July 7th 2017

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

FCC Contractor: fcc@bcpiweb.com

Re: WC Docket No. 06-210

CCB/CPD 96-20

**AT&T GENERAL COUNSEL D. WAYNE WATTS**

**SUPERVISES INTENTIONAL FRAUD & COVER-UPS**

**IN 2015 ON NJFDC JUDGE WIGENTON**

The following addresses misrepresentations made by AT&T’s counsels in 2015 to the NJFDC to cover-up former AT&T counsels assertions to the NJFDC, Third Circuit, FCC and DC Circuit Court. It also addresses AT&T asserting a defense it conceded was already denied by the FCC and therefore withdrawn on June 2, 1995.

AT&T counsel Mr Richard H. Brown was AT&T’s local counsel in 2015 and during this time AT&T’s general counsel was D. Wayne Watts and he was orchestrating and supervising the intentional fraud on the NJFDC and FCC from AT&T corporate HQ in Texas.

The following concerns AT&T counsel’s misrepresentations in 2015 to the NJFDC and thus is within the 4-year statute of limitations of Texas Bar.

The Texas Bar will not have to interpret any tariffs to determine current AT&T counsels engaged in a cover-up and are asserting a defense that the record explicitly shows was FCC denied and AT&T withdrawn.

Texas Bar rules require counsel to provide evidentiary support and to not present defenses which are no longer tenable---same as…..

**4.2.A.1   Standards for Making Representations to the Court:**Rule 11(b) provides that,”[b]y presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the **best of the person's knowledge**, information, and belief, formed **after an inquiry reasonable under the circumstances**” that the material presented is not filed for an improper purpose and has the **requisite degree of evidentiary** and legal support.  This amendment “subject’s litigants to potential sanctions for **insisting upon a position after it is no longer tenable**.

AT&T’s original counsels from 1995 through 2005 (Richard Meade, Frederick L. Whitmer, Aryea Friedman, Edward Barillari, Charles Fash, David Carpenter, Richard Brown) asserted to the NJFDC, Third Circuit and the FCC that when end-user business locations (referred to as “traffic only”) are transferred from one AT&T discount plan to another discount plan the revenue and time commitments of the plan must stay with the non-transferred plan. Only when the entire plan is transferred do the revenue and time commitments transfer with the transferred plan.

AT&T asserted in 1995 that it had the right to use section 2.2.4 fraudulent use to prohibit a permissible “traffic only” non-plan transfer. AT&T’s assertion under “fraudulent use” was that if the end-user locations were transferred away from the revenue commitment the non-transferred plan would no longer have the revenue to satisfy the revenue commitment of the non-transferred plan.

In addition to using section 2.2.4 fraudulent use AT&T filed on February 16th 1995 a Substantial Cause pleading TR8179 under section 2.1.8. to prohibit the January 1995 traffic only transfers. AT&T asserted to the FCC that it was already implicit within section 2.1.8 that when substantial traffic was transferred it could force an entire plan transfer to force the revenue and time commitments to transfer. If the FCC believed that it was implicit than AT&T would have been able to prohibit the January 1995 traffic only transfer. AT&T never provided any proof to the FCC that it was implicit. If it was implicit within section 2.1.8 that AT&T could force a traffic only transfer be forced to do a plan transfer, AT&T would obviously have had evidence to show it was already implicit.

Tr8179 proposal to modify section 2.1.8 was as follows:

“If a Customer seeks to transfer, to one or more other Customers, all or substantially all of the 800 numbers associated with an existing AT&T 800 Service Term Plan or Contract Tariff, and the anticipated result of such a transfer would be that the usage and/or revenue from the remaining 800 numbers associated with the term plan or Contract Tariff (based on the past 12 months of usage) would **not meet the usage and/or revenue commitment of the volume or term plan** or Contract Tariff, the transfer will be **deemed** a **transfer of the** associated volume or **term plan**

AT&T tried to convince the FCC with its 2.16.95 Tr 8179 filing that it was ALREADY IMPLICT that AT&T can deem the plan must be transferred if too many accounts are transferred away from the remaining tariffed revenue commitment of the non-transferred plan. If the FCC believed it was already implicit then AT&T could decide that the January 1995 transfer would have been prohibited as a traffic only transfer and only allowed as a plan transfer.

The FCC 2003 Order is explicit that AT&T withdrew its 2.1.8 defense on June 2, 1995 when the FCC decided against AT&T’s TR8179 Substantial Cause Pleading that was filed 2.16.95. The FCC determined that AT&T’s Tr8179 was a substantive change and thus would only be prospective and therefore not prohibit the January 1995 transfers of CCI to PSE and Inga Companies to PSE. AT&T’s counsel Richard Meade certified in 1995 to Judge Politan and AT&T’s counsel David Carpenter advised the Third Circuit in 1996 that the FCC was going to deny AT&T’s implicit argument under 2.1.8 so AT&T withdrew Tr8179.

The FCC did not buy AT&T’s IMPLICIT Argument and AT&T withdrew the Tr8179 –which was its 2.1.8 defense on June 2, 1995. The other bogus AT&T defense was 2.2.4 fraudulent use and that defense was denied on its merits by the NJFDC Judge Politan. His second Decision in March 1996 was vacated on primary jurisdiction grounds, not legal error.

FCC 2003 Order page 11 addressing AT&T’s section 2.1.8 withdrawn on June 2, 1995 defense:

“After AT&T refused to permit petitioners to move the traffic, it filed Transmittal 8179 with the Commission in February 1995, which sought to amend Tariff No. 2.  The district court’s May 1995 primary jurisdiction referral to the Commission **was based, in part, upon AT&T’s contention that the Commission’s consideration of Transmittal No. 8179 would clarify whether CCI was entitled, under the tariff, to move the traffic without the plans to PSE.** (FOOTNOTE 73 BELOW) According to the record, however, AT&T ultimately withdrew Transmittal 8179 on **June 2, 1995.[[1]](#footnote-1)[**2]  Thus, Transmittal 8179 **never became effective**.”

FCC 2003 Order FN 73:

*“See First District Court Opinion* at 12, 16-17; *Second District Court Opinion* at 3-4, 13; *see also* Petition at 14-16 & n.7 (quoting AT&T’s Brief filed in 1995 with the district court **(“Transmittal 8179 … make[s] explicit AT&T’s implicit rights under the tariff.  Accordingly, the proceeding in the FCC will resolve that issue ….”).**  The district court found that *Mical Communications, Inc. v. Sprint Telemedia, Inc.*, 1 F.3d 1031 (10th Cir. 1993), was persuasive authority on one of the factors relevant to the primary jurisdiction referral:  whether a decision by the court prior to an Commission response to a petition pending before that agency might result in conflicting decisions.  *See First District Court Opinion* at 14 n.10; *see also* Petition at 14-15 n.7 (quoting AT&T’s Brief filed in 1995 with the district court).  A tariff transmittal, however, **is a different kind of administrative filing** than the petition for declaratory ruling, *see Mical*, 1 F.3d at 1037, that was at issue in the *Mical* case.  As we discuss in Section III.C, below, a tariff transmittal is a carrier-initiated document which, if not withdrawn or deferred by the carrier, or suspended or rejected by the Commission, **becomes effective, *i.e.*, modifies the tariff, within a certain number of days from the transmittal filing date.**  *See* 47 U.S.C. § 203(a), (b); 47 C.F.R. § 61.58(a), (b).  Until the transmittal becomes “effective” **it is not part of the tariff.**  In the interim, the carrier has the power to defer the effective date of a particular transmittal, file an amended version of it, or, as AT&T did in this matter, **withdraw it.”**

AT&T counsels Richard Meade certified to Judge Politan that the FCC denied AT&T’s 2.1.8 Tr8179 implicit defense. AT&T counsel David Carpenter conceded to the Third Circuit in 1996 that the FCC denied Tr8179 implicit defense.

AT&T counsel Meade **page 5-6 para 11**

“In particular, we discussed an **alternative approach** by which AT&T's concern would be met by **requiring a deposit** (either in cash or by letter of credit) in the amount of the **projected shortfall charge** that would apply as a result of the **location transfer.** The FCC was receptive to this approach, but noted that it would represent a **significant change** from the pending filing and that it would be appropriate to make that change as a new transmittal, thereby providing interested parties with a new opportunity to state objections. **The Commission asked that AT&T withdraw Transmittal 8179 and submit the new approach as a new filing.”**

AT&T counsel Carpenter conceded to Third Circuit (Oral Pg. 43) the FCC Rejected Tr8179:

“The FCC asked us to withdraw the complaint because the FCC thought we had done **more** in the tariff language **than codify** what the tariff already meant.”

AT&T’s sole defense was fraudulent use under 2.2.4, there was no AT&T controversy under 2.1.8 when AT&T lost its retroactive attempt to “clarify” what it asserted it believed 2.1.8 allowed it to do. AT&T asserted under its Tr8179 filing that 2.1.8 allowed AT&T to force a plan transfer when a substantial traffic only transfer was ordered. AT&T advised the FCC that forcing they PLAN to transfer was the only way it could force the customer plan commitments (revenue and time commitments) to transfer----and of course the potential shortfall and termination charges on those customer plan commitments.

The following is AT&T counsel Richard Meade conceding that the controversy of whether AT&T had the right to decide if a substantial traffic only transfer was a plan transfer had been defeated by the FCC and this controversy ended. AT&T counsel Meade explains that AT&T replaced Tr8179 with Tr9229 which became AT&T’s solution to protect itself from exposure to not being able to collect shortfall charges on the non-transferred plan when substantial traffic was transferred away from those non-transferred plans. AT&T added security deposits against potential shortfall on the non-transferred plan acknowledging that the revenue commitments do not transfer on a traffic only non-plan transfer.

AT&T counsel Richard Meade 1996 certification to NJ District Court Judge Politan pg.7 para 15:

“On October 26th 1995, AT&T Corp. filed Tariff Transmittal No 9229 with the FCC. Transmittal No 9229 addresses the problem implicated in the **CCI-PSE** transfer--- **the segregation of assets (locations) from liabilities (plan commitments) ---** in the following manner.

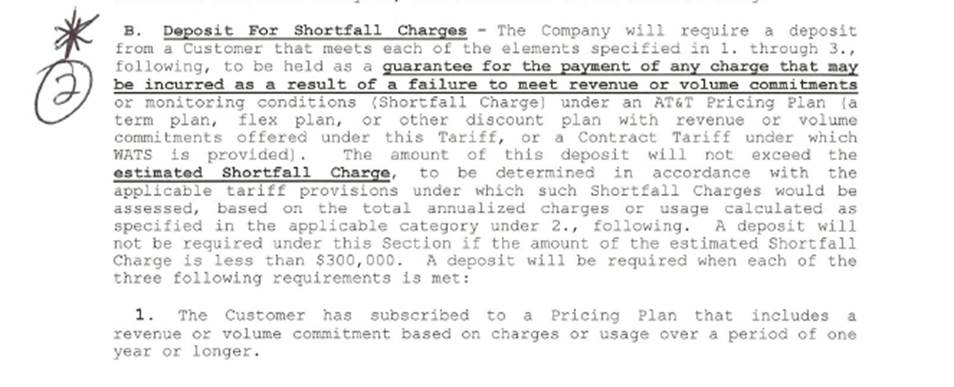
Above AT&T counsel is conceding that when just end-user locations transfer--- but not the plan--- the liabilities (revenue and time commitments) stay with the non-transferred plan. AT&T’s “problem” was 2.1.8 mandated that as long as the main billed telephone number remained on the non-transferred plan the revenue and time commitments must not transfer.

Meade certification to Judge Politan pg.7 para 16

The Deposit for Shortfall Charges included in Transmittal No. 9229 is a **“new concept”** that meets **AT&T's business concern** more directly, without addressing the question of **intent.** Because this is **new,** it will **apply** only to newly ordered term plans, and so would **not be determinative** of the issue presented on the **CCI/PSE transfer**.

Above counsel Meade is addressing the FCC’s concern that AT&T was attempting with the previous Tr8179 filing to subjectively measure INTENT of the former customer. The FCC under Tr8179 was not going to allow AT&T to subjectively determine when a traffic only transfer meets AT&T’s subjective threshold to be deemed a PLAN TRANFER---to force the customer plan obligations to transfer. AT&T counsel Meade conceded the October 26th 1995 change to 2.1.8 was new and was not determinative on petitioners January 1995 transfer. As you are aware any substantive changes to a tariff are prospective. Thus, although the tariffs terms and conditions still applied to petitioners the added security deposit against potential shortfall was not a requirement upon petitioners as it was grandfathered from this new added requirement.

The below AT&T tariff of course shows the deposit is required on the party that transferred away locations. The security deposit against potential shortfall was required when there was projected shortfall on the non-transferred revenue commitment. This obviously confirms that revenue and time commitments do not transfer on a traffic only transfer and of course answers Judge Bassler’s moot question anyway.



Timing: The Tr8179 Defense was withdrawn June 2, 1995 and the new Tr9229 prospective tariff change went into effect in November 1995. So what did AT&T counsel do in the meantime between June and November 1995 to stop accounts going from 28% to 66% discount?

Simple: AT&T counsel called the order processing center in Minnesota and advised AT&T employees that AT&T is no longer going to allow anymore traffic only transfers. The tariff did not change AT&T counsel simply decided to no longer allow traffic only transfers:

As the evidence shows AT&T’s Joyce Suek the order processing manager informs petitioners **in June 1995 the same month AT&T withdrew Tr8179** that AT&T has decided to totally shut 2.1.8 down to all traffic only transfers no matter the size and no matter which obligations transfer. AT&T order processing manager Ms. Joyce Suek’s in June 1995 uses of the term “Partial TSA’s” means “traffic only” transfers under 2.1.8 **T**ransfer **S**ervice **A**greement (TSA).

Al --Per our Conversation, 6/19; an original TSA is now required for transfer activity. Additionally, **we “no longer” process partial TSA’s, the TSA must be for the whole plan.**

AT&T counsel simply decided to take the law into its own hands and violate the tariff.

When Judge Wigenton in 2014 asked AT&T counsel Guerra about this Tr9229 deposit issue on the traffic transfer Mr Guerra pulled a fast one on her Court and said THAT SECURITY Deposit had to do with the first security deposit between the Inga Companies and CCI which was resolved by the May 1995 Judge Politan Order.  Obviously Judge Wigenton was asking about the traffic only transfer but Mr Guerra deflected the conversation because Mr Guerra understood the conclusive tariff evidence showed that revenue and time commitments do not transfer on a traffic only transfer.

Fast forward to 2016 in Judge Wigenton’s Court when petitioners detailed the 2014 “security deposit against potential shortfall” deflection AT&T pulled in 2014. What did AT&T do it 2016?

AT&T’s 3.21.16 brief to Judge Wigenton pg 34

          “Plaintiffs nevertheless base their contrary assumption on the fact that the Court was asking “about transferring obligations in reference to the CCI-PSE transfer.” Pls. Br. at 8. But Transmittal 9229 would have had prospective effect only, **and so would not have governed the CCI/PSE transfer at all**.”

AT&T simply scammed Judge Wigenton into believing that just because petitioners were grandfathered from having to post security deposits against potential shortfall that the tariff did not apply to petitioners, which of course is total nonsense. If the fundamental terms and conditions of the tariff did not apply to petitioners, then there would be nothing to preclude petitioners from ordering whatever type of transfer it wanted. So, AT&T’s own intentional fraud on Judge Wigenton even made no sense. Does anyone really believe that Mr Brown and Mr Guerra actually believe that the tariff did not apply to petitioners! Unbelievable the intentional fraud AT&T counsel got away with!

AT&T of course did confirm as Meade certified to Judge Politan that Tr9229 was AT&T’s new way to handle substantial traffic only transfers. Thus AT&T’s “CLOSE ENOUGH” to a plan transfer assertion under Tr8179 was done ---that controversy was over---and AT&T moved on using security deposits against potential shortfall with its prospective tariff change to 2.1.8.

AT&T’s 1995 position was that it was implicit within 2.1.8 that AT&T could force a conceded traffic only transfer be deemed an entire plan transfer to force the revenue and time commitment to transfer—because under the tariff those 2 obligations (revenue and time commitment) do not transfer on a traffic only transfer—only on a plan transfer.

AT&T’s entire fraudulent use defense under 2.2.4 was premised on the fact that under AT&T’s tariff the revenue and time commitment do not transfer and thus AT&T’s original counsels claimed it had the right to invoke a 2.2.4 fraudulent use defense to stop the large traffic only transfers---whether the transfers were by deleting the end-user accounts from CCI/Inga’s 28% discount plans and adding them to PSE’s 66% discount plan using section 3.3.1Q bullet 4 OR by direct transfer via 2.1.8.

After AT&T withdrew Tr8179 defense under 2.1.8 the only defense AT&T had left was 2.2.4 fraudulent use as the FCC 2003 Order states:

The FCC 2003 Decision Pg.10 para 13

“Because AT&T did not act in accordance with the **“fraudulent use”** provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. AT&T does not rely upon “**any other provisions of its tariff**” to justify its conduct.”

