

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Before the Honorable Robert K. Rogers, Jr.
Administrative Law Judge

In the Matter of

CERTAIN WIRELESS DEVICES WITH
3G AND/OR 4G CAPABILITIES AND
COMPONENTS THEREOF

Investigation No. 337-TA-868

**COMMISSION INVESTIGATIVE STAFF’S RESPONSE TO MOTION BY CERTAIN
RESPONDENTS TO STAY INVESTIGATION, MOT. DOCKET NO. 868-002**

The Commission Investigative Staff (“Staff”) respectfully submits this response to the motion to stay the investigation filed by Respondents ZTE Corporation and ZTE (USA) Inc. (collectively “ZTE”); and Huawei Technologies Co., Ltd., Huawei Device USA, Inc., and Futurewei Technologies, Inc. (collectively “Huawei”). Mot. Docket No. 868-002 (Feb. 22, 2013). Respondents Nokia Corp. and Nokia Inc. (collectively “Nokia”) filed a notice of joinder with the motion on February 28, 2013. Nokia Notice of Joinder, EDIS Doc. No. 504986 (Feb. 28, 2013). ZTE, Huawei, and Nokia (the “Moving Respondents”) move to stay this investigation “until at least the District of Delaware has determined an appropriate FRAND royalty rate in the parallel federal court actions.”¹ Mot. at 1. In the alternative, they request a stay “at least until a Final Determination issues in the 800 Investigation.” *Id.* (referring to *Certain Wireless Devices with 3G Capabilities and Components Thereof*, Inv. No. 337-TA-800). The Staff opposes the motion.

The Moving Respondents argue that they are entitled to an opportunity to accept a license on fair, reasonable, and non-discriminatory (“FRAND”) terms at a royalty rate set by a district

¹ C.A. Nos. 1:13-cv-00008 (Huawei), 1:13-cv-00009 (ZTE) (D. Del. filed Jan. 2, 2013).

court before the Commission may investigate whether their allegedly infringing imports constitute a violation of Section 337. Mot. Mem. at 7. Their position is that if a patent-holder has committed to license a patent on FRAND terms, it is a breach of that commitment for the patent-holder to seek relief at the Commission before a judicial determination of the FRAND royalty rate is complete. *Id.* at 9. By extension, the Moving Respondents argue that the Commission may grant exclusionary relief only if a potential licensee refuses to accept a license on FRAND terms. *Id.* at 7. Section 337, however, provides for a separate administrative remedy for the harm caused by unfair imports of infringing merchandise. 19 U.S.C. § 1337(a)(1) (Section 337 remedies are “in addition to any other provision of law[.]”).

By statute, the Commission is required to investigate any alleged violation of Section 337 and to issue an exclusion order upon the finding of a violation “absent a finding that the effects of one of the statutorily-enumerated public interest factors counsel otherwise.” *Spanston, Inc. v. International Trade Comm’n*, 629 F.3d 1331, 1358 (Fed. Cir. 2010); 19 U.S.C. §§ 1337(b)(1) (“The Commission shall investigate any alleged violation of this section . . .”), 1337(d)(1) (“it shall direct that the articles concerned . . . be excluded from entry into the United States . . .”). The Commission is also required to “conclude any such investigation and make its determination under this section at the earliest practicable time[.]” 19 U.S.C. § 1337(b)(1). The fact that the Moving Respondents have raised a FRAND-based affirmative defense does not relieve the Commission of these obligations. The Staff submits that granting the Moving Respondent’s motion for a lengthy stay of this investigation would be inconsistent with the Commission’s statutory mandate.

