7.12.18

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

Pam Arluk: Pamela.Arluk@fcc.gov

FCC Contractor: fcc@bcpiweb.com

**FURTHER SUPPORT OF MOTION TO DISMISS AT&T AND IMPOSE SANCTIONS DUE TO VIOLATION OF FCC EX PARTE RULES**

**ADDITIONAL EVIDENCE ADDED TO RECORD SUGGESTED BY**

**DC COURT COUNSELS TO CONFIRM FOR NJFDC THAT DC COURT ORDER WAS**

**NOT REMANDED/REVERSED TO FCC.**

**DC COUNSELS WARN: The NJFDC SUGGESTED WRIT OF MANDAMUS FILING WILL SUBJECT PLAINTIFFS OR AT&T TO DC COURT AND FCC**

**ETHICS VIOLATIONS AND SANCTIONS AS THE 1996 REFERRAL WAS RESOLVED –NO REMAND--- AND THERE WERE NO OPEN ISSUES**

**ADDITIONAL EVIDENCE ADDED TO RECORD SUGGESTED BY FCC**

**TO CONFIRM FOR NJFDC THAT DC COURT ORDER WAS**

**NOT REMANDED/REVERSED TO FCC.**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1) The following is a work in progress to submit to the NJFDC to correct the NJFDC record based upon Oral Argument heard before Judge Chesler on June 6, 2018. Judge Chesler was assigned the case on June 5, 2018 due to the recusal of Judge Wigenton. Additional evidence is being added to the case record that was suggested by DC Court counsels (DC Court Docket entry System) and FCC staff (FCC case proceeding List). These documents were suggested as plaintiffs asked is there was an additional procedural way besides the actual statements in the 2005 DC Court Order or FCC 2007 Order to prove to the NJFDC that the 2005 DC Order our case was not a remand (reversed back to the FCC).

Before filing at the NJFDC plaintiffs want to **give AT&T the opportunity to refute the DC Court Counsels and FCC staffs position on the FCC 06-210 record that our case was remand/reversed back to the FCC**. AT&T was advised by the FCC staff during the 3 in person meetings that the DC Court case was not a remand. AT&T was advised by FCC staff during this meeting that AT&T’s defenses were all withdrawn on June 2, 1995 and thus not tariffed to assert. AT&T was advised by the FCC that the only issue referred in 1996 was whether 2.1.8 allowed traffic only transfers. AT&T received was also provided a copy of the email from the FCC OGC and John Ingle also advising the DC Court Order was not remanded (reversed back to the FCC). AT&T’s own counsel Joseph Guerra conceded to Judge Bassler that the DC Order was not a remand.

Yet AT&T is currently before the NJFDC Judge Chesler claiming the DC Court Order was a remand (reversed back to the FCC). by the 1996 defenses were all bogus---which is why AT&T never submitted evidence despite misrepresenting to the FCC that these defenses were IMPLICIT under AT&T’s tariff.

The following is addressed to the NJFDC but AT&T can have the content before it is filed so AT&T can refute the no remand statements of the DC Court and FCC staff. This way when the brief is filed plaintiffs will be able to advise Judge Chesler that AT&T was given the opportunity to refute the DC Court and FCC counsels and plaintiffs believe AT&T will chose not to refute DC Court or FCC on this fact as AT&T faces ethics charges for misrepresentation and delay of the legal process.

2) This Court instructed plaintiffs to file a writ of mandamus with the DC Court to force the FCC to interpret Judge Bassler’s 2006 Referral. **Plaintiffs followed this Courts suggestion explicitly** and contacted DC Court counsels for procedural guidelines on filing mandamus. DC Court counsels were advised of the 2005 DC Court case No. 03-1431. Plaintiffs advised DC Court Counsels that it was AT&T’s and this Court’s opinion that the 2005 DC Court Order was a remand/reverse back to the FCC. The DC Counsel Rebecca Thompson stated that it makes absolutely no sense having a remand 13-year-old, because the FCC would typically respond within a year. Rebecca Thompson pulled the case up on her computer.

2) Rebecca Thompson questioned why this Court would believe the DC Court Order was a remand as it did not say it was a remand. Ms. Thompson said that if it the case was a remand the DC Court would have followed up in 13 years, as to why the FCC was not interpreting a DC Court remand.

