7.10.18

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Office of General Counsel & FCC Staff

AT&T’s Violation of FCC Exparte Rules

And FCC Staffs Responsibility to Report Conversations

Motion Compelling FCC Staff that attended any of 3 AT&T in Person

FCC visits to Certify that it Advised AT&T Counsels

the DC Court 2005 Order was not a Remand.

Motion seeks the issuance of Public Notice in which AT&T counsels provide all FCC argument as to why the DC Court 2005 Order is not a Remand

(Reversed Back to FCC)

Motion seeks FCC to address the ex parte condition as to “Whether the person making the presentation 3 times persisted in doing so after being advised that the presentation was prohibited”

Motion seeks full disclosure by AT&T and FCC staff and if AT&T was advised at any time during any of the 3 in person meetings that that the 2005 DC Court Order was not a remand, or AT&T’s Defenses were withdrawn and not tariffed to Assert, then the FCC must dismiss AT&T’s defenses in total and as per Ex Parte Rules Substantially Sanction AT&T’s Counsels.

**BACKGROUND:**

May 25, 2006 pg. 4 Oral Argument AT&T counsel Joseph Guerra (DC Bar) concedes the DC Court Order was not a remand.

15 The Court (Judge Bassler): Let me just stop you there for a minute. 16 I think there's some **loose language** in one of your 17 briefs where -- I don't have the page number in front of me, 18 where you say the **DC Circuit remands the case to the FCC**. 19 **I don't see any language of remand.** 20 MR. GUERRA: Your Honor, you are correct, **there's no formal remand**

Having conceded in 2006 to the NJFDC that the 2005 DC Order was not a remand AT&T decides in 2018 that it can’t use the word “remand” so below AT&T instead asserts DC Court “reversed” the case back to FCC. The DC Court uses the word “remand” for cases that are “reversed” back to FCC. AT&T counsel just figured it would look less like a misrepresentation ay to change the word remand to Reversed.

AT&T Counsels Richard Brown (NJ/NY Bars) and James F. Bendernagel (DC Bar) and Joseph Guerra May 17, 2018 brief to NJFDC: Pg 1.

“Since January 2005, when the D.C. Circuit **reversed** the FCC's interpretation of the relevant tariff provision, Plaintiffs have repeatedly moved to lift the stay, claiming that the referred issue has been resolved in their favor, or that it is moot.

AT&T counsels again misrepresented the DC Order was a remand **reversal back to FCC:**  May 17, 2018 brief Pg3 to NJFDC:

“Following litigation in this Court, that issue was referred to the FCC, which ruled in October 2003 that 2.1.8 did not apply to the proposed CCI/PSE transfer and thus did not prohibit it. (Id. at 3) The D.C. Circuit **reversed that ruling** on appeal, however, and held that **2.1.8 did apply** to the proposed transfer.”

DC/FCC both have made it explicit that the DC Order was not a remand (reversed back to FCC). DC Court simply corrected FCC on account movement. (DC pg.10 fn1). [[1]](#footnote-1)

Although the DC Court did not recognize **on its face** that 2.1.8 allowed traffic only transfers, DC Court correctly determined traffic only transfers were permitted under 2.1.8.[[2]](#footnote-2)

Here are the DC Court corrections of the FCC:

DC 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.**”

DC 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.**

**FCC 2003 Order:** Correctly defined scope of the 1996 Referral. Correctly stating that it had only to interpret account movement as it cited the non-vacated 1995 NJFDC Order and AT&T’s concession that the outcome of Tr8179 determined the obligation defenses controversy. FCC 2003 Order page 11 addressing AT&T’s Tr8179 Defenses withdrawn on June 2, 1995:

“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. **(FCC FN 73)** According to the record, however, **AT&T ultimately withdrew Transmittal 8179 on June 2, 1995.[[3]](#footnote-3)[**2]  **Thus, Transmittal 8179 never became effective.”**

FCC 2003 Order stated “**in part**” as all AT&T’s Tr8179 obligation defenses were FCC denied/AT&T withdrawn; but FCC had to interpret 2.1.8 the account movement **part**. The FCC did not need to interpret obligation defenses as these defenses did not modify the tariff:

**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’s defenses were withdrawn on June 2, 1995 and thus never---- as FCC stated “modified the tariff” and were “not part of the tariff.” AT&T obviously can’t assert a non-tariffed defense. The only “part” of Third Circuit Referral that was based upon the 1995 May 1995 NJFDC Judge Politan Referral that the FCC needed to interpret was account location movement. **Only MOVEMENT Under the tariff:**

FCC Order pg14 ¶ 21: “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.”

Although not tasked to do so, the FCC did evaluate 2.1.8 obligation allocation taking the same position as the District Court and AT&T and Inga regarding allocation of obligations. FCC 2003 Order fn 50 and fn 51 also utilized section 2.1.8’s obligations language to interpret and determine which obligations transfer on traffic only transfers. Additionally, the FCC brief to the DC Circuit referenced its 2003 Order on a non-controversial 2.1.8 obligation allocation issue.

DC Order: 10 FN 1, it states DC **corrected** FCC, not remanded:

“The FCC contends that this entire line of argument — challenging the Commission’s interpretation as rendering **Section 2.1.8 meaningless** — **is not properly before us,** as AT&T did not first present it to the Commission in a petition for reconsideration. FCC Br. at 15 & 19. **We disagree.** The Communications Act precludes us from addressing only those issues upon which the Commission “has been afforded no opportunity to pass.” 47 U.S.C. § 405(a). **It does not prevent us from considering “whether the original question was correctly decided,**” *MCI v. FCC*, 10 F.3d 842, 845 (D.C. Cir. 1993), **or whether the FCC “relied on faulty logic.**” *Nat’l Ass’n for Better* *Broadcasting v. FCC*, 830 F.2d 270, 275 (D.C. Cir. 1987). Theanalysis recounted above speaks to the soundness of the Commission’s ruling on the **question initially presented**, and not to any novel legal or factual claims.”

DC Order explicitly states its findings 2.1.8 allows traffic only transfers as Inga did. DC Order explicitly states there were no obligation issues to review. The FCC did not need to address the obligation issues that by May 1995 Court Order were denied and by tariff law “never modified tariff,” never became “part of the tariff,” as all obligation issue were withdrawn 6.2.95.

DC Circuit pg. 10 fn1.---“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).”

Above the DC Court is explicitly advising that it can’t address obligation issues and that is simply because the FCC only needed to address account movement issue once all the Tr8179 defenses were FCC denied/AT&T withdrawn and never became part of the tariff.

DC pg. 11 fn2--- “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**.”

Above the DC Court is explicitly advising obligations is “beyond the scope of our opinion” because the FCC only needed to interpret account movement not obligations, once all the Tr8179 defenses were FCC denied/AT&T withdrawn and never became part of the tariff.

DC Circuit Page 11---“**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.”

Above the DC Court is again explicitly advising “We also do not decide precisely which obligations should have been transferred in this case,” because the FCC did not address it---and again that is simply because the FCC only needed to interpret account movement, not obligation allocation once all the Tr8179 defenses were FCC denied/AT&T withdrawn and never became part of the tariff.