A. A FRAND-based affirmative defense is not a basis for terminating or delaying a Commission investigation.

While FRAND issues have been raised in numerous investigations (*e.g.*, Investigation Nos. 577, 578, 601, 613, 669, and 745, amongst others), none have resulted in a finding that the Commission should not conduct an investigation or award relief merely because the asserted patent is allegedly subject to FRAND obligations.² Rather, in such investigations, the focus has typically been on the factual question of whether the patentee engaged in good faith efforts to license the patent on FRAND terms. *Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same* (“DRAMs”), Inv. No. 337-TA-242, is instructive in this regard. In *DRAMs*, the Judge ultimately found that the complainant was estopped from asserting the patent-in-suit (and thus not entitled to an exclusion order), but only after first concluding that

² See, *e.g.*, *Certain Optoelectronic Devices, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-669, Initial Det. at 86-88 (Mar. 12, 2010) (non-reviewed May 19, 2010) (rejecting a FRAND defense due to a lack of evidence demonstrating the patent-in-suit was necessarily infringed by an implementation of the standard-at-issue); *Certain 3G Mobile Handsets and Components*, Inv. No. 337-TA-613, Order No. 18 (Feb. 25, 2008) (granting a motion *in limine* seeking to preclude respondents’ expert from testifying as to whether “public interest” is best served by issuing an exclusion order with respect to a patent essential to standard-compliant handsets); *3G Mobile Handsets*, Inv. No. 337-TA-613, Order No. 29 (Apr. 25, 2008) (denying a motion for summary determination as to an equitable estoppel defense based on a purported failure to comply with FRAND obligations); *Certain 3G Wideband Code Division Multiple Access Handsets and Components Thereof*, Inv. No. 337-TA-601, Prehearing Conf. Tr. at 32-46 (May 22, 2007) (discussing an affirmative defense based on purported FRAND obligations); *Certain Wireless Communications Equip., Articles Therein, and Products Containing Same*, Inv. No. 337-TA-577, Order No. 21 (Apr. 13, 2007) (denying a motion for summary determination as to affirmative defenses of equitable estoppel and breach of contract and on a forum selection clause related to FRAND obligations) (“*Wireless Comm’n Equip.*”); *Wireless Comm’n Equip.*, Order No. 33 (Mar. 19, 2007) (denying a motion for summary determination as to equitable estoppel, breach of contract, and patent misuse defenses based on a purported failure to comply with FRAND obligations); *Certain Mobile Telephone Handsets, Wireless Communication Devices, and Components Thereof*, Inv. No. 337-TA-578, Initial Det., 2007 ITC LEXIS 228 (Feb. 20, 2007) (non-reviewed Mar. 22, 2007) (granting a motion for summary determination rejecting affirmative defenses of unclean hands and patent misuse that were based, in part, on a purported failure by complainant to comply with FRAND obligations).

the complainant had failed to negotiate in good faith a renewal of a cross-license agreement with the respondent.³ In short, the complainant's contractual obligations were not a *per se* jurisdictional bar to a Commission investigation. Rather, the specific contractual obligations at issue required a good faith effort to license the asserted patent before the complainant could obtain such relief at the Commission. *See also Certain Wireless Communication Equipment*, Inv. No. 337-TA-577, Order No. 21 at 9-10 (Apr. 13, 2007) (estoppel under *DRAMs* applies only if complainant failed to comply with its obligation to offer a license on FRAND terms). Stated another way, the mere fact that InterDigital allegedly has FRAND obligations does not, by itself, bar relief at the Commission; rather, it is an affirmative defense to be explored over the course of the investigation, for which the Moving Respondents bear the burden of proof. It is not a basis for staying the investigation indefinitely pending a ruling in a district court action, as the Moving Respondents request.

The Commission has not yet held that a patent-holder may not (or even should not) seek exclusionary relief at the Commission in the first instance where a FRAND-related defense is asserted. The Moving Respondents argue that the trend among “federal regulators and courts” supports the conclusion that “a patent holder may only seek injunctive or exclusionary relief in the ITC only if a potential licensee refuses to accept a license on FRAND terms.” Mot. Mem. at 7. To make this argument, the Moving Respondents equate injunctive relief in the district courts with exclusionary relief at the Commission. Some courts have suggested that equitable injunctive relief may not be available to patent-holders who do not negotiate FRAND terms in

³ *See DRAMs*, Inv. No. 337-TA-242, Initial Det., 1987 ITC LEXIS 95, at *26 (“Under the terms of the TI-Hitachi license agreement, TI had an obligation to negotiate in good faith after the license expired. TI failed to negotiate in good faith. Since the license agreement covered all TI DRAM patents, the failure to negotiate results in an implied license of all TI DRAM patents, even those issued after the date on which the license expired.”), and at *36 (“It is found that TI is estopped in equity from suing Hitachi for infringement.”) (May 21, 1987).

