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**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

AT&T INC.,)	
)	
)	
Petitioner,)	
)	
v.)	No. 08-4024
)	
FEDERAL COMMUNICATIONS COMMISSION)	
and UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

**AT&T INC.’S RESPONSE TO ORDER DIRECTING PARTIES
TO ADDRESS VENUE UNDER 28 U.S.C. § 2343**

Petitioner AT&T Inc. (“AT&T”) respectfully responds to this Court’s September 29, 2008 order directing the parties to address whether venue for AT&T’s petition for review lies in this Court. In particular, the Court asked “whether incorporation in the State of Delaware is sufficient to establish venue in this Circuit.” As explained below, incorporation in Delaware is sufficient to establish venue in this Circuit.

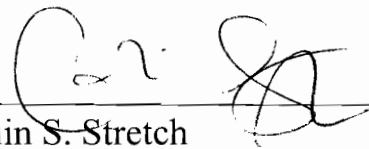
As the Order notes, venue over a petition for review of an order of the Federal Communications Commission is governed by 28 U.S.C. § 2343. That provision states that “[t]he venue of a proceeding under this chapter is in the judicial circuit in which the petitioner *resides* or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.” 28 U.S.C.

§ 2343 (emphasis added). “Courts have uniformly held that for venue purposes the residence of a corporate plaintiff is the place of its incorporation.” *American Civil Liberties Union v. FCC*, 774 F.2d 24, 26 (1st Cir. 1985); see *Leith v. Oil Transp. Co.*, 321 F.2d 591, 593 (3d Cir. 1963) (“it has long been held that, for venue purposes, a corporation ‘resides’ only where it is incorporated”) (citing *Suttle v. Reich Bros. Constr. Co.*, 333 U.S. 163, 166-67 (1948)). As two courts of appeals have recognized, that principle applies equally to venue questions arising under § 2343. See *Merchants Fast Motor Lines, Inc. v. ICC*, 5 F.3d 911, 921 n.15 (5th Cir. 1993) (“For venue purposes the residence of a corporate plaintiff, including a membership corporation, is the place of incorporation.”); *American Civil Liberties Union*, 774 F.2d at 26. See also 33 Wright & Koch, *Federal Practice & Procedure* § 8296, at 29 n.7 (2006) (in cases challenging agency action, “[f]or the purpose of venue determination, a corporation resides only in the state of its incorporation”). AT&T is aware of no authority to the contrary. Because AT&T is incorporated in the State of Delaware, venue for this action is proper pursuant to 28 U.S.C. § 2343.

This Court’s decision in *Kelly v. United States Steel Corp.*, 284 F.2d 850 (3d Cir. 1960), is not to the contrary. *Kelly* addressed, for purposes of diversity jurisdiction under 28 U.S.C. § 1332(c), the “principal place of business” of a particular company with offices and operations in various states. In so doing, the Court observed that a corporation “which gets a charter in one state but carries on

all its business operations in another state” would have its “principal place of business [in the state] where the corporate activity is carried on.” *Id.* at 852. For present purposes, however, AT&T does not allege that its “principal place of business” is in the Third Circuit. Rather, AT&T alleges that venue is proper here solely on the basis of its “residence” – *i.e.*, its incorporation in Delaware. For the reasons set forth above, AT&T’s residence in Delaware is sufficient to establish venue in this Court under 28 U.S.C. § 2343.

Respectfully submitted,



Colin S. Stretch
Kelly P. Dunbar
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Wayne Watts
Paul K. Mancini
AT&T INC.
175 East Houston
San Antonio, Texas 78205
(210) 351-3448

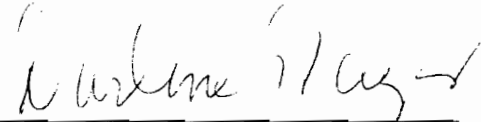
Gary L. Phillips
Terri Hoskins
AT&T INC.
1120 20th Street, N.W.
Washington, D.C. 20036
(202) 457-2055

Counsel for AT&T Inc.

October 2, 2008

CERTIFICATE OF SERVICE

I hereby certify that, on the 2nd day of October 2008, I caused copies of the foregoing to be served upon each of the parties on the attached service list by overnight mail.

A handwritten signature in black ink that reads "Darlene Hayes" with a checkmark at the end of the name.

Darlene Hayes

SERVICE LIST

FEDERAL COMMUNICATIONS COMMISSION

Matthew Berry
General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

COMPTEL

Mary C. Albert
CompTel
900 17 Street, N.W., Suite 400
Washington, D.C. 20006
(202) 926-6650

UNITED STATES OF AMERICA

Catherine G. O'Sullivan
Nancy C. Garrison
United States Department of Justice
Antitrust Division, Appellate Section
950 Pennsylvania Avenue, N.W.
Room 3224
Washington, D.C. 20530-0001