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16 Interim Class Counsel for MCI Class

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 IN RE:

21 NATIONAL SECURITY AGENCY  
22 TELECOMMUNICATIONS RECORDS  
23 LITIGATION,

23 This Document Relates To:

- 24 (1) All Class Actions Against MCI and  
25 Verizon Defendants in the Master MCI and  
26 Verizon Consolidated Complaint, Dkt. 125;  
27 (2) *Bready v. Verizon Maryland* (06-6313);  
28 (3) *Chulsky v. Cellco Partnership & Verizon  
Communications Inc.* (06-6570); and  
(4) *Riordan v. Verizon Communications Inc.*  
(06-3574)

MDL No. 06-1791 VRW

**DECLARATION OF CANDACE J.  
MOREY IN SUPPORT OF PLAINTIFFS'  
JOINT OPPOSITION TO MOTION TO  
DISMISS OR, IN THE ALTERNATIVE,  
FOR SUMMARY JUDGMENT BY THE  
UNITED STATES OF AMERICA AND TO  
STATE SECRETS AND RELATED  
ARGUMENTS IN VERIZON'S MOTION  
TO DISMISS**

Date: August 30, 2007  
Time: 2:00 p.m.  
Courtroom: 6, 17<sup>th</sup> Floor  
Judge: Hon. Vaughn R. Walker

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**DECLARATION OF CANDACE J. MOREY**

I, CANDACE J. MOREY, declare and state:

1. I am a member in good standing of the State Bar of California, and admitted to practice in this district. I am an associate in the law firm of Fenwick & West, LLP which is counsel for plaintiffs Dennis P. Riordan, et al., in this multidistrict litigation proceeding. I have personal knowledge of the matters set forth herein, and could and would testify competently thereto if called upon to do so.

2. Attached hereto are true and correct copies of the following documents:

Exhibit A: Transcript of *President's Radio Address*, December 17, 2005,

<https://www.whitehouse.gov/news/releases/2005/12/print/20051217.html>.

Exhibit B: Transcript of *Press Briefing by Attorney General Alberto Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence, December 19, 2005,*

<http://www.whitehouse.gov/news/releases/2005/12/print/20051219-1.html>.

Exhibit C: *Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys? – Part IV: Hearing Before the S. Judiciary Comm., 110th Cong. (2007) (testimony of James Comey, Former Deputy Attorney General).*

Exhibit D: Responses to *Written Questions to Former Deputy Attorney General James B. Comey Submitted by Senator Patrick Leahy May 22, 2007,*

<http://leahy.senate.gov/press/200705/052507ComeyResponse.pdf>.

Exhibit E: *Wartime Executive Power and the National Security Agency's Surveillance Authority: Hearing Before the S. Judiciary Comm., 109th Cong. (2006) (testimony of Alberto Gonzales, U.S. Attorney General).*

Exhibit F: Paul Kane, *Ashcroft Tells of Surveillance Disputes*, Wash. Post, June 22, 2007,

<http://www.washingtonpost.com/wp-dyn/content/article/2007/06/21/AR2007062101022.html?hpid=moreheadlines>.

Exhibit G: Letter from John Conyers and Jerrold Nadler, U.S. House of Representatives, to