AT&T lost its 2.2.4 defense at the FCC and upon review AT&T lost its fraudulent use defense at the DC Circuit Court.

After the DC Circuit Court AT&T misrepresented the DC Circuit Court Decision was a remand to the new Judge William Bassler. The DC Circuit Legal Director Martha Tomich and FCC General Counsel and FCC case manager Deena Shetler all stated it was not a remand. In 2006 the Judge William Bassler sent in a new referral to the FCC and the FCC in 2007 stated the 2.1.8 referral did not expand the scope of the original referral which the FCC 2003 Order explicitly shows was 2.2.4 fraudulent use.

FCC Jan 12th 2007 Order Pg. 2 para 3 after the Referral that was outside the scope of the case:

As discussed in the 2003 Order on Primary Jurisdiction Referral, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary **to terminate a controversy or remove uncertainty**. When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to assist the referring court by resolving issues arising under the Act. That is our goal here. **The district court's June 2006 order does not expand the scope of the issue previously presented.** Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T's Tariff No.2, a matter already **extensively briefed by the parties**."

By law the DC Circuit Court can only review what was interpreted by the FCC. The FCC was not asked to interpret section 2.1.8 by the Third Circuit Referral in 1996 because 2.1.8 was no longer an issue as it had been withdrawn by AT&T on June 2, 1995.

The DC Circuit Decision explicitly states it cannot review 2.1.8 because it was not referred to the FCC –because simply there was no controversy that remained as per section 2.1.8 when the Third Circuit referred the fraudulent use controversy!

---“The Communications Act **precludes us from addressing only those issues which the Commission has been afforded no opportunity to pass.”** 47 U.S.C. Section 405(a).”

(DC Circuit Decision in Plaintiffs initial briefpg. 10 fn1.

--- “How this enumeration affects the requirement that new customer assume “*all* obligations of the former Customer” (emphasis added) is **beyond the scope of our opinion**.” **DC pg. 11 fn2**

---“We also do not decide precisely which obligations should have been transferred in this case, as this question was **neither addressed by the Commission** nor adequately presented to us.” **DC Circuit Page 11**

The DC Circuit could only review fraudulent use and there was no remand. AT&T counsel simply misrepresented that the DC Circuit Decision was a remand of 2.1.8!

Obviously when the June 2006 Referral came into the FCC from Judge Bassler the FCC within a month explicitly stated the 2.1.8 defense was outside the scope of the original referred controversy which the FCC explicitly stated in 2003 was only “fraudulent use section 2.2.4” After the FCC denied AT&T’s implicit assertion, AT&T withdrew 2.1.8 defense and thus these was NO LONGER A CONTROVERSY as per 2.1.8.

AT&T’s position regarding section 2.1.8 was the same as petitioners: 2.1.8 allowed traffic only transfers and revenue and time commitment do not transfer on a traffic only transfer--- which of course was AT&T’s basis to assert 2.2.4 fraudulent use.

Judge Politan in 1995 understood that AT&T’s fraudulent use defense of being deprived of collecting shortfall was “not properly substantiated” because the plans were pre-June 17th, 1994 Ordered and thus immune from the shortfall charges AT&T premised its 2.2.4 “fraudulent use” on.

A) Judge Politan: “Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. Theonly “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T’s demand for fifteen million dollars’ security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)

B) Judge Politan: **“**Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T’s own tariff.” May 1995 NJFDC Decision pg. 11

C) Judge Politan: “In answer to the court’s questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T.” May 1995 NJFDC Decision pg. 24

This Judge Politan in March 1996 issued an injunction against AT&T as he determined that AT&T’s 2.2.4 defense that was “premised on the danger of shortfalls” had no merit!!!

**AT&T counsels in 2015 Engage in**

**INTENTIONAL FRAUD & COVER-UP ON THE FCC AND NJFDC**

AT&T not only continued to lie that it had a 2.1.8 defense despite the FCC stating the 2.1.8 defense did not expand the scope of the original referral fraudulent use defense; AT&T created an intentional cover-up for its former counsels statements.

**4.2.A.1   Standards for Making Representations to the Court:**Rule 11(b) provides that,”[b]y presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the **best of the person's knowledge**, information, and belief, formed **after an inquiry reasonable under the circumstances**” that the material presented is not filed for an improper purpose and has the **requisite degree of evidentiary** and legal support.  This amendment “subject’s litigants to potential sanctions for **insisting upon a position after it is no longer tenable**.

The following will evidence that AT&T is insisting upon a position after it is no longer tenable and has no evidentiary support.

AT&T and Petitioners had always asserted from 1995 through they DC Circuit Court Review that section 2.1.8 of AT&T’s tariff does allow traffic only transfers and the revenue and time commitment did not transfer.

However, AFTER the DC Circuit AT&T needed a NEW DEFNSE because it lost its fraudulent use defense. So, the NEW FRAUD was 2.1.8 allowed traffic only transfers BUT the revenue and time commitment **MUST** transfer and that is why AT&T denied the traffic only transfer in January 1995! AT&T created a new defense in the year 2005 to assert that was the reason why it denied the traffic only transfer in 1995!

But how was current AT&T counsels going to do make such bogus assertions when all the OLD AT&T counsel all asserted revenue and time commitments DO NOT TRANSFER on a traffic only transfer----AND AT&T had no evidence to support such a position?

Well lets first KEEP our same LAW FIRMS but we will need to play musical chairs and bring in new counsels to pull off the fraud and cover-up to scam the NJFDC and FCC.

AT&T’s current counsels needed to figure out a way to address all the certifications and statements made by former AT&T counsels (Barillari, Meade, Whitmer, Fash, Friedman, Carpenter) that were asserting AT&T 2.2.4 fraudulent use defense—stressing revenue and time commitments don’t transfer on a traffic only transfer only on a PLAN TRANSER.

So, AT&T comes up with its “PROPOSED TRANSFER” cover-up. The new AT&T counsels assert that the dozens of statements by AT&T’s 1995-2005 Counsels were just referring to what petitioners PROPOSED and NOT what the tariff mandated. AT&T’ current counsels were asserting that all the statements that the former AT&T counsel made that revenue and time commitments do not transfer were only referring to the order that was placed and not what the tariff actually mandated that the revenue and time commitments actually transfer on a traffic only transfer.

Here is one of many of current AT&T counsels “proposed cover-ups”: AT&T’s brief page 16 to Judge Wigenton on **Jan 16, 2015:**

“The sentence thus described the transfer plaintiffs **proposed**; it did not say that under § 2.1.8, PSE was not required to assume these obligations.”

This is the statement Judge Politan made as AT&T counsel Fred Whitmer in 1995 kept asserting revenue and time commitments don’t transfer:

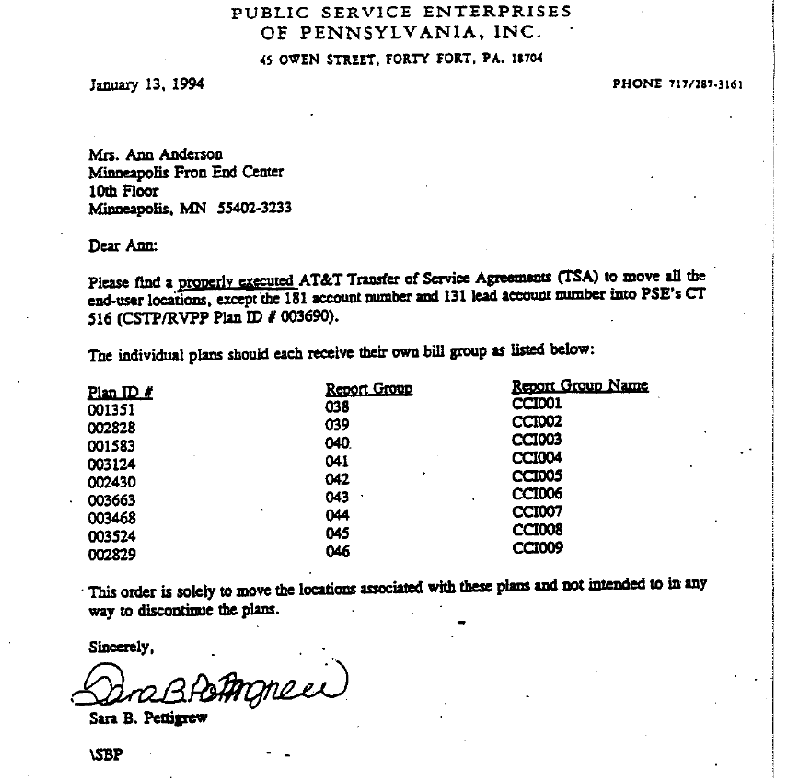
NJFDC Judge Politan March 1996 page 17 fn 7

“Indeed, **AT&T's own counsel** focused the issue by indicating that the tariffed obligations “*involved herein*” are all **tariffed obligations**, for which **“CCI, not PSE”** would be obligated.

POINT 1) Notice the Judge is referencing TARIFFED OBLIGATIONS. Not just what was so called” Proposed” Judge Politan understood that AT&T’s counsel was explicitly referring to what the tariff mandated. The **tariff** mandated that the revenue and time commitments must remain with the non-transferred plan. Yet AT&T’s current counsel engaged in a cover-up of its former counsel Mr Whitmer by bogusly stating Mr Whitmer was only talking about what was “proposed” and not what the tariff mandated.

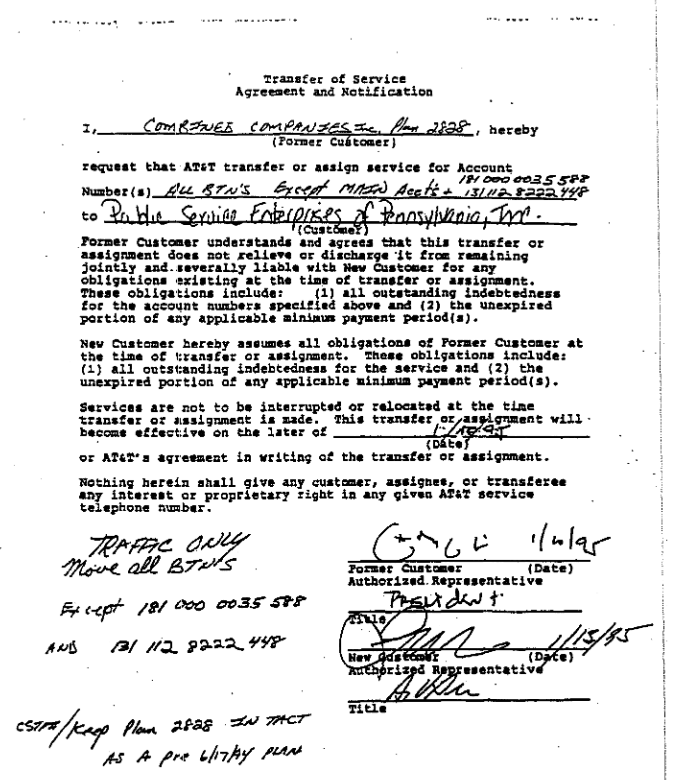
POINT 2) Petitioners didn’t propose to AT&T in its order any mandate, stipulation, or condition upon AT&T to change what the tariffs terms and conditions already required as far as which obligations should or should not transfer!

The cover letter that went in with the transfer forms was explicit that it was a PROPERLY EXECUTED order:



The 9 Transfer of Service Agreements that have already been submitted simply advise AT&T to transfer Traffic Only and then advise which end-user accounts ( Billed Telephone Numbers –BTN’s) remained on the non-transferred plan.

Here is a sample of one of the 9:



The Order was simply a traffic only non-plan transfer order—Not a plan transfer order.

Petitioners simply asked for a traffic only transfer which AT&T and petitioners and the DC Circuit all agreed section 2.1.8 allows both traffic only transfers and plan transfers. [[2]](#footnote-2)

AT&T had 15 days to object under section 2.1.8 (c) if the so called “proposal” was not in compliance with **whatever** this section mandated in reference to which obligations transfer. Petitioners only asked for a traffic only transfer and AT&T was thus required to adhere to whatever the obligation allocation was!!!

Petitioners didn’t PROPOSE any stipulations to the order! The paper work explicitly shows petitioner requested a traffic only transfer—that is it! It was AT&T that on February 16, 1995 filed with the FCC the TR 8179 Substantial Cause Pleading and tried to convince the FCC that it should be able to mandate that that the PLAN should transfer due to the number of end-users being transferred. AT&T was the party that understood that revenue and time commitments do not transfer and that is why AT&T filed Tr8179 on 2.1.6.95 and the FCC denied it and AT&T withdrew it on June 2, 1995. AT&T’s cover-up that what was PROPOSED as far as obligations transferring is a complete intentional fraud as there was NOTHING PROPOSED on which OBLIGATIONS need to go where!!!

Here is AT&T counsel Joseph Guerra scamming Judge Wigenton March 18, 2015 during Oral Argument:

THE COURT: So your position, then, Mr. Guerra, is had there been some understanding that all the obligations would transfer as well, then everything would have obviously proceeded and the contracts would have been fine and AT&T would have been on board. It was the notation of **"traffic only"** which was sort of the impediment?

MR. GUERRA: Yes. And, again, this is the understanding that the **DC Circuit had, the FCC had.** When plaintiffs elsewhere talked about how the FCC characterized how the obligations would be distributed, of course **they're not actually talking about how 2.1.8 applies**, and I'll get to that in a second. But they're describing the **transaction that was proposed.**

AT&T counsel simply scams Judge Wigenton that the Notations on each transfer form “Traffic Only….” were a controversy in 1995. The NJFDC in 1995 and the FCC understood explicitly that all petitioners were requesting is that AT&T process a traffic only transfer and not a plan transfer.

Despite AT&T counsel Mr Guerra claiming that the FCC did not understand “Traffic Only” the FCC understood explicitly what was ordered:

FCC Decision: pg.3:

“At the bottom of each TSA, in handwriting, these parties directed AT&T to move the **"Traffic Only"** on each plan to PSE. The January 13th cover letter, under which these nine TSAs were forwarded, directs AT&T to "move the locations associated with these plans [but] not in any way to discontinue the plans." (Exhibit H to petition). In this way, CCI and PSE attempted to move to PSE the end-user traffic associated with each of the nine CSTPII/RVPP plans, but not to move the actual plans themselves.";

AT&T’s current counsels simply scammed Judge Wigenton in 2015 that AT&T’s former counsel Fred Whitmer position to Judge Politan in March 1995 was only talking about what plaintive “so called proposed” and not what the tariff mandated.

Judge Politan wanted to know how many traffic only transfers AT&T had engaged in as of March 1995 and what was the size of the transfers due to the revenue commitment having to remain with the non-transferred plan as per the tariff.

AT&T Counsel Fred Whitmer asserted to Judge Politan on March 8th 1995 there were thousands of traffic only transfers among aggregators. Obviously, **AT&T can’t produce one** in which the revenue and time commitments transfer:

“But there are literally - - my guess is hundreds, i**f not thousands, of transfers** that have happened among aggregators and aggregations plans.” NJFDC Oral Argument pg. 53

If AT&T had a “misunderstanding what “Traffic Only” meant it would not have filed Tr8179 in which AT&T CONCEDED it was a traffic only order and tried to argue with the FCC that due to the size of the transfer AT&T should be able to force a PLAN transfer to force the revenue and time commitment to transfer.

In 1995 there was never a controversy amongst the parties as to which obligations are transferred. The parties understood that under the tariff the revenue and time commitments must stay with the non-transferred plan.

Of course, only on an entire PLAN transfer did the revenue and time commitments transfer. AT&T’s current counsels having lost its sole defense of fraudulent use revised history and asserted its ISSUE in 1995 was PSE was not assuming revenue and time commitments on a traffic only transfer.

AT&T’s argument in 1995 was actually PSE ---as per the tariff ---was not obligated to assume the revenue and time commitments. AT&T asserted in 1995 that it had the right to stop a permissible traffic only non-plan transfer under section 2.1.8 **BASED UPON** AT&T’s 2.2.4 Fraudulent use defense.

Here is yet another statement by current AT&T counsel Joseph Guerra in 2015 that attempted to cover-up for statements made by the FCC that also agreed with the NJFDC Judge Politan that revenue and time commitments don’t transfer under 2.1.8. on a traffic only transfer. Same nonsense the FCC was “not actually talking about how 2.1.8 applies” ….but they are describing the “transaction that was proposed”:

AT&T Counsel Guerra March 18th 2015

When plaintiffs elsewhere talked about how the FCC characterized how the obligations would be distributed, of course **they're not actually talking about how 2.1.8 applies**, and I'll get to that in a second. But they're describing the **transaction that was proposed.**

AT&T’s current counsel not only asserted a new defense under 2.1.8 it engaged in a cover-up to address all the statements made by former AT&T counsels!

