

Nancy Justice



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1934 Act/ Rule 14a-8

December 11, 2006

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, DC 20549

Re: AT&T Inc. 2007 Annual Meeting  
Stockholder Proposal of Jeremy Kagan

Ladies and Gentlemen:

This statement and the material enclosed herewith are submitted on behalf of AT&T Inc. ("AT&T") pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. AT&T has received a stockholder proposal from "As You Sow," on behalf of Jeremy Kagan, for inclusion in AT&T's 2007 proxy materials. The proposal was co-filed by Jeffrey Hersh, Calvert Asset Management Company, Inc., Larry Fahn, The Adrian Dominican Sisters, and Camilla Madden Charitable Trust (collectively, together with Jeremy Kagan, referred to hereinafter as "Proponents"). Proponents Kagan, Hersh and Calvert have requested that all communications be directed to As You Sow. For the reasons stated below, AT&T intends to omit this proposal from its 2007 proxy statement. It is important to note that AT&T has neither confirmed nor denied the existence of any of the programs that are the basis of this proposal, nor does AT&T now confirm or deny that it has participated in any such activities or programs. In fact, as described in the attached opinion from Sidley Austin LLP, to the extent AT&T were to have participated in any such programs, implementation of the proposal would cause AT&T to violate federal statutes prohibiting their disclosure.

Pursuant to Rule 14a-8(j), enclosed are six copies of each of: this statement, the opinion of Sidley Austin LLP, and the Proponents' letter submitting the proposal, which is attached to the referenced opinion. A copy of this letter and related cover letter are being mailed concurrently to As You Sow and Proponents Fahn, Adrian Dominican

Sisters and Camilla Madden Charitable Trust advising them of AT&T's intention to omit the proposal from its proxy materials for the 2007 Annual Meeting.

### ***The Proposal***

On October 27, 2006, AT&T received a letter from As You Sow, on behalf of Proponent Kagan, alleging that AT&T provided certain customer information to the National Security Agency ("NSA"), the Federal Bureau of Investigation ("FBI"), and other government agencies. The letter also contains a proposal, subsequently co-filed by the other Proponents, requesting that AT&T report on the technical, legal and ethical policy matters and other details relating to the alleged actions (the "Proposal"). Specifically, the Proposal states:

RESOLVED: That shareholders request that the Board of Directors issue a report to shareholders in six months, at reasonable cost and excluding confidential and proprietary information, which describes the following:

- The overarching technical, legal and ethical policy issues surrounding (a) disclosure of the content of customer communications and records to the Federal Bureau of Investigations, NSA and other government agencies without a warrant and its effect on the privacy rights of AT&T's customers and (b) notifying customers whose information has been shared with such agencies;
- Any additional policies, procedures or technologies AT&T could implement to further ensure (a) the integrity of customers' privacy rights and the confidentiality of customer information, and (b) that customer information is only released when required by law; and
- AT&T's past expenditures on attorney's fees, experts fees, operations, lobbying and public relations/media expenses, relating to this alleged program.<sup>1</sup>

### ***The Proposal May be Omitted from the Proxy Statement Pursuant to Rule 14a-8(i)(2): Implementation of the Proposal by AT&T would violate federal law.***

Rule 14a-8(i)(2) provides that a shareholder proposal may be excluded if it "would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." The underlying premise of the Proposal is that AT&T has provided certain customer information to the NSA and other government agencies and that any such action would constitute a violation of the law and the privacy rights of customers. The

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<sup>1</sup> The full text of the Proposal and its Supporting Statement is attached as Exhibit 1 to the opinion of Sidley Austin LLP.

Proposal would require the company to publish a report on the technical, legal and ethical policy matters and other details relating to the alleged actions.

The Proposal, by its terms, directly addresses information regarding the alleged communications intelligence activities of the United States. Any such activities, if engaged in by AT&T, would be classified and disclosing them would be prohibited under Federal law.

