

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST FLAGG, as Next Friend of
JONATHAN BOND, a Minor,

Plaintiffs,

Case No. 05-CV-74253

Hon. Gerald Rosen

Magistrate Judge R. Steven Whalen

v.

CITY OF DETROIT, a municipal corporation;
DETROIT POLICE CHIEF ELLA BULLY-
CUMMINGS; DEPUTY DETROIT POLICE
CHIEF CARA BEST; JOHN DOE POLICE
OFFICERS 1-20; ASST. DEPUTY POLICE
CHIEF HAROLD CURETON; COMMANDER
CRAIG SCHWARTZ; POLICE LT. BILLY
JACKSON; MAYOR KWAME M. KILPATRICK,
CHRISTINE BEATTY, Jointly and Severally,

Defendants.

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**MOTION TO QUASH BY NON-PARTY
BELL INDUSTRIES, INC. D/B/A SKYTEL**

Non-Party Bell Industries, Inc., d/b/a SkyTel (“SkyTel”), by its attorneys, hereby moves to quash certain subpoenas issued in this matter pursuant to Fed. R. Civ. P. 45. In support of its motion, SkyTel states as follows:

1. Plaintiff served subpoenas duces tecum on SkyTel on or about February 1 and February 11, 2008.
2. The February 1 and 11, 2008 subpoenas to SkyTel were the subject of motions to quash filed by certain Defendants on February 8 and 20, 2008.
3. The Court issued an Order on March 20, 2008, granting in part and denying in part Defendants’ motions to quash.
4. Plaintiff sent a third subpoena duces tecum to SkyTel on or about April 21, 2008, but Plaintiff’s counsel informed SkyTel by e-mail on April 25, 2008 that SkyTel should

disregard the April 21 subpoena until service of same is effected on SkyTel. (Ex. B to Brief in Support.) Plaintiff has not served the April 21 subpoena on SkyTel.

5. On April 25, 2008, Defendant Christine Beatty filed a Motion to Preclude Discovery of Electronic Communications From SkyTel Based Upon the Federal Stored Communications Act (“Beatty’s Motion to Preclude”). Beatty’s Motion to Preclude seeks to quash Plaintiff’s February 1, February 11 and April 21 subpoenas to SkyTel.

6. On May 2, 2008, Defendant City of Detroit filed a Motion to Quash Subpoena/Motion to Preclude Discovery of Electronic Communications from SkyTel Based Upon the Federal Stored Communications Act (“the City’s Motion to Quash”). The City’s Motion to Quash relates only to the February 1 and February 11 subpoenas to SkyTel.

7. On May 6, 2008, the Court issued an Order Regarding Defendants’ Motions to Preclude Discovery of Electronic Communications. The May 6 Order denied Beatty’s Motion to Preclude regarding the non-content information sought in the April 21 subpoena to SkyTel. However, Plaintiff’s counsel has instructed SkyTel to disregard that subpoena. (Ex. B to Brief in Support.)

8. Certain Defendants have repeatedly challenged what person or entity can authorize SkyTel to produce electronic communications and have claimed that SkyTel may be exposed to civil claims for such production.

9. SkyTel’s interests in this Court are limited to following: (1) complying with any orders entered by the Court regarding SkyTel’s production in response to the subpoenas at issue; (2) avoiding civil claims based on such compliance; and (3) being reimbursed for its reasonable costs of compliance.

10. The Court has the authority to compel SkyTel's compliance with the February 1 and February 11, 2008 subpoenas, or to quash those subpoenas.

11. The Court has the authority to compel Defendants to request from SkyTel documents responsive to the February 1 and February 11, 2008 subpoenas.

WHEREFORE, for all of the foregoing reasons and those stated in the Brief in Support of this Motion, Non-Party Bell Industries, Inc., d/b/a SkyTel respectfully requests that the Court (1) enter an Order quashing Plaintiff's February 1 and 11, 2008 subpoenas or compelling SkyTel to comply with the subpoenas or (2) enter an Order compelling Defendants to request and obtain the subpoenaed information from SkyTel. Should the Court order SkyTel to respond to the subpoenas, SkyTel should be awarded its reasonable costs of compliance.

Respectfully submitted,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

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Dated: May 13, 2008

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST FLAGG, as Next Friend of
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Plaintiffs,

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CITY OF DETROIT, a municipal corporation;
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**BRIEF IN SUPPORT OF MOTION TO QUASH
BY NON-PARTY BELL INDUSTRIES, INC. D/B/A SKYTEL**

Non-Party Bell Industries, Inc., d/b/a SkyTel (“SkyTel”), files this Brief in Support of its Motion to Quash.