After the FCC denied AT&T’s Tr8179 argument and AT&T withdrew Tr8179 on June 2, 1995 the FCC only had to interpret AT&T’s “fraudulent use” defense. The FCC’s 1996 Third Circuit referral was simply to determine if AT&T could use section 2.2.4 fraudulent use to prohibit a substantial traffic only transfer.

The fact that the FCC 2003 Order did not see that 2.1.8 also allowed traffic only transfers and not just the FCC’s position that the tariff allowed petitioners to delete accounts and PSE to add the accounts did not affect the Commission’s ruling on the fraudulent use controversy. The FCC Order was not a request to interpret obligation allocation under section 2.1.8 because simply there was no controversy amongst the parties that revenue and time commitments do not transfer on a traffic only transfer. The FCC’s 2003 Order agreed with the NJFDC’s May 1995 and March 1996 Decisions that revenue and time commitments do not transfer on a traffic only transfer. The FCC advised the DC Circuit that it did not see how only traffic only can transfer under 2.1.8 but it did use 2.1.8’s obligation language and agreed with the NJFDC that revenue and time commitments do not transfer on a traffic only transfer.

The controversy the FCC was being asked to interpret under the Administrative Procedures Act was section 2.2.4 fraudulent use not section 2.1.8.

Whether the accounts moved by direct transfer via 2.1.8 or by deleting and adding the FCC simply needed to interpret whether AT&T could invoke 2.2.4 Fraudulent use to prohibit substantial end-user account traffic from being moved from the non-transferred plan.

It was an intentional fraud by AT&T Counsel Guerra on Judge Wigenton that the notations “Traffic Only” was AT&T’s reason to deny a traffic only transfer! The fact is AT&T had 15 days to deny in writing under 2.1.8 (c) why the traffic only transfer was being denied. Did AT&T Counsel Guerra provide Judge Wigenton with any evidence that it denied the transfer based upon a permissible “Traffic Only” transfer order –of course not. All revisionist history to intentionally scam Judge Wigenton.

The following are just a few of AT&T’s former counsel’s statements that revenue and time commitments do **not** transfer on a traffic only transfer.

JUDGE ROBERTS:  Why not?  The tariff says they have to **assume all the obligations**. (Oral: Pg 12, Line 9)

AT&T counsel MR. CARPENTER: “**Yes, but what it means to assume all the obligations.** What obligations apply **may vary depending on what's** transferred. “In some cases the **only obligation** that may be transferred is **going to be the outstanding indebtedness.**”

AT&T counsel MR. CARPENTER:  We point out in our brief that there’s a distinction between transfers of entire plans, and transfers of individual end-users locations. That when the “**plan”** is transferred, **"all the obligations"** have to go along with it. (Third Circuit Oral Pg 15 line 9)

Mr. Carpenter: Yes, but what it means to assume **all the obligations.** What obligations **apply** may vary depending on what's transferred. (11/12/04 DC Circuit pg.12 Line 22 )

Mr. Carpenter: Now what obligations they are going to end up assuming will vary depending on what service is being transferred. (11/12/04 DC Circuit pg.12 Line 12 Exhibit W.)

---AT&T 3/21/1995 cross examination of Mr. Inga:

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **“lead account**” ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn’t that correct?**

Inga: Yes

---AT&T reply brief to DC Circuit pg 9:

“Section 2.1.8 “addresses” the transfer of end-user traffic ***without*** the associated liabilities.”

---DC Circuit Judges Tatel and Ginsburg both understood “all obligations” don’t transfer unless the whole plan is transferred: D.C. Oral Argument Page 10

JUDGE GINSBURG: Well, you said “all obligations”.

JUDGE TATEL: Well, that's **only if the whole plan is transferred.**

AT&T’s current counsels are asserting in 2017 that it still has a 2.1.8 defense after it withdrew it on June 2, 1995.

Current counsels are scamming Judge Wigenton with no evidentiary support. It is pathetic that current AT&T counsels are engaged in a cover-up by asserting that ALL THESE FORMER AT&T COUNSELS that EXPLICITLY advised the COURTS and FCC that under the tariff the revenue and time commitments ONLY transfer when the PLAN is transferred.

“they're not actually talking about how **2.1.8 applies,** and I'll get to that in a second. But they're describing the transaction that was **proposed.”**

You have to have SOME NERVE to not only still assert in 2017 that AT&T has a 2.1.8 defense AFTER AT&T’s Tr8179 argument was FCC denied and thus AT&T withdrew it ----but to then intentionally scam the Courts and FCC with a this ridiculous **“PROPOSAL COVER-UP** for its former AT&T counsels’ explicit statements!

AT&T counsels also engaged in a cover-up by misquoting the 2.1.8 tariff language from “FORMER” CUSTOMER to “The OLD PLAN” and “THE TRANSFEROR” to try and change the meaning of the tariff.

This “**proposal cover-up**” is pure intentional fraud as well!

Judge Politan in 1995 understood explicitly based upon AT&T’s and petitioners 2-day hearing and 2 Court cases that revenue and time commitments only transfer when the plan transfers!

NJFDC Judge Politan March 1996 page 17 fn 7

“Indeed, **AT&T's own counsel** focused the issue by indicating that the tariffed obligations “*involved herein*” are all **tariffed obligations**, for which **“CCI, not PSE”** would be obligated.

POINT 3) Existing evidence. Petitioners engaged in multiple traffic only transfers prior to Jan 1995 and those traffic only transfers were successfully completed and the revenue and time commitments **did not transfer**. The revenue and time commitment commitments STAYED with the non-transferred plan. Samples of previous traffic only transfers on 6.14.93 and 9.28.94 can also be seen below.

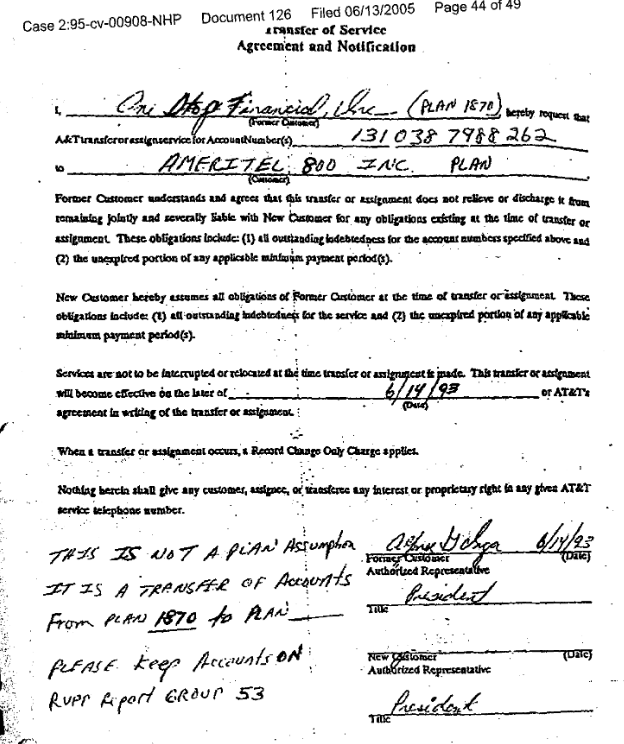
In each of these transfers we transferred away traffic and kept the plan. Obviously, the commitments remained because if the revenue and time commitments were transferred away from these plans prior to the 1995 traffic only transfer there would have been no obligations left on the plan for AT&T to assert its fraudulent use defense! Obviously, AT&T would not have attempted under Tr8179 to force the plan to transfer to force the commitments to transfer if the commitments had already been transferred away prior to 1995! The ethics staff does not have to interpret the tariff. **It just needs to look at the evidence and compare it to AT&T counsel’s false statements made to cover-up its former position!** If AT&T’s position is true that plan obligations transfer on a traffic only transfer then there would have been obligations left to transfer in 1995.

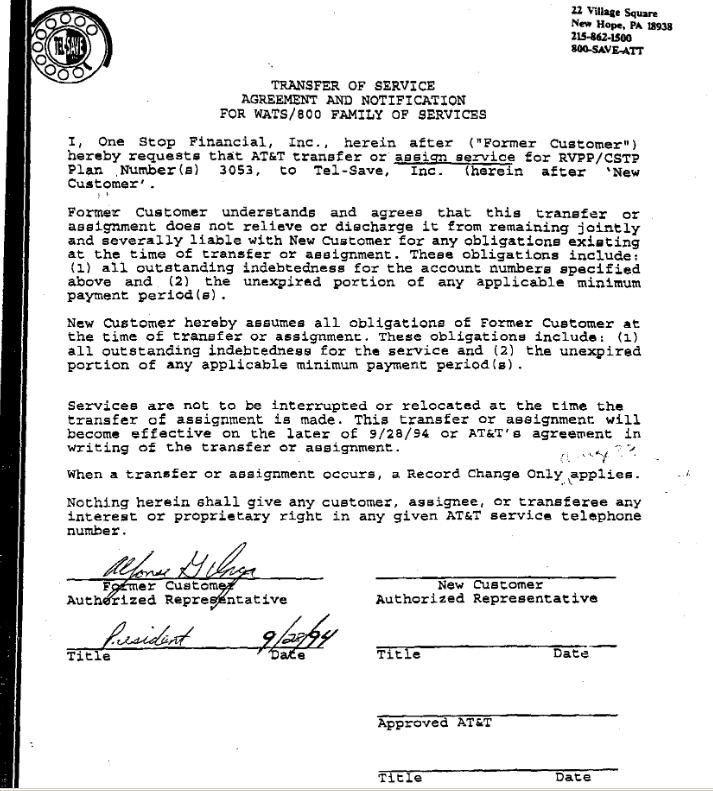
The Ethics staff must appreciate how absurd AT&T’s 2017 position is. Under AT&T’s interpretation of its tariff a new customer can have 3 end-user accounts transferred where the billing is $600 total from a customer that has a $100 million revenue commitment and 10,000 accounts.

Under AT&T’s 2017 fraud the new customer must assume the $100 million commitment despite only receiving $600 of revenue—AND--- the new customer must become financially responsible for the bad debt on the 9,997 accounts that DID NOT EVEN GET TRANSFERRED TO IT!!!

Imagine a company with a $100 million commitment being able to get rid of its revenue and time commitment by transferring a few accounts to some shell company and then taking all the revenue and going to an AT&T competitor! Imagine the brass balls you have to have to not only claim you still have a 2.1.8 defense but to PROPOSE this intentional fraud with NO EVIDENCE on the NJFDC and FCC!!!

That is why the new customer is only responsible for assuming all obligations of the FORMER customer. The transferor is only a FORMER CUSTOMER on that which is transferred. No Plan Transferred = You’re not a FORMER AT&T customer as you remain an AT&T customer. The new company is not responsible for obligations on that which is NOT transferred to it.





POINT 4) AT&T asserted to Judge Wigenton in 2015 that revenue and time commitments must transfer under section 2.1.8 of the tariff on a traffic only transfer--- But if that were reality in 1995 then AT&T would not have needed to propose a tariff change Tr8179 on 2.16.95 to force the entire plan to force the revenue and time commitments to transfer! Current AT&T’s counsels coverup is complete bullshit!

POINT 5) AT&T employees have sent statements that are on the FCC server asserting on traffic only transfers the revenue and time commitments have never transferred. Current AT&T counsels are only intentionally scamming the Courts and FCC only because they need to lie so they don’t have to pay any money.

POINT 6) If only plaintiff was allegedly PROPOSING a transaction that did not conform explicitly to the tariff then why did AT&T change all 6 tariffs as stated by the March 1996 Decision! AT&T understood what petitioners ordered complied explicitly and thus AT&T went ahead and PROSPECTIVELY changed all its tariffs!

POINT 7) AT&T counsels 1995-2005 fraudulent use defense asserted revenue and time commitments **DON’T** transfer on a traffic only transfer. AT&T counsels post 2005 fraud interpretation under 2.1.8. is the revenue and time commitments **MUST** transfer on a traffic only transfer. Current AT&T counsel are incredibly **simultaneously** asserting that under the tariff the revenue and time commitment don’t transfer and must transfer!!! A defendant can have multiple defenses but AT&T’s counsels are simultaneously asserting under the tariff **that revenue and time commitments both transfer and don’t transfer!**

POINT 8) If what petitioners ordered was a so-called PROPOSAL that did not conform to tariff section 2.1.8 then by definition that conversely means AT&T would have a **TON OF EVIDENCE** from so called “Model Citizens” showing all its “model citizens customers” that allegedly DID CONFORM to the tariff!!! AT&T would thus have thousands of examples of traffic only transfers in which the revenue and time commitments did transfer on a traffic only transfer!

Of course, if revenue and time commitments did transfer on a traffic only transfer AT&T’s current Counsels would simply be able to present the evidence; but it can’t because no evidence exists---it was all an intentional fraud—replete with cover-up attempts.

AT&T was asserting its sole defense of “Fraudulent Use” on 3/21/1995 cross examination of Mr. Inga in Judge Politan’s Court and asserted the liabilities remain with the non-transferred plan.

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **“lead account**” ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn’t that correct?**

Inga: Yes

--During the 11.28.95 hearing AT&T counsel kept asserting its fraudulent use defense and CCI’s Mr Shipp kept agreeing that as per section 2.1.8 plan commitments don’t transfer. It led to this comment:

AT&T’s Whitmer: And one of the obligations of the customer, Winback & Conserve or CCI, that did not go to PSE in the attempted transfer was the obligations for shortfall and termination, correct?

Mr Shipp: That's correct. And we so **identified that on the transfer of service document**.

The Court: **I know all these facts, Mr Whitmer. I really do. I swear to God**.

 Mr Whitmer: I have no further questions.

Judge Politan was going to jump off the bench and beat AT&T counsel Whitmer over the head with the gavel if he again made the point that revenue and time commitments don’t transfer! The May 1995 and March 1996 Judge Politan Decision make it explicitly clear that Judge Politan did not care if the liability stayed with the non-transferred plan because the plans were pre June 17th, 1994 issued plans that could be restructured prior to fiscal year end shortfall and or termination charges.

A) Judge Politan: “Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. Theonly “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T’s demand for fifteen million dollars’ security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)

B) Judge Politan: **“**Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T’s own tariff.” **May 1995** NJFDC Decision pg. 11

C) Judge Politan: “In answer to the court’s questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T.” **May 1995 NJFDC Decision pg. 24**

Current AT&T counsel Richard Brown trying to cover-up for its former Counsel Fred Whitmer is an absolute insult to ethics staffs, Judges and the FCC.

AT&T not only hasn’t any evidence it incredibly scammed Judge Wigenton that AT&T has already addressed the evidence at the FCC!

PAGE 22 of Oral Argument CURRENT AT&T Counsel Joseph Guerra states these are only “alleged” transfers of service in which obligations do not transfer:

         8    MR. GUERRA:  It's a possibility.  But I think getting

         9    the answer from the FCC is first.

        10    Just as the FCC said, you don't get to this question

        11    until you conclude that 2.1.8.  **Required all these obligations**

        12**to transfer.**  Because if it didn't, then AT&T didn't

        13    discriminate with respect to the other parties **allegedly** allowed

        14    to make transfers **without switching the obligations over.**

        15    THE COURT:  If you waived it to the other ones,

Here is AT&T’s 2014 Pg. 29 statement to the NJFDC:

“Again, they have also made these contentions to the FCC (see Brown Cert., Ex. O at 73-76 (discussing alleged ambiguity) and 174-178 (**raising alleged other transfers of transfers of service**), and AT&T has responded to those arguments **in that proceeding**.”

Current counsels have the nerve to claim that traffic only transfers in which the revenue and time commitment do not transfer are ALLEDGED---when the record shows petitioners previous traffic only transfers and 6 Certifications from OTHER AT&T resellers ---all of which certified traffic only transfers in which the revenue and time commitment DO NOT transfer are the norm!

Judge Politan asked former AT&T Counsel Fred Whitmer how many traffic only transfers AT&T had done and what were the size of the transfers as Judge Politan was assessing AT&T’s fraudulent use defense. On March 8th, 1995 advised Judge Politan that as of that date AT&T had already done thousands of traffic only transfers in which the revenue and time commitments did not transfer. NJFDC Oral Argument pg. 53:

“But there are literally - - my guess is hundreds, if not **thousands**, of transfers that have happened among aggregators and aggregations plans.”

So, you have AT&T’s former counsel Fred Whitmer advising Judge Politan that AT&T as of March 1995 had already done **thousands** of traffic only transfers and the current AT&T counsels in 2017 are still asserting that traffic only transfers in which the revenue and time commitment transfer are all **“alleged!” You believe this!!!**

AT&T told Judge Wigenton in 2015 that it addressed the alleged evidence at the FCC:

(**raising alleged other transfers of transfers of service**), and AT&T has responded to those arguments **in that proceeding**.”

But of course, AT&T did not respond with evidence —there is no evidence of traffic only transfers in which the revenue and time commitment transfer-- Its simply an intentional fraud and intentional cover-up on the NJFDC and FCC! The FCC in fact advised the DC Circuit in its brief that AT&T has never presented any evidence to support its assertions.

