

ORAL ARGUMENT SCHEDULED MARCH 13, 2009

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

AT&T, INC.,

Petitioner,

v.

FCC and UNITED STATES OF AMERICA,

Respondents.

)
)
)
)
)
)
)
)
)
)
)

Case No. 08-4024

Motion of Intervenor COMPTTEL To Present Oral Argument

Intervenor COMPTTEL respectfully moves this Court for time to present oral argument on March 13, 2009 in the above captioned case. COMPTTEL has intervened for the purpose of supporting the Federal Communications Commission's ("FCC") order. Respondent FCC has informed COMPTTEL that it is unwilling to cede any time to COMPTTEL for argument and that it reserves the right to respond to COMPTTEL's Motion. Petitioner AT&T has authorized COMPTTEL to represent that it does not oppose the Motion so long as the FCC's time is reduced by any time allocated to COMPTTEL.

COMPTEL filed the Freedom of Information Act (“FOIA”) request that is at the heart of AT&T’s reverse FOIA appeal of the FCC’s order. In its brief, COMPTEL raised an issue with respect to this Court’s jurisdiction to hear the appeal. AT&T bears the burden of establishing that this Court has appellate jurisdiction. F.R.A.P. 28(a)(4)(B). AT&T asserts that this Court has jurisdiction pursuant to Section 402(a) of the Communications Act, 47 U.S.C. § 402(a), and the Hobbs Act, 28 U.S.C. §§ 2342(1) and 2344.¹ Section 402(a) of the Communications Act and the Hobbs Act confer exclusive jurisdiction in the courts of appeals for review of final FCC orders under the Communications Act. The FCC order which AT&T asks this Court to review, however, was not an order under the Communications Act, but an order under FOIA. AT&T itself argued that this Court owes no deference to the FCC in interpreting the provisions of FOIA because FOIA applies government wide and no one agency administers it.² In contrast, the FCC is entitled to deference in its interpretation of the Communications Act. *See e.g., Time Warner Telecom, Inc. v. FCC*, 507 F.3d 1205 (3rd Cir. 2007) (considerable weight should be given to a reasonable interpretation of any ambiguities in a statute the agency administers). Because the FCC’s order

¹ AT&T Brief at 1.

² *Id.* at 13.

is not an order under the Communications Act, neither Section 402(a) of the Communications Act nor the Hobbs Act vests jurisdiction in this Court.

The FCC has not raised the jurisdictional issue. For this reason, COMPTel respectfully requests five minutes to present argument and to respond to any questions the Court may have.

March 2, 2009

Respectfully submitted,

/s/

Mary C. Albert
Assistant General Counsel
COMPTel
900 17th Street N.W., Suite 400
Washington, D.C. 20006
malbert@comptel.org
(202) 296-6650 (telephone)
(202) 296-7585 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that the other parties to this appeal listed below are Filing Users and are served electronically by the Notice of Docket Activity.

Federal Communications Commission

Matthew Berry
Michael Krasnow
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

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

AT&T

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

_____/s/
Mary C. Albert