

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

IN RE:	)	
	)	
	)	
VERIZON INTERNET SERVICES, INC.	)	No. 03-7015
Subpoena Enforcement Matter	)	
	)	
	)	
	)	
RECORDING INDUSTRY	)	
ASSOCIATION OF AMERICA, INC.,	)	
	)	
Appellee,	)	On Appeal from the United States
	)	District Court for the District of
v.	)	Columbia, Miscellaneous Action,
	)	Case No. 1:02MS00323 (JDB)
VERIZON INTERNET SERVICES, INC.,	)	
	)	
Appellant.	)	
	)	

**JOINT MOTION OF *AMICI CURIAE* SUPPORTING APPELLANT
VERIZON FOR AMENDMENT OF BRIEFING ORDER TO ALLOW
FILING OF SEPARATE BRIEFS IN EXCESS OF WORD LIMITS, AND
TO EXCLUDE DESCRIPTION OF THE *AMICI* FROM THE WORD COUNT**

Pursuant to Federal Rule of Appellate Procedure 27, and Circuit Rules 27 and 29(b), the numerous consumer, civil liberties, and business organizations and groups listed below jointly move this Court for an order modifying the current briefing schedule (set forth in this Court’s Order dated March 17, 2003) by (1) granting them leave to file two separate briefs as *amici curiae* in support of appellant Verizon Internet Services, Inc. (Verizon); (2) granting leave to exceed the 7,000-word limit, so that each of the proposed separate *amicus* briefs would be subject to a limit of 5,000 words (for a total of 10,000 words); and (3) excluding from the word count the “Statement of Interest” portion of the *amicus* briefs (which must include information on a large number of *amici*

organizations and groups, as described below). Counsel for appellant Verizon has indicated that they do not oppose this motion. Counsel for appellee Recording Industry Association of America, Inc. (RIAA) has indicated that while they do not oppose the participation of these *amici* in this appeal, RIAA does oppose the relief requested in this motion.

A. The Nature of This Appeal and the Identity and Interests of the *Amici Curiae*

This is a test case raising legal issues of profound importance to all users of the Internet (particularly those who engage in anonymous speech in cyberspace), to Internet Service Providers (ISPs) and other Internet-related businesses, to copyright holders, and to the general public. At issue is the meaning, and constitutionality, of a novel subpoena provision created by Congress as part of the Digital Millennium Copyright Act, 17 U.S.C. § 512(h). In the decision below, the district court granted a motion by RIAA to enforce a subpoena issued under Section 512(h), which seeks to obtain from Verizon the identity of an anonymous user of Verizon’s service of providing access to the Internet. *In re Verizon Internet Services, Inc.*, 240 F. Supp. 2d 24 (D.D.C. 2003). In so ruling, the district court stated – in agreement with the parties and numerous *amici curiae* who were allowed to participate below – that this case raises “an issue of first impression” that is “of great importance to the application of copyright law to the Internet.” *Id.* at 26.

In the proceedings below and in a second, related proceeding between the same parties involving enforcement of another Section 512(h) subpoena, numerous trade associations, public interest groups, and corporations – including many of those who have joined in this motion – participated as *amici curiae*. These *amici* advanced a variety of challenges to Section 512(h) as interpreted by RIAA and applied in this case. For example, various *amici* contended that, to the extent that Section 512(h) confers on the clerks of the federal district courts the extraordinary power

to issue subpoenas to private parties *in the absence of any pending civil litigation*, the statute plainly exceeds the boundaries of Article III of the Constitution, which limits the “judicial Power of the United States” to “Cases” and “Controversies.” U.S. Const. art. III. *Amici* also maintained that Section 512(h), as interpreted by RIAA to require immediate disclosure of the customer’s identity without prior notice to the customer and without any prior opportunity by the subpoena recipient or customer to be heard, violates the due process rights not only of ISPs but also of customers (whose liberty and privacy interests are invaded through a statutory procedure that is manifestly prone to error). In addition, certain *amici* contended that the Section 512(h) subpoena process jeopardizes the First Amendment rights of Internet users to engage in anonymous speech and violates the overbreadth doctrine. And finally, various *amici* urged the district court to give Section 512(h) a limiting construction both to comport with limits placed in the statute by Congress and to avoid the many constitutional problems that a broader reading would create. The proper resolution of this appeal – and of the fundamental constitutional issues it raises – is thus of extraordinary importance not only to the public but also to these *amici*.