AT&T has obtained a legal opinion from the law firm of Sidley Austin LLP which describes in detail the laws governing the disclosure of the alleged activities involving the NSA, FBI and other government agencies (the "Sidley Austin Opinion").<sup>2</sup> The Sidley Austin Opinion confirms that the actions called for by the Proposal, based on the premise of the Proposal, would cause AT&T to violate a series of Federal laws designed to protect the intelligence gathering activities of the United States, including 18 U.S.C. § 798(a), which specifically prohibits knowingly and willfully divulging to an unauthorized person classified information regarding the communications intelligence activities of the United States.

Because these issues are discussed at considerable length in the Sidley Austin Opinion, that discussion is incorporated in this letter and will not be repeated here.

Since implementation of the Proposal would violate federal law, AT&T can exclude the Proposal from its 2007 proxy materials in accordance with Rule 14a-8(i)(2).

***The Proposal May be Omitted from the Proxy Statement Pursuant to Rule 14a-8(i)(7): The Proposal relates to ordinary business matters.***

Rule 14a-8(i)(7) permits a company to omit a shareholder proposal from its proxy materials if the proposal deals with a matter relating to the company's ordinary business operations. The general policy underlying the "ordinary business" exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." This general policy reflects two central considerations: (i) "certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight"; and (ii) the "degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Exchange Act Release No. 34-40018 (May 21, 1998).

In applying the Rule 14a-8(i)(7) exclusion to proposals requesting companies to prepare reports on specific aspects of their business, the Staff has determined that it will consider whether the subject matter of the special report involves a matter of ordinary business. If it does, the proposal can be excluded even if it requests only the

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<sup>2</sup> The Sidley Austin Opinion is attached to this letter as Attachment A.

preparation of the report and not the taking of any action with respect to such ordinary business matter. Exchange Act Release No. 34-20091 (August 16, 1983).<sup>3</sup>

*The Proposal relates to ongoing litigation involving the company.*

The Proposal may be omitted as a matter involving ordinary business because it would improperly interfere with AT&T's legal strategy and the discovery process in at least 20 pending proceedings that to Proponent Kagan allege unlawful acts by AT&T in relation to alleged provision of information to the NSA.

AT&T is presently the defendant in multiple pending lawsuits and other proceedings that generally allege that the company has violated customer privacy rights by providing information and assistance to government entities without proper legal authority, including allegedly providing information to the specific entities described in the proposal. For example, in *Terkel & American Civil Liberties Union of Illinois v. AT&T*, No. 06 C.2837 (N.D. Ill.), plaintiffs alleged that AT&T has provided the National Security Agency with access to calling records of millions of customers in the absence of a court order, warrant, subpoena, or certification from the Attorney General that no such process was required. Similarly, these same allegations were also made in *Hepting v. AT&T*, No. 3:06-CV-006720-VRW (N.D. Cal.), where the plaintiffs also alleged that AT&T had also acted unlawfully by providing the National Security Agency with the contents of communications in the absence of a court order, warrant, or certification from the Attorney General that no such process was required. There are over 20 pending cases that make one or both of these allegations, and these cases have been consolidated for coordinated pretrial proceedings in the United States District Court for the Northern District of California.

In addition, local chapters of the ACLU<sup>4</sup> have filed complaints with over 20 state utility commissions that allege that AT&T violated state or federal law by providing the NSA with access to customer calling records in the absence of proper legal process. In cases where a state commission has attempted to institute an investigation, the United States has filed actions against AT&T and the state commissions, seeking declarations that these investigations are preempted by federal law and other appropriate relief.<sup>5</sup>

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<sup>3</sup> This Release addressed Rule 14a-8(c)(7), which is the predecessor to Rule 14a-8(i)(7).

<sup>4</sup> We note that the web site of the American Civil Liberties Union claims responsibility for "The ACLU Freedom Files," a film, co-executive produced and directed by Proponent Kagan, and that, according to the ACLU web site, alleges that the civil liberties of America are threatened and describes how they have fought back. In the "Viewers Guide," the ACLU repeats the allegation that "Americans' phone calls and e-mails [are monitored] – without court approval. Proponent Kagan now seeks the same information through the shareholder approval process that the ACLU has sought through litigation.