Let’s go through AT&T’s January 16th 2015 brief to Judge Wigenton. We will point out the scamming of Judge Wigenton. Remember at this point the FCC in its 2003 Order and 2007 Orders has already determined there was no controversy under section 2.1.8 but AT&T in 2015 scams Judge Wigenton:

AT&T Page 4:

In connection with the second step of the transfer, however, CCI and PSE modified AT&T’s standard transfer of service forms—which tracked the language of § 2.1.8---and wrote “traffic only” on each ( id at ¶ 4), thereby demonstrating that PSE was not accepting all of the obligations of the CCI plans.

AT&T’s use of the word “modified” was used to mislead Judge Wigenton that a stipulation or condition was being placed upon AT&T to alter whatever the customary obligation allocation was under 2.1.8. AT&T short quoted the actual sentence on the Transfer Forms and then spun it’s meaning as all that was being noted was that the order was a traffic only transfer and explicitly listed the accounts that were not to be transferred. AT&T agrees that section 2.1.8 allowed for both traffic only transfers and plan transfers and AT&T was simply being explicitly advised that this order was a traffic only transfer and advised which accounts not to transfer.

There aren’t any notations on the transfer forms to transfer traffic but don’t transfer specific obligations. It was AT&T that understood it was a Traffic Only non-plan transfer and AT&T was the party that then filed Tr8179 on 2.16.95 in which it conceded that revenue and time commitments don’t transfer unless the plan transfers. AT&T argued it needed under Tr8179 to be able to force a plan transfer to force the revenue and time commitment to transfer. PSE was not obligated to assume revenue and time commitments on a traffic only transfer---not AT&T’s nonsense ---“thereby demonstrating that PSE was not accepting all of the obligations of the CCI plans.”

The cover letter states that a proper order was placed and there weren’t any modifications, stipulations, conditions on obligation allocation. If AT&T did not understand the notes or actually believed there was an attempt to modify 2.1.8 it would have to provide in writing a written denial within 15 days of the order submission under 2.1.8 (c).

AT&T did not deny the traffic only transfer based upon PSE not accepting the revenue and time commitments. AT&T in fact let Judge Politan know exactly how the section 2.1.8 tariff operated by asserting fraudulent use under 2.2.4 and stressing to Judge Politan that revenue and time commitments don’t transfer on a traffic only transfer.

AT&T Page 4) then argues its fraudulent use defense and now asserts that the revenue and time commitment stay with the non-transferred plan:

With respect to the second step, AT&T believed there was substantial risk that the “traffic only” transfer would result in CCI (which was a new company) not being able to satisfy its obligations **under the tariff,** because CCI would no longer have the revenue (from the traffic) that it would need to satisfy those obligations.

AT&T counsels are now asserting its fraudulent use defense agreeing what it told the Judge Politan in 1995 that under the tariff CCI must meet its obligations on the non-transferred plan. But in the previous para AT&T claimed PSE was refusing the accept the revenue and time commitments on the traffic only transfer. AT&T counsels are incredibly asserting in 2017 that under 2.1.8 that is NOT EVEN WITHIN THE SCOPE OF THE CASE that revenue and time commitments don’t transfer and must transfer!

AT&T’s only position in 1995 was the non-transferred plans revenue and time commitments must stay with the non-transferred plan and plaintiffs agreed with AT&T. Judge Politan understood this too but he also understood AT&T had no merit to raise defenses premised on being denied collecting shortfall charges as the plans were pre June 17th 1994 ordered and could be continually be restructured and thus as the NJFDC stated:

“Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring.

AT&T Page 4:

At one point, the Court phrased the issue as “whether Section 2.1.8 permits an aggregator to transfer traffic under the plan without transferring the plan itself in the same transaction.” (May 19th, 1995 Opinion at 15)

This statement AT&T is referencing is its Tr8179 defense it raised under 2.1.8. However, it is simply more AT&T scamming of Judge Wigenton. AT&T is quoting from the May 19, 1995 NJFDC Order and that order is obviously PRIOR TO the JUNE 2, 1995 FCC denial and AT&T withdrawal of this defense!!! As the FCC 2003 Order states Judge Politan’s May 1995 Order stated that the FCC outcome of the TR8179 substantial cause pleading would determine that AT&T defense.

FCC 2003 Order FN 73:

*“See First District Court Opinion* at 12, 16-17; *Second District Court Opinion* at 3-4, 13; *see also* Petition at 14-16 & n.7 (quoting AT&T’s Brief filed in 1995 with the district court (“Transmittal 8179 … make[s] explicit AT&T’s implicit rights under the tariff.  **Accordingly, the proceeding in the FCC will resolve that issue ….”).**

Yes, the Tr8179 issue was resolved a few weeks AFTER the May 19, 1995 NJFDC Decision but that non-vacated decision made it clear that the outcome of AT&T’s Substantial Cause pleading under Tr8179 would resolve that issue. AT&T’s counsels in 1995 conceded it lost that defense and yet AT&T’s current counsels engaged in an intentional fraud on the NJFDC, scamming her Court that AT&T still has this 2.1.8 defense in 2015!!!

The Third Circuit referral to the FCC was in 1996. Obviously the Third Circuit did not refer the FCC an issue that was withdrawn by AT&T June 2, 1995. The non-vacated May 1995 NJFDC Decision although being issued prior to the FCC denial and AT&T’s withdrawal determined the FCC outcome would resolve that Tr8179 issue.

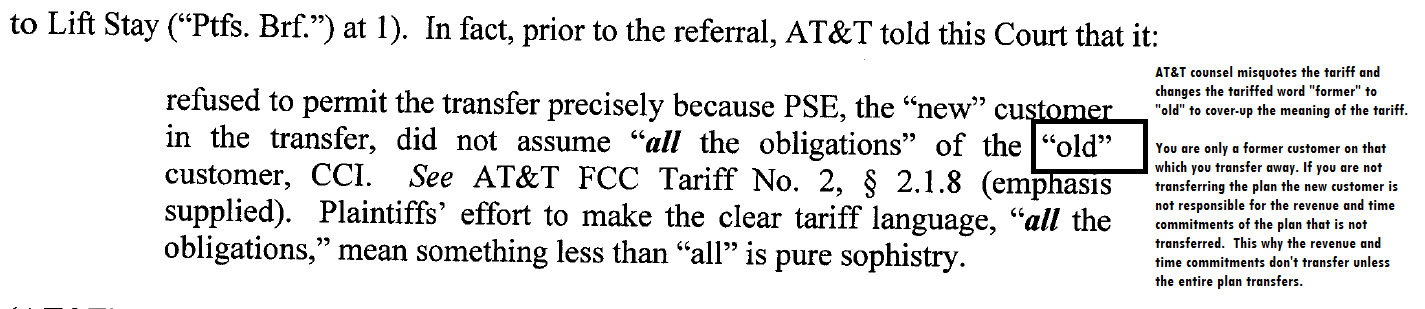
The Third Circuit referred the fraudulent use defense as the FCC 2003 and 2007 Orders state. Yet AT&T’s counsels in 2015 intentionally scammed NJFDC Judge Wigenton. Despite AT&T counsels knowing the DC Circuit Decision was not a remand and the DC Circuit Decision explicitly states that by law the D C Circuit Court can only review what was referred by the Third Circuit to the FCC to interpret, AT&T counsels persisted in a defense outside the scope of the case that obviously was no longer tenable.

Then on top of that the defense that the FCC determined did not expand the scope of the original referral was a complete fraud with ZERO evidentiary support and was replete with intentional cover-ups.

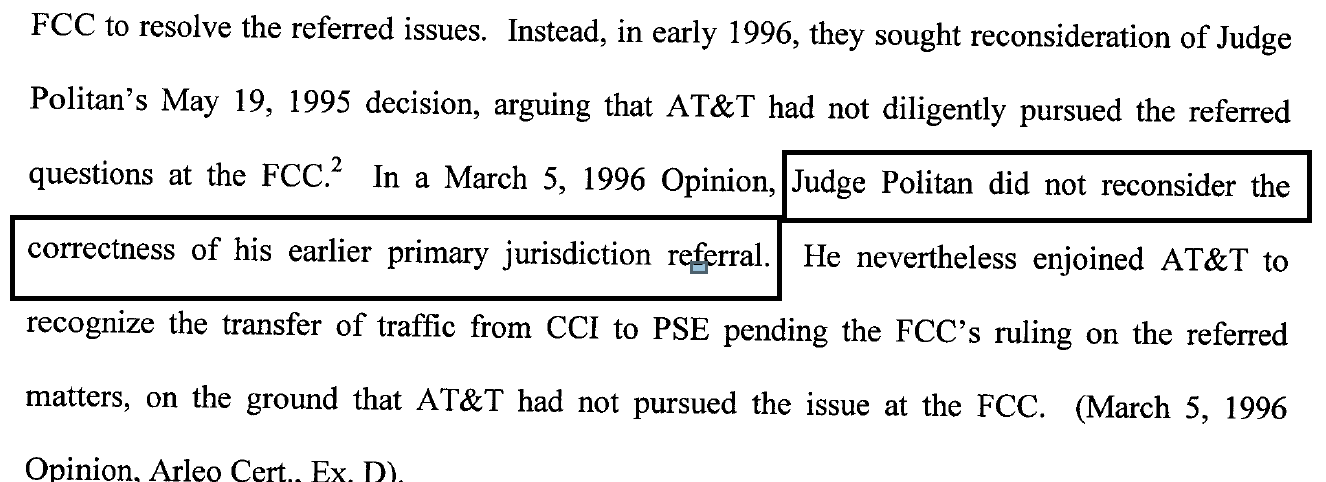
**4.2.A.1   Standards for Making Representations to the Court:**Rule 11(b) provides that,”[b]y presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the **best of the person's knowledge**, information, and belief, formed **after an inquiry reasonable under the circumstances**” that the material presented is not filed for an improper purpose and has the **requisite degree of evidentiary** and legal support.  This amendment “subject’s litigants to potential sanctions for **insisting upon a position after it is no longer tenable**.

AT&T page 5)

See below AT&T’s referencing its own assertion that it argued that it still wanted to have a 2.1.8 defense that the FCC had denied and AT&T had withdrawn Tr8179 and replaced with Tr9229. Also note how AT&T engaged in a cover-up and changed the tariffed word “former” to “old” to mislead the Court as to the true meaning of this section which was outside the scope of the case in any event.



AT&T page 5:



AT&T references the second Judge Politan Decision in March 1996 which now is after the FCC denied AT&T’s Tr8179 substantial Cause attempt and AT&T withdrew Tr8179 on **June 2, 1995.** The first NJFDC Decision was May 1995 and in that Decision Judge Politan made it clear that the FCC determination “would resolve that issue” as the FCC 2003 Order states.

AT&T’s Tr8179 substantial cause pleading argued it had the right to force a traffic only transfer be deemed a plan transfer to force the revenue and time commitments to transfer. AT&T’s statement in 2015 to Judge Wigenton that Judge Politan did not reconsider the correctness of his earlier primary jurisdiction referral is a lie. Judge Politan having been advised by AT&T’s counsel Richard Meade certification that AT&T Tr8179 defense was denied by the FCC, **no longer had to consider that 2.1.8 defense**. AT&T counsel certified that tr8179 was withdrawn and replaced with Tr9229 and Tr9229 would be a prospective tariff change as it was substantive change in the terms and conditions of the tariff. AT&T counsel certified that because it was a substantive change it would be prospective as of November 1995 and not apply to the January 1995 traffic only transfers.

The only defense remaining was fraudulent use under 2.2.4 and Judge Politan appropriately held TA&T had no merit to raise that defense because the plans were all pre-June 17th 1994 Ordered. AT&T’s fraudulent use defense was premised on being denied shortfall but as Judge Politan determined this AT&T assertion was not properly substantiated as the plans were pre-June 17th 1994 immune from shortfall and termination liability.

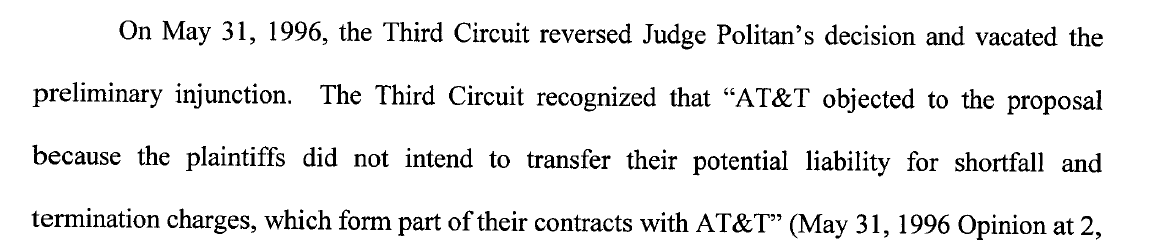
The bottom-line is the 2.1.8 defense filed 2.16.95 was denied and withdrawn 6.1.95 and yet AT&T counsels continued to assert it had a 2.1.8 defense that the FCC denied. Furthermore, the FCC said that even if Tr8179 went into effect it would be substantive as it changed the terms and conditions of 2.1.8 and thus it would have been prospective in any event had AT&T not withdrawn it. So even if Tr8179 went into effect it had no teeth as to the January 1995 traffic only transfers. AT&T counsel’s revisionist history is pure intentional fraud on the Courts.

AT&T page 6:

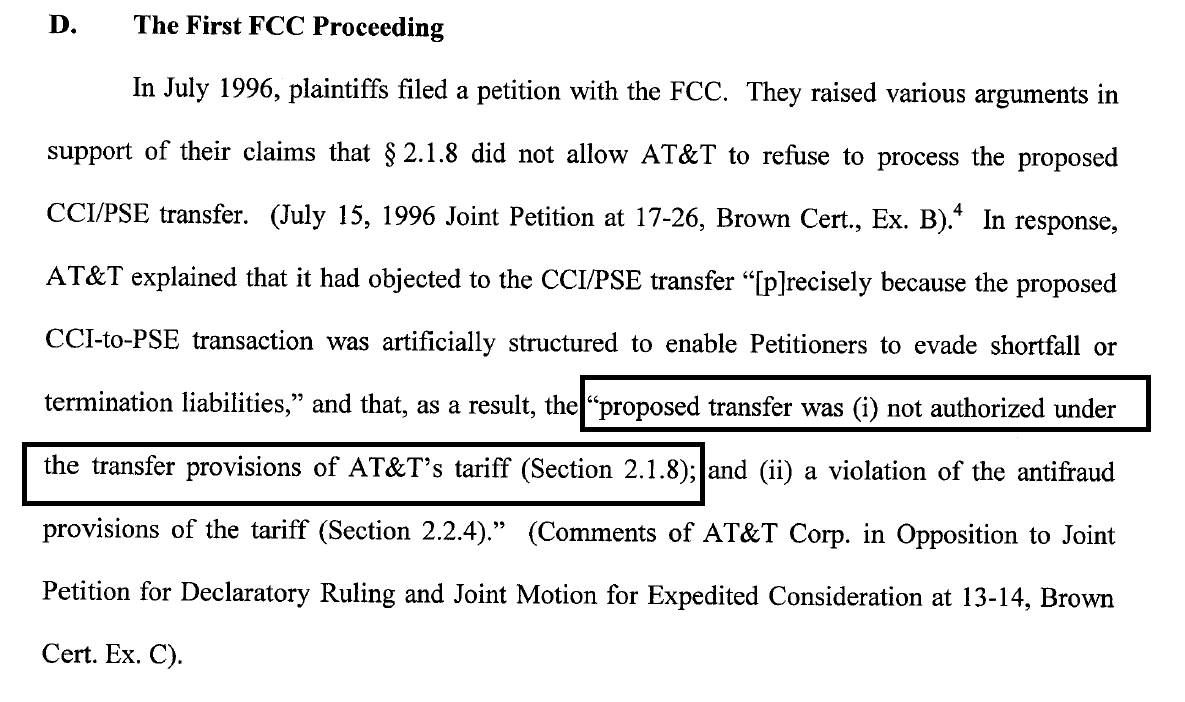
Below AT&T quotes the Third Circuit’s May 31st 1996 referral. The Third Circuit’s referral was 11 months after the FCC denied and AT&T withdrawn 2.1.8 defense. The statements by the Third Circuit about AT&T objecting based upon the potential liability for shortfall and termination charges remaining with the non-transferred plan is obviously in reference to AT&T’s fraudulent use (section 2.2.4) defense. AT&T tried to use section 2.2.4 to prohibit a 2.1.8 traffic only transfer. Judge Politan’s March 1996 Decision stated the plans were pre June 17th 1994 immune and thus AT&T’s premise was not properly substantiated and thus TA&T had no merit to raise this defense in the first place. Judge Politan’s 1996 Decision was not vacated due to legal error it was purely on primary jurisdiction grounds.