In the lower court, three *amicus* briefs were filed in support of Verizon and one in support of RIAA. As below, the *amici* submitting this motion fall into two broad and distinct categories: (1) Businesses and business trade associations (including ISPs and other computer, telecommunications, and Internet industry groups) that represent the likely recipients of Section 512(h) subpoenas and have serious concerns about the negative impact of widespread use of Section 512(h) subpoenas on Internet businesses’ relationships to their customers, ability to offer effective contractual protection of customers’ privacy rights, and operational expenses and costs, as well as on the overall development of the market for Internet services (“the Business *Amici*”); and (2) Consumer groups

(including consumer advocacy organizations, public interest groups, library associations, and civil liberties organizations) that represent the targets of Section 512(h) subpoenas and have serious concerns about the impact of such subpoenas on consumer privacy, the First Amendment rights of Internet users (including the millions of ordinary people who lack the economic wherewithal to litigate against industry-sponsored and -funded entities such as RIAA), and the development of the Internet as a forum for the robust exchange of ideas (“the Consumer *Amici*”). Listed below are the *amici* in each group that have joined in this motion.

1. *The Business Amici*. In addition to a number of large trade groups representing Internet-related businesses – including the United States Internet Industry Association, United States Internet Service Provider Association, and United States Telecom Association – the *amici* in this group include the following (in alphabetical order): American Legislative Exchange Council, Caprica Internet Services, the Computer & Communications Industry Association, the European Internet Industry Association, the Frontier and Citizens Communications Companies, InKeeper Co., Mercury Network Corp., New York State Telecommunications Association, Inc., Progressive Internet Action, SBC Internet Services, Southern Star, Stic.Net, LP, Texas Internet Service Providers Association, Washington Association of Internet Service Providers, and ZZAPP! Internet Services.

The American Legislative Exchange Council is the nation’s largest bipartisan, individual membership organization of state legislators who share a common commitment to the Jeffersonian principles of individual liberty, limited government and free markets.

Caprica Internet Services is a privately-held ISP that is in the business of providing Internet connectivity to its customers.

The Computer & Communications Industry Association (CCIA) is a nonprofit membership organization for companies and senior executives from diverse sectors of the computer and communications industry. CCIA was established nearly three decades ago to represent its members' vital interests. Its member companies range from small start-ups to global leaders that operate in all areas of the high-tech economy. They include information technology, telecommunications, and networking equipment manufacturers, as well as software, Internet, telecommunications, and financial service providers, re-sellers, integrators, and others.

The European Internet Service Provider Association is a trade association of ISPs in Europe.

The Frontier and Citizens Communications Companies are a group of more than 60 affiliated Incumbent Local Exchange Carriers and Interexchange Carriers under the common ownership of Citizens Communications Company (NYSE: CZN), providing local exchange (serving 2.5 million access lines), long distance, Internet access and other services in 25 states. The Frontier and Citizens Communications Companies provide Internet access service under the name Frontiernet.

InKeeper Co. is an Internet/Intranet design, hosting and consulting company dedicated to fair and equal access as it relates to Internet technology.

Mercury Network Corp. is an ISP that provides Internet connectivity to its customers.

The New York State Telecommunications Association, Inc. (NYSTA) is a nonprofit, membership-based association incorporated in the State of New York. NYSTA is comprised of telecommunications carriers and Internet Service Providers operating in New York State

Progressive Internet Action (PIA) is the “Ben & Jerry’s” of business Internet Services. PIA offers businesses “idealistic” web services, including: web and email hosting, web site and e-

commerce development, and socially responsible e-marketing services. Spam is not tolerated or serviced.

SBC Internet Services, which comprises four regional ISPs, is primarily in the business of providing broadband and narrowband Internet access services.

Southern Star is a small ISP providing Internet connectivity services to its customers in New Orleans, Louisiana.

