

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT



AT&T INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

No. 08-4024

**RESPONDENT FEDERAL COMMUNICATIONS COMMISSION'S
CONSENT MOTION FOR EXPEDITED TREATMENT**

The Federal Communications Commission ("FCC" or "Commission") moves pursuant to Federal Rule of Appellate Procedure 27 and Local Appellate Rule 27 for expedited review of the merits of the above-captioned case.¹ Counsel for Petitioner AT&T has authorized the Commission to state that AT&T consents to this motion. Counsel for Proposed Intervenor Respondent CompTel has authorized the Commission to state that CompTel

¹ It is unclear whether LAR 4.1, which applies to notices of appeal of District Court orders, is applicable to AT&T's Petition for Review here. Regardless, consistent with the spirit of LAR 4.1, the FCC has consulted with counsel for Petitioner AT&T and counsel for Proposed Intervenor Respondent CompTel, and attaches hereto as Exhibit 1 a proposed briefing schedule to which they consent.

supports this motion and the proposed briefing schedule. Expedition is warranted for the reasons set forth below.

This is a so-called reverse-FOIA case in which AT&T seeks to prevent the Commission from releasing records requested by trade association CompTel under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *as amended*. The records concern the Commission’s investigation into allegations that AT&T’s predecessor, SBC Communications, Inc. (“SBC”), violated the FCC’s rules when it submitted claims for universal service support for the New London, Connecticut public schools.² On September 12, 2008, the Commission issued an Order³ directing its Enforcement Bureau to release certain of these records to CompTel. On September 26, 2008, AT&T filed a Petition for Review of the Commission’s Order, and moved to stay the Order pending judicial review. On September 30, 2008, CompTel moved to intervene in this litigation. The Commission subsequently agreed not to release the records at issue during the pendency of this proceeding.

² In November 2005, SBC acquired AT&T Corp., and changed its name to AT&T Inc.

³ Memorandum Opinion and Order, *SBC Communications Inc. On Request for Confidential Treatment*, FCC 08-207 (rel. Sept. 12, 2008).

Exceptional reasons exist for expedition. The Commission has issued an Order that it believes serves the public interest, but has agreed not to implement that Order pending judicial review. Moreover, a civil action initiated by CompTel under the FOIA remains pending in the U.S. District Court for the District of Columbia,⁴ and the district court *sua sponte* stayed that action pending resolution of AT&T's reverse-FOIA claims. Expedition of proceedings in this Court will permit CompTel's right to the records to be expeditiously determined and minimize the time in which the parallel district court proceeding must remain in abeyance. In light of the foregoing, expedition of a review of the merits of this case is warranted.

⁴ *CompTel v. FCC et al.*, Civil Action No. 06-1718 (HHK).

Respectfully submitted,



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October 3, 2008

EXHIBIT NO. 1

Proposed Briefing Schedule for Case No. 08-4024

The parties respectfully propose the following expedited briefing schedule in this case:

Petitioner's opening brief due not later than thirty days following the issuance of the Court's decision on Respondent Federal Communications Commission's Uncontested Motion for Expedited Treatment;

Respondent's response due thirty (30) days thereafter;

Proposed Intervenor Respondent's response due seven (7) days thereafter;

Petitioner's reply brief due thirty (14) days thereafter.

Oral argument at the Court's earliest convenience if the Court believes that oral argument is warranted.

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FOR THE THIRD CIRCUIT

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Federal Communications Commission and USA, Respondents.

Certificate Of Service

I, Sharon D. Freeman, hereby certify that the foregoing "Respondent Federal Communications Commission's Consent Motion For Expedited Treatment" was served this 3rd day of October, 2008, by mailing true copies thereof, postage prepaid, to the following persons at the addresses listed below:

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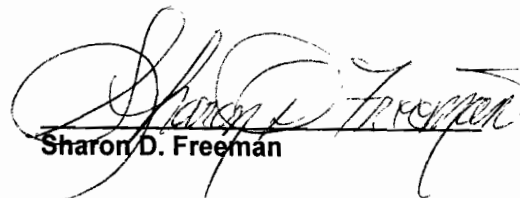
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