

ELECTRONIC FRONTIER FOUNDATION

CINDY COHN (145997)

cindy@eff.org

LEE TIEN (148216)

tien@eff.org

KURT OPSAHL (191303)

kurt@eff.org

KEVIN S. BANKSTON (217026)

bankston@eff.org

CORYNNE MCSHERRY (221504)

corynne@eff.org

JAMES S. TYRE (083117)

jstyre@eff.org

454 Shotwell Street

San Francisco, CA 94110

Telephone: 415/436-9333

415/436-9993 (fax)

TRABER & VOORHEES

BERT VOORHEES (137623)

bv@tvlegal.com

THERESA M. TRABER (116305)

tmt@tvlegal.com

128 North Fair Oaks Avenue, Suite 204

Pasadena, CA 91103

Telephone: 626/585-9611

626/ 577-7079 (fax)

Attorneys for Plaintiffs

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS,)
CAROLYN JEWEL and ERIK KNUTZEN, on)
Behalf of Themselves and All Others Similarly)
Situating,)

Plaintiffs,)

vs.)

AT&T CORP., et al.)

Defendants.)

No.C-06-0672-VRW

CLASS ACTION

[PROPOSED] ORDER GRANTING
PRELIMINARY INJUNCTION

The Hon. Vaughn R. Walker, Chief Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 This matter came on for hearing before the Court on Plaintiffs' motion for a preliminary
2 injunction. Having given full consideration to all of Plaintiffs' papers, evidence, and the relevant
3 authorities, all of Defendants' responses thereto, and the oral presentations of counsel, and good
4 cause appearing, in accordance with Federal Rule of Civil Procedure 65(b), it is HEREBY
5 ORDERED as follows:

6 1. Plaintiffs' motion for preliminary injunction is GRANTED. Plaintiffs have
7 demonstrated: (i) a likelihood of success on the merits of their Title III and Fourth Amendment
8 claims, (ii) irreparable harm if they are not granted a preliminary injunction, (iii) the balance of
9 hardships tipping in their favor, (iv) and the public interest favors the interim relief sought in
10 their application, sufficient to merit and constitute good cause for the issuance of a Preliminary
11 Injunction Order as more particularly described herein.

12 2. Defendants, their officers, agents, servants, employees, attorneys, parent,
13 subsidiary or related entity, any person acting for, with, by, through or under them, and any
14 person in active concert or participation with them having actual notice of this Order by personal
15 service or otherwise, and each of them, shall be immediately preliminarily enjoined and
16 restrained during the pendency of this action from facilitating the interception, use, or disclosure
17 of its customers' communications by or to the United States Government except pursuant to a
18 court order or a legally valid certification by the Attorney General of the United States for short-
19 term, emergency circumstances and lasting no longer than 48 or 72 hours as specifically
20 provided in 18 U.S.C. §2511(2)(a)(ii) (permitting emergency surveillance under Title III and
21 FISA), 18 U.S.C. §2518(7) (Title III emergency surveillance for no more than 48 hours), and 50
22 U.S.C. §1805(f) (FISA emergency surveillance for no more than 72 hours).

23 3. Defendants shall file with the Court and serve upon Plaintiff's counsel within
24 thirty days of the entry of this Order of Preliminary Injunction an affidavit or declaration
25 attesting to and detailing Defendants' compliance with it.

26 4. No bond is required. The balance of hardships favors Plaintiffs, who are
27 experiencing harm to fundamental rights guaranteed them by the Constitution, while Defendants
28

1 do not face a likelihood of financial or other harm from complying with this injunction.
2 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003), *see also Barahona-Gomez v. Reno*,
3 167 F.3d 1228, 1237 (9th Cir. 1999).

4 * * *

5 **ORDER**

6 IT IS SO ORDERED.

7 DATED: _____

8 THE HONORABLE VAUGHN R. WALKER
9 CHIEF UNITED STATES DISTRICT JUDGE

T:\CasesSF\AT&T Privacy\Shared_Counsel\ProposedOrder-New.doc

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I hereby certify that on March 31, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via FedEx to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ REED R. KATHREIN
REED R. KATHREIN

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
100 Pine Street, 26th Floor
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

E-mail: ReedK@lerachlaw.com

Mailing Information for a Case 3:06-cv-00672-VRW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Kevin Stuart Bankston**
bankston@eff.org
- **Cindy Ann Cohn**
cindy@eff.org wendy@eff.org;barak@eff.org
- **Bruce A. Ericson**
bruce.ericson@pillsburylaw.com
- **Jeff D Friedman**
JFriedman@lerachlaw.com RebeccaG@lerachlaw.com
- **Eric A. Isaacson**
erici@lerachlaw.com jackiew@lerachlaw.com
- **Reed R. Kathrein**
reedk@lerachlaw.com e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com
- **Corynne McSherry**
corynne@eff.org
- **Maria V. Morris**
mariam@mwbhl.com e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com
- **Kurt Opsahl**
kurt@eff.org
- **Shana Eve Scarlett**
shanas@lerachlaw.com e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com
- **Theresa M. Traber, Esq**
tmt@tvlegal.com
- **James Samuel Tyre**
jstyre@jstyre.com jstyre@eff.org
- **Bert Voorhees**
bv@tvlegal.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Lee Tien

Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Lee Tien

Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110