Introduction

SkyTel’s intention in filing its Motion to Quash is to protect it from being sued for complying with this Court’s orders. Some Defendants mistakenly believe that the Stored Communications Act, 18 U.S.C. §§ 2701 et seq. (“SCA”), prohibits SkyTel from producing any information in response to a civil subpoena.

The SCA distinguishes between content and non-content information. This Court previously ruled that defendants’ objections to the disclosure of non-content information have no

basis under the SCA,¹ but the issue of whether content information can be released in response to a civil subpoena remains.

SkyTel has been threatened with litigation if it provides information in response to a civil subpoena.² Several parties with divergent interests in this and other cases are seeking information from SkyTel without regard to the consequences to SkyTel. In short, to the extent this Court finds that SkyTel should produce information in response to a subpoena, it should do so in a way that protects Sky Tel from facing civil claims for doing what the Court orders.

This Court can do so by ordering SkyTel to produce the requested information. Alternatively, the Court can avoid ruling upon the propriety of civil subpoenas under the SCA by ordering Defendants to request and obtain the requested information from SkyTel.

Finally, if the Court orders SkyTel to respond to the subpoenas at issue, SkyTel should be awarded its reasonable costs of compliance.

Factual and Procedural Background

1. The Subpoenas

Plaintiff served a subpoena duces tecum on SkyTel on or about February 1, 2008, which seeks, in summary: (1) all contracts between SkyTel and the City of Detroit from 2002 to the present and (2) all text messages, e-mails, telephone calls and instant messages to or from thirty-four (34) individuals.

Plaintiff served a second subpoena duces tecum on SkyTel on or about February 11, 2008, which seeks, in summary: (1) all text messages, e-mails and instant messages to or from all City of Detroit employees between 1:30 a.m. and 5:30 a.m. on the morning of April 30, 2003

¹ *Jessup-Morgan v. America Online, Inc.*, 20 F. Supp. 2d 1105, 1108 (E.D. Mich. 1998) (explaining that the SCA generally permits disclosure of non-content information).
² Ex. A, March 12, 2008 Letter from Dan Webb to Wendy Mullins.

and (2) any information on the geographical location of the senders and recipients at the time of such messages.

Plaintiff sent a third subpoena duces tecum to SkyTel on or about April 21, 2008, which seeks: (1) a list of all PIN numbers for SkyTel pagers issued to the City of Detroit from August 1, 2002 to September 1, 2007; (2) the names associated with each PIN number and (3) the dates of use for all persons and/or PIN numbers identified in (1) and (2). The April 21 subpoena has a return date of May 19, 2008. However, Plaintiff's counsel informed SkyTel by e-mail on April 25, 2008 that the April 21 subpoena was sent to SkyTel only as a courtesy copy, and that SkyTel should disregard the subpoena until service of same is effected on SkyTel.³ As of the filing of this motion, Plaintiff has not served the April 21 subpoena on SkyTel.

2. The Motions to Quash

The February 1 and 11, 2008 subpoenas to SkyTel were the subject of the motions to quash filed by defendants on February 8 and 20, 2008. The Court issued an Order on March 20, 2008 granting in part and denying in part Defendants' motions to quash. The Court's March 20 Order limited the time period at issue in Plaintiff's February 1, 2008 subpoena and ordered Plaintiff to reduce the number of individuals whose communications are subject to that subpoena.

The Court also issued a separate Order on March 20, 2008 establishing a procedure for production of documents by SkyTel in response to the February 1 and 11 subpoenas (the "Order Establishing Protocol"). On April 30, 2008, Magistrate Judge Whalen issued a Notice of a May 14, 2008 Status Conference, at which the parties are to discuss the procedure relating to SkyTel's production pursuant to the February 1 and 11 subpoenas.

³ Ex. B.

On April 25, 2008, Defendant Christine Beatty filed a Motion to Preclude Discovery of Electronic Communications From SkyTel Based Upon the Federal Stored Communications Act (“Beatty’s Motion to Preclude”). Beatty’s Motion to Preclude seeks to quash Plaintiff’s February 1, February 11 and April 21 subpoenas to SkyTel. According to Defendant Beatty, most of the other Defendants have concurred in her Motion to Preclude. Defendant Mayor Kilpatrick filed a separate concurrence with Defendant Beatty’s Motion to Preclude on April 30, 2008.