BACKGROUND EXPLICITLY CONFIRMS 1996 REFERRAL SCOPE WAS BASED UPON THE 1995 NJFDC ORDER WAS AS FCC’s 2003 and 2007 ORDERS INDICATE LIMITED TO WHETHER 2.1.8 ALLOWED TRAFFIC ONLY TRANSFERS. [[4]](#footnote-4)

DC Court Corrected the FCC on the sole issue of whether 2.1.8 allowed traffic only transfers. Issue resolved. No Appeals. DC agreed 2.1.8 did allow traffic only transfers. No DC Remand. No FCC Appeal. Supreme Court Law, issue over. If the DC Court Order was not a remand (reversed back to FCC) then under Supreme Court Law the stay must be lifted.

The Supreme Court has a two-part test for identifying a final agency action.  "First, the action must mark the consummation of the agency's decision-making process -- it must not be of a merely tentative or interlocutory nature.  And second, the action must be one by which 'rights or obligations have been determined' or from which ‘Legal consequences flow.'" Bennett v. Spear, 520 U.S. 154, 177-78, 117 S.Ct. 1154, 137 L.Ed. 2d 281 (1997) (citations omitted).  See also, Abbott Labs., 387 U.S. at 148-49, 87 S.Ct. 1507 (observing that the "problem is best seen in a twofold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration").  The FCC consummated its action referred by Third Circuit. That final agency action was ripe for review under the Administrative Procedure Act (APA) 5. U.S.C. s. 704, See Top Choice Distribs., Inc. v. United States Postal Serv., 138 F.3d 463, 466 (2d Cir. 1998).  The DC Circuit agreed with plaintiffs that § 2.1.8 also allows traffic only transfers—not just the FCC’s (delete and add method), but that still makes it a **final action**. The FCC’s 1.12.07 Order accepted DC’s determination that the FCC was incorrect and 2.1.8 also allowed traffic only to transfers. **The proceeding was over**.  By law it can only have been continued if:

(1) DC issued a **remand ( reversed the case back to FCC.)** DC Legal Director Tomich and FCC GC Schlick wrote DC Decision was no remand. The DC Counsels Rebecca Thompson and Robert Cavello stated the DC Court Docket Entry system indicates what the disposition of the case was and this case was not a remand. It was “Petition for Review Granted”---DC Court simply corrected the FCC.

(2) the FCC voluntarily addressed it; or

(3) a party filed for a clarification.

**None of these things happened.** DC simply determined 2.1.8 traffic only transfers are permissible. All AT&T 2.1.8 defenses were under Tr8179 and FCC denied/AT&T withdrawn on June 2, 1995 under Tr8179. **Per Supreme Court Law the stay should have been lifted and damages scheduled.**

AT&T misrepresented to the NJFDC and the FCC that the DC Circuit Court Decision was a remand (reverse back to FCC) of obligations allocation controversy. This fails for many reasons:

1. Judge Politan determined that none of AT&T’s obligations defenses had merit as the plans were all pre-June 17, 1994 ordered and immune from penalties.
2. no stipulations/conditions were imposed upon AT&T as plaintiffs simply asked for a traffic only transfer in which the DC Court and all parties agree is allowed under 2.1.8.
3. the 1995 non-vacated Court Order determined that the outcome of Tr8179 resolved the issue.
4. AT&T withdrew its defenses on June 2, 1995 and thus these defenses did not modify the tariff (become part of the tariff) and thus were not tariffed to assert. Using any of these non-tariffed defenses would violate 203 (c) as an unspecified illegal remedy.
5. AT&T unlawfully stopped all traffic only transfers in June 1995 when it understood it lost all its obligation defenses.
6. AT&T counsel Meade on 11.28.95 certified it could not prohibit the traffic only transfers.
7. AT&T’s counsel Whitmer conceded in January 1996 that “as a matter of law” AT&T could not prohibit the transfers.
8. the Third Circuit Referral explicitly stated these defenses all asserted under Tr8179 were withdrawn at the behest of the FCC, and thus this limited the scope of the referral to simply does 2.1.8 allow traffic only transfers.
9. the FCC 2003 Order explicitly stated the only issue it was to interpret was account movement. The evidence is overwhelming that AT&T counsels knew exactly what the scope of the 1996 referral was.
10. the DC Court Order was not a remand and was a “petition for review granted” correction of FCC on account movement---finding 2.1.8 does allow traffic only transfers. The DC Court Order page 10 fn 1 explicitly states it corrected the FCC not remanded (reversed) the case back to the FCC.
11. the FCC 2007 Order explicitly defined the scope of the 1996 referral and agreed that the FCC was incorrect and was corrected by the DC Court Order.
12. the Case went on FCC Circulation on 11.2.2015 and was properly pulled from circulation----the APA does not allow the FCC to interpret issues unless they are open controversies/uncertainties within the scope of the 1996 referral. The FCC properly pulled the Judge Bassler referral from FCC circulation after a 13 months review.
13. DC Court Legal Director Martha Tomich and FCC General Counsel and all FCC staff and all DC Court staff have all stated to plaintiffs that the DC Court Order was not a remand and plaintiffs have disclosed all this feedback to AT&T’s counsel. Yet AT&T is currently advising the NJFDC that the FCC staff has simply been lazy since 2006 in not interpreting the 2006 moot Judge Bassler referral.

**Exhibit A** is the FCC General Counsel Austin Schlick and his co-counsel John Ingle confirmed this to plaintiff’s and its counsel Frank Arleo Inga Companies and AT&T in 2005 was provided a copy of the FCC General Counsels emails and it has been filed in both the NJFDC and FCC records.

The background is overwhelming that the 2005 DC Court Order was a correction of the FCC—not a remand (reversed back to the FCC). AT&T and the NJFDC are currently taking the incredible position that the FCC staff has **simply been lazy for 12 years** in not interpreting the 2006 Judge Bassler referral.

