

08-4024

**CERTIFIED LIST OF ITEMS IN THE RECORD*****AT&T v. FCC & USA, 3rd Cir. 08-4024*****Administrative Records Pertaining to  
Intervenor Respondent Comptel's FOIA Request**

- 09/12/08 Memorandum Opinion and Order, *SBC Communications Inc. On Request for Confidential Treatment*, FCC 08-207 (rel. Sept. 12, 2008).
- 09/06/05 SBC Communications, Inc. ("SBC") Opposition to CompTel's Application for Review (Letter from Jim Lamourex, Senior Counsel, SBC, to Samuel Feder, Acting General Counsel, Office of General Counsel, Federal Communications Commission ("FCC")).
- 09/06/05 CompTel's Application for Review of the FCC Enforcement Bureau's administrative Freedom of Information Act ("FOIA") decision (Letter from Mary C. Albert, Vice President Regulatory Policy, CompTel, to Samuel Feder, Acting General Counsel, Office of General Counsel, FCC).
- 09/01/05 CompTel's Opposition to SBC's 08/19/08 Application for Review (Letter from Mary C. Albert, Vice President Regulatory Policy, CompTel, to Samuel Feder, Acting General Counsel, Office of General Counsel, FCC).
- 08/19/05 SBC's Application for Review of the FCC Enforcement Bureau's administrative FOIA decision (Letter from Jim Lamourex, Senior Counsel, SBC, to Samuel Feder, Acting General Counsel, Office of General Counsel, FCC).
- 08/05/05 FCC Enforcement Bureau's administrative FOIA decision (Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Jim Lamourex, Senior Counsel, SBC, and Mary C. Albert, Vice President Regulatory Policy, CompTel).
- 06/28/05 CompTel's Opposition to SBC's Request for Confidential Treatment (Letter from Mary C. Albert, Vice President,

Regulatory Policy, CompTel, to Judy Lancaster, Investigations and Hearings Division, Enforcement Bureau, FCC).

- 05/27/05 SBC's Opposition to CompTel's FOIA request/Request for Confidential Treatment (Letter from Jim Lamoureux, Senior Counsel, SBC, to Judy Lancaster, Investigations and Hearings Division, Enforcement Bureau, FCC).
- 04/04/05 CompTel's FOIA request (e-mail from Mary C. Albert, Vice President, Regulatory Policy, CompTel to FCC's FOIA Control Office).

**Records Contained in File No. EB-04-IH-0342**

- 01/10/05-01/11/05 Two-page e-mail chain between FCC employees, dated January 10, 2005 through January 11, 2005, subject "FW: SBC Documents," discussing whether documents associated with the FCC's E-rate investigation of SBC may be provided to the U.S. Department of Justice ("DOJ").
- 01/10/05-01/11/05 Three-page e-mail chain between FCC employees, dated January 10, 2005 through January 11, 2005, subject "RE: SBC Documents," discussing whether documents associated with the FCC's E-rate investigation of SBC may be provided to DOJ, with handwritten notes.
- 01/10/05-01/11/05 Two-page e-mail chain between FCC employees, dated January 10, 2005 through January 11, 2005, subject "RE: SBC Documents," discussing whether documents associated with the FCC's E-rate investigation of SBC may be provided to DOJ, with handwritten notes.
- 01/10/05 Three-page handwritten notes of FCC staff, dated January 10, 2005, discussing coordination and possible courses of action that FCC and/or DOJ can pursue in E-rate investigations in light of proceedings in FCC's E-rate investigation of SBC.
- 01/06/05-01/11/05 Seven-page e-mail chain between FCC employees, dated January 6, 2005 through January 11, 2005, subject "RE: SBC Documents," discussing the FCC's investigation of SBC for

violations of the FCC's rules in connection with the FCC's E-rate investigation and possible referral to DOJ.