<sup>5</sup> See *United States v. Zulima V. Farber, et al.*, Civil Action No. 3:06 cv 02683 (D.N.J.); *United States v. Palermino, et al.*, C.A. 3:06-1405 (D. Conn.); *United States v. Adams, et al.*, C.A. 1:06-97 (D. Me.); *United States v. Gaw, et al.*, C.A. 4:06-1132 (E.D. Mo); *United States v. Volz, et al.*, C.A. 2:06-00188 (D. Vt.).

The Proposal repeats the substance of the complaints by repeating the allegation that AT&T "has voluntarily provided customer phone records and communications data to the National Security Agency." The Proposal goes on to call for a report on the policies "surrounding (a) disclosure of the content of customer communications and records to the Federal Bureau of Investigation, NSA and other government agencies without a warrant", disclosure of "AT&T's past expenditures on attorney's fees, experts fees, operations . . . relating to this alleged program, and a report on actions AT&T could take to "further" protect customer information, presumably from the government. All of these matters go directly to the substance of the complaints. The proposal calls for the same information that the plaintiff ACLU and others seek in discovery but sidesteps and interferes with the discovery process.

The Staff has previously acknowledged that a shareholder proposal is properly excludable under the "ordinary course of business" exception when the subject matter of the proposal is the same as or similar to that which is at the heart of litigation in which a registrant is then involved. See, e.g., Reynolds American Inc. (February 10, 2006) (proposal to notify African Americans of the purported health hazards unique to that community that were associated with smoking menthol cigarettes while the company was a defendant in a case alleging the company marketed menthol cigarettes to the African American community was excludable as ordinary business.); R. J. Reynolds Tobacco Holdings, Inc. (February 6, 2004) (proposal requiring company to stop using the terms "light," "ultralight" and "mild" until shareholders can be assured through independent research that such brands reduce the risk of smoking-related diseases excludable under the "ordinary course" exception because it interfered with litigation strategy of class-action lawsuit on similar matters); R. J. Reynolds Tobacco Holdings, Inc. (March 6, 2003) (proposal requiring the company to establish a committee of independent directors to determine the company's involvement in cigarette smuggling excludable under the "ordinary course" exception because it relates to subject matter of litigation in which the registrant was named as a defendant).

This result is also consistent with the longstanding position of the Staff that a registrant's decision to institute or defend itself against legal actions, and decisions on how it will conduct those legal actions, are matters relating to its ordinary business operations and within the exclusive prerogative of management. See, e.g., NetCurrents, Inc. (May 8, 2001) (proposal requiring NetCurrents, Inc. to bring an action against certain persons excludable as ordinary business operations because it relates to litigation strategy); Microsoft Corporation (September 15, 2000) (proposal asking the registrant to sue the federal government on behalf of shareholders excludable as ordinary business because it relates to the conduct of litigation); Exxon Mobil Corporation[\*21] (March 21, 2000) (proposal requesting immediate payment of settlements associated with Exxon Valdez oil spill excludable because it relates to litigation strategy and related decisions); Philip Morris Companies Inc. (February 4, 1997) (proposal recommending that Philip Morris Companies Inc. voluntarily implement certain FDA regulations while simultaneously challenging the legality of those regulations excludable under clause (c)(7), the predecessor to the current (i)(7)); Exxon Corporation (December 20, 1995) (proposal

that registrant forego any appellate or other rights that it might have in connection with litigation arising from the Exxon Valdez incident excludable because litigation strategy and related decisions are matters relating to the conduct of the registrant's ordinary business operations).

Therefore, the Proposal directly implicates issues that are the subject matter of multiple lawsuits involving AT&T. In effect, the Proposal recommends that AT&T facilitate the discovery of the opposing parties in these various lawsuits at the same time the company is challenging those parties' legal positions or claims. Compliance with the Proposal would improperly interfere with AT&T's litigation strategy in these cases and intrude upon management's appropriate discretion to conduct the ordinary business litigation as its business judgment dictates.