As the FCC Orders in 2003 and 2007 state the only issue referred to the FCC was fraudulent use once AT&T was denied its 2.1.8 defense attempted by filing the Tr8179 substantial cause pleading. The DC Circuit explicitly stated by law it could not review 2.1.8 as its only scope was 2.2.4 fraudulent use.

The Third Circuit Decision referred AT&T’s 2.2.4 defense. The Third Circuit did **not** refer AT&T’s 2.1.8 FCC denied assertion that it had the implicit right to force a conceded traffic only transfer be deemed a plan transfer to force the revenue and time commitments to transfer. AT&T page 6:



AT&T brief to Judge Wigenton page 6:



Despite the fact that AT&T was FCC denied its 2.1.8 defense filed under the substantial cause pleading (Tr8179) and AT&T replaced Tr8179 with Tr9229 in November 1995 AT&T continued the assert a defense it no longer had.

Notice above where highlighted AT&T doesn’t explicitly state what was not authorized under 2.1.8.

AT&T counsel does this for two reasons. 1) The Tr 8179 defense had already been denied and withdrawn June 2, 1995 so AT&T doesn’t want to explicitly reference that defense. 2) AT&T created in 2005 a brand-new defense under 2.1.8 AFTER it lost the Fraudulent Use defense---- that under a traffic only transfer the revenue and time commitments must transfer.

AT&T counsel realized that it would look like an obvious fraud on the Court to simultaneously assert next to each other that for traffic only transfers the revenue and time commitments DO NOT Transfer under (AT&T’s 2.2.4 fraudulent use defense) while asserting revenue and time commitments MUST Transfer—ie. AT&T’s brand-new fraud defense created after the DC Circuit---- that of course has no evidentiary support as it is an intentional fraud with numerous cover-ups that AT&T counsel engaged in on the Court and FCC.

So AT&T counsel just says (i) it was not authorized under 2.1.8 because explaining would raise red flags showing the obvious conflict with (ii) AT&T’s fraudulent use defense AND the new 2.1.8 defense AT&T created after the DC Court. Furthermore AT&T’s 2 defenses under 2.1.8 conflict against each other. The original withdrawn 2.1.8 defense Tr8179 concedes that revenue and time commitments do not transfer and that is why AT&T must force the plan to transfer to force the revenue and time commitments to transfer. AT&T’s new post 2005 2.1.8 defense is the opposite asserting that revenue and time commitments must transfer under 2.1.8 on a traffic only transfer. Obviously if revenue and time commitments already transferred under 2.1.8 then AT&T counsel in 1995 would not have filed Tr8179 to allow AT&T to force a plan transfer to force the revenue and time commitments to transfer if THEY ALLEDGEDY ALREADY DID TRANSFER!!!

So, AT&T counsels simply leave (i) vague as to what the issue was under 2.1.8 because it alternates its alleged 2.1.8 defense from the original Tr8179 withdrawn defense as of June 2, 1995 in which AT&T asserted it had the implicit right to force a plan transfer to force the revenue and time commitments to transfer OR the post 2005 defense under 2.1.8 that AT&T now claims it denied because 2.1.8 mandates that on a traffic only transfer the revenue and time commitments must transfer. AT&T’s current counsels have created so many lies that the lies keep conflicting against each other and AT&T’s current counsel keeps creating new lies in attempts to cover-up all its original positions in 1995.

The most remarkable aspect of this case is AT&T’s counsel Mr Richard H. Brown who was involved in AT&T’s original position to the Third Circuit that revenue and time commitments do not transfer under a traffic only transfer. However after AT&T lost its sole remaining defense of fraudulent use at the DC Circuit Mr Brown post DC Circuit Decision asserts with no evidence that revenue and time commitments must transfer on a traffic only transfer:

Below is AT&T’s Counsel Richard H Brown on 4.25.96 to Third Circuit asserting it was **self-evident** for traffic only transfers that obligations **don’t transfer**:

“CCI Notes that a transfer of service can apply either to individual end user locations or to entire plans. See CCI Br. At 31-32 & n13. CCI then, incongruously, seeks to defend the District Court by citing “record evidence” that addressed transfers **individual end user locations (not entire plan liabilities), and showed that the only “obligation” transferred to the “new customer” in that event is the unpaid liability associated with the individual end user location** that is transferred. **But that is self-evident under the tariff.** By contrast, when ***all*** the plan’s traffic and locations are being transferred to a new customer and the “plan” would then exist only as an **empty shell**, then the “new customer” would not be assuming “all” the associated “obligations” unless it assumed the “existing customer’s” shortfall and termination commitments.”

Mr Brown confirmed revenue and time commitments do not transfer on a traffic only transfer; however, his con back then was to misrepresent that ALL Accounts were transferred. All accounts were not transferred. The transfer forms explicitly show the home lead accounts were left on the non-transferred plan and a traffic only transfer was ordered NOT a plan transfer.

AT&T’s counsel Mr Fred Whitmer explained to Judge Politan in 1995 that as long as the home lead account remains on the non-transferred plans the revenue commitment must stay with the non-transferred plan:

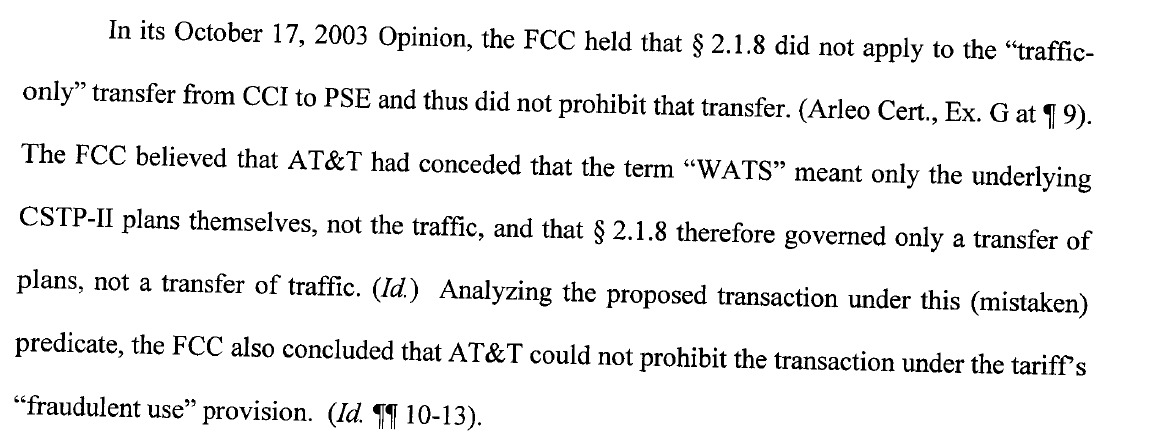
The FCC agreed with the NJFDC Decisions that customer plan obligations don’t transfer unless the plan transfers. AT&T counsel Fred Whitmer detailed PSE does not need to assume plaintiff’s obligations when AT&T was asserting its “Fraudulent Use” defense on 3/21/1995 cross examination of Mr. Inga:

AT&T counsel Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **“lead account**” ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn’t that correct?**

Inga: Yes

AT&T counsel Whitmer in 1995 was asserting AT&T’s section 2.2.4 fraudulent use defense that too much traffic was being transferred away from the tariffed requirement that the revenue and time commitment must remain with the non-transferred plan. Judge Politan determined AT&T’s premise of being denied the shortfall had no merit because the plans were pre-June 17th 1994 immune. The above shows you how Mr Richard H. Brown is not only currently engaging in a fraud to cover up explicit statements of AT&T’s former counsels (Whitmer, Carpenter, Barillari, Meade, Friedman) that revenue and time commitments don’t transfer on a traffic only transfer, but post DC Circuit Mr Brown is engaged in a cover-up of his own EXPLICIT 1996 STATEMENTS that it was “self-evident under the tariff” that revenue and time commitments do not transfer. Furthermore, he is doing this despite knowing he has zero evidentiary support. Then to top that off Mr Brown misled NJFDC Judge Wigenton that AT&T responded to the no evidence issue at the FCC, when of course Mr Richard H. Brown provided no evidence as he is well aware that no evidence exists. It was simply an intentional fraud upon the NJFDC Court with a bunch of intentional cover-ups.

AT&T 2015 Brief page 7:



Above AT&T counsel again misleads what the FCC’s objective was. The FCC was to interpret 2.2.4 fraudulent use. Could AT&T prohibit plaintiffs from moving a substantial number of locations (i.e. traffic only) when the remaining plan had a revenue commitment that under the tariff must remain with the non-transferred plan.

The FCC did not see that 2.1.8 allowed only accounts to move. It stated to the DC Circuit that it only used 2.1.8’s obligation allocation language and agreed with Judge Politan, AT&T and plaintiffs that revenue and time commitments don’t transfer. There was no controversy amongst the parties as to section 2.1.8 once AT&T withdrew Tr8179 forced plan transfer. The parties all agreed revenue and time commitments don’t transfer that was the basis of both AT&T’s defenses (fraudulent use) and the withdrawn Tr8179.

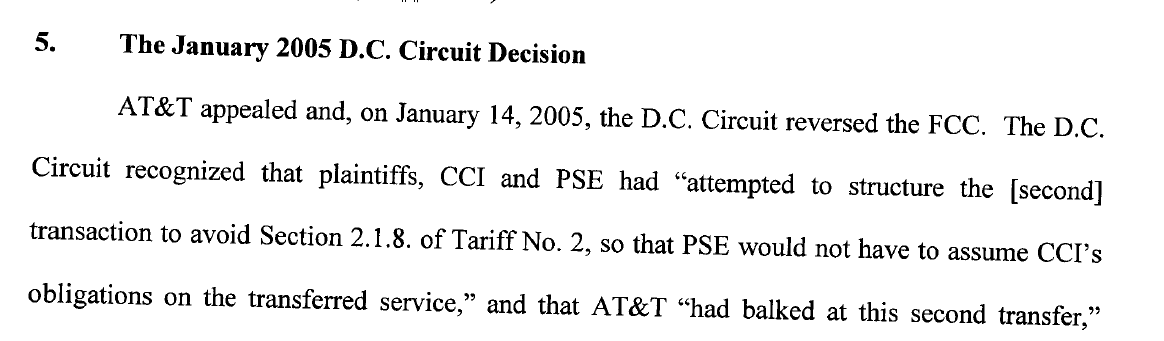
The FCC only saw that section 3.3.1Q bullet 4 allowed a customer to delete accounts and a new customer could add accounts. Judge Politan had stated in 1995 that he wanted to know besides section 2.1.8 is there any other section that either permitted or did not prohibit traffic only from moving without the plan and its commitments needing to also be transferred.

Whether the traffic was deleted and added vis 3.3.1Q Bullet 4 OR directly transferred the result was the non-transferred plan would remain with the revenue and time commitments. The FCC was strictly being asked to interpret section 2.2.4 fraudulent use. The FCC was not asked to interpret 2.1.8 because there was NO CONTROVERSY referred by the Third Circuit to the FCC under 2.1.8 as the parties agreed how 2.1.8 worked. The controversy was whether AT&T could use section 2.2.4 fraudulent use to stop a traffic only transfer where the plans would remain with the revenue commitments. Whether the accounts were directly transferred via 2.1.8 or deleted and added via 3.3.1Q bullet 4 the same FCC interpretation had to take place as per section 2.2.4. fraudulent use. The FCC denied AT&T’s sole remaining defense of fraudulent use.

The DC Circuit reviewed the fraudulent use interpretation and also decided against AT&T determining that it would only be fraudulent use if a new customer did not assume ANY of the commitments. The DC Circuit explicitly stated that plaintiffs attempted to transfer the only two obligations actually listed within section 2.1.8. So obviously plaintiffs did not engage in a transfer in which NO OBLIGATIONS were transferred.

Furthermore, the DC Circuit was advised by the FCC that Judge Politan did not refer the fact that he decided the plans were pre-June 17th 1994 immune. So realistically the FCC interpretation and DC Circuit Review were totally worthless given the fact that Judge Politan had already made the judgement call that AT&T’s fraudulent use defense had no merit to begin with!

AT&T page 7:

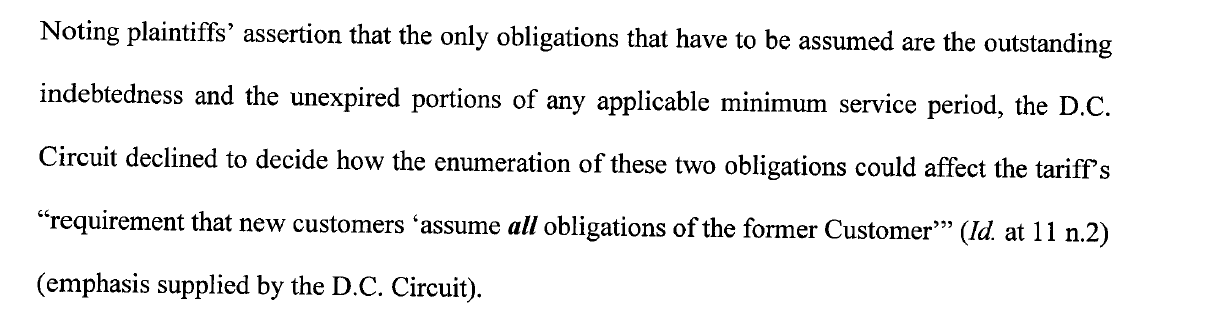


AT&T counsel again misleads the NJFDC Judge Wigenton. The DC Circuit did not REVERSE the FCC. The FCC denied AT&T’s 2.2.4 fraudulent use defense and so did the DC Circuit. The fact that the DC Circuit determined that section 2.1.8 also allows traffic only transfers and not just the FCC’s belief that traffic only can be transferred by deleting and adding is NOT A REVERSAL of what the FCC interpreted –which was section 2.2.4 fraudulent use---not section 2.1.8.

Plaintiffs went from an FCC decision in which the FCC ruled against AT&T on fraudulent use and stated that since the tariff allows accounts to be deleted from one plan and added to the other plan, our traffic only transfer was **not prohibited**. To a DC Circuit Decsion that determined that AT&T’s fraudulent use defense would only be a factor if the new customer was not assuming ANY OF THE OBLIGATIONS and that the 2.1.8 transfer plaintiffs ordered was PERMITTED under the tariff.

A reversal would only be if the DC Circuit Decision explicitly stated that FCC’s decision to deny AT&T’s fraudulent use defense under section 2.2.4 was in error. Even if that were the case AT&T still loses as the NJFDC has the final trump card based upon the fact that Judge Politan already determined and did not refer the June 17th, 1994 shortfall immunity exemption. So, in ***this case*** even if the FCC and DC Circuit stated that AT&T could use section 2.2.4 to prohibit a 2.1.8 transfer or simply deleing the accounts from one plan and adding them to the new plan the facts in this case are that Judge Politan has already determined the plans were immune and AT&T fraudulent use premise of being denied collecting shortfall was not substantiated because the plans were pre-June 17th 1994 shortfall and termination charge immune.

See AT&T’s brief January 16th 2015 page 8:



More intentional subterfuge by AT&T’s counsels. The DC Circuit by law explicitly stated that it could NOT review which obligations transfer because it can only review what the FCC had interpreted.

---“The Communications Act **precludes us from addressing only those issues which the Commission has been afforded no opportunity to pass.”** 47 U.S.C. Section 405(a).”

(DC Circuit Decision in Plaintiffs initial briefpg. 10 fn1.

--- “How this enumeration affects the requirement that new customer assume “*all* obligations of the former Customer” (emphasis added) is **beyond the scope of our opinion**.” **DC pg. 11 fn2**

---“We also do not decide precisely which obligations should have been transferred in this case, as this question was **neither addressed by the Commission** nor adequately presented to us.” **DC Circuit Page 11**

The FCC was only referred section 2.2.4 fraudulent use!!! As the FCC 2003 and 2007 Orders state: Under the Administrative Procedures Act the FCC can only issue tariff interpretations based upon a controversy or uncertainty. In 1995 there was no controversy or uncertainty amongst the parties as to which obligations transfer and which don’t on a traffic only transfer. AT&T and Plaintiffs and Judge Politan all agreed that only the bad debt and minimum payment period obligations transfer on a traffic only transfer. Only on an ENTIRE PLAN transfer did the non-transferred plans revenue and time commitment also transfer.