- 1 Alberto Gonzales, U.S. Attorney General, May 17, 2007,  
2 <http://judiciary.house.gov/Media/PDFS/Conyers-Nadler070517.pdf>.
- 3 Exhibit H: Lesley Cauley, *NSA Has Massive Database of Americans' Phone Calls*, USA  
4 Today, May 11, 2006.
- 5 Exhibit I: Eric Lichtblau & James Risen, *Spy Agency Mined Vast Data Drove, Officials*  
6 *Report*, N.Y. Times, Dec. 24, 2005.
- 7 Exhibit J: Seymour Hersh, *Listening In*, New Yorker, May 29, 2006.
- 8 Exhibit K: Lowell Bergman, Eric Lichtblau, Scott Shane, & Don Van Natta Jr., *Spy Agency*  
9 *Data after Sept. 11 Led F.B.I. to Dead Ends*, N.Y. Times, Jan. 17, 2006.
- 10 Exhibit L: Shane Harris, *NSA Spy Program Hinges on State-of-the-Art Technology*, Nat'l J.,  
11 Jan. 20, 2006, <http://www.govexec.com/dailyfed/0106/012006nj1.htm>.
- 12 Exhibit M: Barton Gellman, Dafna Linzer, & Carol D. Leonnig, *Surveillance Net Yields Few*  
13 *New Suspects*, Wash. Post, Feb. 5, 2006.
- 14 Exhibit N: Transcript of White House Press Conference, *President Bush and Prime Minister*  
15 *John Howard of Australia Participate in Joint Press Availability*, May 16, 2006,  
16 <http://www.whitehouse.gov/news/releases/2006/05/20060516-1.html>.
- 17 Exhibit O: Transcript of "Operation GlobalCon" Press Conference, May 23, 2006,  
18 [http://www.usdoj.gov/ag/speeches/2006/ag\\_speech\\_0605231.html](http://www.usdoj.gov/ag/speeches/2006/ag_speech_0605231.html).
- 19 Exhibit P: Transcript of Senator Roberts' Statements, *Senate Intelligence Chair Readies for*  
20 *Hayden Hearings*, NPR's All Things Considered, May 17, 2006.
- 21 Exhibit Q: Gloria Borger, CBS/AP, *Congress to Be Briefed on NSA*, May 16, 2006,  
22 <http://www.cbsnews.com/stories/2006/05/17/national/main1624039.shtml>.
- 23 Exhibit R: Transcript of *Press Briefing by Tony Snow*, May 16, 2006,  
24 <http://www.whitehouse.gov/news/releases/2006/05/20060516-4.html>.
- 25 Exhibit S: Letter from John D. Negroponte, Director of National Intelligence, to J. Dennis  
26 Hastert, Speaker of the U.S. House of Representatives, May 17, 2006, *available at*  
27 <http://www.usatoday.com/news/2006-05-17-nsa-list.pdf>.
- 28 Exhibit T: Transcript of Senator Kit Bond's Statements, *NSA Wire Tapping Program*

- 1                    *Revealed*, PBS Online Newshour Debate, May 11, 2006,  
2                    [http://www.pbs.org/newshour/bb/law/jan-june06/nsa\\_05-11.html](http://www.pbs.org/newshour/bb/law/jan-june06/nsa_05-11.html).
- 3     Exhibit U:     Transcript of *Interview with Bill Frist; Interview with Stephen Hadley*, CNN Late  
4                    Edition with Wolf Blitzer, May 14, 2006,  
5                    <http://transcripts.cnn.com/TRANSCRIPTS/0605/14/le.01.html>.
- 6     Exhibit V:     Transcript of *Press Briefing by Tony Snow*, May 17, 2006,  
7                    <http://www.whitehouse.gov/news/releases/2006/05/20060517-4.html>.
- 8     Exhibit W:     Susan Page, *Lawmakers: NSA Database Incomplete*, USA Today, June 30, 2006.
- 9     Exhibit X:     *The Department of Homeland Security State and Local Fusion Center Program:  
10                    Advancing Information Sharing while Safeguarding Civil Liberties: Hearing of the  
11                    Subcomm. on Intelligence, Information Sharing, and Terrorism Risk Assessment of  
12                    the Comm. of the H. Homeland Security Comm., 110th Cong. (2007) (statement of  
13                    Rep. Jane Harman).*
- 14    Exhibit Y:     News Release, *Full Statement from Attorney of Former Qwest CEO Nacchio*, Wall  
15                    St. J. Online, May 12, 2006, *available to subscribers at*  
16                    <http://online.wsj.com/article/SB114744615734351338.html>.
- 17    Exhibit Z:     Lee Hochberg, *New Cell Phone Technology Can Track Users*, PBS Online  
18                    NewsHour, aired Apr. 11, 2007,  
19                    [http://www.pbs.org/newshour/bb/science/jan-june07/cellphones\\_04-11.html](http://www.pbs.org/newshour/bb/science/jan-june07/cellphones_04-11.html).
- 20    Exhibit AA:     News Release, *Verizon Issues Statement on NSA and Privacy Protection*, May 12,  
21                    2006,  
22                    <http://newscenter.verizon.com/press-releases/verizon/2006/page.jsp?itemID=29670741>.
- 23    Exhibit BB:     News Release, *Verizon Issues Statement on NSA Media Coverage*, May 16, 2006,  
24                    <http://newscenter.verizon.com/proactive/newsroom/release.html?id=93450>.
- 25    Exhibit CC:     Jim Drinkard, *Verizon Says It Isn't Giving Call Records to Verizon*, USA Today,  
26                    May 16, 2006,  
27                    [http://www.usatoday.com/news/washington/2006-05-16-verizon-nsa\\_x.htm](http://www.usatoday.com/news/washington/2006-05-16-verizon-nsa_x.htm).
- 28    Exhibit DD:     Matt Richtel and Andrew R. Sorkin, *Verizon Agrees to Acquire MCI For \$6.6*