On May 2, 2008, Defendant City of Detroit filed a Motion to Quash Subpoena/Motion to Preclude Discovery of Electronic Communications from SkyTel Based Upon the Federal Stored Communications Act (“the City’s Motion to Quash”). In addition to arguing that the SCA precludes disclosure of the subpoenaed electronic communications, the City’s Motion to Quash argues that the electronic communications at issue are protected by the executive, deliberative process and/or evaluative process privileges. The City’s Motion to Quash relates only to the February 1 and February 11 subpoenas to SkyTel.

On May 6, 2008, the Court issued an Order Regarding Defendants’ Motions to Preclude Discovery of Electronic Communications. The May 6 Order denied Beatty’s Motion to Preclude regarding the non-content information sought in the April 21 subpoena to SkyTel. In the May 6 Order, the Court did not rule on Defendants’ arguments regarding the February 1 and February 11 subpoenas. The May 6 Order states in footnote 4: “In light of this ruling, there is no apparent barrier to SkyTel’s compliance with Plaintiff’s April 21, 2008 subpoena.” As noted above, however, Plaintiff has not served the April 21 subpoena on SkyTel, and Plaintiff’s counsel has instructed SkyTel to disregard that subpoena.

Argument

1. If the Subpoenas Are Not Quashed, SkyTel’s Compliance Should be Ordered.

SkyTel anticipates that Defendants will respond to this motion by making many of the same arguments asserted in Beatty’s Motion to Preclude and the City’s Motion to Quash. If the Court agrees with Defendants’ arguments, SkyTel will, of course, abide by an Order from the Court quashing Plaintiff’s subpoenas.

If the Court rejects Defendants’ arguments, in whole or part, the Court should enter an Order compelling SkyTel to respond to the subpoenas as the Court deems appropriate. See Bansal v. Microsoft Hotmail, 2008 U.S. App. LEXIS 5034 at *2-3 (3rd Cir. Mar. 7, 2008) (“the SCA exempts all parties acting pursuant to a court order from liability”).⁴

Although the SCA does not specifically address a court’s authority to compel a provider of electronic communication service to comply with a civil subpoena, the defenses to liability under the SCA suggest that a court does have such authority. See 18 U.S.C. § 2707(e) (“A good faith reliance on – (1) a court warrant or order . . . is a complete defense to any civil or criminal action brought under this chapter [18 U.S.C. §§ 2701 et seq.] or any other law.”) (emphasis added); 18 U.S.C. § 2703(e) (“No cause of action shall lie in any court against any provider of wire or electronic communication service . . . for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, statutory authorization, or certification under this chapter [18 U.S.C. §§ 2701 et seq.]”) (emphasis added)⁵; contra O’Grady, 139 Cal. App. 4th at 1442-47 (refusing to enforce civil subpoenas under the SCA).

⁴ Ex. C.

⁵ Although Section 2703 of the SCA focuses on disclosure to governmental entities, Section 2703(e) is specifically incorporated into Section 2707, which addresses potential liability for providers of electronic communication service. See 18 U.S.C. § 2707(a) (“Except as provided in section 2703(e), [providers may incur civil liability for violating the SCA]”) (emphasis added). The exception to liability in Section 2703(e) “for providing information, facilities, or assistance in accordance with the terms of a . . . subpoena” also implicitly authorizes providers to respond to civil subpoenas. See also McCready v. eBay, Inc., 453 F.3d 882, 892 (7th Cir. 2006) (“Good faith

2. Alternatively, Defendants Should be Ordered to Obtain the Electronic Communications from SkyTel.

This Court can completely avoid the issue of the propriety of a civil subpoena under the SCA by ordering Defendants to request and obtain the information from SkyTel. The SCA expressly permits providers such as SkyTel to disclose electronic communications “with the lawful consent of the originator or an addressee or intended recipient of such communications, or the subscriber in the case of remote computing service.” 18 U.S.C. § 2702(b)(3).