- 12/20/04-01/06/05 Five-page e-mail chain between FCC staff and DOJ officials, dated December 20, 2004 through January 6, 2005, subject "SBC e-rate consent decree," discussing whether documents associated with the FCC's E-rate investigation of SBC may be provided to DOJ and containing DOJ opinions regarding that investigation vis-à-vis similar investigations in other cases, with attached one-page chart identifying SBC New London E-rate projects.
- 12/20/04-01/06/05 Three-page e-mail chain between FCC staff, dated December 20, 2004 through January 6, 2005, subject "FW: SBC e-rate consent decree," discussing whether documents associated with the FCC's E-rate investigation of SBC may be provided to DOJ and containing DOJ opinions regarding that investigation vis-à-vis similar investigations in other cases.
- 12/20/04-01/06/05 Four-page e-mail chain between FCC staff and DOJ officials, dated December 20, 2004 through January 6, 2005, subject "RE: SBC e-rate consent decree," discussing whether documents associated with the FCC's E-rate investigation of SBC may be provided to DOJ and containing DOJ opinions regarding that investigation vis-à-vis similar investigations in other cases, with attached one-page chart identifying SBC New London E-rate projects.
- 12/20/04-01/06/05 Three-page e-mail chain between FCC staff and DOJ officials, dated December 20, 2004 through January 6, 2005, subject "FW: SBC e-rate consent decree," discussing whether documents associated with the FCC's E-rate investigation of SBC may be provided to DOJ and containing DOJ opinions regarding that investigation vis-à-vis similar investigations in other cases.
- 12/06/04 One-page e-mail between FCC staff, dated December 6, 2004, subject "Tolling Agreement Extension.doc," discussing edits to draft Tolling Agreement Extension between the FCC and SBC.

- 11/30/04 One-page e-mail between FCC staff, dated November 30, 2004, subject "SBC Erate," discussing edits to draft Compliance Plan.
- 11/09/04 One-page e-mail between FCC staff, dated November 9, 2004, subject "RE: SBC E Rate – New London," discussing edits to draft Consent Decree and strategies for presenting FCC counter-offer to SBC.
- 11/09/04 One-page handwritten note of FCC staff, dated November 9, 2004, containing SBC employee's contact information.
- 10/22/04-  
10/24/04 Three-page e-mail chain between FCC staff and SBC officials, dated October 22, 2004 through October 29, 2004, subject heading may not be disclosed because it would reveal protected information, discussing edits to draft Consent Decree and draft Compliance Plan.
- 10/22/04-  
10/29/04 Two-page e-mail chain between FCC staff and SBC officials, dated October 22, 2004 through October 29, 2004, subject heading may not be disclosed because it would reveal protected information, discussing edits to draft Consent Decree and draft Compliance Plan.
- 10/29/04 One-page handwritten notes of FCC staff, dated October 29, 2004, discussing meeting between FCC and SBC officials regarding possible points to be included in Consent Decree and Compliance Plan.
- 10/21/04 Two-page e-mail between FCC staff, dated October 21, 2004, subject "RE: SBC E Rate," discussing edits to draft Consent Decree.
- 10/21/04 One-page e-mail between FCC staff, dated October 21, 2004, subject "SBC E Rate," discussing edits to draft Consent Decree, with handwritten notes, and attached five-page draft Consent Decree with edits.
- 10/12/04 One-page e-mail from FCC official to SBC officials, dated October 12, 2004, subject "Tolling Agreement, EB-04-IH-0342," stating that Tolling Agreement was signed.

- 10/08/04 One-page e-mail between FCC staff, dated October 8, 2004, subject "FW: SBC erate New London," discussing FCC and SBC settlement offers and FCC strategies in settlement discussions.
- 10/07/04 One-page handwritten notes of FCC staff, dated October 7, 2004, discussing potential settlement terms in FCC's E-rate investigation of SBC.
- 10/07/04 One-page e-mail between FCC staff, dated October 7, 2004, subject "SBC E Rate New London," discussing settlement negotiations between FCC and SBC regarding FCC's E-rate investigation, with attached one-page summary of matters at issue prepared for settlement negotiations.
- 10/07/04 One-page e-mail between FCC staff, dated October 7, 2004, subject "RE: SBC E Rate - New London," discussing potential FCC settlement counter-offers in FCC's E-rate investigation of SBC.
- 10/05/04 Two-page e-mail between FCC staff, dated October 5 through 7, 2004, subject "RE: SBC New London," discussing invoices at issue in FCC's E-rate investigation of SBC and how invoices may relate to investigation.
- 10/05/04-  
10/07/04 One-page e-mail between FCC staff, dated October 5 through 7, 2004, subject "RE: SBC E Rate – Invoices," discussing FCC's interpretation of SBC invoices regarding FCC's E-rate investigation and FCC investigatory practices regarding such invoices.
- 10/05/04 Four-page memorandum between FCC staff, dated October 5, 2004, preparing for settlement negotiations and discussing matters at issue in FCC E-rate investigation of SBC and the parties' settlement negotiations.
- 09/30/04 One-page FCC staff typewritten notes, dated September 30, 2004, discussing SBC settlement offer and possible FCC counter-offers.