Judge John Roberts did not have authority to review which obligations transfer because that was not interpreted by the FCC. Thankfully he couldn’t because he IGNORED the NJFDC Decision which explicitly stated that AT&T counsels stressed revenue and time commitments don’t transfer. Judge Roberts ignored the evidence in the case that showed for previous traffic only transfers the revenue and time commitment did not transfer. Judge Roberts ignored COMMON SENSE that you can’t transfer away a few accounts and GET RID OF YOUR ENTIRE REVENUE COMMITMENT!!! Judge Roberts simply did not understand the adjective “former” in the sentence. The new customer only assumes all obligations of the FORMER customer. In the opening of the 2.1.8 the customer is defined as a former customer ON THAT WHICH IS TRANSFERRED. If the plan is not transferred the transferor of traffic only is only a former customer on the traffic transferred. They are not a FORMER AT&T customer if they **still have an AT&T discount plan** that has a revenue and time commitment!!! If the new customer had to assume all obligations that means the new customer would be FINANCIALLY LIABLE for BAD DEBT ON ACCOUNTS THAT WERE NOT EVEN TRANSFFERED TO THE NEW CUSTOMER!!! Judge Roberts simply looked at words on a piece of paper and despite AT&T counsel even trying to explain to him that it depends upon what is transferred he knew he was LIMITED by law in offering a REVIEW but he highlighted the word “all” because he thought he knew how it should work.

JUDGE ROBERTS:  Why not?  The tariff says they have to **assume all the obligations**. (Oral: Pg 12, Line 9)

AT&T counsel MR. CARPENTER: “**Yes, but what it means to assume all the obligations.** What obligations apply **may vary depending on what's** transferred. “In some cases the **only obligation** that may be transferred is **going to be the outstanding indebtedness.**”

AT&T counsel MR. CARPENTER:  We point out in our brief that there’s a distinction between transfers of entire plans, and transfers of individual end-users locations. That when the “**plan”** is transferred, **"all the obligations"** have to go along with it. (Third Circuit Oral Pg 15 line 9)

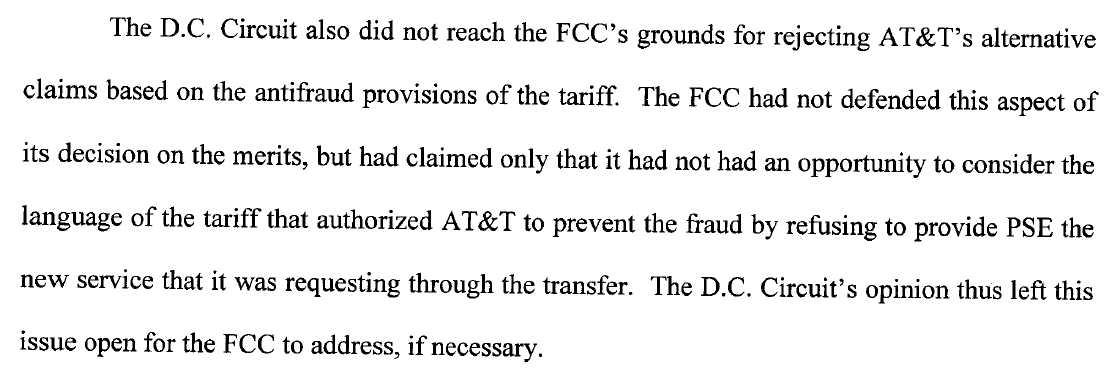
Mr. Carpenter: Yes, but what it means to assume **all the obligations.** What obligations **apply** may vary depending on what's transferred. (11/12/04 DC Circuit pg.12 Line 22 )

Mr. Carpenter: Now what obligations they are going to end up assuming will vary depending on what service is being transferred. (11/12/04 DC Circuit pg.12 Line 12 Exhibit W.)

Despite being told by AT&T’s counsel and the FCC Counsel Nick Bourne multiple times that revenue and time commitments don’t transfer he still didn’t understand it!! Furthermore, AT&T’s defense of fraudulent use and the withdrawn Tr8179 Defense were both premised on AT&T’s position that the revenue and time commitments do not transfer under the tariff!!

Based upon Judge Roberts misreading of the tariff and offering an opinion on a NON-REVIEWABLE issue AT&T’s current counsels figured let’s scam the NJFDC in 2005! If the current Supreme Court Judge John Roberts screwed it up we will hijack John Roberts credibility and use it on NJFDC Court Judges. We will lie that the DC Circuit Court Decision was a remand when it obviously wasn’t. We will lie that the reason why he denied the traffic only transfer in 1995 was because PSE refused to accept the revenue and time commitments! When asked for evidence of traffic only transfers in which obligations transfer we will lie to the NJFDC that we addressed this with the FCC or just make some nonsense up. We will keep the same law firms but get rid of all the old AT&T counsels that stressed revenue and time commitments don’t transfer and bring in new counsel and come up with cover-ups for their explicit statements!!! So, based upon a NON CONTROVERSIAL NON REVIEWABLE ISSUE and confusion by the DC Circuit----AT&T’s counsels set in motion operation intentional fraud and cover-up on the NJFDC!!!

AT&T page 8:



More AT&T counsel misrepresentation. The DC Circuit’s deciding statement was its POSITION ON SECTION 2.2.4 FRAUDULENT USE which was the ONLY REVIEWABLE CONTROVERSY:

The Inga Companies submitted a brief after Oral Argument to correct misrepresentations made by AT&T counsel. The Inga Companies presented evidence and indicated that it did transfer the only two obligations listed on the AT&T transfer form that are listed within section 2.1.8.

The DC Circuit decided that it would only be fraudulent use if the new customer wasn’t receiving ANY OBLIGATIONS. That is not what happened in this transaction as the DC Circuity Court stated that all the obligations listed were transferred:

**DC Circuit page 11:**

All we decide is that Section 2.1.8 cannot be read to allow parties to transfer the benefits associated with 800 service **without assuming any obligations**. The petition for review is granted.

**DC Circuit page 11 footnote:**

At oral argument, AT&T’s counsel repeatedly stated that Tariff No. 2 expressly required PSE to assume **the volume commitments that form the heart of AT&T’s concern in this case.** *See* Transcript of Oral Argument at 11, 13. In a motion submitted after the argument, however, **the Inga companies note that the only obligations enumerated by Section 2.1.8 are “outstanding indebtedness for the service” and “the unexpired portion of any applicable minimum payment period.”**

If the Fraudulent use issue was left open as AT&T’s current counsel misrepresents to Judge Wigenton then it would have been a remand!! The fact that it was not a remand concludes the only issue the DC Circuit had to review was reviewed. As Martha Tomich the DC Circuit Legal Director stated---If AT&T counsel had an issue with the DC Circuit Decision it should have appealed it! AT&T counsel understood the DC Circuit Decision was not a remand but figured since Judge Roberts questioned which obligations might transfer under 2.1.8 let’s scam the hell out of the NJFDC!!!

AT&T’s 2015 statement that the FCC did not have the opportunity to interpret fraudulent use **on its merits** is also misleading. The FCC 2003 Order denied AT&T on the fraudulent use section 2.2.4 because it used an illegal remedy of permanently denying the 2.1.8 transfer instead of the tariffed remedy of only temporarily suspending service. The FCC’s briefs to the DC Circuit Court also advised the DC Circuit that it could have also decided against AT&T because by law any rate or regulation must be explicitly referred to. The FCC stated that in order for AT&T to rely upon section 2.2.4 fraudulent use to prohibit a traffic only transfer it must be explicitly stated in the tariff. If AT&T did not want its customers to either use 2.1.8 to directly transfer end-users OR use section 3.3.1 Q bullet 4 to simply delete the accounts from one plan and enroll on new plan---- then each of those tariff sections must explicitly refer to section 2.2.4. The FCC believed it didn’t need to pile on as it held that the illegal remedy alone defeated AT&T’s use of 2.2.4.

Additionally, AT&T’s 2015 statement is also misleading about the FCC determining the merits of fraudulent use. Merits are a judgement call made by the District Court. The FCC’s job is to interpret the tariff. Judge Politan had already determined that AT&T’s reliance on its fraudulent use section because it suspected shortfall HAD NO MERIT because the plans were pre-June 17th 1994 Ordered!

A) Judge Politan: “Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. Theonly “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T’s demand for fifteen million dollars’ security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)

B) Judge Politan: **“**Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T’s own tariff.” May 1995 NJFDC Decision pg. 11

C) Judge Politan: “In answer to the court’s questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T.” May 1995 NJFDC Decision pg. 24

Remember Judge Politan’s injunction was vacated by the Third Circuit based upon primary jurisdiction. Judge Politan’s determination that AT&T had no merit to rely upon fraudulent use trumps any decision the FCC or DC Circuit made as to whether the tariff allows AT&T to use fraudulent use to prevent a traffic only transfer under either account movement scenario.

The FCC’s R.L Smith commenting on AT&T’s Tr8179 filing to modify 2.1.8:

“Two things to keep in mind about this one. First **it indicates intent to** and that is a **judgment call** which would have to be decided in a complaint case if the matter came up. And **‘it does not even take intent into account but assumes it is there”**

The FCC is confirming it is a NJFDC judgement call to determine intent to evade paying shortfall charges. The FCC is making the point that it is interpreting the tariff but AT&T is forgetting the fact that it never got to 1st base by establishing with Judge Politan the merits of raising this defense in the first place!! AT&T just assumes INTENT IS THERE!!!

The FCC Order stated the same thing:

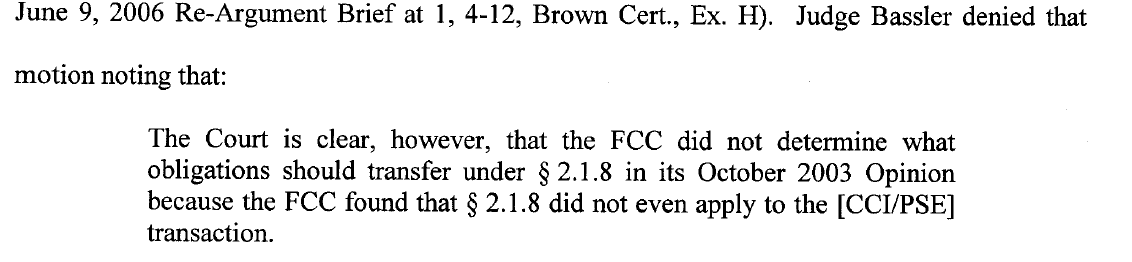
FCC 2003 Order page 8 para 11:

Based upon our review of AT&T’s tariff, we conclude that, **even assuming** that AT&T reasonably suspected a violation of the “fraudulent use” provisions of its tariff – **which we do not decide** – those provisions did not authorize AT&T to refuse to move the traffic from CCI to PSE

The FCC had to ASSUME AT&T had the merits to rely upon fraudulent use because the injunction against AT&T shows Judge Politan clearly indicated AT&T’s premise of being deprived collecting “shortfall” i.e. charges for services NOT EVEN RENDERED was **not properly substantiated.**

The FCC is saying it does not decide merits, yet AT&T’s counsels misrepresented to Judge Wigenton that this fraudulent use issue was still open when it was obviously not remanded and thus closed, and the FCC has to decide merits---when the FCC explicitly stated it doesn’t decide merits as that is what Judge Politan already did.

AT&T page 9:



More subterfuge by AT&T’s counsels. AT&T counsels understood the FCC was not asked to interpret which obligations transfer under 2.1.8 as that was NOT A CONTROVERSY REFERRED to the FCC. All parties agreed from 1995 through the DC Circuit Court Decision that revenue and time commitments transfer only when the plan transfers. This is why when Judge Bassler’s referral on interpreting section 2.1.8 was referred to the FCC the FCC 2007 Order stated:

FCC *2007 Order*: **(pg. 2 para 3)**

“As discussed in the 2003 Order on Primary Jurisdiction Referral, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to **terminate a controversy or remove uncertainty**. When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to **assist the referring court** by resolving issues arising under the Act. That is our goal here. **The district court's June 2006 order does “not expand the scope of the issue previously presented.** Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T’s Tariff No. 2, **a matter already extensively briefed by the parties.**

Simple: The issue that was previously presented to the FCC was section 2.2.4 fraudulent use as the 2003 Order States and the DC Circuit Order confirmed. The FCC is saying **RATHER** because it was interpreting 2.2.4 but you now “RATHER” have us interpret 2.1.8 **a matter already extensively briefed by the parties.**

Of course, 2.1.8 was a matter already extensively briefed by the parties as AT&T and plaintiffs agreed revenue and time commitments do not transfer unless the whole plan transfers:

The FCC is telling the NJFDC the answer to Judge Basslers 2006 Referred Question was not a controversy and the answer is right in the NJFDC Decision:

NJFDC Judge Politan March 1996 page 17 fn 7

“Indeed, **AT&T's own counsel** focused the issue by indicating that the tariffed obligations “*involved herein*” are all **tariffed obligations**, for which **“CCI, not PSE”** would be obligated.

Yes AT&T’s own counsel Fred Whitmer was stressing to Judge Politan that revenue and time commitments don’t transfer under the tariff as AT&T was asserting to Judge Politan its non-substantiated fraudulent use defense.

If you read the FCC 2003 Order the FCC agrees with the obligation allocation agreed upon by the parties at the NJFDC under 2.1.8 even though it was not asked to interpret 2.1.8. The FCC in fact advised the DC Circuit that although it did not see that 2.1.8 also allowed traffic only transfers and not just 3.3.1Q bullet 4 (delete and Add) that the FCC used 2.1.8 for its obligation language. The FCC did not say that 2.1.8 did not apply at all to the transaction

FCC page 6:

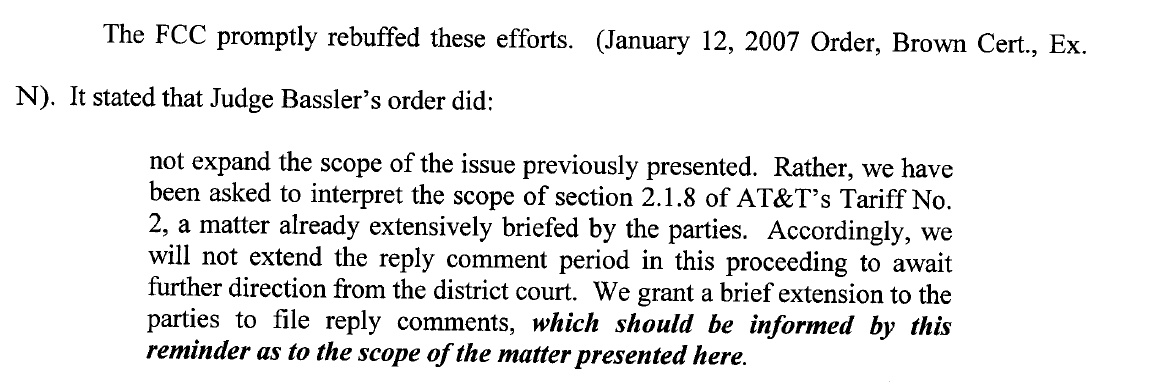
We conclude that section 2.1.8 of AT&T’s Tariff did not address – and therefore did not preclude or otherwise govern – **the movement** of end-user traffic from one aggregator to another, as CCI and PSE sought to effect in this case.

The FCC’s only job was to interpret 2.2.4. It believed that movement of traffic only could only be done through delete and add (3.3.1Q Bullet 4). Whether the accounts were moved by 2.1.8 direct transfer or (3.3.1Q Bullet 4) delete and add the FCC was simply interpreting whether AT&T could use 2.2.4 fraudulent use to stop a traffic only transfer where the remaining plan had to keep its revenue and time commitments.

The fact that the DC Circuit found that 2.1.8 also allows traffic only transfers didn’t affect the interpretation of 2.2.4 fraudulent use. How the accounts got from point A to point B had no effect on the FCC’s interpretation that AT&T could not rely upon fraudulent use.

AT&T page 11: Misleads short quotes and spins the FCC 2007 Order to scam Judge Wigenton:

Notice where AT&T picks up the quote of the FCC 2007 Order: “not expand the scope



AT&T counsel intentionally left out the entire para leading up to NOT EXPAND:

Here is what AT&T counsel left out…

“As discussed in the 2003 Order on Primary Jurisdiction Referral, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to **terminate a controversy or remove uncertainty**. When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to **assist the referring court** by resolving issues arising under the Act. That is our goal here. **The district court's June 2006 order does**

AT&T counsel cut off the quote **right in the middle of the sentence and left out**: {The district court’s June 2006 order does}AT&T counsel didn’t want Judge Wigenton to realize the FCC was advising her Court the key sentence in the FCC 2007 Order:

**The district court's June 2006 order does “not expand the scope of the issue previously presented.**

Section 2.1.8 is moot!!! It is outside the scope of the original referred issue of fraudulent use!! It’s obvious AT&T COUNSEL INTENTIONALLY SCAMMED Judge Wigenton. There was absolutely no reason to have short quoted the FCC 2007 Order like AT&T’s counsel did unless it was intentionally trying to deceive the Court. As usual the cover-up shows AT&T counsels clearly understood the FCC 2007 Order and intentionally scammed the NJFDC Judge Wigenton.

When the Inga Companies filed a motion to make the FCC 2007 Order explicit so the NJFDC Judge could understand it and leave AT&T no room to manipulate it, AT&T counsel opposed the motion to reissue the 2007 FCC Order just to make it even more explicit.