1 *Billion, Beating Qwest*, N.Y. Times, Feb. 14, 2005.

2 Exhibit EE: Excerpts of FCC Industry Analysis and Technology Division Wireline  
3 Competition Bureau, Trends in Telephone Service, (June 21, 2005),  
4 [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/trend605.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend605.pdf).

5 Exhibit FF: Leslie Cauley & John Diamond, *Telecoms Let NSA Spy on Calls*, USA Today,  
6 Feb. 6, 2006.

7 Exhibit GG: *Recent Verizon History*,  
8 [http://investor.verizon.com/profile/history/history\\_001.aspx](http://investor.verizon.com/profile/history/history_001.aspx), which I caused to be  
9 printed on June 21, 2007.

10 Exhibit HH: *The Inspector General's Independent Report on the F.B.I.'s Use of National*  
11 *Security Letters: Hearing Before the H. Judiciary Comm.*, 110th Cong. (2007)  
12 (testimony of Valerie Caproni, FBI General Counsel and Glenn A. Fine, DOJ  
13 Inspector General).

14 Exhibit II: Excerpts of DOJ Office of the Inspector General, *A Review of the Federal Bureau*  
15 *of Investigation's Use of National Security Letters* (Mar. 2007),  
16 <http://www.usdoj.gov/oig/special/s0703b/final.pdf>.

17 Exhibit JJ: John Solomon, *FBI Finds It Frequently Overstepped in Data Collection*, Wash.  
18 Post, June 14, 2007.

19 Exhibit KK: Excerpts of U.S. Attorney General John Ashcroft, *Attorney General's Guidelines*  
20 *for FBI National Security Investigations and Foreign Intelligence Collection* (Oct.  
21 31, 2003), <http://www.usdoj.gov/olp/nsiguilines.pdf>.

22 3. I am familiar with the records and proceedings in this action, with the exception of  
23 the *in camera*, *ex parte* materials submitted to the Court by the Government. Plaintiffs have  
24 diligently developed the factual record relating to their claims. Although Plaintiffs contend that  
25 their pleadings and evidence already set forth in the record of these proceedings are sufficient to  
26 defeat the Government's "motion to dismiss, or, in the alternative, for summary judgment," 06  
27 MDL 1791 Dkt. 253, should the Court believe that critical evidence is missing (whether by  
28 operation of the state secrets privilege or otherwise), Plaintiffs respectfully submit that further

1 information supporting their claims is in the hands of other parties. Non-privileged discovery is  
2 likely to reveal additional facts that will contribute to the genuine issues of material fact, thereby  
3 warranting denial of the Government’s “alternative” motion for summary judgment.

4 4. The information that Plaintiffs intend to uncover through discovery exists in  
5 several sources, as outlined below. As a preliminary matter, Plaintiffs would ask the Court to  
6 require Defendants to answer the Master MCI and Verizon Consolidated Complaint, the *Bready*  
7 Complaint, the *Chulsky* Amended Complaint, and the *Riordan* Complaint, thereby potentially  
8 generating admissions that would support Plaintiffs’ claims.