DC Court Counsel Robert Cavello also pulled the case up on his computer. I advised Mr Cavello and Ms. Thompson that former DC Court legal director Martha Tomich already advised me that the DC Order must state it is a remand and this case was not remanded---it was a DC Court correction of the FCC. I have already filed a certification with Judge Wigenton recounting the conversation with the DC Court Legal Director.

3) Ms. Tomich walked me through the DC Court 2005 Order and detailed the several statements in the DC Order that are conclusive that DC Court did not remand (reverse back to FCC) the case; but simply corrected the FCC on the sole issue of whether 2.1.8 allowed traffic only to transfer.

4) I explained to Rebecca Thompson that the NJFDC wanted a writ of mandamus filed that would cause the DC Court and FCC to detail why the DC Order was not a remand. Rebecca Thompson stated the writ of mandamus or any motion can’t be used to get the DC Court and FCC to “detail the reasons why” the DC Court did not order a remand.

5) Rebecca Thompson and Robert Cavello agreed with DC Legal Director Tomich stating that the DC Court Order was definitely not a remand/reversed back to FCC as it would state such and warned me that if either plaintiffs or AT&T filed a writ of mandamus, this would be **serious ethics violations**. Ms. Thompson then gave me the DC Court website address for ethics **violations [[1]](#footnote-1)** and stated it also opens plaintiffs or AT&T to having **sanctions imposed. [[2]](#footnote-2)**

6) DC Court counsels Rebecca Thompson and Robert Cavello said plaintiffs cannot ethically motion DC Court to force the FCC to rule, as the case is not a remand, and that means all referred issues were obviously resolved. Ms. Thompson also stated it would especially be egregious to file a writ of mandamus after being told by DC Court Legal Director Tomich and several other DC Court counsels and the FCC staff that the case was not a remand. Ms. Thompson said the DC Court absolutely would deny the writ as the FCC would not be expected to interpret any issue as the one issue on account movement was corrected by the DC Court.

7) The DC Court counsels said the DC Court order must explicitly state remand and then suggested plaintiffs show the NJFDC the **DC Court Docket Entry** screenshot. DC Counsel stated that the DC Court Docket Entry System would explicitly need to state the case was remanded, if it were remanded. DC Counsels stated petition for review granted is just a correction of the FCC.

8) The DC Counsel Cavello said that since AT&T is the party that is misrepresenting the DC Order is a remanded why didn’t AT&T file the mandamus? DC Counsel Cavello said AT&T obviously knows it is not a remand and if AT&T were to use the mandamus process for an improper purpose to have the DC Court and FCC “elaborate on reasons why” the DC Court will seek ethics violations and impose sanctions on AT&T. Therefore AT&T suggested plaintiffs violate ethics rules and expose plaintiffs’ counsel to sanctions.

9) **See here exhibit H** is **new evidence** suggested by the DC Court Counsels to show the NJFDC the DC Court Docket Entry System accessible via PACER. The DC Court counsels said that our case is not a remand/reversed and this also conclusively proves it. **Exhibit H** shows our case, and also shows a case that involved AT&T which really was remanded i.e. (reversed back to the FCC) by the DC Court. DC Court Counsel Mr Cavello made the point that AT&T obviously knows when a case is remanded as it knows the DC Court Docket system disposition of the case format must say remand if it is a remand. Mr Cavello said AT&T knows Petition for Review is Granted means the DC Court corrected the FCC.

10) Since the declaratory ruling process is permit but disclose proceeding, plaintiffs recounted the conversations with the DC Court counsels and copied AT&T counsel on June 27, 2018. Therefore, within exhibit H are the supporting emails with AT&T counsel Richard Brown, DC Court Counsels and Legal Director Office, FCC Ethics, FCC Staff and State Bar Counsels. AT&T counsel Brown has not as of this date refuted to the DC Court or the FCC the DC Court Counsels and DC Court Legal Director’s statements that the case is not a remand (reversed back to the FCC), and DC Court corrected the FCC on the sole issue of does 2.1.8 allow traffic only transfers.

**Correcting the NJFDC Judge Chesler Oral Argument Record**

**Explicit Evidence Shows 2.1.8 Defenses were not within 1996 Referral Scope**

**Judge Chesler Oral Argument HERE as Exhibit F**

11) **January 13, 1995** CCI-PSE and **January 30, 1995** Inga to PSE traffic only transfers take place.