Although it is a legal question for the Court to decide, it appears that SkyTel is a “remote computing service” within the meaning of the SCA regarding the electronic communications at issue. The SCA defines “remote computing service” as “the provision to the public of computer storage or processing services by means of an electronic communications system.” 18 U.S.C. § 2711(2). The most exhaustive judicial analysis of the term “remote computing service” has further clarified its meaning: “The storage is long-term, is not incidental to the transmission of the communication itself, and is not meant for backup protection but apparently as the single place where text messages, after they have been read, are archived for a permanent record-keeping mechanism.” Quon v. Arch Wireless Operating Co., Inc., 445 F. Supp.2d 1116, 1136 (C.D. Cal. 2006) (granting summary judgment to provider and other defendants on SCA claim). This description applies squarely to the electronic communications sought by Plaintiff’s subpoenas. As such, the subscriber can consent to the disclosure of the communications at issue, and the City of Detroit has admitted to this Court that it is the subscriber of the SkyTel service.⁶

Moreover, the remaining Defendants are “the originator or an addressee or intended

reliance on a subpoena is a complete defense to actions brought under the ECPA and SCA.”); contra O’Grady v. Superior Court of Santa Clara County, 139 Cal. App. 4th 1423, 1442-47 (6th Dist. 2006) (refusing to enforce civil subpoenas under the SCA), modified by 2006 Cal. App. LEXIS 934 (6th Dist. June 23, 2006).

⁶ The City’s Motion to Quash, p. 2, ¶ 3 and Brief in Support, pp. 1, 3 (Docket Entry 106).

recipient” with respect to electronic communications sent by them or to them, and thus can consent to the disclosure of such communications under 18 U.S.C. § 2702(b)(3). Even if SkyTel were not providing a remote computing service, and even if the City were not the admitted subscriber, the remaining Defendants can consent to the disclosure of their own communications stored by SkyTel.

Courts have the authority to order parties to request electronic communications from their service providers. O’Grady, 139 Cal. App. 4th at 1446 (“Where a party to the communication is also a party to the litigation, it would seem within the power of a court to require his consent to disclosure on pain of discovery sanctions.”). Accordingly, if this Court finds that the information sought by the subpoenas should be produced, it should order Defendants to request and obtain that information from SkyTel.

Conclusion

For all of the foregoing reasons, SkyTel respectfully requests that the Court (1) enter an Order quashing Plaintiff’s February 1 and 11, 2008 subpoenas or compelling SkyTel to comply with the subpoenas or (2) enter an Order compelling Defendants to request and obtain the subpoenaed information from SkyTel. Should the Court order SkyTel to respond to the subpoenas, SkyTel should be awarded its reasonable costs of compliance.

Respectfully submitted,

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Dated: May 13, 2008

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March 12, 2008

VIA FACSIMILE & FEDERAL EXPRESS

Ms. Wendy Mullins
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Fax: (601) 292-8151

Re: **City of Detroit Records**

Dear Ms. Mullins:

We represent Mayor Kwame Kilpatrick. Based on recent newspaper reports, it is our understanding that SkyTel has been or may continue to be served with subpoenas seeking records related to text messages sent by or to our client.

As I am sure you are aware, our client has a reasonable expectation of privacy in these records and that privacy right is both statutorily and constitutionally protected. Specifically, the Stored Communications Act (18 USC § 2701, *et seq.*) (the "Act") governs any release of stored electronic communications and SkyTel's obligation to maintain the privacy of its customers is clearly set out in the Act. Title 18 USC § 2702(1) makes plain that "a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service." The language of the statute is clear that SkyTel is prohibited from disclosing these records unless such disclosure falls within one of the specifically enumerated exceptions to the prohibition against release. Those exceptions, however, do not include civil discovery. *See O'Grady v. Superior Court*, 139 Cal. App. 4th 123, 44 Cal. Rptr. 3d 72 (Cal. Ct. App. 2006). It is our understanding that SkyTel has breached its obligations under the Act by producing records in response to discovery in civil litigation involving the Mayor.

Moreover, we believe that the release of these records even in response to a government subpoena, which is governed by 18 USC § 2703, constitutionally requires notice to

WINSTON & STRAWN LLP

Ms. Wendy Mullins
March 12, 2008
Page 2

the customer. In fact, the Sixth Circuit Court of Appeals recently held Section 2703(b) of the Act unconstitutional to the extent it would allow disclosure of these records to a government entity absent a showing of probable cause or without prior notice to the customer. *See Warshak v. US*, 490 F.3d 455 (6th Cir. 2007) (opinion vacated, rehearing en banc granted).

In light of the foregoing, we respectfully request the following:

1. SkyTel's immediate assurance that going forward it will not produce records regarding the contents of any text messages sent by or to our client in response to civil discovery;
2. SkyTel will provide us with notice of any subpoena it receives or has received to date seeking such communications; and
3. Whether, and to whom, Skytel has divulged any such communications to date, including the date such information was divulged and a description of the information divulged.