good faith. *See Apple, Inc. v. Motorola, Inc.*, 869 F. Supp. 2d 901, 913-14 (N.D. Ill. 2012) (“By committing to license its patents on FRAND terms, Motorola committed to license the ’898 to anyone willing to pay a FRAND royalty and thus implicitly acknowledged that a royalty is adequate compensation for a license to use that patent.”); *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 884 (9th Cir. 2012) (“[T]he district court did not abuse its discretion in determining that Microsoft’s contract-based claims, including its claim that the RAND commitment precludes injunctive relief, would, if decided in favor of Microsoft, determine the propriety of the enforcement by Motorola of the injunctive relief obtained in Germany.”). The Staff is unaware of any court that has held that the statutory remedy of an exclusion order is (or should be) unavailable where a respondent in a section 337 investigation has asked a federal district court to set a FRAND royalty rate.

Exclusion orders are different from injunctions issued by federal district courts. For example, Congress amended Section 337 in 1988 to provide that an exclusion order may be obtained without a showing of irreparable harm. *Spansion*, 629 F.3d 1331 at 1358-59; H.R. Rep. No. 100–576 at 633 (1988) (Conf. Rep.); S. Rep. No. 100–71, at 128 (1987). “The difference between exclusion orders granted under Section 337 and injunctions granted under the Patent Act, 35 U.S.C. § 283, follows ‘the long-standing principle that importation is treated differently than domestic activity.’” *Id.* at 1359-60 (quoting *Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Comm’n Op. at 62 n.230 (June 19, 2007) (“*Baseband Processors*”). When Congress gave district courts the discretion to grant injunctive relief, it provided that such discretion is to be exercised “in accordance with the principles of equity . . . on such terms as the court deems reasonable.” 35 U.S.C. § 283. “[T]he decision whether to grant or deny injunctive relief under Section 283

depends on traditional principles of equity, applying the four-part test for permanent injunctive relief in patent disputes no less than in other cases governed by such standards.” *Spansion*, 629 F.3d 1331 at 1359 (citing *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006)). In contrast, the decision whether to grant or deny exclusionary relief under Section 337 is not based on traditional equitable principles, but on the statutory public interest factors enumerated in 19 U.S.C. § 1337(d)(1). “The scope of the public interest factors recited in Section 337 is a matter of statutory interpretation not necessarily informed by the same principles of equity relevant to the grant of permanent injunctive relief under 35 U.S.C. § 283.” *Id.* (holding that *eBay* does not apply to Commission remedy determinations under Section 337). Thus, the reasoning behind Judge Posner’s conclusion that “I don’t see how, given FRAND, I would be justified in enjoining Apple . . . unless Apple refuses to pay a royalty that meets the FRAND requirement[,]” *Apple*, 869 F. Supp. 2d at 913-14, does not necessarily extend to exclusionary relief at the Commission. *See id.* at 915 (denying injunction based on reasoning that “[a] FRAND royalty would provide all the relief to which Motorola would be entitled”).

B. A FRAND royalty rate set by a district court would not necessarily moot the Commission’s investigation.

The Staff submits that the Commission is not required to stay this investigation because of the FRAND issues pending district court action. The Moving Respondents contend that granting a stay until the Delaware District Court sets a FRAND royalty rate for a license covering the patents at issue “would likely eliminate the need for any further proceedings with respect to the Moving Respondents, which would be free to take licenses to the patents-in-suit, and would therefore conserve Commission resources.” Mot. Mem. at 11-12. The Staff disagrees that the setting of a FRAND royalty rate would necessarily moot the Commission’s investigation.

As a preliminary matter, the Staff notes that setting a FRAND royalty rate alone would not even eliminate the need to continue litigation in the District Court. Huawei and ZTE (but not Nokia) have asked the District Court to “determine the FRAND rate on an expedited basis” and assert that they have committed to accept that judicially determined rate. Mot. Mem. at 2. The Moving Respondents have not, however, agreed to stipulate to other significant issues pending before the District Court. They have not, for example, conceded that their products infringe the asserted patents, or that the patents at issue are valid and enforceable. *See, e.g.*, Nokia Notice of Joinder at 1. Even assuming that it would be possible for the District Court to set a reasonable royalty rate without first resolving these other issues, an expedited order establishing a FRAND royalty rate would not necessarily resolve the district court litigation, and therefore would not be a final judgment subject to notice by the Commission.

