June 20, 2016

Commission’s Secretary

Marlene H. Dortch

Office of the Secretary

Federal Communications Commission

445 12th Street, SW

Room TW-A325

Washington, DC 20554

Deena Shetler: deena.shetler@fcc.gov

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Re: WC Docket No. 06-210

CCB/CPD 96-20

**Further Support of**

**800 Services, Inc.**

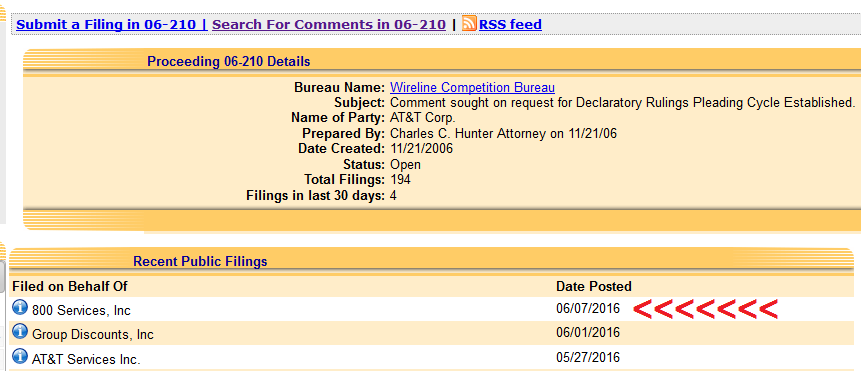
**REQUEST FOR DECLARATORY RULINGS**

**& RELIANCE UPON COMMENTS IN CASE 06-210**

My firm is counsel for 800 Services, Inc. owned by Mr. Phillip Okin. My firm is also counsel for One Stop Financial, Inc., Winback & Conserve Program Inc., 800 Discounts, Inc., and Group Discounts, Inc. herein further referred to as the “Inga Companies” as the 4 companies as owned by Mr. Inga.

These comments are a joint comment on behalf of the aforementioned 5 companies in support of 800 Services, Inc.’s request for 3 declaratory rulings sent to the Commission via email on Friday June 3, 2016.

800 Services, Inc.’s declaratory ruling requests were also uploaded to the FCC server on June 6, 2016 within case 06-210 between the Inga Companies and AT&T. In the interests of judicial economy a motion was requested by 800 Services, Inc to rely upon the comments within the 06-210 case as AT&T and the Inga Companies have filed substantial comments addressing 800 Services, Inc. requests.  800 Services, Inc.’s motion was FCC posted on June 7, 2016:



The 3 Declaratory Ruling motions were:

**Declaratory Ruling Number I**

Did AT&T violate the FCC’s Oct 23rd 1995 Order by not allowing its customers to maintain for minimum of 3 years its pre June 17th 1994 terms and conditions by not allowing petitioners to use the discontinuation without liability provision under Tariff No. 2., on its 3 years CSTPII/RVPP (EBO) plan commitment?

**Declaratory Ruling Number II**

AT&T under the CSTPII/RVPP Enhanced Billing Option billed petitioner’s end-user locations were inflicted shortfall and termination charges on petitioner’s end-user locations far in excess of the discounts each end-user location was receiving. Under AT&T’s Tariff No 2 within section 3.3.1Q it states for billing purposes AT&T can only remove the discounts. Therefore, would exceeding the location discount constitute an illegal AT&T billing remedy and thus regardless whether the charges were permissible AT&T wouldn’t be able to rely upon its charges?

**Declaratory Ruling Number III**

For plans that were ordered prior to June 17th 1994 and requested under the discontinuation without liability provision, interpret the duration of the immunity period from being charged pro rata shortfall and termination charges on a CSTPII/RVPP (EBO) plan commitment of 3 years?

**AT&T has Not Opposed 800 Services, Inc.’s Motion Within the Commission’s Rules:**

Mr. Inga contacted the FCC’s case manager Deena Shetler to ascertain what the procedural timeline was for AT&T to oppose the 800 Services, Inc. request. The following FCC rule was referenced for filing oppositions and replies that apply to petitions filed within an existing docket.  47 C.F.R. 1.45(b)-(c):

§ 1.45 Pleadings; filing periods.

Except as otherwise provided in this chapter, pleadings in Commission proceedings shall be filed in accordance with the provisions of this section. Pleadings associated with licenses, applications, waivers and other documents in the Wireless Radio Services may be filed via the ULS.

**(a)** ***Petitions.***Petitions to deny may be filed pursuant to § [1.939](https://www.law.cornell.edu/cfr/text/47/1.939) of this part.

**(b)** ***Oppositions.***Oppositions to any motion, petition, or request may be filed **within 10 days** after the original pleading is filed.

**(c)** ***Replies.***The person who filed the original pleading **may reply to oppositions within 5 days** after the time for filing oppositions has expired. **The reply shall be limited to matters raised in the oppositions**, and the response to all such matters shall be set forth in a single pleading; separate replies to individual oppositions shall not be filed.

**(d)** ***Requests for temporary relief; shorter filing periods.***Oppositions to a request for stay of any order or to a request for other temporary relief shall be filed within 7 days after the request is filed. Replies to oppositions should not be filed and will not be considered. The provisions of § [1.4(h)](https://www.law.cornell.edu/cfr/text/47/1.4#h) shall not apply in computing the filing date for oppositions to a request for stay or for other temporary relief.