Stic.Net, LP is an ISP that provides dial-up, dsl, and cable connectivity to customers in Austin, San Antonio, and Houston, Texas.

The Texas Internet Service Providers Association is a nonprofit organization committed to advocating and supporting a healthy Internet industry in the state of Texas.

The United States Internet Industry Association (USIIA) is the North American trade association for Internet commerce, content, and connectivity. Founded in 1994, USIIA advocates effective public policy for the Internet and provides its members with essential business news, support, and services. USIIA is a member-owned-and-managed association. With members of every size, engaged in virtually every facet of the Internet, USIIA works to craft an environment in which Internet companies can thrive.

The United States Internet Service Provider Association (US ISPA) is a national trade association whose members are among the largest providers of Internet service in the country. A principal purpose of US ISPA is to represent its members before federal agencies, courts, and Congress in matters of common concern. US ISPA board members include industry experts. Their combined experience gives the US ISPA a unique understanding of the practical, as well as legal, considerations relevant to the proper interpretation and application of internet-related laws.

The United States Telecom Association (USTA) is the leading not-for-profit trade association for the local telephone industry. Founded more than a century ago, USTA represents some 600 facilities-based incumbent wireline providers of local telephone service, many of whom also provide Internet access service, which operate more than 80% of the country's local access lines. USTA also has international and associate members that include consultants, communications equipment providers, banks and investors, and other parties with interests in the local exchange carrier industry.

The Washington Association of Internet Service Providers (WAISP) is a trade association representing the interests of independent Internet Service Providers in Washington state. WAISP has 32 ISP members.

ZZAPP! is a nonprofit 501(c)(3) community-supported Internet Service Provider which, among other community services, provides free one-year Internet access accounts to selected individuals who are suffering terminal or chronic illness.

2. *The Consumer Amici.* This group of *amici* includes a broad array of public interest organizations, consumer advocacy groups, library associations, and civil liberties organizations. In addition to the Electronic Frontier Foundation, this group includes the following (in alphabetical order): the Alliance for Public Technology, American Civil Liberties Union, American Civil Liberties Union Capital Area, American Association of Law Libraries, American Library Association, Association of Research Libraries, Citizens for a Sound Economy Foundation, Competitive Enterprise Institute, Computer Professionals for Social Responsibility, Consumer Action, Consumer Federation of America, Consumers Union, DigitalConsumer.org, Digital Future Coalition, EDUCAUSE, Electronic Privacy Information Center, Media Access Project, National Association of Consumer Agency Administrators, National Coalition Against Domestic Violence,

National Consumers League, National Grange of the Order of Patrons of Husbandry, Pacific Research Institute, Privacy Rights Clearinghouse, Privacyactivism, Public Knowledge, Utility Consumers Action Network, and WiredSafety.org.

The Alliance for Public Technology (APT) is a nonprofit organization of public interest groups and individuals. APT's members work together to foster broad access to affordable, usable information and communications services and technology for the purpose of bringing better and more affordable health care to all citizens, expanding educational opportunities for lifelong learning, enabling people with disabilities to function in ways they otherwise could not, creating opportunities for jobs and economic advancement, making government more responsive to all citizens, and simplifying access to communications technology.

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the U.S. Constitution. The protection of principles of freedom of expression as guaranteed by the First Amendment is an area of special concern to the ACLU. In this connection, the ACLU has been at the forefront in numerous state and federal cases involving freedom of expression on the Internet. The ACLU has also been involved in numerous cases raising issues of due process and the right to anonymous speech.

The ACLU of the National Capital Area is the local affiliate of the ACLU. Like the national ACLU, the ACLU of the National Capital Area is frequently involved in cases raising issues of freedom of expression and due process.

The American Association of Law Libraries is a nonprofit educational organization of over 5,000 members who respond to the legal information needs of legislators, judges, and other public

officials at all levels of government, corporations and small businesses, law professors and students, attorneys, and members of the general public.

The American Library Association is a nonprofit educational organization of approximately 61,000 librarians, library educators, information specialists, library trustees, and friends of libraries representing public, school, academic, state, and specialized libraries.