Moreover, the proceedings in the District Court may be of limited relevance at the Commission, since Section 337 remedies are to be imposed in addition to any other provision of law. 19 U.S.C. § 1337(a)(1); *see Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same*, Inv. No. 337-TA-605, Comm’n Op. at 3-4 n.2 (May 27, 2008) (“*Semiconductor Chips*”) (“Because section 337 remedies are in addition to, and not instead of, other remedies at law, we believe that remedies potentially available in the courts are irrelevant to our analysis of whether to stay this proceeding.”); *cf. Baseband Processors*, Comm’n Op. at 47 n.175 (rejecting contention that the Commission should decline to grant certain relief in a section 337 investigation because alternative remedies were available in the courts). The purpose of establishing a royalty rate in district court litigation is to determine the amount of money damages owed if infringement is found, as well as setting a rate for future royalties if there is to be a license to the asserted patents going forward. Money damages are not available in Section 337 proceedings, and a future royalty rate, even one accepted by all parties,

is of limited relevance because the Commission has no authority to require parties to enter into a license agreement.⁴ Thus, it is entirely uncertain the extent to which any factual findings made by the District Court in establishing a FRAND royalty rate would be relevant to the remedies available under Section 337. Accordingly, delaying this investigation until the District Court sets a FRAND royalty rate is not warranted in the Staff's view.

The Staff submits that the soundness of the Moving Respondents' assertion that obtaining a royalty rate from the District Court would "likely eliminate the need for any further proceedings" at the Commission is also uncertain. Mot. Mem. at 11-12. Like the District Court, the Commission would still need to investigate issues of infringement and validity, in addition to making determinations on importation, the existence of a domestic industry, and the public interest. Even if the parties reach a settlement, the Commission will have to consider whether any proposed resolution of the investigation is in the public interest. These issues do not necessarily become moot simply because the District Court has set a FRAND royalty rate.

The Moving Respondents appear to believe that by accepting a FRAND rate set by the District Court they will have a licensing affirmative defense to all of the allegations in the Complaint filed at the Commission. *See* Mot. Mem. at 11-12 (Moving Respondents "would be free to take licenses to the patents-in-suit[.]"). The Staff respectfully disagrees. First, a royalty rate alone does not constitute a license. Even after a rate is set, the Moving Respondents will still need to obtain a license to the asserted patents, either through negotiation with InterDigital or by obtaining an injunction in District Court. Until an actual license exists, there can be no licensing defense.

⁴ In the Staff's view, it is likely that the royalty rate's only relevance at the Commission would be for the purpose of setting a bond rate pursuant to 19 U.S.C. § 1337(j)(3) for imports made during the Presidential review period.

Second, even if the Moving Respondents obtained a license immediately, InterDigital would still have a cause of action under Section 337 based on unlawful importations, if any, made before the license took effect. A single unlawful importation is all that is needed to establish a violation of Section 337. Procedurally, a complainant “need only prove importation of a single accused product to satisfy the importation element.” *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17 at 5 (Sept. 23, 2004); *see also Certain Laser Imageable Lithographic Printing Plates*, Inv. No. 337-TA-636, Initial Det. at 12 (Jul. 24, 2009); *Certain Integrated Circuits, Processes for Making Same, and Products Containing Same*, Inv. No. 337-TA-450, Order No. 15, at 6-7 (Nov. 2, 2001); *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, USITC Pub. No. 1605, Comm’n Op. at 8 (Nov. 1984). Substantively, the fact that certain future importations would be licensed would not excuse past infringement. *See Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476, 500 (1964) (a license agreement “cannot be held, in the teeth of its contrary language and intention, to have erased extant infringement”); *Honeywell Int’l Inc. v. United States*, 609 F.3d 1292, 1303-04 (Fed. Cir. 2010) (Honeywell’s sale of infringing products was not authorized because at the time of the sale Honeywell had no rights under the patent, and “[t]he fact that Honeywell now owns the patent does not retroactively authorize the earlier sale.”); *Certain Automated Media Library Devices*, Inv. No. 337-TA-746, Initial Det. at 61 (June 20, 2012) (“Promising not to sue for past infringement, does not . . . equate to ‘*ex post facto* authorization . . . to practice the [a]sserted [p]atents’ and does not eradicate instances of prior direct infringement.”). InterDigital would still have the right to pursue an exclusion order (which would not apply to licensed imports, but would apply to any future infringing imports outside the scope of the license agreement, including infringing new technologies), and the Commission would still have the obligation to investigate InterDigital’s allegations and determine whether a violation of Section 337 exists.