**(e)** ***Ex parte disposition of certain pleadings.***As a matter of discretion, the Commission may rule *ex parte* upon requests for continuances and extensions of time, requests for permission to file pleadings in excess of the length prescribed in this chapter, and requests for temporary relief, without waiting for the filing of oppositions or replies.

**Note:**

Where specific provisions contained in part [1](https://www.law.cornell.edu/cfr/text/47/1) conflict with this section, those specific provisions are controlling. See, in particular, §§ [1.294(c)](https://www.law.cornell.edu/cfr/text/47/1.294#c), [1.298(a)](https://www.law.cornell.edu/cfr/text/47/1.298#a), and [1.773](https://www.law.cornell.edu/cfr/text/47/1.773).

[28 FR 12415, Nov. 22, 1963, as amended at 33 FR 7153, May 15, 1968; 45 FR 64190, Sept. 29, 1980; 54 FR 31032, July 26, 1989; 54 FR 37682, Sept. 12, 1989; [63 FR 68919](http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=1998_register&position=all&page=68919), Dec. 14, 1998]

These FCC rules also cover addressing the substance of the declaratory rulings as well---not just whether or not 800 Services, Inc. should be added as a co-petitioner. AT&T and the Inga Companies did **not** oppose 800, Service’s, Inc.’s requests within the FCC mandated 10 days. AT&T and the Inga companies thus also have chosen to rely upon the comments filed within the 06-210 case pertaining to the penalty infliction issues.

The FCC rules allow for a 5-day period to reply to opposition; however, since the replies must be limited to addressing opposition comments, which were not filed within the 10 days, the 5-day reply period is not relevant and the FCC must now release a Public Notice to add 800 Services, Inc. as a co-petitioner of the 4 Inga Companies within case ID 06-210.

The Florida Department of Revenue is also waiting for FCC confirmation that the FCC will interpret the permissibility of inflicting shortfall and termination charges. AT&T has conceded that it did not pay taxes on what AT&T advised Judge Bassler that AT&T was compensated by Combined Companies, Inc., for shortfall and termination charges “in a form other than cash.” Thus FCC’s acknowledgement of 800 Services, Inc.’s co-petitioner status will confirm that the FCC will address the penalty infliction issues on any non-disputed facts which under the Administrative Procedures Act will aid the NJFDC and Florida Department of Revenue to terminate a controversy or remove uncertainty.

AT&T’s position that it was compensated by CCI for both shortfall and termination charges also needs to be evaluated in terms of an unreasonable practice, as to AT&T’s expectation that it also now expects the Inga Companies to compensate AT&T for these same alleged shortfall and termination charges. If AT&T were also to be compensated for the same $80 million that CCI already compensated AT&T for, this would obviously constitute being compensated twice for the same charges. The AT&T-CCI settlement agreement indicates that AT&T was being compensated for both shortfall and termination charges. Double compensation for the same charges would constitute double billing which certainly would be an unreasonable practice under 201 of the Communications Act.

AT&T inflicted both shortfall and termination charges upon the Inga Companies Plans. AT&T has provided comments within the case regarding its reasoning why it inflicted shortfall charges. AT&T’s position is well documented that it interpreted the plans were post June 17th 1994 plans and no longer eligible for discontinuation without liability (aka restructure) after the first post June 17th 1994 restructure—despite the CSTPII/RVPP EBO plans being within a 3-year commitment period in which the terms and conditions were expected to be honored for the entire 3 years.

While AT&T has made comments as to why it believed shortfall charges were permissible, AT&T has conceded to the FCC that the Inga Companies plans were never terminated and therefore by law should have never been inflicted with termination charges. In fact, in 1996 AT&T’s 2.2.4 fraudulent use argument to the FCC was that it was **not concerned** with collecting termination charges because the plans were not being terminated.

The FCC’s 2003 Order also noted the fact that AT&T conceded that termination charges were not an issue and AT&T has thus conceded it violated its tariff by inflicting the termination charges. FCC 2003 Order Page 8 fn 56 quoting AT&T:

“termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is **not** at issue here. Opposition at 3 n.1. That is consistent with the **facts** of this matter; **petitioners never terminated their plans**. Accordingly, termination charges are **not** at issue in this matter.”

It is thus an undisputed fact that whether or not shortfall charges were permissible, AT&T has conceded that at minimum it violated its tariff by unlawfully applying termination charges. The FCC should also interpret the shortfall permissibility.

AT&T also charged 800 Services, Inc. with termination charges, however the non-disputed fact is that 800 Services, Inc. never terminated its CSTPII/RVPP EBO Plans.

On behalf of 800 Services, Inc., and the 4 Inga Companies it is requested that since the 10 days’ opposition period is over, the Commission must release a Public Notice that 800 Services, Inc. has been added as a co-petitioner within case 06-210 and the Commission will rely upon all the comments filed within the 06-210 case pertaining to the permissibility and as to whether or not a non-tariffed, illegal remedy was used by AT&T in inflicting AT&T’s alleged charges.

Sincerely Ray Grimes esq