



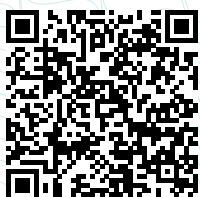
Legal Document

United States Court of Federal Claims
Case No. 1:05-cv-01105-TCW
EVENLINK, LLC, v. USA

Document 15



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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 05-1105 T
(JUDGE WHEELER)

EVENLINK, LLC

Plaintiff

v.

THE UNITED STATES,

Defendant

SUPPLEMENTAL JOINT STATUS REPORT

Pursuant to the Court's scheduling order in the above-referenced matter, requesting a Joint Status Report on the status of XO, Comcation and USA Choice every 60 days beginning August 1, 2006, the parties submit the following information:

In *XO Communications v. United States*, Fed Cl. No. 03-2754 T (2003), the Plaintiff and the United States have completed discovery. The discovery accomplished includes initial disclosures by the parties, including plaintiff's disclosures of information in support of its claim for refund (such as invoices, filings, etc.), and plaintiff's responses to defendant's interrogatories and requests for production of documents. In addition, the parties in *XO* have filed cross-motions for summary judgment on the "Dial Access" issue, which is substantially similar to the issue involved in this action. In addition, Judge Williams has conducted an expert witness hearing on the "Dial Access" issue and the parties subsequently submitted supplemental briefs. This case

was transferred to Judge Wheeler on July 24, 2006, and supplemental briefs were filed on November 9th and 10th addressing the extent to which the Internal Revenue Service (“IRS”) currently imposes a tax on Internet access and related Internet communications. On January 10, 2007, an Order was filed denying the parties’ cross-motions for summary judgment. The court instructed the parties to file a Joint Status Report on or before May 4, 2007, indicating after an examination of records, the extent to which disputed issues of fact remain. Thereafter, the matter will be set for trial.

In *Comcation v. United States*, Fed Cl. No. 05-515 T (2005), the Plaintiff and the United States have completed discovery. The discovery accomplished includes initial disclosures by the parties, including plaintiff’s disclosures of information in support of its claim for refund (such as invoices, filings, etc.), and plaintiff’s responses to defendant’s interrogatories and requests for production of documents. A trial was held in this case on September 11, 2006. The parties’ simultaneous opening post trial briefs were filed on November 13, 2006, and the parties’ simultaneous reply briefs were filed on December 13, 2006. Closing arguments occurred on January 9, 2007, and a decision in this matter is forthcoming.

In *USA Choice v. United States*, Fed Cl. No. 05-525 T (2005), Judge Lettow awarded the Plaintiff judgment insofar as it paid communications excise taxes from January 1999 through April 2002 on incoming-only PRI channels purchased from ALLTEL and Verizon and its predecessors and on private-communication DCS and BRA channels obtained from ALLTEL plus the private lines associated with specific telephone numbers. Judge Lettow held that charges for these channels and services are not taxable as local telephone service, in the first instance because the services are not covered by the definition of such service in the Internal Revenue

Code, and in the second instance because the services are exempted from the definition. Final Judgment was entered for the Plaintiff in this case on December 15, 2006 in the amount of \$20,625.76.

Respectfully submitted,

February 1, 2007
Date

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