The Association of Research Libraries is a nonprofit association of research libraries in North America, including university, public, government, and national libraries whose mission is to influence the future of research libraries in the process of scholarly communication.

The Citizens for a Sound Economy Foundation (CSEF) is a grassroots organization with approximately 280,000 members whose mission is to educate citizens on the benefits of free-market policies. CSEF is a nonprofit, non-partisan organization. It is committed to principles of free enterprise, believing that those principles inure to the benefit of consumers and citizens generally.

The Competitive Enterprise Institute is a nonpartisan policy analysis 501(c)(3) organization founded in 1984, dedicated to the principles of limited constitutional government and free enterprise. CEI scholars have often commented on issues pertaining to technology, intellectual property, and the First Amendment.

For over 20 years, members of Computer Professionals for Social Responsibility (CPSR) have provided the public and policymakers with realistic assessments of the power, promise, and problems of information technology. CPSR members work to direct public attention to critical choices concerning the applications of information technology and how those choices affect society.

Founded in 1971, the San Francisco-based Consumer Action (CA) is a nonprofit, membership-based organization that serves consumers nationwide by advancing consumer rights.

CA has a national reputation for multilingual consumer education and advocacy in the fields of credit, banking, privacy, insurance, utilities and Health Maintenance Organizations. CA is available on the Web at www.consumer-action.org.

Since 1968, the Consumer Federation of America (CFA) has provided consumers a well-reasoned and articulate voice in decisions that affect their lives. Day in and out, CFA's professional staff gathers facts, analyzes issues, and disseminates information to the public, legislators, and regulators. The size and diversity of its membership – more than 285 organizations from throughout the nation with a combined membership exceeding 50 million people – enables CFA to speak for virtually all consumers. In particular, CFA looks out for those who have the greatest needs, especially the least affluent.

Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* (with a paid circulation of more than 4 million) regularly carries articles on health, product safety, marketplace economics and legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

DigitalConsumer.org is a consumer membership organization formed in 2002 and comprised of over 49,000 individuals from across the United States. Its mission is to restore the balance of

copyright law so that artists and creators can prosper while citizens have reasonable flexibility to use content in fair and legal ways. DigitalConsumer.org has offices in Palo Alto, CA.

Digital Future Coalition (DFC) is an alliance of many of the nation's leading nonprofit educational, scholarly, library and consumer groups, along with major commercial trade associations representing leaders in consumer electronics, telecommunications, computer and network access industries.

EDUCAUSE is a nonprofit association whose mission is to advance higher education by promoting the intelligent use of information technology. Membership is open to institutions of higher education, corporations serving the higher education information technology market and other related associations and organizations. EDUCAUSE programs include professional development activities, print and electronic publications, strategic policy initiatives, research, awards for leadership and exemplary practices, and a wealth of online information services. The current membership comprises more than 1800 colleges, universities, and education organizations, including over 180 corporations.

The Electronic Frontier Foundation (EFF) is a nonprofit public interest organization dedicated to protecting civil liberties and free expression in the digital world. With over 6,000 members, EFF represents the interests of Internet users in court cases and in the broader policy debates surrounding the application of law in the digital age. EFF opposes misguided legislation, initiates and defends court cases preserving individuals' rights, launches global public campaigns, introduces leading edge proposals and papers, hosts frequent educational events, engages the press regularly, and publishes a comprehensive archive of digital civil liberties information at one of the most linked-to websites in the world (www.eff.org).

The Electronic Privacy Information Center (EPIC) is a public interest research center in Washington, D.C. that was established to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other constitutional values. EPIC has participated as *amicus curiae* in numerous privacy cases, including most recently in *Watchtower Bible and Tract Soc’y of New York, Inc. v. Village of Stratton*, 122 S. Ct. 2080 (2002).

Media Access Project (MAP) is a 30 year-old nonprofit public interest law firm which represents the public’s First Amendment rights to speak and to receive information through the electronic mass media. MAP has often depended on promises of anonymity to obtain information necessary to its representation.