*The Proposal relates to matters of customer privacy.*

The Staff has, in the past, applied Rule 14a-8(i)(7) to allow for the exclusion of proposals requesting reports on issues related to customer privacy. In Bank of America Corp., a shareholder, in response to specific instances of lost and stolen customer records, submitted a proposal requesting that the company prepare a report on its policies and procedures for ensuring the confidentiality of customer information. The Staff concluded that the requested report involved matters of ordinary business in that it sought information regarding the company's "procedures for protecting customer information" and concurred in the company's decision to exclude the proposal pursuant to Rule 14a-8(i)(7). Bank of America Corp. (February 21, 2006); see also, Bank of America Corp. (March 7, 2005) (an almost identical proposal from the same proponent was excluded as relating to the company's ordinary business of protecting customer information); Applied Digital Solutions, Inc. (March 25, 2006) (a proposal requesting the company to prepare a report analyzing the public privacy implications of its radio frequency identification chips was excluded as relating to the company's ordinary business of managing the privacy issues related to its product development).

Like the proposals excluded in Bank of America Corp., the Proposal requests AT&T to produce a report assessing customer privacy issues and the company's policies and procedures for addressing such issues, in response to a perceived breach of that privacy. Thus, the Proposal explicitly deals with matters of customer privacy, which are a central function of AT&T's daily business operations and cannot, "as a practical matter, be subject to direct shareholder oversight."

*The Proposal relates to matters of legal compliance.*

The Proposal can also be properly excluded, pursuant to Rule 14a-8(i)(7), because it seeks to regulate the company's conduct of its legal compliance program. The Staff has long since identified a company's compliance with laws and regulations as a matter of ordinary business. In Allstate Corp., a shareholder proposal requested, in part, that the company issue a report discussing the illegal activities that were the subject of a number of state investigations and consent decrees involving Allstate. The Staff held

that a company's general conduct of a legal compliance program was a matter of ordinary business and agreed to Allstate's exclusion of the proposal under Rule 14a-8(i)(7). Allstate Corp. (February 16, 1999); see also, Duke Power Co. (February 1, 1988) (a proposal requesting the company to prepare a report detailing its environmental protection and pollution control activities was excluded as relating to the ordinary business matter of complying with government regulations); Halliburton Company (March 10, 2006) (a proposal requesting the company to produce a report analyzing the potential impact on reputation and stock value of the violations and investigations discussed in the Proposal and discussing how the company intends to eliminate the reoccurrence of such violations was excluded as relating to the ordinary business of conducting a legal compliance program); Monsanto Co. (November 3, 2005) (a proposal requesting the company to issue a report on its compliance with all applicable federal, state and local laws was excluded as relating to the ordinary business of conducting a legal compliance program).

The essence of the Proposal is to discover the relationship, if any, between AT&T and government agencies, including those agencies responsible for matters of tax collection, fugitive apprehension, criminal prosecution, and national security, among others. Specifically, the Proposal looks for the technical, legal and policy issues related to the company's cooperation with the NSA, FBI and other government agencies, the effects that such cooperation may have on customers, and the costs associated with such cooperation. In addition, the proposal requests consideration of "additional policies, procedures or technologies that AT&T could implement to further ensure . . . (b) that customer information is only released when required by law." The information requested by the Proposal relates to AT&T's compliance with government laws and regulations and is precisely the type of information that the Staff has identified as relating to matters of ordinary business.

It would be hard to find matters that are more intimately related to day-to-day business operations, or that pose a greater threat to micro-manage the company, than a company's compliance with its legal obligations. Legal compliance is exactly the type of "matter of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

Moreover, AT&T believes that exclusion of the Proposal is justified because the Proposal involves the company in the political or legislative process relating to aspects of the company's operations. Numerous no-action precedents have indicated that proposals requesting a company to issue reports analyzing the potential impacts on the company of proposed national legislation may properly be excluded as "involving [the company] in the political or legislative process relating to an aspect of [the company's] operations." International Business Machines Corp. (March 2, 2000); see also, Electronic Data Systems Corp. (March 24, 2000) and Niagara Mohawk Holdings, Inc. (March 5, 2001) (in all three cases, proposals requesting the company to issue reports evaluating the impact on the company of pension-related proposals being considered by national policy makers were excluded as involving the company in the political or legislative process). Likewise, the Proposal essentially requests AT&T to evaluate the

impact that the alleged government surveillance programs would have on the company's business operations, including matters of customer privacy and company costs. In this way, the Proposal can be seen as involving AT&T in the political process, and, therefore, excludable as relating to the company's ordinary business.