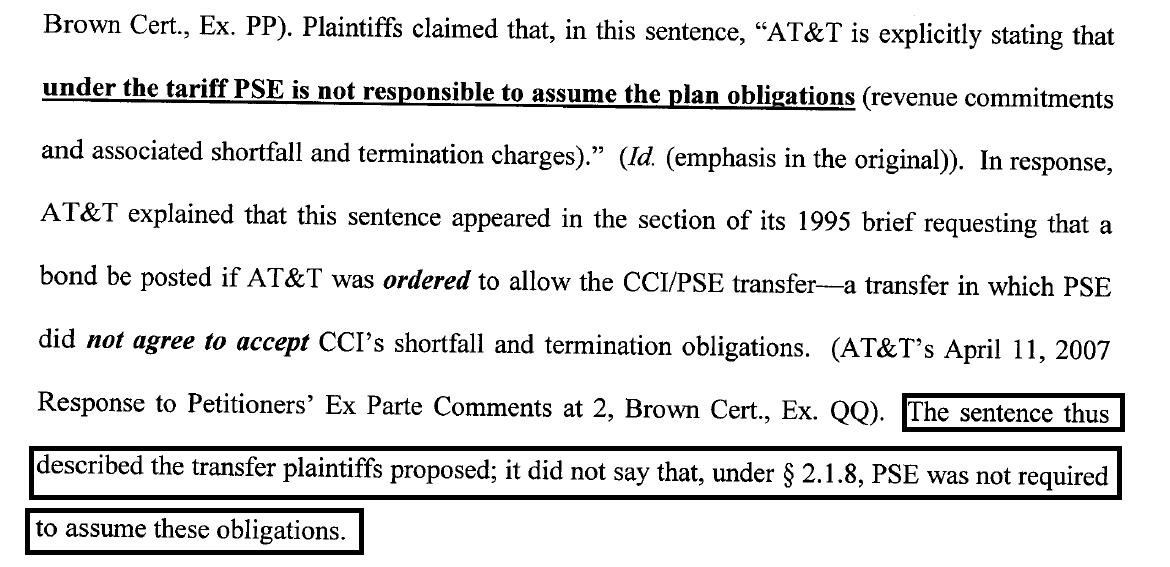
The FCC Commissioners in January ended up completing its review and removed the traffic only transfer issue from Commissioner Circulation after about 13 or 14 months review. The FCC obviously decided that here were no additional open controversies under the Administrative Procedures Act that were within the scope of the original fraudulent use referral that the FCC needed to interpret.

Pages 12 through 15 of AT&T’s January 16th 2015 brief concern issues related to AT&T unlawfully inflicting shortfall and termination charges against the plans in June 1996---18 months after the January 1995 denied traffic only transfers. There was an issue as to whether the FCC would accept a declaratory Ruling Request from the Taxpayer Advocate Program. It ended up that it didn’t matter as the FCC on 8.11.16 released a Public Notice asking for comments to interpret the penalty infliction claims. The FCC evaluated the case and saw that there were open controversies that had no disputed facts and decided that these penalty infliction issues needed to be resolved. However, in January the FCC removed all issues and is standing by the fact that Judge Politan had already determined the plans were pre June 17th 1994 immune and the FCC 2003 Order states Judge Politan did not need to refer that issue to the FCC.

AT&T page 16 asserting its “proposal cover-up” scam that what AT&T was referring to was what was proposed and not what the 2.1.8 mandated. We have detailed all the points (POINT 1 through POINT 8) previously why AT&T’s cover-up is pure deceit.

Remember section 2.1.8 is not even in the scope of the case and AT&T counsel is not only asserting it is within the scope but is engaged in a cover up of its previous 1995 through DC Circuit statement:

AT&T page 16



The most obvious failure of AT&T’s “proposal cover-up” is that it conversely means that AT&T has in its possession traffic only transfers from “model citizens” in which the revenue and time commitments transferred. Of course, AT&T counsel violated Rule 11b for not providing evidentiary support and even after the FCC 2007 Order determined 2.1.8 did not expand the scope of the original fraudulent use issue AT&T counsel continued to insist on a position after it no longer was tenable:

**4.2.A.1   Standards for Making Representations to the Court:**Rule 11(b) provides that,”[b]y presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the **best of the person's knowledge**, information, and belief, formed **after an inquiry reasonable under the circumstances**” that the material presented is not filed for an improper purpose and has the **requisite degree of** **evidentiary** and legal support.  This amendment “subject’s litigants to potential sanctions for **insisting upon a position after it is no longer tenable**.

AT&T on page 16 is trying to cover-up for just one of its former counsel’s statements. What about the dozens of additional statements made by many other AT&T counsels all claiming that under the tariff the revenue and time commitments don’t transfer! AT&T’s original counsels from 1995 through 2005 (Richard Meade, Frederick L. Whitmer, Aryea Friedman, Edward Barillari, Charles Fash, David Carpenter, Richard Brown)

Why isn’t current Richard H. Brown offering a cover up his 1996 explicit statement to the Third Circuit Court:

Below is AT&T’s Counsel Richard H Brown on 4.25.96 to Third Circuit asserting it was **self-evident under the tariff**, for traffic only transfers that obligations **don’t transfer**:

“CCI Notes that a transfer of service can apply either to individual end user locations or to entire plans. See CCI Br. At 31-32 & n13. CCI then, incongruously, seeks to defend the District Court by citing “record evidence” that addressed transfers **individual end user locations (not entire plan liabilities), and showed that the only “obligation” transferred to the “new customer” in that event is the unpaid liability associated with the individual end user location** that is transferred. **But that is self-evident under the tariff.**

AT&T counsel Richard H. Brown offers no cover-up for these AT&T counsel statements either. These statements were statements regarding the terms and conditions of the tariff not this nonsense what plaintiffs proposed that somehow was different than what everyone else did ---but AT&T of course offers zero evidence of the alleged “model citizens” that transferred revenue and time commitments on a traffic only transfer:

JUDGE ROBERTS:  Why not?  The tariff says they have to **assume all the obligations**. (Oral: Pg 12, Line 9)

AT&T counsel MR. CARPENTER: “**Yes, but what it means to assume all the obligations.** What obligations apply **may vary depending on what's** transferred. “In some cases the **only obligation** that may be transferred is **going to be the outstanding indebtedness.**”

AT&T counsel MR. CARPENTER:  We point out in our brief that there’s a distinction between transfers of entire plans, and transfers of individual end-users locations. That when the “**plan”** is transferred, **"all the obligations"** have to go along with it. (Third Circuit Oral Pg 15 line 9)

Mr. Carpenter: Yes, but what it means to assume **all the obligations.** What obligations **apply** may vary depending on what's transferred. (11/12/04 DC Circuit pg.12 Line 22 )

Mr. Carpenter: Now what obligations they are going to end up assuming will vary depending on what service is being transferred. (11/12/04 DC Circuit pg.12 Line 12 Exhibit W.)

---AT&T 3/21/1995 cross examination of Mr. Inga:

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **“lead account**” ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn’t that correct?**

Inga: Yes

---AT&T reply brief to DC Circuit pg 9:

“Section 2.1.8 “addresses” the transfer of end-user traffic ***without*** the associated liabilities.”

---DC Circuit Judges Tatel and Ginsburg both understood “all obligations” don’t transfer unless the whole plan is transferred: D.C. Oral Argument Page 10

JUDGE GINSBURG: Well, you said “all obligations”.

JUDGE TATEL: Well, that's **only if the whole plan is transferred.**

AT&T’s position from 1995 through the DC Circuit Court was exactly the same as plaintiffs that revenue and time commitments do not transfer UNLESS THE PLAN TRANSFERS. That is why in January 2017 the FCC dropped the 2.1.8 referral sent in 2006 as under the Administrative Procedures Act the FCC is limited to only dealing with CONTROVERSIES/UNCERTAINTIES that existed within the original scope of the case. There was no controversy or uncertain between the parties as per 2.1.8 as to which obligations transfer. AT&T’s only defense as per 2.1.8 was when AT&T was FCC denied its Tr8179 Substantial Cause Pleading and withdrew Tr8179 on June 2, 1995 and that defense was based upon obligations do not transfer on a traffic only transfer so AT&T tried to change the tariff so it could force a plan transfer to force the revenue and time commitments to transfer.

When the DC Circuit understood that 2.1.8 also allows traffic only transfers:

The DC Circuit Decision stated on pg.8:

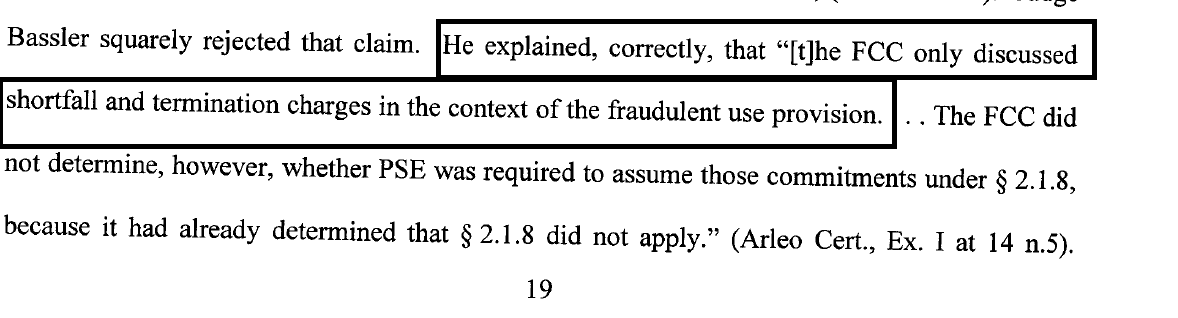
Absent such reliance, the commission provides us with little reason why the plain language of Section 2.1.8 fails to encompass **transfers of traffic alone.**

and the DC Circuit Decision stated on pg.10:

As the foregoing discussion indicates, we find the Commission’s interpretation implausible on its face. First, the plain language of Section 2.1.8 encompasses all transfers of WATS, and **not just transfers of entire plans.**

AT&T counsels asserted that 2.1.8 allowed traffic only transfers as it had before but REVERSED ITS 1995 through DC Circuit Position that under the tariff revenue and time commitments don’t transfer to the Post DC Circuit position that 2.1.8 was a controversy in 1995 as to which obligations transfer and that is why it denied the transfer. AT&T counsel’s problem is that when it created the fraud in 2005 it did not care that it had no evidence to support the fraud. At that point in 2005 AT&T’s counsels coverup of switching out all the “former” customer language in 2.1.8 had not yet been discovered. AT&T counsel also did not believe that the Inga Companies would refuse to take AT&T’s hush money which also required the Inga Companies drop ethics complaints. **AT&T counsels thought it could just buy its way out of the intentional fraud and coverup.**

AT&T page 19 of its 1.16.15 brief to the NJFDC Court



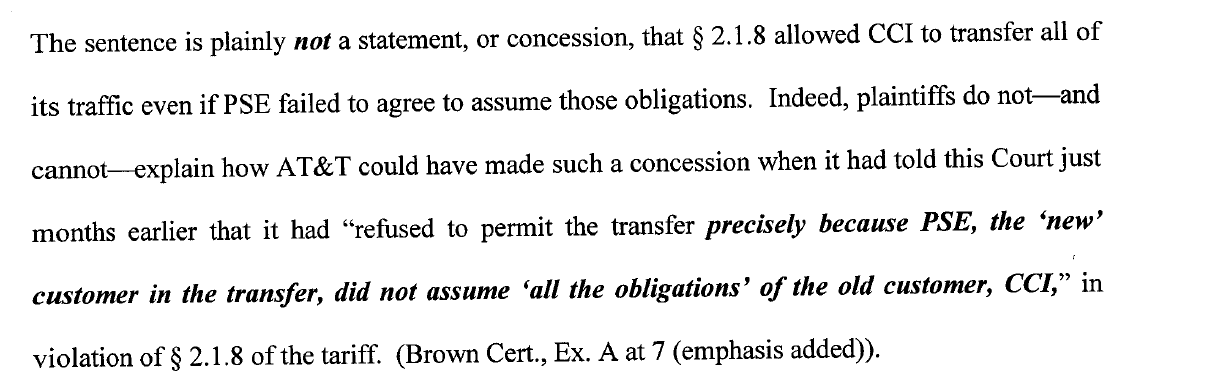
The FCC was only obligated to address shortfall and termination charges in the context of the fraudulent use provision as the fraudulent use provision was the only controversy. There was no controversy as to which obligations transfer. The FCC agreed with the NJFDC that shortfall and termination obligations don’t transfer in its interpretation of the fraudulent use section. You can’t interpret fraudulent use without already accepting the non-controversial position of the parties that revenue and time commitments do not transfer. That is the fundamental non-controversial position that you start out with. The controversy is whether substantial accounts could be transferred understanding the revenue commitment must remain with the non-transferred plan.

If in 1995 revenue and time commitments actually transferred under 2.1.8, AT&T would not have asserted a defense under fraudulent use section 2.2.4. It would have just asserted that 2.1.8 requires revenue and time commitments to transfer on a traffic only transfer and its defense would be that there was a violation of 2.1.8 for not transferring revenue and time commitments.

Common Sense: AT&T’s Tr8179 FCC denied 2.1.8 defense required that AT&T could mandate that when substantial accounts are transferred the ENTIRE PLAN must transfer to force the revenue and time commitments transfer. **If in 1995, time revenue and time commitments already were supposed to transfer--- there would not have been a reason to file Tr8179 on 2.16.95 based upon AT&T counsels post DC Circuit Court intentional fraud!!!**

AT&T counsels simply proceeded with its intentional fraud in 2005 and never thought any of these conflicts out and just figured it would continue to bullshit the NJFDC--- with no evidence ---as we see here in 2015 under the intentional fraud supervised by Mr D. Wayne Watts AT&T’s General Counsel.

More subterfuge to cover-up AT&T former AT&T counsel’s statements that revenue and time commitments don’t transfer on a traffic only transfer. Check out this slick maneuver….



Notice AT&T does not say PSE must assume all of CCI’s obligations **on a traffic only transfer.** Here is the AT&T scam….

AT&T’s original position was revenue and time commitments don’t transfer on a traffic only transfer. Current AT&T counsel needed to cover-up for all of these explicit statements. What current AT&T counsel pulled on Judge Wigenton above was taking a sentence from its Tr8179 FCC denied and AT&T withdrawn implicit argument and APPLYING IT to its current argument that revenue and time commitments must transfer **on a traffic only transfer.**

The statement AT&T made about PSE needing to assume all obligations was in reference to AT&T’s Tr8179 defense denied by the FCC. Yes AT&T under its Tr8179 withdrawn on June 2, 1995 defense asserted 2.1.8 was being violated because PSE was not assuming all the obligations, SO AT&T FILED TR8179 AND TRIED TO SELL THE FCC THAT IT COULD FORCE A PLAN TRANSER to force the revenue commitments to transfer.

There are ZERO STATEMENTS in the record from 1995 through the DC Circuit Court in which AT&T stated: AT&T is denying the traffic only transfers because under the tariff PSE must assume the revenue and time commitments **on a TRAFFIC ONLY TRANFER!**

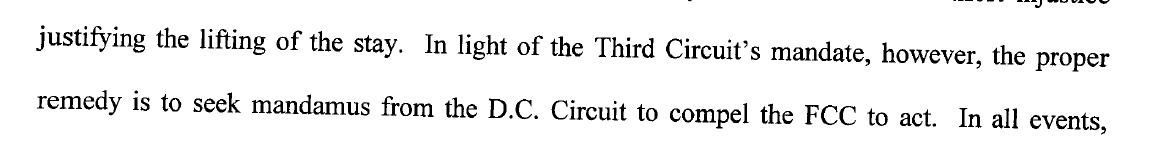
AT&T counsels simply scammed Judge Wigenton by taking a piece of its FCC denied and withdrawn Tr8179 defense and applied it to the current fraud that revenue and time commitments must transfer on a traffic only transfer. AT&T Tr8179 was about the plan transferring to transfer all the obligations not just traffic only as AT&T counsel Richard H. Brown intentionally misled Judge Wigenton.

Furthermore AT&T is again quoting from a defense that AT&T counsel Meade certified to Judge Politan and AT&T counsel Carpenter advised the Third Circuit that the FCC denied and AT&T withdrew it on June 2, 1995. AT&T counsel is incredibly relying upon a denied defense and then misleading the NJFDC that it applies to a revisionist history 1995 AT&T position that revenue and time commitments transfer **on traffic only transfers! Simply an intentional fraud replete with cover up attempts on Judge Wigenton.**

Common Sense: If under the tariff revenue and time commitments really did transfer AT&T would not have to do all this cut and paste and spin and short quote nonsense. All AT&T counsel would have to do is say: Judge Wigenton here are dozens of examples of traffic only transfers in which the revenue and time commitments transferred!

As AT&T counsel Fred Whitmer advised Judge Politan in March 1995 AT&T had already done THOUSANDS of traffic transfers. AT&T counsel knows it has no evidentiary support of its post DC Circuit fraud so it needs to rely upon hocus pocus deception maneuvers as it engaged in above.