The National Association of Consumer Agency Administrators (NACAA) is a 25 year-old nonprofit organization comprised of over 165 city, county, state, provincial, and federal consumer agencies in the United States and several other countries. This membership organization forms a “network of knowledge” about consumer enforcement, education, legislation and consumer protection office administration.

The National Coalition Against Domestic Violence (NCADV) is the leading nonprofit association committed to the elimination of personal and societal violence in the lives of battered women and their children. NCADV is the only national organization of grassroots shelter and service programs for battered women.

The National Consumers League is a private, nonprofit advocacy group representing consumers on marketplace and workplace issues. Our mission is to identify, protect, represent, and advance the economic and social interests of consumers and workers.

The National Grange of the Order of Patrons of Husbandry (Grange) is the nation's oldest general farm and rural public interest organization. Founded in 1867, today the Grange represents nearly 300,000 individual members affiliated with 3000 local, county and state Grange chapters across the nation. The Grange has a strong interest in protecting the privacy rights of its members in rural areas who access the Internet through ISPs.

The mission of the Pacific Research Institute (PRI) is to champion freedom, opportunity, and personal responsibility for all individuals by advancing free-market policy solutions. PRI's Center for Technology Studies promotes opportunity, innovation, and economic growth by helping to limit harmful government intervention in the electronic frontier.

The Privacy Rights Clearinghouse is a nonprofit consumer education and advocacy program, established in 1992 and based in San Diego, California. It provides information and assistance to consumers on a variety of informational privacy issues including identity theft, telemarketing, Internet privacy, and financial privacy. It represents consumers' interests in public policy proceedings (legislative and regulatory agency) at the state and federal level.

Privacyactivism is a nonprofit organization dedicated to informing and empowering individuals about their privacy rights on the Internet. Through a mixture of education (using graphics such as posters and video games), activism, and the law, the organization strives to make complex issues of privacy law, policy, and technology accessible to all. Privacyactivism can be found on the Internet (www.privacyactivism.org).

Public Knowledge is a Washington, D.C. based public-interest advocacy and research organization dedicated to fortifying and defending a vibrant "information commons" – the shared information resources and cultural assets that we own as a people. It works with diverse creators,

consumers, civic groups, and enlightened businesses to ensure that public access, creativity, and competition are embodied in the digital age. One of its core goals is to ensure that intellectual property law and policy reflect the cultural bargain intended by the framers of the Constitution: providing an incentive to creators and innovators while benefitting the public through the free flow of information and ideas.

The Utility Consumers' Action Network (UCAN) is a nonprofit membership organization based in San Diego, California. Established in 1983, it advocates for consumers' interests in the areas of energy, telecommunications, and the Internet.

WiredSafety.org is the parent organization of WiredPatrol, WiredKids, and WiredCops, and provides many services aimed at enhancing Internet safety and privacy.

B. The Court Should Allow the Two Groups of *Amici* To Submit Separate Briefs

Amici respectfully ask this Court to permit the filing of separate briefs by the Business *Amici* and the Consumer *Amici* in this appeal. As the foregoing description of the individual *amici* in each group suggests, the two groups have quite different interests and perspectives on the important constitutional and statutory issues raised in this appeal. The 28 groups and organizations that make up the Consumer *Amici* share an overriding focus on the privacy, speech, and liberty interests of individuals who use the Internet. They wish to present to the Court the concerns not only of the users of the Internet whose identifying information is being sought by putative copyright holders through resort to the novel subpoena procedure created by Section 512(h), but also of others who undoubtedly will be chilled by the use of this process. The Consumer *Amici* intend to focus on the procedural and substantive protections that must be in place before the privacy and anonymity of an Internet user may be breached, under both the Fifth Amendment Due Process Clause and the First

Amendment. These *amici* are focused on the danger that this statute poses to the privacy, anonymity, and free speech interests of the public as well as the on unfair burdens it imposes on ordinary consumers to quickly mount litigation (often in a distant forum). Their chief interest is in protecting the basic rights to anonymous speech and privacy online.

