

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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VIA ECF

Marcia M. Waldron, Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: *AT&T Inc. v. FCC*, No. 08-4024 (oral argument held on March 13, 2009)

Dear Ms. Waldron:

This responds to AT&T's May 29, 2009 letter bringing to the Court's attention under Federal Rule of Appellate Procedure 28(j) the D.C. Circuit's decision in *National Cable & Telecommunications Association v. FCC*, No. 08-1016 (D.C. Cir. May 26 2009) ("*NCTA*"). AT&T asserts that the court's decision in *NCTA* supports AT&T's position in this case that "even assuming various references to individual privacy in the legislative history reflect Congress' primary focus in enacting Exemption 7(C), that does not limit the scope of the exemption, the text of which on its face encompasses corporations."

NCTA is irrelevant here because the FCC's principal arguments are not based on legislative history. Rather, we argued (FCC Br. at 30) that "[g]iven the text and structure of FOIA and the consistent judicial interpretation of it, there is no need to resort to legislative history in this case." The statutory text and structure of the FOIA and Exemption 7(C), along with judicial precedent interpreting that provision, make clear that the exemption is intended to encompass only individual and not corporate privacy interests. FCC Br. at 14-30. In this case, the legislative history – which uniformly demonstrates that Congress intended the phrase "personal privacy" in Exemption 7(C) to cover only individuals – is merely confirmatory. *Id.* at 30-34.

Respectfully submitted,

_____/s/_____
Michael A. Krasnow
Counsel
Federal Communications Commission

cc: Counsel for all parties