

Parties

3. Plaintiff COMPTTEL is the nation's oldest and largest industry association representing competitive telecommunications providers and their suppliers. COMPTTEL has over 300 member companies that include competitive local exchange carriers, Internet backbone providers, and competitive providers of local and long-haul wholesale transmission service. Plaintiff COMPTTEL is the requester of the withheld records.

4. Defendant FCC is an United States government agency and has possession of and control over the records that Plaintiff COMPTTEL seeks.

Statement of Facts

5. On April 4, 2005, COMPTTEL filed a FOIA request with the FCC for documents contained in, and relating to, the investigation of SBC in File No. EB-04-IH-0342. On August 5, 2005, the FCC's Enforcement Bureau granted in part and denied in part COMPTTEL's request. The Enforcement Bureau stated its intent to withhold some of the records requested on the grounds that they were exempt from disclosure pursuant to Exemptions 4 and 5 of the FOIA, 5 U.S.C. § 552(b)(4) and (5).

6. On August 19, 2005, SBC filed an application for review of the Enforcement Bureau's August 5, 2005 decision to grant in part COMPTTEL's FOIA request. On September 1, 2005, COMPTTEL responded to SBC's application for review and asked the FCC to summarily deny the application for review. On September 6, 2005, COMPTTEL filed an application for review of the FCC's decision denying its FOIA request in part. As of this date, the FCC has made no documents available to Plaintiff COMPTTEL.

7. The FOIA mandates that the FCC resolve appeals of its decisions within 20 working days. 5 U.S.C. §552(a)(6)(A)(ii). As of October 5, 2006, the FCC has yet to make a decision on the August 19, 2005 application for review filed by SBC or the September 6, 2005 application for review filed by COMPTTEL. The FCC never notified COMPTTEL that it would need more than 20 working days to resolve the appeal.

8. Thirteen months have passed since the FCC received COMPTTEL's September 6, 2005 application for review of the Enforcement Bureau's August 5, 2005 decision. The statutory 20 working day time frame for the FCC to resolve the appeal expired over one year ago. Pursuant to 5 U.S.C. § 552 (a)(6)(C)(i), any person requesting records from any agency shall be deemed to have exhausted his administrative remedies if the agency fails to comply with the 20 day time limit for resolving appeals. The FCC failed to comply with the 20 working day deadline on October 4, 2005 and as of that date, COMPTTEL is deemed to have exhausted its administrative remedies . Having exhausted all administrative remedies one year ago, COMPTTEL is entitled to seek judicial review.

9. Over eighteen months after COMPTTEL filed its FOIA request, the FCC has yet to produce a single document. According to the FCC's Freedom Of Information Act Annual Report for Fiscal Year 2005 (October 1, 2004 to September 30, 2005), the average FCC response time for FOIA appeals in fiscal year 2005 was 292 days—almost 15 times the statutory time limit. See "Federal Communications Commission Freedom of Information Act Annual Report Fiscal Year 2005," at 2 available at <http://www.fcc.gov/foia/2005foiareport.pdf>. The FCC's failure to act on COMPTTEL's appeal has extended well beyond even its 292 day average response time that is already a gross violation of FOIA's statutory time limit for the FCC to act.

Demand for Relief

WHEREFORE, Plaintiff COMPTTEL respectfully requests that this Court:

- (1) compel Defendant FCC to produce to Plaintiff COMPTTEL the documents requested by COMPTTEL or, in the alternative, compel Defendant FCC to produce the documents requested by COMPTTEL to the Court for an *in camera* inspection and resolution of COMPTTEL's entitlement to the documents under FOIA;
- (2) declare that Defendant FCC's refusal to disclose the documents requested by Plaintiff COMPTTEL is unlawful;
- (3) declare that Defendant FCC's conduct in failing to comply with the statutory time frames for resolving appeals of FOIA requests is unlawful;
- (4) award Plaintiff COMPTTEL its costs and reasonable attorney's fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
- (5) grant such other relief as this Court may deem just and proper.

Respectfully submitted,



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Counsel for Plaintiff

October 5, 2006

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26-118
HHK

ORIGINAL

CIVIL COVER SHEET

JS-44
(Rev. 1/05 DC)

I (a) PLAINTIFFS COMPTEL 11001		DEFENDANTS Federal Communications Commission COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) 11001 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND																									
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) 11001		ATT CASE NUMBER 1:06CV01718 JUDGE: Henry H. Kennedy DECK TYPE: FOIA/Privacy Act DATE STAMP: 10/05/2006																									
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Mary C. Albert, COMPTEL, 1900 M Street N.W., Suite 800, Washington, D.C. 20036 (202) 296-6650		III CITIZENS! FOR PLAINTIFF A <table border="1"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input checked="" type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input checked="" type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input checked="" type="radio"/> 6</td> </tr> </tbody> </table>			PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input checked="" type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input checked="" type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input checked="" type="radio"/> 6
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II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)																											
<input type="radio"/> 1 U.S. Government Plaintiff <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)																											

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act Social Security: <input type="checkbox"/> 861 HIA (11395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) Other Statutes <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*	
<input type="radio"/> E. General Civil (Other)		OR	<input type="radio"/> F. Pro Se General Civil	
Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property Personal Property <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	Bankruptcy <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 Prisoner Petitions <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Property Rights <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	Forfeiture/Penalty <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other Other Statutes <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)	

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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/PRIVACY ACT <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

V. ORIGIN

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 FOIA action under 5 U.S.C. Sec. 552 to compel Federal Communications Commission to produce documents requested by Plaintiff.

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ JURY DEMAND: YES NO Check YES only if demanded in complaint

VIII. RELATED CASE(S) IF ANY (See instruction) YES NO If yes, please complete related case form.

DATE 10/05/06 SIGNATURE OF ATTORNEY OF RECORD Mary C. Ethel

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION: Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.