In contrast, although the Business *Amici* certainly share a concern for the privacy rights of their customers, they are equally concerned about the potential adverse impact of Section 512(h) subpoenas on the operation of their businesses (including the cost of doing business and the attendant impact on competition in the markets they serve), their relationship with their customers, and their own property interests in confidential business information. Consisting of 18 companies and trade associations, the Business *Amici* represent the businesses and coalitions of businesses that provide Internet services to the public, and they bring to bear a distinctive perspective on the issues before the Court. They represent the community that will be served with the Section 512(h) subpoenas, and they claim a proprietary interest in their own customer data. Representing the broader business community of which Verizon is a part, the Business *Amici* deserve to have their own voice heard clearly on the vitally important issues raised in this appeal.

As one might expect, these significant differences in perspective lead each group to take a different approach to the issues raised here. For example, while both groups have contended below that Section 512(h), at least as interpreted by RIAA, violates the Due Process Clause of the Fifth Amendment, the Consumer *Amici* are most concerned about the absence of notice to the *individual customer* before her identity is disclosed to a putative copyright owner armed with a subpoena. Relatedly, the Consumer *Amici* are concerned about the due process protections that must be superimposed on Section 512(h) to ensure that the privacy rights and liberty interests (including the

right to speak anonymously on the Internet) of consumers is not impaired without prior notice and an opportunity to be heard.

In contrast, the Business *Amici* are focused on the due process protections afforded to ISPs and other *recipients* of Section 512(h) subpoenas. Accordingly, these *amici* advanced certain arguments below about the property interest of ISPs and other Internet businesses in their confidential business information (including the identity of their customers) that Section 512(h) subpoenas threaten.

Given this difference in perspective, it comes as no surprise that the two groups of *amici* have different perspectives on the problems created by RIAA's interpretation of Section 512(h) or on the limits imposed on the statute by the Federal Constitution. For instance, several of the Consumer *Amici* have substantial experience litigating First Amendment and privacy issues. This includes experience defending the right of anonymous speech online in contexts other than Section 512(h). In the course of that work, some of these *amici* have compiled a record of past positions that does not necessarily reflect the views of the Business *Amici*. Other members of the Consumer *Amici* – such as the library groups, the Grange, and the National Coalition Against Domestic Violence – have specific experiences and perspectives that are far removed from the business and technical expertise of the Business *Amici*. In fact, it would be surprising, to say the least, if the corporations and business trade associations that are included in the Business *Amici* – and that represent the providers or *sellers* of internet-related services – were in complete agreement on all of the constitutional issues raised with the ACLU and other members of the Consumer *Amici*, which represent the consumers or *purchasers* of those services.

In view of these substantial differences in perspectives, this Court will not be well-served by requiring such a large and diverse group of *amici* to join in a single brief reflecting a unitary, watered-down, consensus view on the important issues presented. Accordingly, the Court should permit the submission of separate *amicus* briefs by these two groups.

C. The Court Should Grant Leave To Exceed the Word Limits

Under this Court's rules (and Order dated March 17, 2003), the *amici* who wish to file in support of Verizon are limited to 7,000 words. See FRAP 29(d), 32(a)(7). Given the importance of this appeal to *amici* and the public at large, and the range of constitutional issues raised by RIAA's interpretation of Section 512(h), *amici* respectfully ask this Court to modify the briefing schedule to increase the number of total words available to them. Specifically, *amici* request that the Court permit them a total of 10,000 words (5,000 for each of the separate briefs *amici* are seeking leave to file).

As explained above, this is a case of first impression raising issues of great importance to the Internet industry and the public. It has engendered extraordinary interest and concern on the part of consumers, privacy rights organizations, civil liberties groups, ISPs, and others. The case also has been covered extensively in the local and national press.¹ Because of this high level of public concern and attention, there is a long list of *amici* who wish to participate in this appeal. In the district court, twelve national organizations signed onto the *amicus* brief submitted by the consumer and civil rights amici, and another twelve organizations or entities signed onto the Internet industry

¹ See, e.g., *Internet providers ordered to identify illegal music users*, Baton Rouge Advocate, Jan. 22, 2003, at 4C; *ISPs must help music industry fight piracy*, Newark Star-Ledger, Jan. 22, 2003, at 051; *Ruling lets studios track music pirates*, Austin-American Statesman, Jan. 22, 2003, at A1; *Verizon Hears the Music*, Newsday, Jan. 22, 2003, at A37.

amicus brief. Since the district court’s ruling, additional groups in both classes have approached undersigned counsel for the *amici* and have joined in this motion (which is being filed on behalf of 46 different groups, associations, organizations, and entities).