*The Proposal can be excluded as relating to matters of ordinary business, regardless of whether or not it touches upon a significant social policy issue.*

Simply because a proposal touches upon a matter with possible public policy implications does not necessarily undermine the basis for omitting it under Rule 14a-8(i)(7). The Staff has indicated that the applicability of Rule 14a-8(i)(7) depends largely on whether implementing the proposal would have broad public policy impacts outside the company, or instead would deal only with matters of the company's internal business operations, planning and strategies. In fact, the Staff has consistently concurred with the exclusion of proposals that address ordinary business matters, even though they might also implicate public policy concerns. See, e.g. Microsoft (September 29, 2006) (excluding a proposal asking the company to evaluate the impact of expanded government regulation of the internet); Pfizer Inc. (January 24, 2006) and Marathon Oil (January 23, 2006) (excluding proposals requesting inward-looking reports on the economic effects of HIV/AIDS, tuberculosis and malaria pandemics on the companies' business strategies and risk profiles). The Proposal falls squarely in this group.

The Proposal requests that the company issue a report on matters relating to its ordinary business and, as such, may be properly omitted pursuant to Rule 14a-8(i)(7).

***The Proposal May be Omitted from the Proxy Statement Pursuant to Rules 14a-8(i)(3) and 14a-8(i)(6): The Proposal is vague and indefinite and, therefore, AT&T would lack the power or authority to implement it.***

Rule 14a-8(i)(3) permits a company to exclude a shareholder proposal if it is contrary to any of the Commission's proxy rules, including Rule 14a-9's prohibition on materially false and misleading statements in proxy solicitation materials.

The Proposal, by its own terms, is inherently contradictory - according to the Proposal, AT&T is, at the same time, required to provide information and permitted to exclude the same information. The underlying premise of the Proposal is that AT&T has participated in programs requiring it to provide customer information to the NSA and other government agencies, and the Proposal requests the company to provide information regarding such participation. Although, as noted above, AT&T has not confirmed or denied its participation in any such programs, the Proposal, itself, acknowledges that, if AT&T were a participant in these programs, information regarding its participation would be considered confidential. The Sidley Austin Opinion confirms that the essential portion of the information requested by the Proposal, if it existed, would be identified by the United States as classified information and must be treated

confidentially.<sup>6</sup> However, the Proposal specifically allows AT&T to exclude all "confidential and proprietary information." These conflicting mandates make the Proposal inherently vague and indefinite and, as such, impossible for AT&T to implement. Therefore, the Proposal can be excluded under the Staff's interpretations of Rules 14a-8(i)(3) and 14a-8(i)(6).

Pursuant to the Staff's explanation of "materially false and misleading," a proposal can be properly excluded under Rule 14a-8(i)(3) where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (CF) (September 15, 2004); see also, Philadelphia Electric Co. (July 30, 1992). Moreover, the Staff has found a proposal to be sufficiently vague and indefinite so as to justify exclusion under Rule 14a-8(i)(3) where a company and its shareholders might interpret the proposal so differently that "any action ultimately taken by the company upon implementation of the proposal could be significantly different from the actions envisioned by the shareholders voting on the proposal." Fuqua Industries, Inc. (March 12, 1991).

Furthermore, Rule 14a-8(i)(6) allows for the exclusion of a shareholder proposal if the company lacks the power or authority to implement it. The Staff has previously held that a proposal may be omitted under Rule 14a-8(i)(6) where the proposal is so vague and indefinite that the company is unable to determine what actions are required by the proposal and, as such, is "beyond the [company's] power to effectuate." Int'l Business Machines Corporation (January 14, 1992) (permitted the exclusion of a resolution stating only that "It is now apparent that the need for representation has become a necessity."); see also, The Southern Company (February 23, 1995) (permitted the exclusion of a proposal recommending that the company take the essential steps to ensure the highest standards of ethical behavior of employees appointed to serve in the public sector without providing any suggestions on how to achieve such an objective).