**February 16, 1995** AT&T files Substantial Cause pleading Tr8179 at FCC and asserts the 3 obligation defenses contained within its Tr8179 pleading are already **implicit** under its tariff. **SEE HERE AS EXHIBIT B AT&T ASSERTS 3 DEFENSES**. AT&T claims the defenses are implicit in order to receive retroactive application to the January transfers but does not produce evidence to support defenses---as no evidence existed then and no evidence in 23 years has ever been submitted.

12) **Late February 1995:** FCC FOIA notes were not obtained until December 1995—so plaintiffs did not know the FCC had already denied all Tr8179 defenses in February 1995 and suggested on a prospective basis security deposits against potential shortfall. Inga moving brief pg.14:

**“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.”** FCC’s Notes for February 1995 meeting with AT&T

13) **March 1995:** AT&T concedes that the outcome of Tr8179 will resolve the issue. [[3]](#footnote-3)

14) **May 19, 1995 Non-Vacated Order:** The critical part of this non-vacated decision was –as FCC 2003 Order stated---Judge Politan determined---based upon AT&T’s March 1995 briefs---that the “outcome of Tr8179” defenses would resolve the traffic only transfer issue. This Court bypassed the importance of the non-vacated May 1995 Order that denied AT&T’s defenses and **skipped** to the March 1996 injunction: pg10:

21 THE COURT: Okay. I gather that he then concluded

22 that he was going to issue an order requiring AT&T to

23 accept the transfer pending FCC's determination on this.

24 Is that correct?

15) AT&T can’t violate the non-vacated NJFDC May 1995 Judge Politan Court Order.

**June 2, 1995 AT&T withdraws Tr8179 defenses**. AT&T counsels Meade 11.28.95 certification and AT&T’s David Carpenter conceded to Third Circuit that FCC determined AT&T’s defense did more than codify [[4]](#footnote-4) (i.e. were not implicit) to achieve retroactive application to prohibit the January 1995 traffic only transfers. As FCC 2003 Order states AT&T withdrew its defenses and obviously none of AT&T’s defenses modified the tariff (i.e. became part of the tariff) for AT&T to assert. AT&T can’t assert a non-tariffed defense as that violates 203(c) unspecified illegal tariff remedies.

16) **June 1995 & July 1995** AT&T obviously understood it lost all it defenses, so it violated 2.1.8 by using an unspecified illegal remedy by shutting 2.1.8 down all traffic only transfers.[[5]](#footnote-5) This Court did not address that AT&T obviously conceded it lost defenses and used illegal remedy. (Inga 1st brief 23 para 43)

17) **October 15, 1995 Releases Tr9229 to be effective 11.9.95:** AT&T’s Tr9229 security deposits against shortfall---the replacement for Tr8179 was prospective and thus as AT&T counsels Meade and Whitmer conceded could not be used to prohibit the January 1995 traffic only transfers.

18) **November 1, 1995:** AT&T’s 11.1.95 letter to Judge Politan was still misrepresenting the outcome of Tr9229 would resolve the traffic only issue---however the FCC FOIA notes show AT&T knew the Tr9229 security deposits solution was to be only prospective back in February 1995. AT&T’s March 1995 briefs mention the “security deposits against shortfall” as well so that further documents that the Tr8179 defenses had already been FCC denied and AT&T was on to a different and prospective tariff modification. Also, AT&T already prospectively released Tr9229 on 10.15.95 prior to the 11.1.95 letter. (Inga Moving brief pg 20 para 34)

19) **November 28, 1995 Meade Certification:** AT&T concedes to Judge Politan that the key FCC problem with AT&T’s Tr8179 defenses was AT&T’s subjective ability to measure intent of former customer of traffic to avoid paying shortfall charges on the non-transferred plan; as per 2.1.8 the revenue and term commitment do not transfer on a traffic only transfer. This also answered Judge Bassler’s moot referral but this Court did not address AT&T’s own concession. (Inga moving brief pgs. 16-18.)

20) **January 1996 Oral Argument:** AT&T counsel Whitmer concedes to Judge Politan on pg.25 of Oral Argument **“as a matter of law”** it couldn’t prohibit the transfer. (See Inga moving brief page 6) Again this Court did not address AT&T’s lead counsels concession to Judge Politan that led to the injunction.

