

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 16-3766

NAPERVILLE SMART METER)	
AWARENESS,)	Appeal from the United States
)	District Court for the Northern
Plaintiff-Appellant)	District of Illinois, Eastern Division
v.)	
)	District Court No. 1:11-cv-09299
CITY OF NAPERVILLE,)	
)	The Honorable John Z. Lee
Defendant-Appellee)	
_____)	

**MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
APPELLANT'S REPLY BRIEF**

Plaintiff-Appellant Naperville Smart Meter Awareness ("NSMA"), pursuant to Circuit Rule 26, respectfully requests an additional thirty-five days to file its reply brief, and in support states:

1. NSMA timely filed its notice of appeal in the district court on October 26, 2016. See Fed. R. App. P. 4(a)(1)(A).
2. On November 14, 2016, this Court entered a "Circuit Rule 33 - Briefing" Order which set the following briefing schedule: (1) NSMA's opening brief and required short appendix were due by January 9, 2017; (2) the City of Naperville's brief was due by February 9, 2017; and (3) NSMA's reply brief was due by February 23, 2017.
3. On December 16, 2016, this Court entered a new "Circuit Rule 33 - Briefing" Order, which set the following revised briefing schedule: (1) NSMA's opening brief and required

short appendix were due by January 17, 2017; (2) the City of Naperville's brief was due by February 17, 2017; and (3) NSMA's reply brief was due by March 3, 2017.

4. On December 20, 2016, this Court granted the Appellant's motion to extend time to file Appellant's brief. The Appellant's brief was due by February 21, 2017 and the Appellee brief was due by April 24, 2017. The Appellant brief and appendix were filed on February 21, 2017.

5. On March 14, 2017, this Court granted the Appellee's motion to extend time to file Appellee's brief. The Appellee's brief was due by May 15, 2017 and the Appellant reply brief was due by May 30, 2017. Appellee's brief was filed on May 15, 2017.

6. On May 25, 2017, Appellant's previous counsel filed a motion to withdraw as counsel for Appellant. On May 26, 2017, this Court granted the motion to withdraw and suspended briefing until further order.

7. On July 6, 2017, David L. Gulbransen filed a Rule 26.1 Disclosure Statement and Appearance, and on July 7, 2017, the Court set the date for Appellant's reply brief as due by August 4, 2017.

8. Pursuant to Circuit Rule 26, NSMA now seeks an extension of no more than thirty-five days to file its reply brief. A declaration in support of this motion from NSMA's counsel, David L. Gulbransen, is attached to this motion as Exhibit A.

9. Although NSMA's counsel is working diligently on this appeal, it is not possible for NSMA to file its opening brief by the current deadline of August 4, 2017, for a combination of reasons.

10. First, NSMA's counsel is new to this case on appeal and is representing NSMA pro bono. Despite efforts by NSMA to obtain other legal representation, counsel was only

retained by NSMA on June 30, 2017, the deadline for obtaining counsel to avoid dismissal of the appeal. Due to Court closures for the July 4th holiday and counsel's travel schedule, counsel was only able to file an appearance on July 6, 2017. *See* Ex. A ¶ 7.

11. Second, counsel is new to this case on appeal, which raises novel and relatively complex technical issues, relating not only to the technology surrounding smart meters, but the implications of that technology with respect to Fourth Amendment concerns related to smart meters employed by the City of Naperville to measure residential electric usage. Specifically, NSMA seeks review of the trial court's dismissal of its claim that the City of Naperville's use of smart meters constitutes a violation of NSMA members' Fourth Amendment rights because the City's smart meters collect electrical usage data from members' homes at intervals of every fifteen minutes, which data can then be de-aggregated to offer an invasive view into their personal lives and activities inside their homes. The application of the Fourth Amendment to this emergent technology and the implications of this example of government-administered big data raises relatively complex technical issues and novel legal issues. *See* Ex. A ¶ 8.

12. Given counsel's newness to the case and in light of the complex technical and novel legal issues involved, counsel needs additional time to familiarize themselves both with the proceedings in the trial court and the underlying technical issues in order to be able to present the issues on appeal to this Court in an efficient and comprehensive manner. *See* Ex. A ¶ 9.

13. For these reasons, set forth in more detail in counsel's declaration attached as Exhibit A, NSMA requests an extension of time of thirty-five days to September 8, 2017-to file its reply brief.


14. NSMA provided notice to the City of Naperville's counsel of its intent to seek an extension prior to filing. Counsel indicated that the City of Naperville opposed this motion. *See* Ex. A ¶ 10.

WHEREFORE, Plaintiff-Appellant Naperville Smart Meter Awareness respectfully requests that this Court grant its motion and enter a new briefing schedule allowing it an additional thirty-five days to file its reply brief.

Dated this 17th Day of July, 2017.

Respectfully submitted,

By:



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**DECLARATION OF DAVID L. GULBRANSEN IN SUPPORT OF
MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
APPELLANT’S REPLY BRIEF**

Under the penalty of perjury of the laws of the United States of America, David L. Gulbransen declares:

1. I am over twenty-one years of age and am competent to testify to the matters set forth in this Declaration.
2. The facts stated herein are within my personal knowledge and are true and correct.
3. I am the sole practitioner in the Law Office of David Gulbransen, LLC in Oak Park, Illinois, and counsel for Plaintiff-Appellant Naperville Smart Meter Awareness ("NSMA").

EXHIBIT A

4. This is the second motion NSMA has filed requesting an extension of time to file a brief in this case. Appellant petitioned the Court, and was granted a thirty-five day extension to file the Appellant's brief on on December 12, 2016.

5. On March 14, 2017, Appellee City of Naperville petitioned the Court on a agreed motion with Appellant counsel and was granted a thirty-five day extension to file Appellee's brief.

6. Although I have been working diligently on this appeal, it is not possible for NSMA to file its reply brief by the current deadline of August 4, 2017, for a combination of reasons.

7. First, I am new to this case on appeal and am representing NSMA pro bono. Despite efforts by NSMA to obtain other legal representation, I was only retained by NSMA on June 30, 2017, their deadline for obtaining counsel to avoid dismissal of the appeal. Due to Court closures for the July 4th holiday and my travel schedule, I was only able to file my appearance on July 6, 2017.

8. Second, I and my firm are new to this case on appeal, which raises novel and relatively complex technical issues, relating not only to the technology surrounding smart meters, but the implications of that technology with respect to Fourth Amendment concerns related to smart meters employed by the City of Naperville to measure residential electric usage. Specifically, NSMA seeks review of the trial court's dismissal of its claim that the City of Naperville's use of smart meters constitutes a violation of NSMA members' Fourth Amendment rights because the City's smart meters collect electrical usage data from members' homes at intervals of every fifteen minutes, which data can then be de-aggregated to offer an invasive view into their personal lives and activities inside their homes. The application of the Fourth

Amendment to this emergent technology and the implications of this example of government-administered big data raises relatively complex technical issues and novel legal issues.

9. Given my newness to the case and in light of the complex technical and novel legal issues involved, I need additional time to familiarize myself both with the proceedings in the trial court and the underlying technical issues in order to be able to present the issues on appeal to this Court in an efficient and comprehensive manner.

10. On December 17, 2016, I emailed counsel representing the City of Naperville in this case to inform her that NSMA was seeking an extension. Counsel indicated that the City of Naperville opposed NSMA's requested extension of time to file a reply brief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 17th Day of July, 2017.

Respectfully submitted,

By:



David Gulbransen

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*Counsel for Plaintiff-Appellant
Naperville Smart Meter Awareness*



CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ _____



CERTIFICATE OF SERVICE

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:

address:

s/ _____