Since substantially all of the information requested by the Proposal is confidential, the Proposal essentially requests AT&T to produce a report excluding the very substance of the report. Thus, the terms of the Proposal are so vague and ambiguous that it is impossible for AT&T to be able to ascertain with any reasonable certainty the exact actions that it would be required to take with respect to the Proposal. As such, the Proposal, if adopted, would be beyond AT&T's "power to effectuate." If AT&T were to implement the Proposal as drafted, it would issue a report excluding substantially all of the information sought for by the Proposal; this could result in a significantly different outcome than that envisioned by the shareholders voting on the Proposal.

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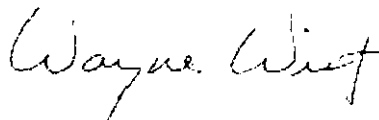
<sup>6</sup> For further analysis, refer to the Sidley Austin Opinion.

Because the terms of the Proposal are inherently vague and indefinite, AT&T believes that it can properly omit the Proposal from its proxy materials under Rules 14a-8(i)(3) and 14a-8(i)(6).

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For the reasons set forth above, we ask the Staff to recommend to the Commission that no action be taken if the Proposal is omitted from AT&T's 2007 proxy statement. Please acknowledge receipt of this letter by date-stamping and returning the extra enclosed copy of this letter in the enclosed self-addressed envelope. If the Staff does not concur that AT&T may exclude the Proposal, we respectfully request that the decision be promptly appealed to the full Commission for reconsideration, and that we be promptly notified of that appeal.

Sincerely,



Wayne Wirtz  
Assistant General Counsel

Enclosures

cc: As You Sow  
Calvert Asset Management Co., Inc.  
Larry Fahn  
Camilla Madden Charitable Trust  
Adrian Dominican Sisters



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November 22, 2006

Board of Directors  
 AT&T Inc.  
 c/o James D. Ellis  
 General Counsel  
 175 E. Houston, Room 205  
 San Antonio, Texas 78205

Re: Shareholder Proposal

Ladies and Gentlemen:

You have requested our legal opinion whether implementation by AT&T Inc. ("AT&T" or the "Company") of a shareholder proposal submitted by Jeremy Kagan on October 24, 2006, along with several co-filers (the "Proposal") to the Company for inclusion in its 2007 proxy statement for AT&T Inc. ("Proxy") would violate federal law.<sup>1</sup>

**The Proposal.** The Proposal calls for the AT&T Board of Directors to issue a report to shareholders describing, *inter alia*, "[t]he overarching technical, legal and ethical policy issues surrounding (a) disclosure of the content of customer communications and records to the Federal Bureau of Investigation, NSA [National Security Agency] and other government agencies without a warrant and its effect on the privacy rights of AT&T's customers and (b) notifying customers whose information has been shared with such agencies. . . ." The Proposal also would require the disclosure of past corporate expenditures, including for "operations" of specified intelligence programs allegedly undertaken by the NSA.

The cover letter accompanying the Proposal makes clear that it is based on the widely publicized allegations that AT&T and other telecommunications carriers have assisted the United States government, and in particular the NSA, in connection with foreign intelligence-gathering activities.<sup>2</sup> These media reports alleged two types of activities. First, on December 19, 2005, in response to a report in the *New York Times*, President Bush acknowledged the existence of a counterterrorism program involving the interception of international telephone calls made or

<sup>1</sup> The Proposal and cover letter are attached hereto as Exhibit 1.

<sup>2</sup> See Letter from Conrad B. MacKerron, Director, Corporate Social Responsibility Program to Edward E. Whitacre, CEO, AT&T Inc. (October 24, 2006) ("MacKerron Letter") (Exhibit 1) ("We are concerned about reports that AT&T provided customer information to the National Security Agency without a warrant.").