21) **March 5, 1996:** NJFDC issues injunction to transfer the locations. Again, determining AT&T had no right to security deposit bond on the injunction as AT&T had **no merit** to speculate on the “dangers of shortfall” on the non-transferred plans revenue commitment as the plans were shortfall immune due to having been ordered prior to June 17, 1994. This was a critical judgement call that supersedes the merits of AT&T’s withdrawn defenses, that this Court didn’t address.[[6]](#footnote-6) Thus even if DC Court ruled in AT&T’s favor that it could use it’s defenses ---AT&T still loses as Judge Politan determined the defenses had **no merit**. Inga 1st brief pgs. 27-28.

22) **May 31, 1996 Third Circuit referral:** Page 12 of Oral Argument this Court stated:

5 THE COURT: The Third Circuit held that Judge

6 Politan's granting of that injunction was in conflict with

7 his determination that primary jurisdiction required the

8 matter to be sent to the FCC. Correct?

The critical fact not addressed---as also stated by the FCC 2003 Order--- was the Third Circuit limited the scope of the referral by explicitly stating AT&T’s Tr8179 defenses were withdrawn (never tariffed). Inga moving brief page 5 para 8 gave this Court a screenshot of the Third Circuit Order to draw attention to it.

**“Shortly after the May 19, 1995 Order, however, AT&T withdrew tariff transmittal 8179, assertedly at the FCC's request.”**

23) Also Inga reply briefs in two places also stressed scope limitation on pg. 5fn5 & pg 10 fn12

“Shortly after the May 19, 1995 Order, however, AT&T withdrew tariff transmittal 8179, assertedly at the FCC's request.”

Third Circuit explicitly stated TR8179 defenses were withdrawn. As per the non-vacated May 1995 Court Order these defenses could not be asserted. Additionally, as FCC 2003 Order states these defenses obviously did not modify the tariff (were not made part of the tariff) so of course these defenses could not be asserted any more. Yet this Court did not mention at Oral the critical fact that (A) per May 1995 Court Order the defenses could not be asserted and (B)Third Circuit Courts explicit statement that these defenses were withdrawn and thus not tariffed. AT&T can’t assert non-tariffed defenses. See Oral pg. 14:

17 THE COURT: Okay. Now, Mr. Grimes --

18 MR. GRIMES: Yes, sir.

19 THE COURT: -- Judge Politan was reversed.

20 MR. GRIMES: **The underlying 1995 order was never**

21 **appealed or reversed. It was only the injunction from**

22 **1996.**

23 THE COURT: **The injunction was reversed.**

24 MR. GRIMES: Yes, that was.

24) This Court did not address Counsel Grimes critical point that the May 1995 non vacated Order ---that determined the “outcome of Tr8179” resolved the issue as per AT&T’s own March 1995 briefs ---and was not appealed or reversed. that the 1995 Order was never appealed. AT&T can’t assert a non-tariffed defense—especially one in which it needs to be implicit/routine—yet presents zero evidence—because **none exits.** [[7]](#footnote-7)

25) **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 explicitly states AT&T’s defenses were withdrawn:

“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.[[8]](#footnote-8)[**2]  **Thus, Transmittal 8179 never became effective.”**

26) FCC 2003 Order stated “**in part**” as all AT&T’s Tr8179 obligation defenses were FCC denied/AT&T withdrawn as conceded by AT&T counsels Meade and Whitmer. FCC still had to interpret 2.1.8 the account movement **part**. The scope was simply limited to account movement. No non-tariffed obligation defenses.

**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.”**

27) 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.” The only “part” of Third Circuit Referral that was based upon the 1995 May 1995 Referral that the FCC needed to interpret was account location movement. Did 2.1.8 allow traffic only transfers was the only issue once the obligation defenses were not tariffed.

**Only MOVEMENT Under the tariff is the scope of the FCC 2003 Order:**

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.”

28) Although not within the scope, the FCC did evaluate 2.1.8 obligation allocation taking the same position as the District Court, Inga and AT&T, regarding allocation of obligations. FCC 2003 Order fn 50 and fn 51 agreed revenue and term commitment only transfer on plan transfers not traffic only transfers.

**THE DC ORDER EXPLICTLY STATES IT CORRECTED THE FCC**

29) The FCC erred in believing 2.1.8 was meaning less to traffic only transfer account movement. DC Order: 10 FN 1, it states DC **corrected** FCC, not remanded/reversed the FCC.