The Staff also submits that the extent to which any Commission resources will be conserved by postponing the inevitable is unclear. Even if the Delaware District Court agrees to expedite its consideration of the Moving Respondents' counterclaims, an order setting a FRAND royalty rate is unlikely to issue anytime soon. If it does not expedite its consideration, the District Court likely will not set a royalty rate until the conclusion of the entire district court litigation. At that point, the Administrative Law Judge might need to resolve just as many issues as if there had never been a stay. Accordingly, the Staff submits that a stay is uncertain, even unlikely, to conserve Commission resources, and would be inconsistent with the statutory mandate that the Commission "conclude any such investigation and make its determination under this section at the earliest practicable time[.]" 19 U.S.C. § 1337(b)(1).

C. A stay pending the final resolution of Inv. No. 337-TA-800 would not simplify the investigation.

In the alternative, the Moving Respondents request a stay of the investigation at least until a final determination issues in *Certain Wireless Devices with 3G Capabilities and Components Thereof*, Inv. No. 337-TA-800 ("the 800 investigation"). Mot. at 1. They contend that this would "serve to simplify the issues in this Investigation and . . . conserve valuable Commission resources." Mot. Mem. at 13. The Staff disagrees that a stay until the Commission issues a final determination in Inv. No. 337-TA-800 would have any such effect.

The 800 investigation was filed on July 26, 2011, and an evidentiary hearing concluded on February 21, 2013. The initial determination is not due until June 28, 2013, and the target date for the investigation is October 28, 2013. Of the patents asserted in the 800 investigation, four are asserted against Respondents Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively "Samsung"): U.S. Patent Nos. 7,616,970; 7,706,830; 8,009,636; and 7,502,406. Samsung is not a party to the

current motion, however, and none of these patents are asserted against any of the Moving Respondents. In the Staff's view, therefore, staying the current investigation as to the Moving Respondents would not significantly streamline the issues in this investigation or prevent duplication of effort. There is no overlap between the patents asserted against the Moving Respondents in the 800 investigation and the patents asserted against them now.

Moreover, in the current investigation there are three patents that were not at issue in the 800 investigation: U.S. Patent Nos. 7,190,966; 7,286,847; and 7,941,151. The first two are asserted against Huawei, ZTE, and Samsung; the remaining patent is asserted against all Respondents. There is also a newly accused technology: 4G wireless communication. The final determination in the 800 investigation will not address any of these three patents or any aspect of 4G technology. Accordingly, the Staff submits that there would be no purpose in staying these portions of the investigation. The Staff further submits that staying some portions of the investigation but not others would needlessly complicate matters and create unnecessary duplication of effort. For these reasons, the Staff opposes the Moving Respondents' alternative request.

D. The traditional factors considered do not indicate that a stay is warranted.

When considering whether to stay an investigation, the Commission typically considers five factors: (1) the state of discovery and the hearing date; (2) whether a stay will simplify the issues and hearing of the case; (3) the undue prejudice or clear tactical disadvantage to any party; (4) the stage of parallel proceedings; and (5) the efficient use of Commission resources. *See Certain Integrated Circuits, Chipsets, and Products Containing Same Including Televisions*, Inv. No. 337- TA-822, Order 17 at 3-4 (Aug. 6, 2012); *Semiconductor Chips*, Comm'n Op. at 3. In the Staff's view, the balance of these factors weighs against granting a stay.