In addition, this case raises not only questions of statutory construction but also constitutional issues implicating Article III, due process, and the First Amendment. To ensure that these important issues receive adequate treatment, the proposed increase in the total number of words sought by these *amici* is fully warranted.²

D. The Court Should Grant Leave To Exclude the Statement of Interest from the Word Count

The word limits applicable to an *amicus* brief include the “Statement of Interest” portion of the brief. See FRAP 29(c)(3), 32(a)(7)(B); Circuit Rule 32(a)(2). As noted above, a very large number of *amici* wish to participate in this appeal on Verizon’s side. Under this Court’s rules, each of these *amici* must be identified (and its interest described) in the “Statement of Interest” portion of the brief.

Accordingly, *amici* request that this Court direct that the Statement of Interest be excluded from the expanded word limit. The description of the *amici* set forth in this motion is more than 2600 words in length – more than 37% of the total amount of words allotted for the *amici* under this Court’s March 17, 2003 Order. Without an exclusion of this material from the word limit, much of the *amici*’s limited space will have to be devoted merely to reporting on the identity of the many

² *Amici* agree with Verizon that *amicus* Public Citizen should not be allowed more than 5,000 words for a separate brief in support of neither party. That sensible limitation will reduce the overall burden on the Court and eliminate the anomaly that would otherwise result from permitting Public Citizen to have more space than is granted, respectively, to the 18 members of the Business *Amici* or the 28 members of the Consumer *Amici* under our proposal.

amici and describing their interests. The remaining words are simply insufficient to address the important statutory, due process, Article III, and First Amendment issues that are raised in this appeal.

Conclusion

For the foregoing reasons, *amici* jointly seek an order amending the current briefing order as follows: (1) granting leave to file two separate briefs as *amici curiae* in support of Appellant Verizon; (2) granting an extension of the 7,000-word limit, so that each of the proposed separate *amicus* briefs would be subject to a limit of 5,000 words (for a combined total of 10,000 words); and (3) excluding from the word limitations of the *amicus* briefs the “Statement of Interest” section.

March 31, 2003

Respectfully Submitted.

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Counsel for *Amici Curiae* American Legislative Exchange Council, Caprica Internet Services, the Computer & Communications Industry Association, the European Internet Industry Association, the Frontier and Citizens Communications Companies, InKeeper Co., Mercury Network Corp., New York State Telecommunications Association, Inc., Progressive Internet Action, SBC Internet Services, Southern Star, Stic.Net, LP, Texas Internet Service Providers Association, United States Internet Industry Association, United States Internet Service Provider Association, United States Telecom Association, Washington Association of Internet Service Providers, and ZZAPP! Internet Services

CERTIFICATE OF SERVICE

I certify that on Monday, March 31, 2003, I caused copies of the foregoing (1) Joint Motion of *Amici Curiae* Supporting Verizon for Amendment of the Briefing Order To Allow Filing of Separate Briefs in Excess of Word Limits, and To Exclude Description of the *Amici* from the Word Count, (2) Corporate Disclosure Statement of the Consumer *Amici*, and (3) Corporate Disclosure Statement of the Business *Amici*, to be served on the following by first class mail, postage prepaid:

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CORPORATE DISCLOSURE STATEMENT

In compliance with Rule 26.1 of the Federal Rules of Civil Procedure, the undersigned, counsel of record for *amici curiae* Alliance for Public Technology, American Civil Liberties Union, American Civil Liberties Union Capital Area, American Association of Law Libraries, American Library Association, Association of Research Libraries, Citizens for a Sound Economy Foundation, Competitive Enterprise Institute, Computer Professionals for Social Responsibility, Consumer Action, Consumer Federation of America, Consumers Union, DigitalConsumer.org, Digital Future Coalition, EDUCAUSE, Electronic Frontier Foundation, Electronic Privacy Information Center, Media Access Project, National Association of Consumer Agency Administrators, National Coalition Against Domestic Violence, National Consumers League, National Grange of the Order of Patrons of Husbandry, Pacific Research Institute, Privacy Rights Clearinghouse, Privacyactivism, Public Knowledge, Utility Consumers Action Network, and WiredSafety.org, states the following:

1. *Amici* are all nonprofit organizations; none of the *amici* has a parent corporation.
2. *Amici* have no stock and hence no shareholders.

