

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Ernest Flagg,

**DEFENDANT CITY OF DETROIT's *SUPPLEMENTAL*
BRIEF IN SUPPORT OF ITS
MOTION TO PRECLUDE DISCOVERY OF
ELECTRONIC COMMUNICATIONS FROM SKYTEL BASED UPON THE
FEDERAL STORED COMMUNICATIONS ACT**

NOW COMES Defendant, CITY OF DETROIT, by and through its attorney, KRYSTAL

A. CRITTENDON, and for its *Supplemental Brief in Support of its Motion to Preclude Discovery of Electronic Communications from SkyTel Based Upon the Federal Stored Communications Act*, submits the following:

Procedural History

Plaintiff sought discovery of certain electronic communications or “text messages” from non-party, Bell Industries, Inc, f/k/a SkyTel, Inc., via subpoena. On May 2, 2008, Defendant City of Detroit filed a *Motion to Preclude Discovery of Electronic Communications from SkyTel Based Upon the Federal Stored Communications Act*. In that *Motion*, Defendant City argued that the City of Detroit and Bell Industries, Inc, f/k/a SkyTel, Inc. entered into a contract, wherein SkyTel provided text message devices to the City of Detroit for use by certain City of Detroit employees, appointees, elected officials and agents. The contract between the City of Detroit and Bell Industries, Inc, f/k/a SkyTel, Inc. was not attached to Defendant City’s *Motion*.

On May 6, 2008, this Honorable Court issued an *Order Regarding Defendants’ Motions to Preclude Discovery of Electronic Communications*, in which the Court ordered that within fourteen (14) days of the entry of that order, Defendant City “to file with the Court and serve upon Plaintiff copies of any and all contracts between the City of Detroit and SkyTel covering the period from August 1, 2002 to September 1, 2007, pursuant to which SkyTel issued text messaging devices for use by City employees and provided text messaging services to the City and its employees.”

After receipt of the Court's Order, defense counsel for the City of Detroit Law requested that the City of Detroit Purchasing Department conduct another search of its records to attempt to locate any records or documents related to a contract between the City of Detroit and Bell Industries, Inc, f/k/a SkyTel, Inc. After an extensive search, the Purchasing Department located the attached documents related to the subject contract. (See Exhibit(s) A - Contract Documents). For the reasons articulated in Defendant City of Detroit's previously-filed *Motion to Preclude Discovery of Electronic Communications from SkyTel Based Upon the Federal Stored Communications Act*, Defendant City submits that the Federal Stored Communication Act (the "SCA"), 18 U.S.C. § 2701 *et seq.* precludes the production of the requested electronic communications in the instant civil litigation.

WHEREFORE Defendant, **CITY OF DETROIT**, respectfully requests that this Honorable Court issue an Order, granting its **Motion to Preclude Discovery of Electronic Communications from SkyTel Based Upon the Federal Stored Communications Act**.

Respectfully submitted,

s/ Krystal A. Crittendon
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DATED: May 16, 2008

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2008, after unsuccessfully seeking concurrence in the foregoing *Supplemental Brief in Support of its Motion to Preclude Discovery of Electronic*

Communications from SkyTel Based Upon the Federal Stored Communications Act, I electronically filed the foregoing paper with the Clerk of the Court using the ECT system, which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: N/A.

Respectfully submitted,

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