9 5. Under the multi-step protocol of the Foreign Intelligence Surveillance Act  
10 (“FISA”), Section 1806(f), whereby Congress superseded the common law state secrets privilege  
11 to allow courts to review sensitive material on all motions “to discover or obtain applications or  
12 orders or other materials relating to electronic surveillance,” 50 U.S.C. § 1806, and under Section  
13 1845(f) authorizing judicial review on motions “to discover, obtain, or suppress evidence or  
14 information obtained or derived from the use of a pen register or trap and trace device,” 50 U.S.C.  
15 § 1845(f), Plaintiffs would propound targeted discovery on MCI and Verizon seeking information  
16 on the interception and disclosure of Plaintiffs’ communications and records to the Government.  
17 To the extent that the Court finds that it needs additional information on the challenged  
18 surveillance, and the Government asserts that such information would harm national security, the  
19 procedures of Sections 1806(f) and 1845(f) provide for the requisite discovery without undue risk  
20 of public disclosure.

21 6. Specifically, Plaintiffs would propound targeted discovery on MCI and Verizon on  
22 the existence of the content monitoring program, whereby MCI and Verizon could, among other  
23 things, “confirm or deny the existence of a certification authorizing monitoring of communication  
24 content through a combination of responses to interrogatories and *in camera* review by the  
25 Court.” *Hepting v. AT&T Corp.*, 439 F. Supp. 2d 974, 997 (N.D. Cal. 2006).

26 7. After the *Hepting* opinion was rendered, the Government and Verizon made  
27 statements confirming the existence of the Government’s domestic monitoring of  
28 communications records. *See e.g.*, Ex. HH (March 20, 2007 testimony of FBI General Counsel

1 Caproni before Congress); Ex. Z (April 11, 2007 statement of Verizon Wireless Regional  
2 President Kelly Kurtzman on PBS NewsHour). Plaintiffs would propound targeted discovery on  
3 MCI and Verizon on the existence of the records monitoring program, including whether either  
4 received certification authorizing monitoring of communications records, through a combination  
5 of responses to interrogatories and *in camera* review by the Court.

6 8. Plaintiffs would serve requests for admissions regarding the facts of MCI and  
7 Verizon's interception of Plaintiffs' communications for the Government.

8 9. Plaintiffs would serve requests for admissions regarding the facts of MCI and  
9 Verizon's interception of Plaintiffs' call records for the Government.

10 10. Plaintiffs would serve requests for admissions regarding the facts of MCI and  
11 Verizon's disclosure of Plaintiffs' communications to the Government.

12 11. Plaintiffs would serve requests for admissions regarding the facts of MCI and  
13 Verizon's disclosure of Plaintiffs' call records to the Government.

14 12. The Government has previously stated in open court in *Hepting* that AT&T  
15 documents obtained by Mark Klein and accompanying declarations, "which documents allegedly  
16 demonstrate how AT&T has implemented a warrantless surveillance system on behalf of the  
17 NSA" did "not . . . contain classified information." *Hepting*, 439 F.Supp.2d at 979, 989 (citing  
18 6/23/06 Transcript at 76:9-20). The MCI and Verizon Plaintiffs would serve requests for  
19 admissions, interrogatories, and document production requests on MCI and Verizon seeking  
20 information on their network architecture and the manner in which they keep their call records.

21 13. Plaintiffs would seek to obtain declarations from, or propound depositions on  
22 written questions to, the confidential sources quoted in the news reports (set forth in Exhibits  
23 described *supra*) to overcome the hearsay nature of the news reports in which they were quoted,  
24 to the extent Plaintiffs are able to identify those confidential sources.

25 14. Plaintiffs would take depositions of Qwest executives regarding public statements  
26 made by Qwest executives that the NSA asked Qwest to intercept and disclose customer  
27 communications and records. *See* Ex. Y.

28 15. Each of the topics of targeted discovery outlined above is highly likely to yield



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further evidence of genuine dispute of material facts relating to Plaintiffs' claims.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 22<sup>nd</sup> day of June, 2007, at San Francisco, California.

\_\_\_\_\_  
/s/ Candace J. Morey  
Candace J. Morey

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