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March 31, 2003

CORPORATE DISCLOSURE STATEMENT

In compliance with Rule 26.1 of the Federal Rules of Civil Procedure, the undersigned, counsel of record for *amici curiae* American Legislative Exchange Council, Caprica Internet Services, the Computer & Communications Industry Association, the European Internet Industry Association, Frontier and Citizens Communications Companies, InKeeper Co., Mercury Network Corp., New York State Telecommunications Association, Inc., Progressive Internet Action, SBC Internet Services, Southern Star, Stic.Net, LP, Texas Internet Service Providers Association, United States Internet Industry Association, United States Internet Service Provider Association, United States Telecom Association, Washington Association of Internet Service Providers, and ZZAPP! Internet Services, states the following:

1. The American Legislative Exchange Council is an organization of state legislators. It has no parent company and no stock.

2. Caprica Internet Services is a small, privately-held Internet Service provider based in Los Angeles and serving most of Southern California. It has no parent company and no shares in the hands of the public.

3. The Computer & Communications Industry Association is a trade association. It has no parent company and no stock.

4. The European Internet Industry Association is a trade association. It has no parent company and no stock.

5. Frontier and Citizens Communications is publicly traded. It has no corporate parent. FMR Corp. owns more than 10% of its stock.

6. InKeeper Co. has no parent corporation. No publicly held company owns 10% or more of Inkeeper's stock.

7. Mercury Network Corp. is an Internet Service Provider. It has no parent company, and no publicly held company owns 10% or more of its stock.

8. The New York State Telecommunications Association, Inc. is a nonprofit, membership-based association. It has no parent corporation, no stock and hence no shareholders.

9. Progressive Internet Action (PIA) is wholly owned by Richard R. Jones Communications, a sole proprietorship of Richard R. Jones. No publicly held company owns PIA's stock.

10. SBC Internet Services comprises four regional ISPs. Southwestern Bell Internet Services Inc. is 100%-owned by SBC Telecommunications Inc., which is 100%-owned by SBC Communications Inc., which is publicly traded. Pacific Bell Internet Services Inc. is 100%-owned

by Pacific Telesis Inc., which is 100%-owned by SBC Communications Inc., which is publicly traded. Ameritech Interactive Media Services Inc. is 100%-owned by Ameritech Corp., which is 100%-owned by SBC Communications Inc., which is publicly traded. SNET Diversified Group, Inc. is 100%-owned by Southern New England Telecommunications Corp., which is 100%-owned by SBC Communications Inc., which is publicly traded.

11. Southern Star has no parent company. No publicly held company owns 10% or more of Inkeeper's stock.

12. Stic.Net, LP has no parent company. No publicly held company owns 10% or more of Stic.Net, LP stock.

13. Texas Internet Service Providers Association is a trade association. It has no parent corporation and no shares in the hands of the public.

14. The United States Internet Industry Association is a national trade association. It has no parent corporation and no shares in the hands of the public.

15. The United States Internet Service Provider Association is a national trade association. It has no parent corporation and no shares in the hands of the public.

16. The United States Telecom Association is a national trade association. It has no parent corporation and no shares in the hands of the public.

17. The Washington Association of Internet Service Providers is a nonprofit trade association, incorporated under the Washington Non-Profit Business Act. It has not parent corporation and no shares in the hands of the public.

18. ZZAPP! Internet Services is a service of Community Educational Services Foundation (CESF), a local 501(c)(3) nonprofit communications and information resource based in Arlington, Virginia. ZZAPP! Internet Services and CESF have no parent corporation and no shareholders.

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