“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. [[9]](#footnote-9)

30) DC Order explicitly states there were no obligation issues to review. The FCC 2003 Order stated it did not need to address the obligation issues that by May 1995 Court Order were denied and by tariff law “never modified tariff,” ( i.e. never became “part of the tariff,”) as all obligation issue were withdrawn 6.2.95. DC Court Legal Director Martha Tomich walked plaintiff through the DC Order and detailed the scope of the DC order and why it was not a remand. She pointed out the following:

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).”

31) 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 as they FCC 2003 Order stated: “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**.”

32) DC Above the DC Court is explicitly advising obligations is “beyond the scope of our opinion” because the FCC’s scope was only account movement-- not obligations, once all Tr8179 defenses were FCC denied/AT&T withdrawn and as FCC 2003 Order states never modified the tariff… 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.”

33) 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.

34) After the 2005 DC Order was released plaintiffs did question the FCC as to whether the DC 2005 order was a remand. On April 15, 2005 FCC General Counsel Austin Schlick emailed plaintiff and copied FCC senior counsel John Ingle. It was concerning a conversation in which FCC counsel John Ingle stated the FCC’s position of the DC 2005 Order was that it was **not a remand** and thus left no open issues within the scope of the 1996 Third Court Referral. General Counsel Schlick welcomed the NJFDC to contact him regarding the FCC’s no remand no reverse –no open issues position. **See HERE EXHIBIT A** emails from FCC General Counsel Austin Schlick and senior counsel John Ingle. This exhibit was provided in Inga Reply brief as Exhibit L. Additionally the case file contains Inga Certification provided to Judge Wigenton recounting DC Legal Director Martha Tomich on the phone walking plaintiffs through the DC 2005 Court Order law and detailing it is not a remand ( reverse back to FCC) and citing the above DC Order law, why it is not a remand.

35) The FCC General Counsel and DC Legal Director obviously understand what a DC Court remand is. Believing the DC order is a remand is also taking the position that the FCC staff are all simply lazy since the **year 2006** for refusing to interpret Judge Bassler’s 2006 referral. Plaintiffs questioning whether the DC Court was a remand in 2005 makes sense but not in 2018. This Court really can’t believe the FCC staff is simply lazy for 13 years. DC Court remands to FCC are typically done within 1 year according to FCC case manager Deena Shetler.

36) The case went on FCC Commissioner Circulation on 11.2.15 and was reviewed by all FCC Commissioners and their staffs of counsels. The case was **removed from circulation** in January 2017 after 13 months review. There was no issue of not having all 5 Commissioners there to vote over 13 months as AT&T speculated without evidence.

37) As cited by the FCC 2003 and FCC 2007 Orders in accordance with the Administrative Procedures Act (APA) the Commissioners **only act on open controversies/uncertainties**. There were simply no controversies/uncertainties presented in the 2006 Judge Bassler referral **(HERE AS EXHIBIT C)** that were within the scope of the 1996 Third Circuit referral. The 1996 referral was based on the non-vacated 1995 Judge Politan May 1995 Order that by Court Order eliminated AT&T’s Tr8179 defenses and that 1996 referral explicitly stated the defenses within Tr8179 were withdrawn and never became part of the tariff to assert.

**FCC STAFF PROVIDED NJFDC THE DC COURT CASE LISTINGS INVOLVING THE FCCTO SHOW DC COURT USES EXPLICIT SPECIFIED STATEMENTS**

38) The following is also new evidence this Court has never seen that AT&T counsel Mr Brown was provided the morning of Oral argument. The FCC was asked a procedural question if it could reference DC Court cases with the FCC to show the NJFDC when a remand is really a remand vs. “petition for review is granted” ----means DC Corrected the FCC and resolved the issue. **See here as EXHIBIT D** an email sent to AT&T counsel Richard Brown prior to the June 6, 2018 Oral argument. The email included the FCC staff and FCC ethics staff and State Bar Counsels Staffs. The FCC and FCC ethics staffs and State Bars were provided AT&T’s NJFDC brief misrepresenting that the DC Court “reversed’ the FCC. The FCC staff is well aware AT&T understands the case was not remanded /reversed and that the FCC is simply not lazy to interpret the moot Judge Bassler referral. **The FCC was simply providing yet another way for NJFDC to understand the DC Court Order was not a remand**. The FCC referenced this FCC page:

<https://www.fcc.gov/proceedings-actions/fcc-and-courts> to show NJFDC the **specific language** used by the DC Court when a case is really a remand. See sample: 8/29/17 [Court opinion **remanding** case - SNR Wireless v. FCC](https://docs.fcc.gov/public/attachments/DOC-346423A1.pdf) DC Court and FCC have told plaintiffs DC always explicitly states remand when it is a remand as it did in above case.