Due to the urgency of this matter, we request that you provide us the requested assurance and information by the close of business on March 17, 2008. Our intent here is to be reasonable, and if we receive a good faith assurance from SkyTel on these issues, we will not pursue litigation. If you wish to discuss this matter, please do not hesitate to call. Thank you for your attention to this important matter.

Very truly yours,

Dan K Webb/ECS

Dan K. Webb

DKW/dr

EXHIBIT “B”

From: bobel@normanyatooma.com [mailto:bobel@normanyatooma.com]
Sent: Friday, April 25, 2008 1:38 PM
To: Jim Shelson (724 J.O.)
Cc: zawideh@normanyatooma.com; jmorganroth@morganrothlaw.com
Subject: Flagg v. City of Detroit, et al.

Dear Mr. Shelson,

On April 21, 2008 this office provided you with a courtesy copy of a proposed subpoena to your client Bell Industries, Inc. f/k/a SkyTel, Inc. Please note that this was only a courtesy copy and no production will be required unless and until the subpoena is actually served upon you. Therefore, please disregard the April 21, 2008 subpoena until formal service has been completed.

Thank you for your consideration,

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EXHIBIT “C”

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Citation: 2008 U.S. App. LEXIS 5034

*2008 U.S. App. LEXIS 5034, **

AKHIL BANSAL, Appellant v. MICROSOFT HOTMAIL

No. 07-4515

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

2008 U.S. App. LEXIS 5034

February 22, 2008, Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
March 7, 2008, Opinion Filed

NOTICE: NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING
PROCEDURE RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND
THE COURT.

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE
CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: [*1]

On Appeal from the United States District Court for the Eastern District of Pennsylvania.
(D.C. Civil No. 06-cv-04029). District Judge: Honorable Norma L. Shapiro.
United States v. Bansal, 2006 U.S. Dist. LEXIS 53475 (E.D. Pa., Aug. 1, 2006)

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff inmate appealed a judgment of the United States
District Court for the Eastern District of Pennsylvania dismissing pursuant to 28 U.S.C.S. §
1915(e)(2)(B)(i) his action against defendant communications service provider alleging
violations of the Stored Communications Act (SCA), the Omnibus Crime Control and Safe
Streets Act of 1968, the Pennsylvania Wiretapping Act, and violations of his rights to
privacy under common law.

OVERVIEW: On appeal, the court held that inmate's claim under the SCA was meritless.
The provider was excepted from liability under 18 U.S.C.S. § 2701 from the inmate's suit
because it was the communications service provider for his e-mail account. Further, as
evidenced by the attachments to the inmate's complaint, the provider's actions with
regards to his account were in compliance with a court order. Thus, his claim could not
succeed under 18 U.S.C.S. § 2707. Similarly, the inmate's claims under the Crime Control
Act could not succeed. Like the SCA, the Crime Control Act, 18 U.S.C.S. § 2511(2)(a)(ii),
exempted providers of electronic communication services from liability if they disclosed
information pursuant to a court order. Because the provider disclosed the contents of the
inmate's e-mails pursuant to a court order, it could not be liable under the statute.


OUTCOME: The court dismissed the inmate's appeal pursuant to 28 U.S.C.S. § 1915(e)(2)
(B)(I).


CORE TERMS: electronic communication, Control Act, email, pro se, civil damages, intentionally, authorization, meritless, provider, succeed, stored, exempts


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HN1  Where an appellant is proceeding in forma pauperis, the court of appeals will dismiss the appeal if it lacks an arguable basis in law or in fact. [More Like This Headnote](#)


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HN2  The Stored Communications Act (SCA) prohibits intentionally accessing without authorization a facility through which an electronic communication service is provided, or intentionally exceeding an authorization to access that facility, thereby obtaining access to an electronic communication while it is in electronic storage. 18 U.S.C.S. § 2701(a). It authorizes a private right of action for monetary damages under § 2707. However, § 2701(c) of the act exempts entities providing a wire or electronic communications service, and the SCA has been interpreted as exempting searches of stored electronic communications by the party providing the communications service. Furthermore, the SCA exempts all parties acting pursuant to a court order from liability. § 2707 (e). [More Like This Headnote](#)


[Civil Rights Law](#) > [Privacy Rights](#) > [Electronic Communications](#) 

[Communications Law](#) > [Privacy](#) > [Stored Communications Act](#) 

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HN3  Like the Stored Communications Act, the Omnibus Crime Control and Safe Streets Act of 1968 exempts providers of electronic communication services from liability if they have disclosed information pursuant to a court order. 18 U.S.C.S. § 2511 (2)(a)(ii). [More Like This Headnote](#)

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HN4  Where an appeal is meritless, the court of appeals will dismiss it pursuant to 28 U.S.C.S. § 1915(e)(2)(B)(I). [More Like This Headnote](#)

COUNSEL: AKHIL BANSAL, Appellant, Pro se, Schuylkill FCI, Minersville, PA.