- 09/28/04-09/30/08 Two-page e-mail between FCC staff, dated September 28 through September 30, 2004, subject "RE: SBC New London," discussing settlement discussions between FCC and SBC and potential FCC strategies and counter-offers.
- 09/28/04 Two-page e-mail between FCC staff, dated September 28 through September 30, 2004, subject "RE: SBC New London," discussing settlement discussions between FCC and SBC and potential FCC strategies and counter-offers.
- 09/23/04 One-page e-mail between FCC staff and USAC official, dated September 23, 2004, subject "Requirement that funds be used at sites specified on the," discussing analysis of FCC rules at issue in FCC's E-rate investigation of SBC and how rules might apply to that investigation.
- 09/23/04 Two-page handwritten notes of FCC staff, dated September 23, 2004, discussing meeting with SBC and SBC settlement proposals for resolving FCC's E-rate investigation of SBC.
- 09/07/04-09/22/07 Three-page e-mail chain between FCC officials, dated September 7, 2004 through September 22, 2004, subject "SBC E Rate," discussing FCC staff opinions regarding possible courses of action for FCC to pursue in its E-rate investigation of SBC and possible violations.
- 09/20/04-09/21/04 Three-page e-mail chain between FCC officials, dated September 20, 2004 through September 21, 2004, subject "FW: SBC E Rate," discussing staff opinions regarding possible courses of action for FCC to pursue in its E-rate investigation of SBC; discussions with SBC officials; and issues regarding settlement.
- 09/13/04 SBC's response to the FCC's Letter of Inquiry, with attachments.
- 08/25/04-09/14/04 One-page of handwritten notes of FCC staff, with attached three-page e-mail chain between FCC officials, dated August 25, 2004 through September 14, 2004, subject "RE: SBC E-

rate,” discussing FCC staff opinions regarding possible courses of action for FCC to pursue in its E-rate investigation of SBC.

- 08/25/04-09/14/04 Two-page e-mail between FCC staff, dated August 25, 2004 and September 14, 2004, subject “RE: SBC e-rate,” discussing FCC staff opinions regarding possible courses of action for the FCC to pursue in its E-rate investigation of SBC.
- 08/25/04-09/07/04 Two-page e-mail between FCC staff, dated August 25, 2004 through September 7, 2004, subject “RE: SBC E-rate,” discussing FCC staff opinions regarding possible courses of action for the FCC to pursue in its E-rate investigation of SBC, with handwritten notes on first page.
- 08/25/04-09/07/04 Two-page e-mail between FCC staff, dated August 25, 2004 through September 7, 2004, subject “RE: SBC E-rate,” discussing FCC staff opinions regarding possible FCC rules at issue in FCC’s E-rate investigation of SBC and how these rules might relate to that investigation.
- 08/25/04 One-page e-mail between FCC staff, dated August 25, 2004, subject “SBC E-rate,” discussing issues that FCC should review in connection with its E-rate investigation of SBC.
- 08/24/04 Letter of Inquiry from the FCC to SBC.
- 08/18/04 One-page e-mail between FCC staff, dated August 18, 2004, subject “SBC erate,” discussing suggested edits to draft FCC LOI to SBC, with handwritten notes.
- 08/06/04 One-page e-mail between FCC staff, dated August 6, 2004, subject “SBC e-rate,” discussing telephone conversation with SBC officials regarding SBC’s internal E-rate investigation and the FCC’s possible courses of action.
- 08/06/04 Two-page e-mail between FCC staff and SBC officials, dated August 6, 2004 through August 9, 2004, subject heading may not be disclosed because it would reveal protected information, discussing SBC’s August 6, 2004 letter notifying the FCC that SBC had discovered “certain irregularities” during an internal

audit that constituted an “apparent violation of the E-rate rules” and possible FCC courses of action.