**“We therefore** **remand** **this matter** **to the FCC**

**for further proceedings consistent with our opinion.”**

39) **See here Exhibit E** for DC Court explicit case concluding case disposition statements.The FCC said that DC Orders that are remanded explicitly must state “remand.” A reverse is layman’s term for a remand. The FCC said our case was not a remand. It was: **“The petition for review is granted.”** No remand, no appeal, the sole 1996 account movement referral was DC corrected. As shown above the DC Court pg. 10 fn 1 explicitly states it **corrected** the FCC.

**THE FCC 2007 Order ALSO CONCLUDED THE DC COURT CORRECTED THE FCC:**

“Specifically, the Commission was asked to determine '''whether section 2.1.8 [of AT&T's Tariff FCC No.2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.",6 In its *Order* 011 *Primary Jurisdiction Referral****,* the FCC initially concluded that section 2.1.8 did not apply to transfers oftraffic alone.'** The United States Court of Appeals for the District of Columbia Circuit, however, **found that conclusion to be incorrect.**

“the FCC initially concluded that section 2.1.8 did not apply to transfers of traffic alone.” Does 2.1.8 allow traffic only to transfer was the scope of the issue. No about obligation allocation issues. FCC 2007 Order correctly determined Judge Bassler’s referral (on obligation issues) does not expand the scope of the 1996 referral (which FCC 2003 Order/DC Order stated was on account movement): FCC 2007 Order:

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**."

Your Honor ---Does not expand the scope is explicit as can be. Already briefed was a nice way to tell Judge Bassler that the answer to Judge Bassler’s moot obligations referral was right in the briefs.

40) Judge Chesler Oral Argument pg. 16:

14 MR. GRIMES: Your Honor, just first, **there was never**

15 **a reversal** of the FCC by the D.C. Circuit Court.

16 THE COURT: Excuse me. That is patently incorrect

17 and that is patently a mischaracterization of what the D.C.

18 Circuit did. **The D.C. Circuit concluded that the FCC had**

**19 made a totally erroneous decision.** That's what reversal

20 is.

Your Honor is absolutely correct that DC Court concluded that the FCC made an erroneous decision, but DC Court legal Director Tomich explained that does not automatically make it a remand/reverse. The DC Court had the options of (A) either remanding/reversing the FCC or (B) Correcting the FCC. Director Tomich said the DC Court Order explicitly states it corrected the FCC on the sole account movement issue and obligation issues were not within DC Court scope as FCC 2007 Order stated.

41) Judge Chesler Oral pg 18

19 Now, that clearly sent this matter back to the FCC.

20 All right. Subsequently, a motion was made before Judge

If the matter was sent back to the FCC, the DC Court Counsels and FCC staff have stated the DC Order would have explicitly stated the case is remanded. The term “reverse” is means remanded.[[10]](#footnote-10) This case was not remanded/reversed as it would have explicitly stated so in the DC Court Docket Entry system and on the DC Court Order. If it was remanded the FCC would have issued another decision within 1 year.

42) Oral Page 17-18

1. **THE COURT** any obligations. **The petition for review is granted."**

1 That is **a very nice way of saying** that the FCC's

2 determination was **reversed.**

Your Honor DC Legal Director Tomich said the DC Court doesn’t do guessing games i.e. (a very nice way of saying). DC Director Tomich, Rebecca Thompson, Robert Cavello, Nancy Dunn all said “Petition for review is granted” means-- DC corrected the FCC---and this is explicitly stated in both DC Order and FCC 2007 Orders. DC and FCC staff have told plaintiffs DC Orders use consistent and explicit concluding “a case disposition statements” to leave nothing to be (nice way of saying) speculated. To believe it was a reversal means this Court believes the FCC staff is simply lazy since 2005 and the FCC Commissioners were all in error for taking the moot 2006 referral off circulation and DC Court Legal Director and staff are all in error.

