

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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

Plaintiffs,

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.

Case No. 05-CV-74253

District Judge Gerald E. Rosen

Magistrate Judge R. Steven Whalen

**MOTION TO AMEND ORDER**

Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel (“SkyTel”), by its attorneys, hereby moves the Court to amend the September 5, 2008 Order [Docket #141] issued by Magistrate Judge Whalen regarding production of text messages by SkyTel. In support of its motion, SkyTel states as follows:

1. Following a status conference on September 4, 2008, Magistrate Judge Whalen issued an Order on September 5, 2008 regarding production of text messages by SkyTel (the “September 5 Order”).
2. The September 5 Order requires the following at pages 1-2:

On or before **September 8, 2008**, Plaintiff shall serve a Rule 34 Document Request on Defendant City of Detroit as to incoming or outgoing text messages or other communications, maintained by SkyTel on behalf of the City of Detroit, that

originated from or were received by *any* City of Detroit official or employee between 1:30 a.m. and 5:30 a.m. on the morning of April 30, 2003.

On or before **September 10, 2008**, Defendant City of Detroit shall forward the request to SkyTel, along with its written authorization to release said communications to the Court for *in camera* review.

On or before **September 20, 2008**, SkyTel shall forward three copies of said communications, in CD form, to the chambers of the Honorable Gerald E. Rosen, United States District Judge, Eastern District of Michigan, in a sealed envelope, for distribution to United States Magistrate Judge R. Steven Whalen and United States Magistrate Judge Michael J. Hluchaniuk, who will conduct an *in camera* review.

3. On September 9, 2008, counsel for SkyTel was informed by SkyTel that it would be overly burdensome for SkyTel to produce text messages originated from or received by text messaging devices issued to the City of Detroit between 1:30 a.m. and 5:30 a.m. on April 30, 2003, as required by the September 5 Order. The undue burden relates to limiting the production to messages sent or received between 1:30 a.m. and 5:30 a.m., which cannot be accomplished by electronic searches and sorting, but instead would require manual manipulation of hundreds of SkyTel records and would take weeks to accomplish.

4. It is not an undue burden for SkyTel to produce all text messages originated from or received by text messaging devices issued to the City of Detroit at any time on April 30, 2003.

5. As such, SkyTel seeks an amendment to the September 5 Order reflecting the following changes:

- a. In the first paragraph in Section A of the September 5 Order, change the last clause from “that originated from or were received by *any* City of Detroit official or employee between 1:30 a.m. and 5:30 a.m. on the morning of April 30, 2003” to “that originated from or were received by *any* City of Detroit official or employee on April 30, 2003.”

- b. In the second paragraph of Section A of the September 5 Order, change the deadline for Plaintiff to serve a Rule 34 Document Request on Defendant City of Detroit from September 8, 2008 to **September 12, 2008**.
- c. In the second paragraph of Section A of the September 5 Order, change the deadline for Defendant City of Detroit to forward the request and written authorization to release to SkyTel from September 10, 2008 to **September 15, 2008**.

6. SkyTel does not propose to change the deadline for its production of text messages, in CD form, to Judge Rosen's chambers, which would remain September 20, 2008, as set forth in the September 5 Order.

7. A proposed Order reflecting the above amendments is attached as Exhibit A.

8. SkyTel contacted all counsel of record by e-mail on September 10, 2008, seeking the parties' stipulation to its proposed amendments to the September 5 Order. The following parties have stipulated to the entry of the attached proposed Order: Plaintiff and Defendants City of Detroit, Bully-Cummings, Cureton, Best and Schwartz. As of the filing of this motion, SkyTel has not received stipulations or objections to the proposed Order from the remaining Defendants.

WHEREFORE, for all of the foregoing reasons, Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel respectfully requests that the Court enter the attached proposed Order amending Magistrate Whalen's September 5, 2008 Order [Docket #141].

Respectfully submitted,

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

By: /s/ David E. Plunkett

Thomas G. Plunkett (P18957)

David E. Plunkett (P66696)

Attorneys for Non-Party Velocita Wireless, LLC

f/k/a Bell Industries, Inc. d/b/a SkyTel

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(248) 642-0333

Dated: September 11, 2008

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**BRIEF IN SUPPORT OF MOTION TO AMEND ORDER**

Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel (“SkyTel”), by  
its attorneys, relies on the facts set for in their Motion to Amend Order.

Respectfully submitted,

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

By: /s/ David E. Plunkett

Thomas G. Plunkett (P18957)  
David E. Plunkett (P66696)  
Attorneys for Non-Party Velocita Wireless, LLC  
f/k/a Bell Industries, Inc. d/b/a SkyTel  
380 N. Old Woodward Avenue, Suite 300  
Birmingham, Michigan 48009  
(248) 642-0333

Dated: September 11, 2008

**CERTIFICATE OF SERVICE**

David E. Plunkett hereby certifies that on September 11, 2008 he served Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel’s Motion to Amend Order, Brief in Support of Motion to Amend Order and this Certificate of Service on behalf of Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel using the ECF system which will send notification to counsel of record.

Respectfully submitted,

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

By: /s/ David E. Plunkett  
Thomas G. Plunkett (P18957)  
David E. Plunkett (P66696)  
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Dated: September 11, 2008

# **EXHIBIT A**

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**ORDER**

Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel ("SkyTel")  
having filed a Motion to Amend Order and the Court being otherwise fully advised in the  
premises, it is hereby

ORDERED that the September 5, 2008 Order [Docket #141] by Magistrate Whalen  
regarding the procedure for production of text messages by Non-Party Velocita Wireless, LLC  
f/k/a Bell Industries, Inc. d/b/a SkyTel ("SkyTel") is hereby amended; and it is further

ORDERED that section A of the September 5 Order [Docket #141] shall be replaced by  
the following:

"On or before **September 12, 2008**, Plaintiff shall serve a Rule 34 Document Request on  
Defendant City of Detroit as to incoming or outgoing text messages or other communications,



maintained by SkyTel on behalf of the City of Detroit, that originated from or were received by *any* City of Detroit official or employee on April 30, 2003.

On or before **September 15, 2008**, Defendant City of Detroit shall forward the request to SkyTel, along with its written authorization to release said communications to the Court for *in camera* review.

On or before **September 20, 2008**, SkyTel shall forward three copies of said communications, in CD form, to the chambers of the Honorable Gerald E. Rosen, United States District Judge, Eastern District of Michigan, in a sealed envelope, for distribution to United States Magistrate Judge R. Steven Whalen and United States Magistrate Judge Michael J. Hluchaniuk, who will conduct an *in camera* review.”

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Honorable Gerald E. Rosen  
United States District Judge

Date: \_\_\_\_\_