- 08/06/04-08/09/04 Two-page e-mail chain between FCC staff and SBC officials, dated August 6, 2004 through August 9, 2004, subject heading may not be disclosed because it would reveal protected information, discussing SBC’s August 6, 2004 letter to the FCC described in paragraph 46 above and possible FCC courses of action, with attached 15-page SBC August 6, 2004 letter (with attachments) containing handwritten notes of FCC staff.
- 08/--/04 Six-page draft FCC Letter of Inquiry to SBC, dated “August \_\_, 2004,” with handwritten edits.
- 08/--/04 Nine-page draft FCC Letter of Inquiry to SBC, dated “August \_\_, 2004.”
- 08/06/04 SBC’s August 6, 2004 letter (with attachments) notifying the FCC that SBC had discovered “certain irregularities” during an internal audit that constituted an “apparent violation of the E-rate rules” (15 pages).
- 06/04/04 Cover letter with attached Plea Agreement in *United States v. NEC-Business Network Solutions, Inc.* (43 pages, with personally identifiable information redacted from cover letter)
- 05/28/04 Cover letter with attached Settlement Agreement in *U.S. ex rel. San Francisco Unified School District v. Nippon Electric Co. Business Network Solutions, et al.*, No. C02-2398 CRB; *U.S. v. NEC-Business Network Solutions, Inc.*, CR 04-184 CRB (13 pages)
- 04/14/04 One-page e-mail between FCC staff and USAC officials, dated April 14, 2004, subject “FW: Surveillance Cameras,” discussing whether E-rate pays for certain equipment.
- 02/06/04 Two-page e-mail between FCC staff, dated February 6, 2004, subject “2/6 TR Daily story on Sprint & E-Rate program,” containing FCC staff opinion on news article.



- 02/--/04 Six-page draft memorandum from FCC staff to other FCC staff, dated "February \_\_, 2004," subject heading may not be disclosed because it would reveal protected information, summarizing issues in another E-rate matter and discussing possible courses of action for the FCC to pursue in that matter, with handwriting and edits.
- 01/06/04 One-page handwritten notes of FCC staff discussing certain "DOJ issues" relating to subject matter that is unclear, dated January 6, 2004.
- /--/-- Two-page handwritten notes of FCC staff, undated, discussing FCC rules associated with possible SBC violations of E-rate program and possible SBC E-rate violations.
- /--/-- Two-page draft Tolling Agreement Extension between FCC and SBC, undated, with handwritten edits.
- /--/-- Two-page draft Tolling Agreement Extension between FCC and SBC, undated.
- /--/-- One-page handwritten notes of FCC staff, undated, discussing timeline of events in connection with FCC's E-rate investigation of SBC and FCC rules related thereto.
- /--/-- Three-page typed notes of FCC staff, undated, subject "SBC E Rate Investigation New London, CT," summarizing and discussing possible violations and courses of action for the FCC to pursue in its E-rate investigation of SBC, with handwritten notes and edits.
- /--/-- One-page handwritten notes of FCC staff, undated, discussing tasks that FCC may perform in connection with FCC's E-rate investigation of SBC.
- /--/-- Three-page handwritten notes of FCC staff, undated, summarizing and discussing possible violations and courses of action for the FCC to pursue in its E-rate investigation of SBC, with handwritten notes and edits.

- /--/-- One-page handwritten notes of FCC staff, undated, discussing possible SBC violations in connection with FCC's E-rate investigation of SBC.
- /--/-- One-page handwritten notes of FCC staff, undated, subject "Invoices SBC E Rate," discussing information in connection with FCC's E-rate investigation of SBC.
- /--/-- One-page handwritten notes of FCC staff, undated, discussing information in connection with FCC's E-rate investigation of SBC.
- /--/-- Four-page draft Consent Decree between FCC and SBC, undated, with handwritten notes and typed edits.
- /--/-- Six-page draft Consent Decree between FCC and SBC, undated, with typed edits and handwritten notes.
- /--/-- Four-page draft Consent Decree between FCC and SBC, undated, with typed edits and handwritten notes, with attached one-page e-mail between FCC and SBC officials (dated October 28, 2004) discussing edits, and three-page memo discussing SBC E-Rate Compliance Program, with FCC staff handwritten notes.
- /--/-- Four-page executed Tolling Agreement between FCC and SBC, with one-page fax transmission cover sheet and one-page confirmation page, and one-page EB cover sheet.
- 02/27/01 FCC Order *In the Matter of Request for Review of a Decision of the Universal Service Administrative Company by Naperville Community Unit School District 203 Naperville, Illinois, et al.*, released February 27, 2001 (8 pages, with the handwriting of FCC staff redacted).



IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

AT&T, Inc., Petitioner,

v.

Federal Communications Commission and the United States of America, Respondents.

Certificate Of Service

I, Koy Miller, hereby certify that the foregoing "Certified List of Items in the Record" was served this 10th day of November, 2008, by mailing true copies thereof, postage prepaid, to the following persons at the addresses listed below:

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