



***EX PARTE APPLICATION***

**COME NOW** the Defendants in the above-captioned action and for their *Ex Parte* Motion pursuant to Local Rule 7-10 respectfully request that the hearing scheduled for April 1, 2009 and the related briefs in opposition to the United States' pending Motion for Summary Judgment (Doc. 536) be continued until after the Court has issued its ruling on the currently pending motion to dismiss or for summary judgment in the telecommunications cases brought by private plaintiffs in this MDL. (collectively referred to as the private plaintiff cases) (Doc. 468; Doc. 469). The Court heard oral arguments on the motion to dismiss or motion for summary judgment on December 2, 2008.

On December 23, 2008 the United States filed a Motion for Summary Judgment (Doc. 536) in the five cases in which the United States is a plaintiff (07-1242; 07-1323; 07-1324; 07-1326; 07-1396) and in 07-1187, in which case the United States is not a party (collectively referred to as the state cases). Because the United States is not a party to 07-1187, this case has proceeded along separate but parallel briefing and argument schedules (Doc 225).

The United States noticed its Motion for Summary Judgment to be heard on March 26, 2009. On January 5, 2009, a Clerk's Notice (Doc. 539) was issued, informing the parties that the hearing set for March 26, 2009 had been rescheduled for April 1, 2009 and advising the parties that any request for continuance be made in the form of an *ex parte* application in the event that all parties did not stipulate

to the continuance. The parties in this case were unable to reach a stipulation as to continuance.

Movants request that the Court continue the hearing on the United States' Motion for Summary Judgment until after the Court rules on the dispositive motion to dismiss or motion for summary judgment currently pending before it in the private plaintiff cases. Movants request this continuance because of the likelihood that issues decided by the Court in the private plaintiff cases will have a direct bearing on the issues anticipated to be raised in the state cases. Movants further request the continuance because it will benefit the Court and the parties to have the guidance of the Court's rulings on the pending motion before it becomes necessary for the states to respond to the United States' Motion for Summary Judgment. At the scheduling conference held on September 12, 2008, the United States indicated its preference for proceeding separately in the private plaintiff cases and in the state cases. (Doc. 512, p. 50, line 24). At that hearing, the Court also indicated a preference to proceed separately. (Doc. 512, p. 49 lines 18-21). Judicial economy will be best served by allowing the Court to first rule on the pending motion and for the parties to take the Court's ruling into consideration prior to briefing and arguing the United States' Motion for Summary Judgment in the state cases. Movants further state that no state intends to request that any action be taken and no state anticipates that any action will be taken in the

underlying state administrative proceedings while the United States' Motion for Summary Judgment is pending before this Court.

**WHEREFORE**, for the foregoing reasons, Movants respectfully request that this Court continue the hearing currently scheduled for April 1, 2009 until such time as the Court has issued its ruling on the motion to dismiss and motion for summary judgment currently pending in the private plaintiff telecommunications cases. Movants further request that no briefing be required on the United States' Motion for Summary Judgment until such time as the Court has issued its ruling on the motion currently pending in the private plaintiff telecommunications cases. Specifically, Movants request that they have until 30 days from the date of such ruling to oppose the United States' Motion for Summary Judgment and that the United States have 30 days from the date of such opposition to submit a reply.

Dated: 1-15-09

Respectfully submitted,

/s/ Peggy A. Whipple

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**DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B**

I, PEGGY A. WHIPPLE, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from each of the other signatories listed below.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on January 15, 2009, at Jefferson City, Missouri.

Respectfully submitted,

/s/ Peggy A. Whipple  
Peggy A. Whipple