AT&T’s 1.16.15 brief to NJFDC page 23:



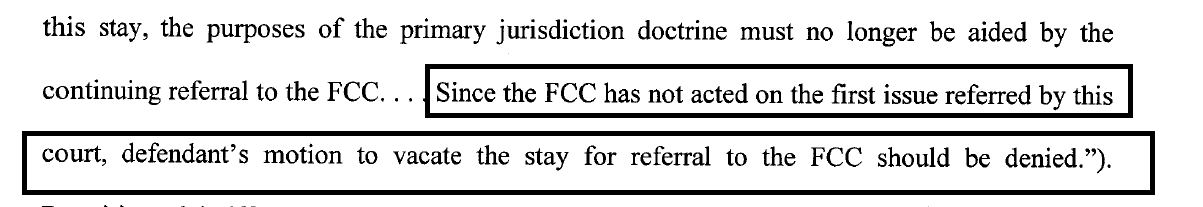
The Third Circuit referral was in 1996! AT&T’s only defense as per section 2.1.8 was the Tr8179 defense filed on 2.16.95 and FCC Denied so AT&T withdrew it on June 2, 1995. The Third Circuit did not mandate that the FCC which had already decided that 2.1.8 issue needed to interpret it again!!! The Third Circuit referred the only issue outstanding which of course was fraudulent use (section 2.2.4).

AT&T counsel advised Judge Wigenton that AT&T would not oppose plaintiffs going to the DC Circuit and filing a writ of mandamus to compel the FCC to interpret 2.1.8! Of course, AT&T counsel would not oppose it as the fraudulent use controversy was already over! AT&T created a new fraud under 2.1.8 after the DC Circuit Court Decision in 2005 as its justification why it denied the traffic only transfer in the YEAR 1995!!! Judge Wigenton thought AT&T counsel was being such a nice guy not opposing a writ of mandamus when in reality Richard H. Brown was scamming her Court silly!!! This is the same Richard H. Brown that in 1996 claimed:

“CCI Notes that a transfer of service can apply either to individual end user locations or to entire plans. See CCI Br. At 31-32 & n13. CCI then, incongruously, seeks to defend the District Court by citing **“record evidence”** that addressed transfers **individual end user locations (not entire plan liabilities), and showed that the only “obligation” transferred to the “new customer” in that event is the unpaid liability associated with the individual end user location** that is transferred. **But that is self-evident under the tariff.**

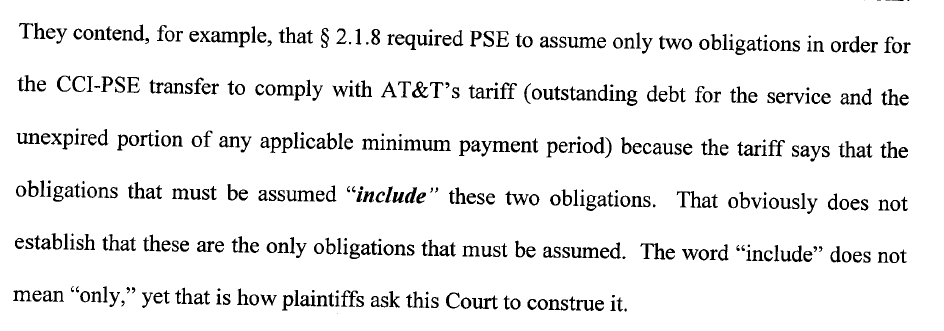
Richard H. Brown in 1996 conceded the evidence presented to Judge Politan indicated that revenue and time commitments don’t transfer. But in 2015 doesn’t want to talk about evidence. Richard Brown misled Judge Wigenton that AT&T provided evidence to the FCC when of course he didn’t.

AT&T brief to NJFDC 1.16.15 page 24:



The reality is both the FCC and DC Circuit Court both decided on the sole remaining defense of fraudulent use. Furthermore, the FCC stated that it has to assume AT&T had merit to raise that defense. Judge Politan had already decided the plans were Pre-June 17th 1994 immune and that judgement call supersedes any tariff interpretation.

AT&T’s January 16, 2015 brief page 28:



Again, simply look at the orders submitted and there is no stipulation, condition or any remarks as to which obligations need to be transferred or not transferred. All plaintiffs asked for was a traffic only transfer and indicated the accounts to remain with the non-transferred plans. It was AT&T that spilled the beans on February 16th, 1995 when it filed Tr8179. AT&T was the party that conceded that the order was a traffic only order and filed the substantial cause pleading to force the plan to transfer to force tehrevenue and time commitments to transfer. The order was **silent as to which obligations go where**. Section 2.1.8 allows for traffic only and plan transfers and all plaintiffs were doing is simply advising AT&T that it was doing a traffic only order. AT&T was supposed to process the traffic only transfer within 15 days as per section 2.1.8 (c) or it must provide a written denial. There was no written denial based upon the obligations allocation under section 2.1.8 not being complied with. The TR 8179 filing was 2.16.95 which was more than 15 days after the traffic only transfer orders.

AT&T was simply mandated to process the traffic only transfer under whatever its tariff mandated for obligations allocation.

In reality, the case has also been moot from the standpoint that EVEN IF THE FCC HAD TO DECIDE the 2006 MOOT REFERRAL under 2.1.8 because it DID NOT EXPAND THE SCOPE OF THE 2.2.4 FRAUDULENT USE CONTROVERSY------ the case is still moot because there was NO STIPULATIONS or CONDITIONS WERE MADE UPON AT&T to process the orders!!! Whatever the tariffed mandated for obligation allocations was fine as long as we could keep the pre-June 17th 1994 grandfathered shortfall and termination charge immune plan.

Judge Bassler 2006 Referral was on section 2.1.8. The FCC 2007 Order stated. **The district court's June 2006 order does “not expand the scope of the issue previously presented.**

The FCC Commissioners reviewed the case from November 2, 2015 and took the case off circulation in January 2017. The FCC Commissioners understood that section 2.1.8 was not the controversy referred to it.

AT&T’s only defense was fraudulent use as the FCC made that EXPLICITLY CLEAR:

The FCC 2003 Decision Pg.10 para 13

“Because AT&T did not act in accordance with the **“fraudulent use”** provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. AT&T does not rely upon “**any other provisions of its tariff**” to justify its conduct.”

After the FCC denied AT&T’s Tr8179 implicit absurdity and AT&T withdrew it in June 2,1995 the FCC only had the 1996 Third Circuit Referral to interpret.

**There is not one single statement that AT&T can provide from 1995 through 2005 DC Circuit Court case in which AT&T’s counsels ever asserted to any Court that under the tariff the non-transferred plans revenue and time commitments must transfer ON A TRAFFIC ONLY TRANFER!!!**

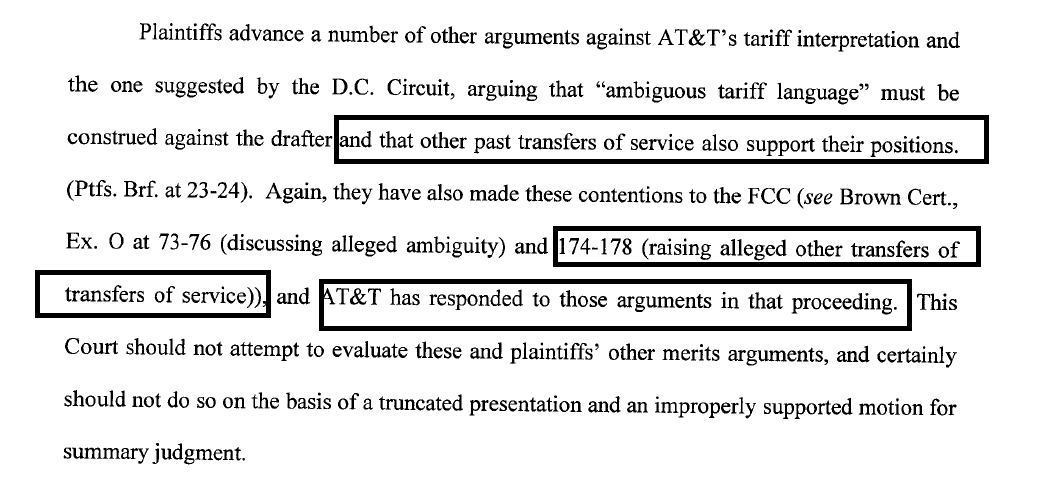
Plaintiffs position in 1995 as to which obligations transfer on a traffic only transfer was **exactly as AT&T’s**. AT&T is misleading Judge Wigenton that there was a controversy in 1995 regarding which obligations transfer on a traffic only transfer—there was no controversy. AT&T counsels continuing to assert it has a 2.1.8 defense when the only one it had was already FCC denied and withdrawn is pure deceit.

AT&T’s only defense was fraudulent use.

Current AT&T counsel Richard Brown himself stated that the record evidence indicated and it was self-evident under the tariff that revenue and time commitments don’t transfer on a traffic only transfer—only on a plan transfer.

AT&T counsel simply hi-jacked the credibility of John Roberts. Fortunately Judge Roberts only screwed up on an issue that by law the DC Circuit stated was not reviewable as it was not referred to the FCC to interpret! Obviously the reason why it was not referred to the FCC was that IT WAS NOT A CONTROVERSY in 1995!!!

AT&T’s January 16th 2015 brief to the NJFDC page 29:



By law when a tariff is not explicit it must be ruled against the maker of the tariff –AT&T. AT&T counsel Richard H. Brown does not want to address the law so he says “(discussing **alleged** ambiguity).” I think after 22 years of multiple Judges not understanding the tariff –including the current Supreme Court Justice of the US that totally screwed up the meaning of the tariff because he IGNORED all the evidence--- no one can state the tariff is not explicit.

AT&T’s ploy to address the fact that AT&T violated 11B by not providing the NJFDC with **evidentiary support** was to claim in 2015 that these traffic only transfers in which the revenue and time commitments transferred were “**alleged** other transfers of service.” AT&T counsel Richard H. Brown intentionally misled Judge Wigenton by stating “AT&T has responded to those arguments in that proceeding.”

Imagine current AT&T counsel Richard Brown who was involved in the case in 1995 NOW claiming in 2015+ that these were “**alleged** other transfers of service!” The record shows his own co-counsel Fred Whitmer advised Judge Politan in March 1995 that AT&T had already done literally **thousands** of transfers.

“But there are literally - - my guess is hundreds, i**f not thousands, of transfers** that have happened among aggregators and aggregations plans.” NJFDC Oral Argument pg. 53

Mr Whitmer assertions were clear that the revenue and time commitment don’t transfer unless the home/lead account transfers.

---AT&T 3/21/1995 cross examination of Mr. Inga:

Fred Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **“lead account**” ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn’t that correct?**

Inga: Yes

--During the 11.28.95 hearing AT&T counsel kept asserting its fraudulent use defense and CCI’s Mr Shipp kept agreeing that as per section 2.1.8 plan commitments don’t transfer. It led to this comment:

AT&T’s Whitmer: And one of the obligations of the customer, Winback & Conserve or CCI, that did not go to PSE in the attempted transfer was the obligations for shortfall and termination, correct?

Mr Shipp: That's correct. And we so **identified that on the transfer of service document**.

The Court: **I know all these facts, Mr Whitmer. I really do. I swear to God**.

 Mr Whitmer: I have no further questions.

Mr Whitmer was the AT&T counsel that Judge Politan was referring to that kept stressing that under the tariff the tariffed obligations must stay with the non transferred plan:

NJFDC Judge Politan March 1996 page 17 fn 7

“Indeed, **AT&T's own counsel** focused the issue by indicating that the tariffed obligations “*involved herein*” are all **tariffed obligations**, for which **“CCI, not PSE”** would be obligated.

Yet Richard H. Brown who himself claimed in 1996 that it was self-evident under the tariff that the commitments do not transfer in 2015 claims these transfers are alleged and AT&T responded to this no evidence assertion of plaintiffs!!

Richard H. Brown provided ZERO response to the FCC as to why AT&T has violated 4.2.A.1 Standards for Making Representations to the Court: Rule 11 (b) by not providing any evidentiary support.

**4.2.A.1   Standards for Making Representations to the Court:**Rule 11(b) provides that,”[b]y presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the **best of the person's knowledge**, information, and belief, formed **after an inquiry reasonable under the circumstances**” that the material presented is not filed for an improper purpose and has the **requisite degree of evidentiary** and legal support.  This amendment “subject’s litigants to potential sanctions for **insisting upon a position after it is no longer tenable**.

Richard H. Brown and AT&T general counsel D. Wayne Watts engaged intentionally in a fraud on Judge Wigenton and the FCC that was replete with cover-ups that conflicted with

1. the evidence presented
2. conflicted with its former counsels
3. conflicted with Richard H Brown 1996 statement to the Third Circuit that it is “self-evident under the tariff that revenue and time commitments don’t transfer.”
4. conflicted with its own defenses as AT&T argued in 1995 the revenue and time commitments must stay with the non-transferred plan and in 2015 + argued the revenue and time commitments must transfer away from the non-transferred plan
5. conflicted with the fact that if revenue and time commitments already were supposed to transfer (AT&T’s post 2005 assertion) why did AT&T file Tr8179 in 1995 to force the plan to transfer to force the revenue and time commitments to transfer!
6. Conflicted with its fraudulent use defense that asserted revenue and time commitments do NOT transfer and post DC Circuit counsels asserting revenue and time commitments DID Transfer in 1995 on a traffic only transfer.
7. conflicted with the FCC 2003 and 2007 Order that state AT&T had one defense fraudulent use under section 2.2.4 NOT 2.1.8.
8. conflicted with 6 certifications from other aggregator resellers and AT&T’s own employees all of whom stated revenue and time commitments never transfer on a traffic only transfer.
9. Conflicted with the tariff Tr9229 (security deposits against potential shortfall) that explicitly shows that revenue and time commitments do not transfer on a traffic only transfer---yet AT&T lied to Judge Wigenton and told her Court the tariff doesn’t apply!
10. conflicted with the fact the DC Circuit Decision was not a remand
11. conflicted with the FCC General Counsel and FCC case Manager and DC Circuit Court Legal Director that all confirmed the DC Circuit Decision against AT&T’s attempt to use fraudulent use **was not a remand**.
12. Conflicted with Judge Politan’s determination that the fraudulent use defense and the Tr8179 withdrawn defense were both premised on AT&T suspecting shortfall charges; however, Judge Politan already made the judgement call that AT&T’s premise was not substantiated because the plans were pre June 17th 1994 immune. Thus AT&T’s defenses were correctly determined by Judge Politan as having no merit to be raised in the first place. The FCC 2003 Order stated that it had to assume (make believe) AT&T had a reasonable right to suspect shortfall charges. The FCC’s Randolph Smith noted that the NJFDC determines judgement of merit not the FCC and yet AT&T claimed the FCC needed to judge merit.
13. conflicted with the fact the DC Circuit Decision explicitly stated by law it can’t review what the FCC did not interpret
14. and most of all conflicted with common sense as the last thing AT&T’s tariffs would allow is for a company to transfer away accounts and transfer away all its obligations and then take the remaining accounts and go off to an AT&T competitor. Of course, you can’t get rid of the plan obligations (revenue and time commitment) unless you transfer the entire plan! Common sense!!!

Richard H. Brown and AT&T’s general Counsel D. Wayne Watts were able to pull off the fraud on NJFDC Judge Wigenton in 2015. Richard Brown was also able to pull off the fraud in 2016 on the NJFDC Judge Wigenton but that was under new AT&T general counsel David R. McAtee.

We are aware that ethics is not capable of addressing issues that involve tariff interpretation. The issues contained within simply address unethical conduct of AT&T’s counsels in asserting a defense it conceded was denied and withdrawn. AT&T counsel also asserted a defense in which it not only provided zero evidentiary support it misled the NJFDC that the evidence question was addressed at the FCC. AT&T counsel also engaged in a cover-up of all its former counsel’s concessions with its “proposal cover-up.”

AT&T general counsel D. Wayne Watts was responsible for knowing what was going on for all AT&T litigation. He obviously allowed Richard H. Brown to engage in whatever fraud was necessary to scam the NJFDC and FCC.

Texas Bar simply cannot allow D. Wayne Watts to keep his license after this egregious intentional fraud that is replete with attempts to cover-up the fraud.

Al Inga President

Group Discounts, Inc.

1. [2]  *Second District Court Opinion* at 4. [↑](#footnote-ref-1)
2. The DC Circuit Decision stated on pg.8:

   Absent such reliance, the commission provides us with little reason why the plain language of Section 2.1.8 fails to encompass **transfers of traffic alone.**

   and the DC Circuit Decision stated on pg.10:

   As the foregoing discussion indicates, we find the Commission’s interpretation implausible on its face. First, the plain language of Section 2.1.8 encompasses all transfers of WATS, and **not just transfers of entire plans.** [↑](#footnote-ref-2)