

# EXHIBIT C



April 5, 2006

Pillsbury Winthrop Shaw Pittman LLP  
Bruce A. Ericson  
50 Fremont Street  
San Francisco, CA 94105  
(415)983-1200 (fax)

Re: Hepting v. AT&T C-06-0672-VRW  
By facsimile transmission and electronic mail

Dear Bruce:

We write to respond to your letter of April 4, 2006, as well as to the draft stipulation concerning the motion for preliminary injunction that you sent to us on March 31, 2006.

Initially, it appears that events have overtaken most of the draft stipulation. Since we have now filed our notice of motion for preliminary injunction, we do not require a stipulation setting that date, and we do not agree to set your planned motion to dismiss to be heard concurrently or before our motion for preliminary injunction. We do appreciate your agreement to allow us to file a 35 page brief and we of course extend you the same courtesy.

More importantly, we address your April 4, 2006 letter. As you know, this filing for a Motion for Preliminary Injunction has already been delayed significantly by the concerns raised by the DOJ last week, which we accommodated. AT&T raised no additional concerns in the intervening time. Indeed, the first we learned of any issues from AT&T was over an hour after we received the government's approval for us to file the documents under seal.

As you know, the First Amendment protects the right to litigate, and that right is especially strong in public interest litigation such as this. Moreover, the First Amendment right of Plaintiffs to present information on a matter of important public interest to the court would exist even if it was proven that a third party violated law in obtaining the information. Obviously this case raises matters critical to the public interest, since it alleges that millions of AT&T customers are having their private communications illegally diverted to the government. And of course this conclusion is supported by the press attention that has been given to both this case and the issues surrounding the admission of warrantless wiretapping by the President. In this instance, as we have explained, copies of the two-year-old documents were given to plaintiffs by a third party to this litigation and are not being used by plaintiffs as a means to circumvent limitations on discovery, avoid the civil discovery process or to advantage that third party's financial interest. AT&T has copies of the documents and so can continue to use them for its own purposes.

We do understand the concerns that you raise regarding these three documents, however. While we do not necessarily agree with your assertions, we are lodging the documents under seal according to Local Rule 79-5(d) in order to preserve AT&T's ability to make such arguments to the Court. We

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believe that these already-established procedures are sufficient to protect any legitimate interest that AT&T may have to prevent further dissemination of any proprietary information contained in the documents. You have presented us with no authority or argument that the court processes for handling documents under seal are inadequate to protect AT&T's interests here, nor any authority that requires us to forego those processes and instead seek leave of court prior to lodging the documents. As a result, we will be lodging the documents under seal.

Nonetheless, we are willing to enter into discussions with you about an appropriate protective order to govern the three documents. We are concerned, however, that your blanket demand here for protection of all of the over 140 pages in the three documents, without any specificity about the information contained within them, is not justified by good cause. In fact, such blanket requests are specifically disfavored by the Northern District of California Local Rules. Accordingly, we ask that in addition to providing us with a proposed order, that you outline which specific portions of the documents you believe should be protected under the order. For instance, you assert that the documents contain trade secrets, but do not identify them or indicate where in the documents they can be found. Similarly, please indicate which portions of the documents you contend could be used by criminals to "hack" into AT&T's telephone network. We of course wish to respect any trade secrets of AT&T and wish to prevent any damage to AT&T's telephone network due to illegal behavior of others, but we do believe that more specificity is required for a protective order under both the Federal Rules and Local Rules.

Additionally, you have asked us to identify the former AT&T employee and/or his or her counsel. The employee's counsel is Miles Ehrlich, Esq., Ramsey & Ehrlich. His telephone number is (510) 548-3600.

We remain willing to work with you to ensure that AT&T's legitimate concerns are addressed. However, we must reject your demand that we seek prior court approval before lodging documents under seal that are key to our motion for preliminary injunction, and must defer your other demands pending court consideration. Our case alleges that every day AT&T is violating the law and privacy of millions of AT&T customers, and those who communicate with them, by diverting their communications to the government. These allegations are critical to the public interest and are supported by the documents. We must take appropriate steps to stop what we believe is a gross violation of law as soon as possible and those steps must include presenting our evidence to the court.

Sincerely,

ELECTRONIC FRONTIER FOUNDATION

A handwritten signature in black ink, appearing to read 'C.A. Cohn', written in a cursive style.

CINDY A. COHN  
Legal Director