The first factor, the state of discovery and the hearing date, admittedly does not weigh against staying the investigation. This investigation was instituted on January 30, 2013, and the parties are in the earliest stages of discovery. The hearing date is scheduled to begin on December 16, 2013. Order No. 6 (Feb. 28, 2013). The remaining factors, however, all suggest that the Moving Respondents' motion should be denied.

Staying the investigation until either the Delaware District Court sets a FRAND royalty rate or the Commission issues a final determination in Inv. 337-TA-800 will not simplify the issues or hearing of the case. As discussed above, the extent to which a FRAND royalty rate would be relevant to the issues before the Commission remains speculative, and waiting for the District Court to set such a rate will not necessarily eliminate any issues from consideration by the Commission. Moreover, a stay pending the final determination in Inv. 337-TA-800 is not certain (or even likely) to prevent duplication of effort, as there is no overlap between the patents asserted against the Moving Respondents in the 800 investigation and the patents asserted against them now.

The third factor, undue prejudice or clear tactical disadvantage to any party, strongly weighs against granting the motion for a stay. InterDigital would clearly be disadvantaged by a lengthy delay of the target date in this investigation. The Moving Respondents argue that InterDigital would be fully compensated for this delay once the District Court sets a FRAND royalty rate for license agreements with InterDigital. Mot. Mem. at 14. The Staff disagrees. Even assuming that establishing a royalty rate would lead to a license within the time period currently set for this investigation, the license would not necessarily have the same scope as an exclusion order, which is prospective and applies to all infringing products, including those that have not yet been imported. InterDigital is entitled to prompt consideration of the allegations in its Complaint, and would be unduly prejudiced by a delay that will not necessarily streamline the

issues in the investigation. Furthermore, Respondent Samsung has not joined in the motion, and it has the right to raise its own defenses with regard to the patents asserted against the Moving Respondents in Inv. No. 337-TA-800 as well as against Samsung in the current investigation. The Staff submits that Samsung would be prejudiced if not allowed to fully argue all issues related to those patents before any findings in the 800 investigation were adopted in this investigation.

The fourth factor, the stage of the parallel proceedings, also militates against granting a stay. InterDigital filed parallel lawsuits in the Delaware District Court against each of the Moving Respondents on the same day that the Complaint in this investigation was filed. Mot. Mem. at 1. The Moving Respondents filed counterclaims requesting that the District Court set a FRAND royalty rate shortly thereafter. *Id.* at 2. Thus, discovery in the district court litigation is no further along than it is in this investigation. Moreover, the District Court has yet to rule on the Moving Respondents' request for expedited review of their counterclaims, which could be denied. If so, then the District Court might not even consider the issue until determining damages, if any, at the end of the district court litigation. Thus, the timing of the district court's resolution of this issue remains unknown. Even if the request for expedited review is granted, it could still be many months before the District Court determines *whether* to set a FRAND rate, let alone determines what that rate should be. Similarly, it will be many months before a final determination issues in Inv. No. 337-TA-800, which has a target date of October 28, 2013.

Finally, the Staff submits that a stay would not promote the efficient use of Commission resources, particularly if some but not all aspects of the investigation were stayed. For the reasons discussed above, the Staff disagrees with the Moving Respondents' definitive statement that a stay would "eliminate[e] some or all of the issues at stake in this investigation." Mot. Mem. at 15. Moreover, if the Moving Respondents' motion were granted, the investigation

would still continue as to Respondent Samsung, eventually resulting in duplicate discovery efforts and potentially duplicate hearings. Accordingly, the Staff submits that on balance, the five criteria traditionally used to evaluate a request for a stay weigh against granting the Moving Respondents' motion.

Respectfully submitted,

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March 7, 2013

CERTIFICATE OF SERVICE

The undersigned certifies that on March 7, 2013, she caused the foregoing **COMMISSION INVESTIGATIVE STAFF'S RESPONSE TO MOTION BY CERTAIN RESPONDENTS TO STAY INVESTIGATION** to be served by hand upon Administrative Law Judge Robert K. Rogers, Jr. (2 copies), and served upon the parties (1 copy each) in the manner indicated below:

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