt. No. 11. The Clerk of this Court has already
 3 received the files for fourteen of the remaining fifteen actions identified in the ITO:

Case Name	Original Filing Information	Clerk's Notice of Transfer	N.D. Cal. Case No.
<i>Bissit, et al. v. Verizon Commc'ns, Inc. et al.</i>	C.A. 1:06-0220 (D.R.I.)	MDL Dkt. No. 10-4	C 06-5066 VRW
<i>Conner, et al. v. AT&T Corp., et al.</i>	C.A. 1:06-0632 (E.D. Cal.)	MDL Dkt. No. 32-1	C 06-5576 VRW
<i>Dolberg v. AT&T Corp.</i>	C.A. 9:06-0078 (D. Mont.)	MDL Dkt. No. 12-3	C 06-5269 VRW
<i>Fuller v. Verizon Commc'ns, Inc., et al.</i>	C.A. 9:06-0077 (D. Mont.)	MDL Dkt. No. 12-1	C 06-5267 VRW
<i>Harrington, et al. v. AT&T Inc.</i>	C.A. 1:06-0374 (W.D. Tex.)	MDL Dkt. No. 26	C 06-5452 VRW
<i>Herron, et al. v. Verizon Global Networks, Inc., et al.</i>	C.A. 2:06-2491 (E.D. La.)	MDL Dkt. No. 16-3	C 06-5343 VRW
<i>Hines, et al. v. Verizon Northwest, Inc., et al.</i>	C.A. 3:06-0694 (D. Or.)	MDL Dkt. No. 16-2	C 06-5341 VRW
<i>Mahoney v. AT&T Commc'ns, Inc., et al.</i>	C.A. 1:06-0223 (D.R.I.)	MDL Dkt. No. 10-3	C 06-5065 VRW
<i>Mahoney v. Verizon Commc'ns, Inc., et al.</i>	C.A. 1:06-0224 (D.R.I.)	MDL Dkt. No. 10-2	C 06-5064 VRW
<i>Marck, et al. v. Verizon Commc'ns, Inc. et al.</i>	C.A. 2:06-2455 (E.D.N.Y.)	MDL Dkt. No. 10-1	C 06-5063 VRW
<i>Schwarz et al. v. AT&T Corp. et al.</i>	C.A. 1:06-2680 (N.D. Ill.)	MDL Dkt. No. 27	C 06-2680 VRW

Case Name	Original Filing Information	Clerk's Notice of Transfer	N.D. Cal. Case No.
<i>Souder v. AT&T Corp., et al.</i>	C.A. 3:06-1058 (S.D. Cal.)	MDL Dkt. No. 10-5	C 06-1058 VRW
<i>Terkel, et al. v. AT&T Inc.</i>	C.A. 1:06-2937 (N.D. Ill.)	MDL Dkt. No. 16-1	C 06-5340 VRW
<i>Trevino, et al. v. AT&T Corp., et al.</i>	C.A. 2:06-0209 (S.D. Tex.)	MDL Dkt. No. 12-2	C 06-5268 VRW

The one remaining case transferred pursuant to the ITO for which the Clerk of this Court has not yet received the case files is *Carl J. Mayer, et al. v. Verizon Commc'ns, Inc., et al.*, C.A. No 1:06-3650 (S.D.N.Y.).

B. Related Case Consolidation.

In addition to the actions filed outside the Northern District of California that have been or soon will be transferred to MDL 06-1791 pursuant to the ITO, the Court recently consolidated into MDL 06-1791 four actions over which it has presided since before the issuance of the ITO: *Roe, et al. v. AT&T Corp., et al.*, No. C-06-3467 VRW; *Riordan, et al. v. Verizon Commc'ns, Inc. et al.*, No. C-06-3574 VRW; *Spielfogel-Landis v. MCI, LLC*, No. C-06-4221 VRW; and *Campbell, et al. v. AT&T Commc'ns of Cal., et al.*, No. C-06-3596 VRW.

C. Conditional Transfer Orders.

On August 31, 2006, the Panel issued a Conditional Transfer Order (“First CTO,” attached hereto as Exhibit A) conditionally transferring to this Court twenty-one “tag-along” actions that the Panel determined have “questions of fact common to the actions previously transferred” to this Court.² The plaintiffs identified in the First CTO had until

² The Panel vacated the First CTO as to an action filed in the District of Nebraska (*Tyler v. AT&T, Inc. et al.*, D. Neb. No. 8:06-523) after the Honorable Lyle E. Strom dismissed the case. A copy of the Panel’s Order striking *Tyler* from the First CTO is attached hereto as Exhibit B. Plaintiff filed an appeal of the dismissal in the Eighth Circuit, although transmission of the notice to that court has been delayed in light of plaintiff’s failure to comply with the Prison Litigation Reform Act, 28 U.S.C. § 1915(b).

1 today, September 15, 2006, to file oppositions to thereto. As of the time the JMPL Clerk's
2 Office closed today, the plaintiffs in four of the twenty actions subject to the First CTO had
3 filed oppositions: *Mink v. AT&T Commc'ns, et al.*, C.A. 4:06-1113 (E.D. Mo.), *Shubert, et*
4 *al. v. Bush, et al.*, C.A. 1:06-2282 (E.D.N.Y.), *Center for Constitutional Rights, et al. v.*
5 *Bush, et al.*, C.A. 1:06-313 (S.D.N.Y.), and *Al-Haramain Islamic Foundation, Inc., et al. v.*
6 *Bush, et al.*, 3:06-274 (D. Or.).

7 On September 11, 2006, the Panel issued a Second Conditional Transfer Order
8 ("Second CTO," attached hereto as Exhibit C) conditionally transferring to this Court one
9 tag-along action that the Panel determined has "questions of fact common to the actions
10 previously transferred" to this Court. The plaintiffs in that action, *Bready, et al. v. Verizon*
11 *Maryland, Inc.*, C.A. 1:06-2185, have until September 26, 2006 to file an opposition to the
12 Second CTO.

13 **D. Additional Tag-Along Actions.**

14 In addition to the tag-along actions subject to the conditional transfer orders, AT&T
15 recently notified the Panel of five potential tag-along actions involving state governmental
16 entities that may be subject to a future transfer order. See Letter from Bradford A.
17 Berenson, Sidley Austin LLP, to Jeffrey N. Lüthi, Clerk of the Panel, Judicial Panel on
18 Multidistrict Litigation (Sept. 8, 2006) (attached hereto as Exhibit D). As of the filing of
19 this Response, no orders have issued with respect to these recently tagged actions.

20 Based on the cases currently filed, AT&T believes that all cases related to MDL 06-
21 1791 and subject to the Panel's jurisdiction have been identified,³ and that future
22 conditional transfer orders will address the transfer of all actions that should be a part of the
23 MDL.

24 **III. CONCLUSION.**

25 *Appeals:* The Ninth Circuit has yet to act on the parties' cross-petitions. An appeal

26 _____
27 ³ AT&T is aware of another prisoner *pro se* action filed in a Nebraska state court. AT&T
28 will remove that action to federal court and present it to the Panel as a tag-along action
once it is removed.