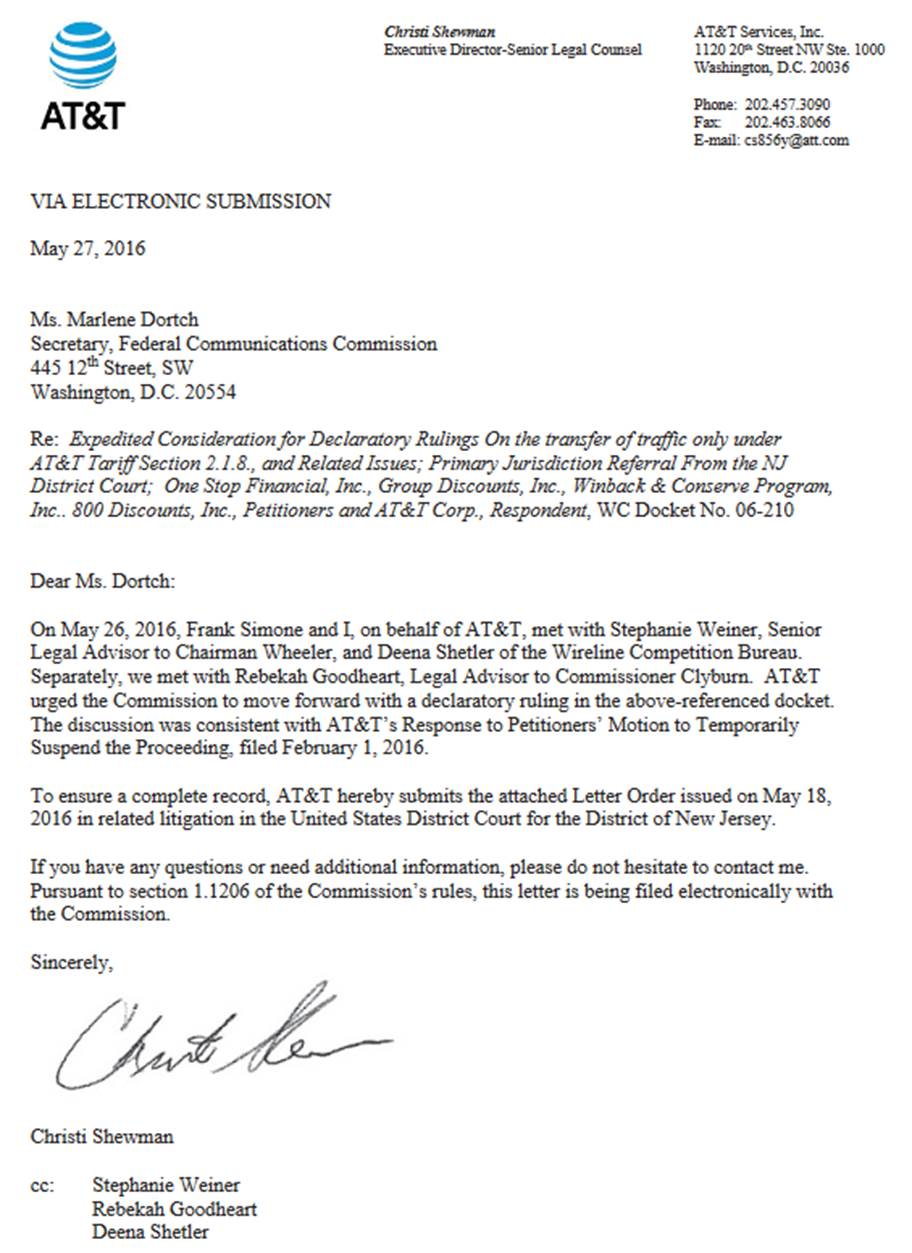
The FCC’s case manager Deena Shetler advised plaintiff’s that if the case were a remand the FCC typically would respond within a year---obviously not 12+ years.

Now that background is clear and the Supreme Court law mandates lifting the stay if the case is not a remand the misrepresentation AT&T counsels need to take is DC Court Order is a remand (reversed back to FCC).

Plaintiffs now address AT&T’s Ex-Parte Filings and what the several violations of the FCC rules. AT&T counsels made three in person visits to the FCC trying to convince the FCC staff that there was an open issue within the 1996 “account movement” referral that needed to be resolved based upon Judge Bassler’s 2006 referral on obligation allocation defenses that were all withdrawn and non-tariffed as of June 2, 1995.

The following are AT&T’s FCC ex parte notices received ***after*** each of its counsels in person visits: Below is ON FCC SERVER AT: <https://ecfsapi.fcc.gov/file/60002079099.pdf>

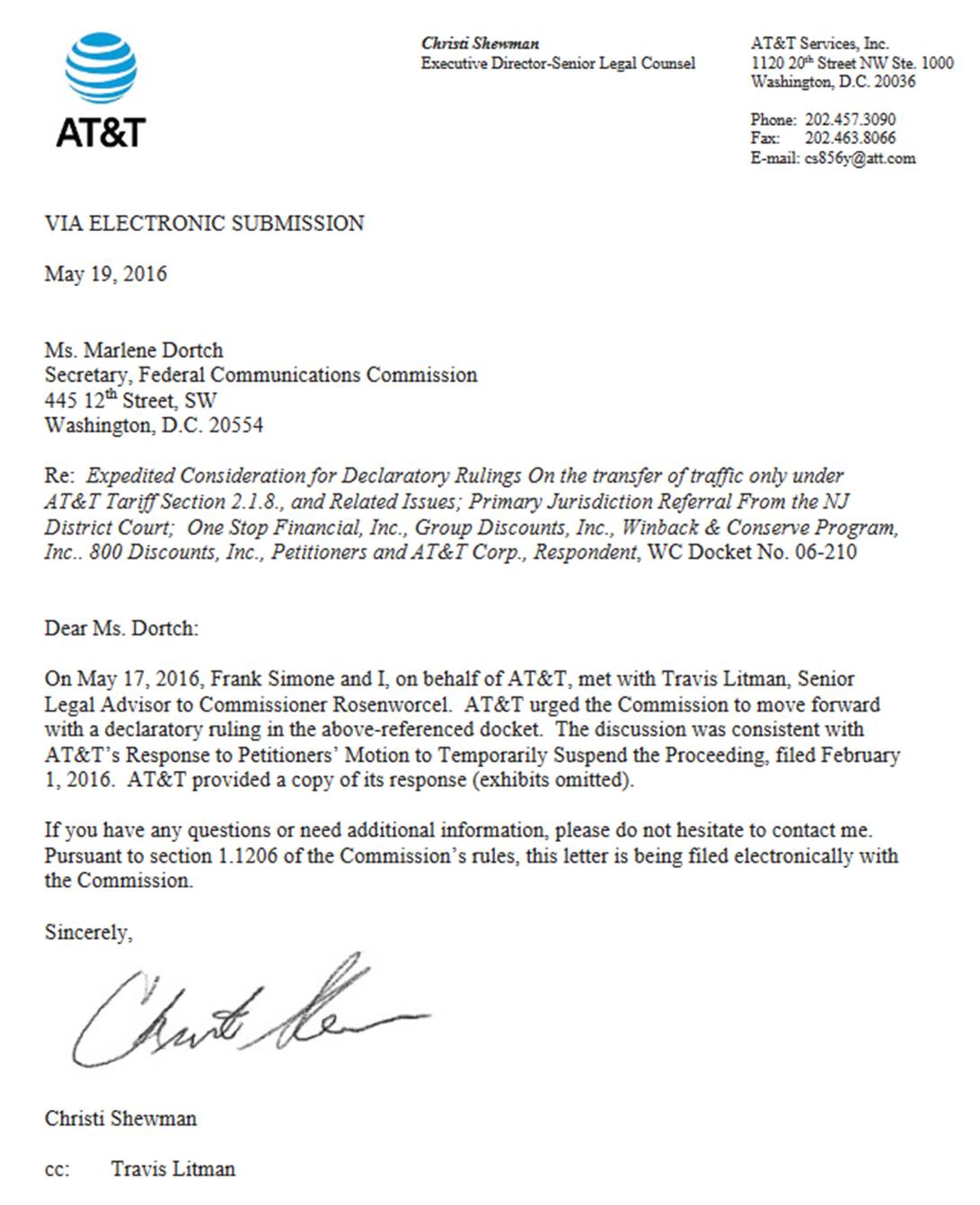
It was AT&T’s 3rd personal visit to the FCC:



Below is #2 AT&T 2nd personal visit trying

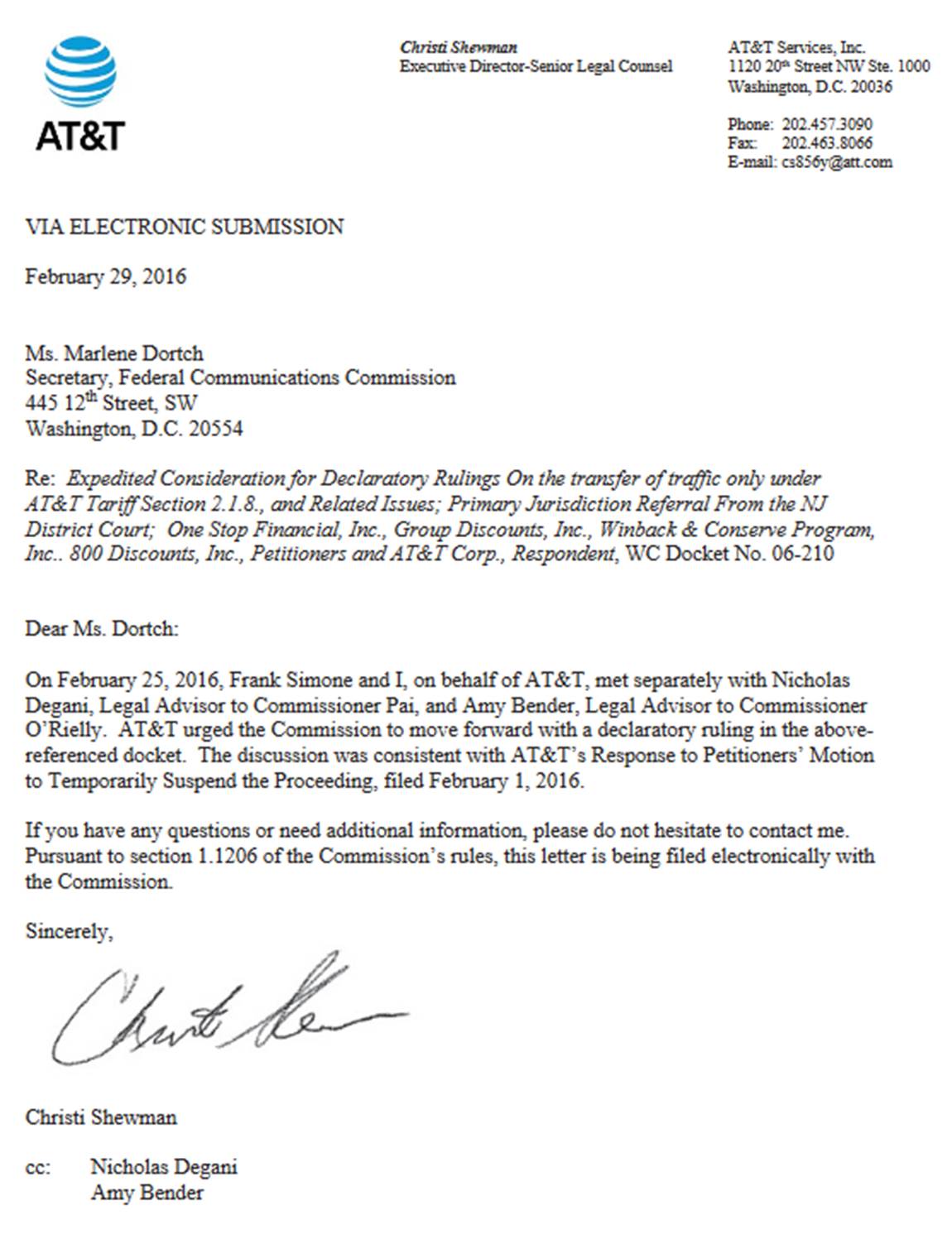
desperately to pull off another fraud:

FCC Server: <https://ecfsapi.fcc.gov/file/60001975991.pdf>



Below is AT&T first personal visit trying desperately to pull off another fraud:

FCC Server: <https://ecfsapi.fcc.gov/file/60001524570.pdf>



AT&T’s ex parte filing simply recounts its position in its FCC meetings that the DC Order was a remand (reversed back to FCC) but does not detail the FCC’s staff position. AT&T did not disclose FCC counsels statements because it did not help AT&T’s bogus argument. The FCC staff that attended any of the 3 in person meetings my FCC rule needs to force AT&T to disclose the FCC’s statements or the FCC staff itself needs to certify what it told AT&T counsels during these 3 visits—regarding the FCC’s no remand position.

Additionally, according to the laws AT&T was supposed to provide notice to plaintiff’s that it scheduled in person meetings and by FCC rule plaintiffs should have been asked if it wanted to attend the 3 AT&T/FCC meetings. AT&T simply filed inadequate ex parte notices “after the meetings.” What AT&T did was a clear violation of the FCC law. Obviously, the FCC told AT&T that 2006 Judge Bassler referral was moot. AT&T wouldn't have gone back three times if the FCC in its first meeting agreed with AT&T that the 2006 referral still needed to be interpreted.

By law AT&T was supposed to give a full detailed recount of the conversations with the FCC staff. During those meetings plaintiffs have learned that AT&T was explicitly told

1. AT&T was explicitly told during these meetings that the DC Court Order was not a remand and if it was a remand would need to explicitly state such.
2. The FCC advised AT&T during these meetings that the DC Court corrected AT&T.
3. The FCC advised AT&T during these meetings that the obligation defenses it raised was -----as FCC 2003 Order stated---withdrawn June 2, 1995 and therefore the scope was only on account movement. The FCC advised AT&T during these meetings AT&T was explicitly told that the obligation defenses never modified the tariff (made part of the tariff) and thus could not be asserted.
4. The FCC advised AT&T during these meetings that as per the APA the FCC can only interpret controversies and uncertainties within the scope of the 1996 referral and even if “obligation allocation questions were within the scope of the 1996 referral ---AT&T position to the DC Court was exactly the same as the FCC’s and Inga plaintiffs that revenue and term commitments do not transfer on a traffic only transfer and thus there couldn’t have been a controversy or uncertainty to meet APA requirements. [[5]](#footnote-5)
5. Because none of these obligation defenses that were filed under Tr8179 were implicit and already part of AT&T’s tariff; any FCC decision to add such defenses would be a substantive change and thus prospective and could not prohibit the January 1995 traffic only transfers. If these defenses were implicit/ routine AT&T would have been able to present evidence that prior to January 1995 AT&T often used these defenses to prohibit the Tr8179 conceded traffic only transfers.

AT&T misrepresented to the NJFDC and the FCC that the DC Circuit Court Decision was a remand of the obligations allocation controversy and it was not. The FCC General Counsel Austin Schlick and his co-counsel John Ingle confirmed this to plaintiff’s and its counsel Frank Arleo Inga Companies and AT&T in 2005 was provided a copy of the FCC General Counsels emails…. EXHIBIT A

AT&T ex parte filings were done without inviting plaintiffs and were totally inadequate regarding what AT&T was said to the FCC and more so what the FCC staffs’ responses were.  See below ex parte law...

<https://www.fcc.gov/proceedings-actions/ex-parte/general/ex-parte-rules-2011>

**47 C. F. R. §§ 1.1200 – 1.1216** **PART 1 -- PRACTICE AND PROCEDURE** **§ 1.1200 Introduction**.

            (a) Purpose.  To ensure the fairness and integrity of its decision-making, the Commission has prescribed rules to regulate ex parte presentations in Commission proceedings.  These rules specify "exempt" proceedings, in which ex parte presentations may be made freely (§ 1.1204(b)), "permit-but-disclose" proceedings, in which ex parte presentations to Commission decision-making personnel are permissible **but subject to certain disclosure requirements (§ 1.1206), and "restricted" proceedings in which ex parte presentations to and from Commission decision-making personnel are generally prohibited (§ 1.1208)**.  In all proceedings, a certain period ("the Sunshine Agenda period") is designated in which all presentations to Commission decision-making personnel are prohibited (§ 1.1203).  The limitations on ex parte presentations described above are subject to certain general exceptions set forth in § 1.1204(a).  Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable ex parte rules by order, letter, or public notice.  Joint Boards may modify the ex parte rules in proceedings before them.

            (b) Inquiries concerning the propriety of ex parte presentations should be directed to the Office of General Counsel.

**§ 1.1202 Definitions**.

For the purposes of this subpart, the following definitions apply:

            (a) Presentation.  A communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. **[[6]](#footnote-6)** Excluded from this term are communications which are inadvertently or casually made, inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken.  **However, a status inquiry which states or implies a view as to the merits or outcome of the proceeding or a preference for a particular party, which states why timing is important to a particular party or indicates a view as to the date by which a proceeding should be resolved, or which otherwise is intended to address the merits or outcome or to influence the timing of a proceeding is a presentation.[[7]](#footnote-7)**

Note to paragraph (a):  A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, **no view is expressed as to the merits** [[8]](#footnote-8)or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved.  A presentation by a party in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an ex parte basis subject to the provisions of § 1.1204(a)(11).

            (b) Ex parte presentation.  Any presentation which:

                        (1) If written, is not served on the parties to the proceeding; or

                        (2) **If oral, is made without advance notice to the parties and without opportunity for them to be present.[[9]](#footnote-9)**

Note to paragraph (b): Written communications include electronic submissions transmitted in the form of texts, such as by Internet electronic mail.

            (c) Decision-making personnel.  Any member, officer, or employee of the Commission, or, in the case of a Joint Board, its members or their staffs, who is or may reasonably be expected to be **involved in formulating a decision**, rule, or order in a proceeding. **[[10]](#footnote-10)**

    (d) Party.  Unless otherwise ordered by the Commission, the following persons are parties:

            (1) In a proceeding not designated for hearing, any person who files an application, waiver request, petition, motion, **request for a declaratory ruling**, [[11]](#footnote-11)or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application or members of Congress or their staffs or branches of the federal government or their staffs) filing a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application;

**§  1.1206 Permit-but-disclose proceedings.**

            (a) Unless otherwise provided by the Commission or the staff pursuant to § 1.1200(a), until the proceeding is no longer subject to administrative reconsideration or review or to judicial review, ex parte presentations (other than ex parte presentations exempt under § 1.1204(a)) to or from Commission decision-making personnel are permissible in the following proceedings, which are referred to as permit-but-disclose proceedings, provided that ex parte presentations to Commission decision-making personnel **are disclosed pursuant to paragraph (b) of this section**:

            (b) The following disclosure requirements apply to ex parte presentations in permit but disclose proceedings:

1. Oral presentations.  A person who makes an oral ex parte presentation subject to this section shall submit to the Commission’s Secretary a memorandum that lists all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, **and summarizes all data presented and arguments made during the oral ex parte presentation.  [[12]](#footnote-12)** Memoranda must contain a summary of the substance of the ex parte presentation and **not merely a listing of the subjects discussed**.  **[[13]](#footnote-13)** More than a one or two sentence description of the views and arguments presented is generally required.  **[[14]](#footnote-14)**

(2) Written and oral presentations.  A written ex parte presentation and a memorandum summarizing an oral ex parte presentation (and cover letter, if any) shall clearly identify the proceeding to which it relates, including the docket number, if any, and must be labeled as an ex parte presentation.  **Documents** [[15]](#footnote-15) shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and, accordingly, **must be filed consistent** with the provisions of this section.  Consistent with the requirements of § 1.49 paragraphs (a) and (f), additional copies of all written ex parte presentations and notices of oral ex parte presentations, and any replies thereto, shall be mailed, e-mailed or transmitted by facsimile to the Commissioners or Commission employees who attended or otherwise participated in the presentation.

(vi) If a notice of an oral ex parte presentation is **incomplete or inaccurate, staff may request the filer to correct any inaccuracies or missing information.  Failure by the filer to file a corrected memorandum in a timely fashion as set forth in paragraph (b) of this section, or any other evidence of substantial or repeated violations of the rules on ex parte contacts, should be reported to the General Counsel.[[16]](#footnote-16)**

(3) Notwithstanding paragraphs(b)(1) and (2) of this section, permit-but-disclose proceedings involving presentations made by members of Congress or their staffs or by an agency or branch of the Federal Government or its staff shall be treated as ex parte presentations only if the presentations are of substantial significance and clearly intended to affect the ultimate decision.  The Commission staff shall prepare written summaries of any such oral presentations and place them in the record in accordance with paragraph (b) of this section and also place any written presentations in the record in accordance with that paragraph.

(4) Notice of ex parte presentations.  The Commission’s Secretary shall issue a public notice listing any written ex parte presentations **or written summaries of oral ex parte presentations received by his or her office relating to any permit-but-disclose proceeding.  Such public notices generally should be released at least twice per week.[[17]](#footnote-17)**

Note 2 to paragraph (b): Interested persons should be aware that some ex parte filings, for example, those not filed in accordance with the requirements of this paragraph (b), might not be placed on the referenced public notice.  All ex parte presentations and memoranda filed under this section will be available for public inspection in the public file **or record of the proceeding, [[18]](#footnote-18)** and parties wishing to ensure awareness of all filings should review the public file or record.

**§ 1.1208 Restricted proceedings.**

         Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a) of this section, ex parte presentations (other than ex parte presentations exempt under § 1.1204 (a) of this section) to or from Commission decision-making personnel are prohibited in all proceedings not listed as exempt in § 1.1204(b) or permit-but-disclose in § 1.1206(a) of this section until the proceeding **is no longer subject to administrative reconsideration or review or judicial review.**  [[19]](#footnote-19)

**§ 1.1210 Prohibition on solicitation of presentations.**

            No person shall solicit or encourage others to make any improper presentation under the provisions of this section.

**§ 1.1212 Procedures for handling of prohibited ex parte presentations.**

            (a) Commission personnel who believe that an oral presentation which is being made to them or is about to be made to them is prohibited shall promptly advise the person initiating the presentation that it is prohibited and shall terminate the discussion.

            (b) Commission personnel who receive oral ex parte presentations which they believe are prohibited shall forward to the Office of General Counsel a statement containing the following information:

            (1) The name of the proceeding;

            (2) The name and address of the person making the presentation and that person's relationship (if any) to the parties to the proceeding;

            (3) The date and time of the presentation, its duration, and the circumstances under which it was made;

            (4) **A full summary of the substance of the presentation;[[20]](#footnote-20)**

            (5) Whether the person making the presentation **persisted in doing so** after being advised **that the presentation was prohibited;** [[21]](#footnote-21)and

            (6) The date and time that the statement was prepared.

            (c) Commission personnel who receive written ex parte presentations which they believe are prohibited shall forward them to the Office of General Counsel.  **If the circumstances in which the presentation was made are not apparent from the presentation itself, a statement describing those circumstances shall be submitted to the Office of General Counsel with the presentation. [[22]](#footnote-22)**

**§ 1.1214 Disclosure of information concerning violations of this subpart.**

            Any party to a proceeding or any **Commission employee** [[23]](#footnote-23)who has substantial reason to believe that any violation of this subpart has been solicited, attempted, or committed shall promptly advise the Office of General Counsel in writing of all the facts and circumstances which are known to him or her.

15.  Section 1.1216 is revised to read as follows:

**§ 1.1216 Sanctions.**

            (a)Parties.  Upon notice and hearing, any party to a proceeding who directly or indirectly violates or causes the violation of any provision of this subpart, or who **fails to report the facts and circumstances concerning any such violation as required by this subpart**[[24]](#footnote-24), may be subject to sanctions as provided in paragraph (d) of this section, or **disqualified from further participation in that proceeding**.  In proceedings other than a rulemaking, a party who has violated or caused the violation of any provision of this subpart may be required to show cause why his or her **claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected**.  [[25]](#footnote-25)In any proceeding, such alternative or additional sanctions as may be appropriate may also be imposed.

            (b) Commission personnel.  Commission personnel who violate provisions of this subpart may be subject to appropriate disciplinary or other remedial action as provided in Part 19 of this chapter.

            (c) Other persons. Such sanctions as may be appropriate under the circumstances shall be imposed upon other persons who violate the provisions of this subpart.

(**d) Penalties.**  A party who has violated or caused the violation of any provision of this subpart may be subject to admonishment, monetary forfeiture, or to **having his or her claim or interest in the proceeding dismissed, denied, disregarded, or otherwise adversely affected.**  In any proceeding, such alternative or **additional sanctions** as may be appropriate also may be imposed.  Upon referral from the General Counsel following a finding of an ex parte violation pursuant to § 0.251(g) of this chapter, the Enforcement Bureau shall have delegated authority to impose sanctions in such matters pursuant to § 0.111(a)(15) of this chapter.

**Conclusion**

**If AT&T does not disclose the following the FCC staff must disclose:**

1. AT&T was told during these meetings that the DC Court Order was not a remand.
2. AT&T was told during these meetings the DC Court corrected the FCC on the account movement.
3. That it’s obligation defenses ----as FCC 2003 Order stated---were withdrawn June 2, 1995 and therefore the scope of the 1996 referral was only on account movement.
4. Did the FCC staff advised AT&T during these meetings that its obligation defenses never modified the tariff (made part of the tariff) and thus could not be asserted.
5. Did the FCC staff advised AT&T during the 3 meetings that even if the issue of obligations were within the scope of the 1996 referral ----AT&T’s position on obligation allocation was exactly the same as Judge Politan’s and Inga’s and the FCC 2003 Order FN 50 and FN 51 and thus there wasn’t a controversy or uncertainty that would meet the APA standards to interpret as there wasn’t a controversy. AT&T’s **withdrawn non-tariffed defense** under Tr8179 regarding “substantially how much can be transferred” is a totally different and non-relevant argument than the AT&T/Inga agreed upon terms and conditions of section 2.1.8 that revenue and term commitments only transfer when the PLAN transfers. AT&T’s “all obligation” defense under Tr8179 that mandated that revenue and term commitments transfer on a traffic only transfer was also asserted and withdrawn and was bogus in any event as no such evidence exists. AT&T’s 2.2.4 fraudulent use defense argued under Tr8179 was also withdrawn and would have been denied in any event as 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item must be specifically referred to in connection with such item). For AT&T to have raised the 2.2.4 defense section 2.1.8 would have needed to be conditioned on first meeting 2.2.4. and was not. Additionally, the 2.2.4 also fails because the remedy required “**circumvention**” to avoid the shortfall. In this case there was no circumvention as the plans were still there to assess shortfall if shortfall was warranted. 2.2.4 also failed because Judge Politan made the judgement call that AT&T had **no merit** to raise AT&T’s fraudulent use defense in the first place. In short, all AT&T’s defenses were asserted, and FCC denied and withdrawn on June 2, 1995 instead of being rejected by the FCC. That is why AT&T counsel Meade’s 11.28.95 certification and AT&T counsels Fred Whitmer’s January 1996 Oral argument statement “as a matter of law” conceded AT&T had no defenses left to prohibit the January traffic only transfers. Petitioners have no doubt that AT&T will refuse to disclose any FCC statements that argued against AT&T’s position that the FCC needed to interpret the 2006 Judge Bassler referral. AT&T knows these AT&T statements are also being closely monitored by FCC Ethics, State Bar Ethics. Therefore, whether AT&T responds the FCC staff itself must report all FCC statements made to AT&T counsels during these meetings that gave reasons why the FCC opposed AT&T’s position that the FCC must interpret the Judge Bassler 2006 referral. The FCC must also agree that AT&T violated the condition that it “**persisted in doing so after being advised that the presentation was prohibited**.” AT&T can’t even justify the very first in person FCC meeting ---as it knew it withdrew all these defenses that it has no evidentiary support because they were all intentional frauds. It’s bad enough that AT&T’s defenses were not tariffed –its incredible that AT&T PERSISTED to justify 3 in person FCC visits to assert defenses it claimed were **implicit** yet has never provided evidentiary support!!! This AT&T misconduct obviously meets the “persisted standard” under the ex parte rules. Issue Public Notice and let’s see what AT&T says so Ethics Director Jane Halprin can add to her file. The FCC needs to impose upon AT&T’s counsels the greatest amount of sanctions in FCC history.

Al Inga President

Group Discounts’ Inc. One Stop Financial, Inc. Winback & Conserve Program, Inc. 800 Discounts, Inc.

**EXHIBIT A**

Note: The following emails have been arranged in chronological order to read from 1st to last. So when the below email from plaintiffs says: “May I use the email **below**, as is, in a letter to Judge Bassler,” that email confirming the FCC no remand position was below in the email thread as the time of the emails indicate; however here it is listed as the first email to better understand the conversation:

-----Original Message-----  
**From:** Al [<mailto:ajdmm@optonline.net>]   
**Sent:** Friday, April 15, 2005 2:22 PM  
**To:** Austin Schlick; John Ingle  
**Subject:** Mr. Schlick & Mr. Ingle

Gentleman

Is there some time point where the FCC will put in writing that it is **not treating the DC Courts decision as a remand?**

**Mr Arleo was told by John Ingle of this FCC position**, but Judge Bassler in the NJ District Court may want to see something in writing. If the FCC will not declare in writing the FCC proceedings are over will the FCC respond to a letter from Judge Bassler? If the FCC will answer the Judge to whom at the FCC can the Judge address his question to? I hope you appreciate the situation that the Inga Companies are in. Generally, Judges are not apt to act on verbal stances.

