

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LARRY BERKE,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

Civil Action No. 12-1347 (ESH)

ORDER

Berke filed a motion for a temporary restraining order on August 14, 2012. It was converted to a motion for a preliminary injunction after the sentencing judge in New Jersey agreed to postpone the commencement of Berke's sentence. (*See* Order, Aug. 17, 2012 [Dkt. No. 5]; Order, Aug. 24, 2012 [Dkt. No. 6].) Thereafter, the parties commenced negotiations and settled all of their disputes but one (*see* Order Approving Stipulation, Sept. 27, 2012 [Dkt. No. 18]): whether the Bureau of Prisons ("BOP") would be required to provide Berke with a videophone upon his checking-in to the BOP facility in Tucson on September 28, 2012. On September 25, 2012, the Court heard testimony from two experts for the plaintiff and Todd Craig, the Acting Chief of the BOP's Office of Security Technology. Based on the testimony and the argument of counsel, the Court granted Berke's motion in part and denied it in part for reasons stated from the bench. It ordered the BOP, by May 25, 2013, to complete an evaluation of the videophone and make a written determination, as required by 28 C.F.R. § 39.160, as to whether providing Berke with a videophone at the Tucson facility "would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative

