

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

MAY 10 2004 JS

MICHAEL A. MILBY, CLERK OF COURT

<b>In re ENRON CORPORATION</b>	§
<b>SECURITIES, DERIVATIVE</b>	§
<b>&amp; "ERISA" LITIGATION</b>	§
<hr/>	§
<b>MARK NEWBY, ET AL.,</b>	§
	§
<i>Plaintiffs,</i>	§
	§
<b>v.</b>	§
	§
<b>ENRON CORPORATION, ET AL.,</b>	§
	§
<i>Defendants.</i>	§
<hr/>	§

**MDL 1446  
and Consolidated, Related  
and Coordinated Cases**

**Civil Action no: H-01-3624  
and Consolidated, Related Cases  
and Coordinated Cases**

**MOTION FOR EXPEDITED CONSIDERATION OF OFFICER DEFENDANTS'  
MOTION TO COMPEL THIRD-PARTY BLOCKBUSTER, INC.  
TO RESPOND TO SUBPOENA DUCES TECUM**

Defendants Richard B. Buy, Steven J. Kean, Jeffrey McMahon, Mark A. Frevert, Mark E. Koenig, Cindy Olson, and Lawrence G. Whalley, (collectively "Officer Defendants") respectfully submit this Motion for Expedited Consideration of their Motion to Compel Third Party Blockbuster, Inc. to Respond to a Subpoena Duces Tecum, filed on Friday, May 7, 2004. (See Mot. to Compel, attached as Exhibit A). In support of this Motion, the Officer Defendants respectfully show the Court the following:

1. The Officer Defendants served a subpoena duces tecum on Blockbuster, Inc. on or about December 19, 2003, with an original return date of January 17, 2004. The subpoena seeks production of documents related to the Officer Defendants' defense of allegations regarding Enron

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Broadband Services, Inc. (“EBS”), specifically regarding EBS and Blockbuster’s joint effort to develop a service called “Video-on-Demand.”

2. Over the past several months, counsel for the Officer Defendants have engaged in discussions with counsel for Blockbuster regarding the scope of Blockbuster’s response to the subpoena. Ultimately, the Officer Defendants agreed that Blockbuster would produce documents responsive to four of the twenty categories of documents listed in the subpoena on or before April 28, 2004.

3. On May 6, 2004, Blockbuster finally produced a small number of documents to the Officer Defendants. However, this production was inadequate for a variety of reasons, outlined in detail in the Motion to Compel. *See* Ex. A. Accordingly, the Officer Defendants filed their Motion to Compel.

4. Depositions of important witnesses regarding EBS are scheduled to begin in June, a mere three weeks away. The Officer Defendants need to obtain the discovery sought in the Blockbuster subpoena in time to review the documents prior to these crucial depositions. The Motion to Compel requests that the Court order Blockbuster to comply with the subpoena no later than May 21, 2004.

5. Accordingly, the Officer Defendants respectfully request that the Court expedite consideration of their Motion to Compel so that it may be resolved and documents may be produced prior to the June 2, 2004 start of the deposition schedule in this case.

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

The undersigned certifies that counsel for the movants has conferred with Blockbuster, Inc. regarding the subject matter of this motion and that counsel cannot agree about the disposition of the motion.

Paul D. Flack /ms

Paul D. Flack

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 10<sup>th</sup> day of May, 2004, a true and correct copy of the foregoing document was served by mail on counsel for Blockbuster, Inc., and on all counsel of record in the Enron Securities Litigation by posting said document in .PDF format to the <http://www.esl3624.com> website.

*Paul D. Flack/VHS*

Paul D. Flack