I have not been able to retain Mr. Arleo as of yet and part is because he does not want to represent to the Judge the FCC's verbal position.

Please understand my predicament.

Al Inga

Inga Companies

----- Original Message -----

**From:** [Austin Schlick](mailto:Austin.Schlick@fcc.gov)

**To:** [Al](mailto:ajdmm@optonline.net)

**Cc:** [John Ingle](mailto:John.Ingle@fcc.gov)

**Sent:** Friday, April 15, 2005 3:12 PM

**Subject:** RE: Mr. Schlick & Mr. Ingle

Any letter from the court to the FCC, or from a party in litigation to the FCC concerning the litigation, could be directed to me:

Austin C. Schlick

Acting General Counsel

Federal Communications Commission

Washington, D.C.  20554

-----Original Message-----  
**From:** Al [<mailto:ajdmm@optonline.net>]   
**Sent:** Friday, April 15, 2005 6:01 PM  
**To:** Austin Schlick  
**Subject:** Re: Mr. Schlick & Mr. Ingle

Mr Schlick

May I use the email below, as is, in a letter to Judge Bassler.

**From:** [Austin Schlick](mailto:Austin.Schlick@fcc.gov)

**To:** [Al](mailto:ajdmm@optonline.net)

**Cc:** [John Ingle](mailto:John.Ingle@fcc.gov)

**Sent:** Friday, April 15, 2005 6:05 PM

**Subject:** RE: Mr. Schlick & Mr. Ingle

Yes.

**From:** Al [<mailto:ajdmm@optonline.net>]   
**Sent:** Friday, April 15, 2005 6:09 PM  
**To:** Austin Schlick  
**Cc:** John Ingle  
**Subject:** Re: Mr. Schlick & Mr. Ingle

Thank you

Al Inga

The Inga Companies

1. DC Order page 10 Footnote 1 “The FCC contends that this entire line of argument — challenging the Commission’s interpretation as rendering **Section 2.1.8 meaningless** — **is not properly before us,** as AT&T did not first present it to the Commission in a petition for reconsideration. FCC Br. at 15 & 19. **We disagree.** The Communications Act precludes us from addressing only those issues upon which the Commission “has been afforded no opportunity to pass.” 47 U.S.C. § 405(a). **It does not prevent us from considering “whether the original question was correctly decided,**” *MCI v. FCC*, 10 F.3d 842, 845 (D.C. Cir. 1993), **or whether the FCC “relied on faulty logic.**” *Nat’l Ass’n for Better* *Broadcasting v. FCC*, 830 F.2d 270, 275 (D.C. Cir. 1987). Theanalysis recounted above speaks to the soundness of the Commission’s ruling on the **question initially presented**, and not to any novel legal or factual claims.” [↑](#footnote-ref-1)
2. DC Order pg 7 “The Section **on its face does not differentiate between transfers of entire plans and transfers of traffic,** but rather speaks only in terms of WATS — the telephone service itself. The new and former Customers referred to are the aggregators, in this case PSE and CCI. Accordingly, any transfer of WATS required PSE to assume CCI’s obligations.” The DC Order did not recognize that section 2.1.8 on its face actually did differentiate between transfers of traffic only vs whole plan transfers. Section 2.1.8 from FCC 2003 Order page 6 fn 46:

   Transfer or Assignment – WATS, including **any** associated telephone **number(s)**, may be transferred or assigned to a new Customer, provided that:

   1. The Customer of record **(former Customer)** requests in writing that the Company transfer or assign WATS to the new Customer.
   2. The new Customer notifies the Company in writing that it agrees to assume all obligations of the **former** Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

   DC Court did not see **any** number of accounts can be transferred. If 2.1.8 only allowed plan transfers the section would not say any number ----it would only say all numbers and plan. The DC Court scope was limited to account movement, nothing at all to do with obligation allocation. If the DC Court had recognized within 2.1.8 (A) that the Customer is being defined as a **former** customer on the accounts transferred and then at 2.1.8 (B) the new customer ( PSE) is only responsible for obligations on those former accounts it would not have been confused on obligation allocation. AT&T and Inga and FCC all tried to explain to the DC Court that revenue and term commitments do not transfer unless the whole plan transfers. DC Court determined the obligation allocation was beyond the scope of its decision and thankfully did not decide obligation allocation.

   Although the DC Court ended up getting the correct decision on the only issue within the scope of the case ( account movement) the DC Court misread 2.1.8 and by mistakenly substitution the word “transferor” when the phrase “former customer” limited the new customers (PSE) obligation acceptance requirement to only the accounts that were “former” to CCI/Inga. See a couple of Judge Roberts additional errors other than “on the face” error that fortunately did not affect the DC Courts correct position that 2.1.8 allowed traffic only transfers:

   DC ORDER page 2: “A provision of that tariff allows resellers to transfer their business, so long as the recipient assumes all of the **transferor’s** obligations.

   DC ORDER page 3: A provision of that tariff allows resellers to transfer their business, so long as the recipient assumes all of the **transferor’s** obligations.

   What was even more bizarre about the DC Court confusion on the DC Court non-reviewable June 2, 1995 withdrawal of obligations issues was the fact that DC Court understood AT&T’s position was that revenue and term commitments do not transfer on a traffic only transfer and thus AT&T had raised under the 2.16.95 Tr8179 filing its fraudulent use defense which conceded revenue and term commitments did not transfer on a traffic only transfer and if these non-transferred commitments were not met ---would result in shortfall and term commitment penalties:

   DC Order pag4-5: In addition, AT&T argued that the proposed transfer violated the tariff’s “fraudulent use” provisions, as CCI almost certainly would fall short of **its volume commitments** once the traffic was moved to PSE’s account, and AT&T had reason to believe that CCI would not have sufficient assets to pay the resulting **penalties”** [↑](#footnote-ref-2)
3. [2]  *Second District Court Opinion* at 4. [↑](#footnote-ref-3)
4. The 1996 Referral was based upon the May 1995 non-vacated Order. However, AT&T’s counsels Meade on 11.28.95 certified to NJFDC that AT&T could not prohibit the traffic only transfers as the FCC did not want AT&T measuring “intent” to avoid paying shortfall on the non-transferred plans revenue commitment. In January 1996 AT&T counsel Fred Whitmer conceded to Judge Politan that “as a matter of law” it could not prohibit the traffic only transfers.

   FCC’s Notes for February 1995 meeting with AT&T

   **“rely on deposits in some manner and not have to impose any conditions on the customer to which the locations or 800 numbers are being moved.”**

   AT&T counsel Meade 11.28.95 certification to NJFDC:

   “I and others at AT&T had a number of discussions with the FCC concerning Transmittal No. 8179. In the course of those discussions we explored **alternative tariff language** that would address more directly the problem **(the separation of assets and liabilities)** that give rise to the initial filing without requiring a determination as to whether the parties to the transfer **intended** to avoid payment of charges.”