JUDGES: Before: [AMBRO](#) , [FUENTES](#)  and [JORDAN](#) , Circuit Judges.

OPINION

PER CURIAM

Akhil Bansal is currently incarcerated at the Federal Detention Center in Philadelphia. In 2007, he filed a *pro se* lawsuit for civil damages against Microsoft  Hotmail alleging violations of the Stored Communications Act, 18 U.S.C. § 2701 et seq. ("SCA"), the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520 (the "Crime Control Act"), the Pennsylvania Wiretapping Act, 18 Pa.C.S. 5741 et seq., and violations of his rights

to privacy under common law. Proceeding *pro se* and *in forma pauperis* ("IFP"), Bansal appeals the District Court's dismissal of this action pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

The relevant facts are as follows. At some point, Bansal set up an e-mail account with Microsoft Hotmail. In 2006, Bansal was convicted in federal court of multiple counts related to his illegal, internet sales of pharmaceuticals. In the course of the criminal investigation, the government **[*2]** issued several subpoenas and warrants to Microsoft Hotmail, ordering it to divulge emails and furnish information regarding Bansal's account. Microsoft Hotmail complied pursuant to these court orders.

We have jurisdiction pursuant to 28 U.S.C. § 1291. **HN1** Because Bansal is proceeding IFP, we will dismiss his appeal if it "lacks an arguable basis in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989).

HN2 The SCA prohibits "intentionally access[ing] without authorization a facility through which an electronic communication service is provided; . . . or intentionally exceed[ing] an authorization to access that facility; . . . thereby obtain[ing] . . . access to . . . [an] electronic communication while it is in electronic storage" 18 U.S.C. § 2701(a). It authorizes a private right of action for monetary damages under § 2707. However, § 2701(c) of the act excepts "entit[ies] providing a wire or electronic communications service," and we have interpreted the act as exempting searches of stored electronic communications by the party providing the communications service. Fraser v. Nationwide Mutual Insurance Co., 352 F.3d 107, 115 (3d Cir. 2003). Furthermore, the SCA exempts all **[*3]** parties acting pursuant to a court order from liability. 18 U.S.C. § 2707(e).

Bansal's claim under the SCA is meritless. Microsoft Hotmail is excepted from liability under § 2701 from Bansal's suit, because it is the communications service provider for his email account. See Fraser, 352 F.3d at 115. Furthermore, as evidenced by the attachments to Bansal's complaint, Microsoft Hotmail's actions with regards to his account were in compliance with a court order. Thus, his claim cannot succeed. See 18 U.S.C. § 2707.

Similarly, Bansal's claims under the Crime Control Act cannot succeed. **HN3** Like the SCA, the Crime Control Act exempts "providers of . . . electronic communication services" from liability if they have disclosed information pursuant to a court order. 18 U.S.C. § 2511(2)(a)(ii); see also id. § 2520(d)(1) (the civil damages provision of the Crime Control Act relieves a party from liability if it acts in good faith compliance with a court order). Because Microsoft Hotmail disclosed the contents of Bansal's emails pursuant to a court order, it cannot be liable under the statute.

HN4 Because the appeal is meritless, we will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B)(I). Neitzke, 490 U.S. at 325.







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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST FLAGG, as Next Friend of
JONATHAN BOND, a Minor,

Plaintiffs,

Case No. 05-CV-74253
Hon. Gerald Rosen
Magistrate Judge R. Steven Whalen

v.

CITY OF DETROIT, a municipal corporation;
DETROIT POLICE CHIEF ELLA BULLY-
CUMMINGS; DEPUTY DETROIT POLICE
CHIEF CARA BEST; JOHN DOE POLICE
OFFICERS 1-20; ASST. DEPUTY POLICE
CHIEF HAROLD CURETON; COMMANDER
CRAIG SCHWARTZ; POLICE LT. BILLY
JACKSON; MAYOR KWAME M. KILPATRICK,
CHRISTINE BEATTY, Jointly and Severally,

Defendants.

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I hereby certify that on May 13, 2008, I electronically filed the foregoing Motion to Quash by Non-Party Bell Industries, Inc. d/b/a Skytel and this Certificate of Service with the Clerk of the Court using the ECF, which will send notification to the following:

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