   As FOIA notes show the FCC’s Mr Randolph Smith suggested a mathematical non-subjective method “security deposits against potential shortfall” (aka Tr9229) on the transferor because the revenue and term commitments don’t transfer—i.e. Meade’s’ noted “separation of assets and liabilities.”

   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.” [↑](#footnote-ref-4)
5. AT&T’s DC Circuit position **was exactly the same as the Inga Companies** and the FCC’s, and Judge Politan’s, that 2.1.8 allows traffic only transfers without the associated liabilities (revenue and term commitments).  AT&T reply brief to DC Circuit Court pg 9:

   “Section 2.1.8 “addresses” the transfer of end-user traffic ***without*** the associated liabilities.” (no emphasis added)

   AT&T explicitly advised DC: “all the obligations” vary depending on what is transferred:

   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's 11.28 1995 br. page 5 confirms obligations don’t transfer:

   These charges are all **tariff obligations**, for which **CCI**, **not PSE** (which would have the revenue stream to satisfy such charges, would be obligated.

   NJFDC March 1996 pg 17 fn 7 cites AT&T’s brief, answering Judge Bassler’s moot referral:

   “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.

   Obligation allocation issues could not have been a controversy when prior to the DC Circuit all parties agreed! Today Mr Brown lies that revenue and term commitments transfer on traffic only transfers (as AT&T did under the withdrawn Tr8179) but claimed to Third Circuit Court it was self-evident the obligations **don’t** transfer:

   “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.”

   In the above Mr Brown statement his game plan was to **accurately state the terms and conditions for 2.1.8** but misrepresent the facts of the traffic only transfer---misrepresenting that all the plans traffic was transferred. AT&T counsel Whitmer advised that as long as the Main Billed account did not transfer the revenue and term commitments did not transfer. See AT&T counsel Whitmer detailed the commitments do not transfer when asserting AT&T’s fraudulent use defense:

   On 3/21/1995 Counsel Whitmer made it explicitly clear---as long as the home lead account remains with the non-transferred plan, the **shortfall and termination liabilities** for not meeting the non-transferred revenue and term commitment, remain with the non-transferred plan:

   AT&T’s 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 [↑](#footnote-ref-5)
6. AT&T provided the NJFDC Opinion and argued it had merit to assert there was an open issue to resolve under the 2006 Judge Bassler referral. [↑](#footnote-ref-6)
7. AT&T’s oral presentation clearly meets a status inquiry which states or implies a view as to the merits and that is why the FCC forced AT&T to file the ex parte. [↑](#footnote-ref-7)
8. AT&T was not at the FCC 3 times for personal visits just to address delay. It clearly asserted it had merits as it also included the NJFDC decision from the recused Judge Wigenton as AT&T argued the merits. [↑](#footnote-ref-8)
9. AT&T gave plaintiffs no advanced notice of its 3 FCC in person meetings. [↑](#footnote-ref-9)
10. FCC staff involved in formulating a decision attended meetings. [↑](#footnote-ref-10)
11. Declaratory Rulings as in this case are covered. [↑](#footnote-ref-11)
12. AT&T’s summary does not come close to what ex parte requirements mandate. AT&T simply provided its position that Judge Basslers 2006 referral had merit to be FCC interpreted and never summarized what the FCC’s staffs position was on why the 2006 referral did not expand the scope of the 1996 referral on account movement. [↑](#footnote-ref-12)
13. AT&T did what the FCC Rules explicitly state it could not do----it could not merely list subjects discussed. [↑](#footnote-ref-13)
14. AT&T provided no view of the “argument.” It provided its side only not the FCC staffs position. [↑](#footnote-ref-14)
15. AT&T provided the entire NJFDC Wigenton Opinion asserting the FCC needed to interpret the moot Judge Bassler referral. [↑](#footnote-ref-15)
16. AT&T’s ex parte filing is not only incomplete for not having provided the FCC point of view “argument” as to WHY the FCC’s GC Austin Schlick and John Ingle took the position the DC Court Order was not remanded reversed back to FCC ----AT&T’s ex parte filing was inaccurate as it knows the DC Court Order must explicitly state it is a remand and its own counsel Guerra already conceded to the NJFDC that the DC order was not a remand. [↑](#footnote-ref-16)
17. AT&T must disclose all arguments against AT&T’s position that Judge Bassler’s referral needed to be FCC interpreted. [↑](#footnote-ref-17)
18. Public notice needs to be issued and AT&T must provide full disclosure in writing of the FCC’s arguments against AT&T’s position. This will also enable the FCC ethics staff to have jurisdiction over the misrepresentations. [↑](#footnote-ref-18)
19. AT&T’s 3 personal visits were made while the case was under FCC circulation and thus is subjected to ex parte rules. [↑](#footnote-ref-19)
20. The FCC staff must disclose whether AT&T was advised that the DC Order was not a remand and addressed the fact that AT&T’s defenses were withdrawn and thus not a part of the tariff to assert, and per APA there was no controversy between the parties regarding obligation allocation pre or post the June 2, 1995 withdrawal of AT&T’s defenses. [↑](#footnote-ref-20)
21. Three visits after being advised on the first visit that the 2006 referral was moot and this is after the FCC 2007 Order already advised AT&T that DC Court corrected the FCC. This conduct is way above **“persistent.”** [↑](#footnote-ref-21)
22. AT&T’s ex parte does not address the FCC argument position and per ex parte rules is “not apparent from the presentation itself,” thus per ex parte rules **the FCC staff must disclose all arguments presented against AT&T’s position** that the FCC must interpret the moot Judge Bassler Order. The only issue was resolved by the DC Court no remand. [↑](#footnote-ref-22)
23. Each FCC staff that attended one of the 3 in person meetings is mandated to provide all FCC argument against AT&T’s position that the FCC staff were simply lazy for 12 years in refusing to interpret the June 2006 Judge Bassler moot referral. [↑](#footnote-ref-23)
24. AT&T clearly failed providing an ex parte that meets the standards of “facts and circumstances,” outlined by the ex parte rules. These meetings are all after the FCC 2007 Order explicitly advised AT&T that the DC Court corrected the FCC. The FCC is not dealing with novices here. AT&T counsel knows what a remand is. AT&T counsel knows what the FCC 2007 Order means: “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." [↑](#footnote-ref-24)
25. AT&T ‘S failure to meet ex parte standards was done by accomplished counsel who know better. Scheduling 3 personal meetings on a case in which AT&T withdrew its defenses and was under non-vacated May 1995 Court Order, and conceded TO NJFDC Judge Bassler that the DC Court Order was “not a REMAND” ……THEN CHANGES THE WORD “REMAND” TO IT WAS A “REVERSE” SHOWs HOW EGGRGUIOIS THIS MISCONDUCT IS!!! On top of this AT&T not only withdrew the defenses on June 2, 1995 -----AT&T then made use of an unspecified remedy violating 203 (c) by completely shutting down 2.1.8 to all traffic only transfers in June 1995. Petitioners have cited the letters from Joyce Suek fax “**we no longer do partial TSA’s it has to be for the whole plan**” and AT&T counsel Charles Fash July 1995 letter regarding the complete shut down of 2..18 to traffic only transfers as soon as AT&T recognized all its 2.1.8 defenses were FCC denied/ AT&T withdrawn. [↑](#footnote-ref-25)