19 THE COURT : **Now, that clearly sent this matter back to the FCC**.

20 All right. Subsequently, a motion was made before Judge

21 Bassler to lift the stay. Judge Bassler wrote an

43) The only clear thing the DC Order did was correct the FCC as the DC Order and FCC 2007 Orders explicitly indicate. Plaintiffs **in 2005** initially questioned the FCC GC and DC Court Legal Director as plaintiffs were confused—but that was 2005. Both DC and FCC explicitly detailed scope of referral was only account movement and was DC Corrected. DC did not remand case as its concluding statement would say remand. **Petition for review is granted** is a DC Court **correction** of the FCC—not a remand/reversal. The FCC staff has advised plaintiffs that DC Court to avoid confusion uses specified common statements to avoid misinterpretation. DC Court doesn’t do “nice way of saying” statements. **[[11]](#footnote-11)** Explicit statements in both DC Order and FCC 2007 order state DC corrected the FCC.

**Judge Bassler Errors**

Erred Referring Non-Remanded DC Court Order—Only issue DC Corrected

Erred Referring Defenses Denied by 1995 Non-Vacated Outcome of Tr8179 Court Order

Erred Referring Defenses that were never tariffed as Defenses were Withdrawn

Erred in expanding the Scope of the 1996 Referral which was solely on Account Movement

Judge Bassler first instinct that the DC order was not a remand was correct. AT&T counsel Joseph Guerra conceded DC Order was not a remand/reversal. (Judge Bassler Oral Argument 5.25.06 pg. 4)

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**. **I** 19 **don't see any language of remand.** 20 MR. GUERRA: Your Honor, you are correct, **there's no formal remand**

Inga reply brief pg5fn5 cover many facts that Judge Wigenton and Judge Bassler never saw that this Judge Chesler Court now has. [[12]](#footnote-12) The facts (a) show the scope of the referral was limited to only account movement and (b) the answer to the moot referral is revenue and term commitments not transfer on traffic only transfer as AT&T also asserted to DC Court[[13]](#footnote-13).

44) Your Honor was given the case and was so gracious in less than 1 day accommodated the oral argument schedule set by the recused Judge Wigenton. With 10 Orders and thousands of pages of content, this Court should be given time to address the new evidence provided by the DC Court and FCC---which AT&T did not refute--and time to reevaluate the case. This Court did not address AT&T withdrawing its defenses and the fact AT&T’s defenses were big fibs with no transactional support despite being common transactions. [[14]](#footnote-14)

45) All AT&T had to do was show transactional evidence to win the case since 1995 and it was obvious AT&T was involved in “the big fib.” [[15]](#footnote-15) Judge Chesler Oral Argument page 23:

9 THE COURT:-- the problem is that you are asking

10 this Court in the first instance **to answer the question** **[[16]](#footnote-16)**

11 which this Court asked the FCC to answer and the **FCC hasn't**

12 **answered it,** **[[17]](#footnote-17)** and you're telling me your interpretation of

13 2.1.8, as opposed to **AT&T's interpretation of the**

14 **obligations under 2.1.8,** **[[18]](#footnote-18)** are all very interesting but, you

15 know something, in their infinite wisdom, **Judge Politan,** **[[19]](#footnote-19)**

16 followed by **Judge Bassler,[[20]](#footnote-20)** followed by Judge Wigenton,

17 decided that the determination in the first instance should

18 be by the FCC, **and nothing has changed.** [[21]](#footnote-21)

19 MR. GRIMES: Your Honor, the FCC took it off of

20 circulation, so, what our interpretation of this is is

21 because there is no issue, [[22]](#footnote-22)Judge Politan originally ruled

22 that the traffic transfer should be allowed. **Any**

23 **obligations that were required under 2.1.8 were transferred [[23]](#footnote-23)**

**2006 Referral Moot Anyway as All 3 Tr8179 defenses would be Prospective:**

46) Even if AT&T’s Tr8179 defenses became part of the tariff AT&T conceded its defenses did more than codify (i.e. not implicit). Thus, would have been substantial changes and thus prospective only. Additionally, Judge Bassler’s 2006 Referral, it also moot, to the January 1995 transactions, as AT&T’s counsels Meade, Carpenter and Whitmer all conceded the tariff modifications filed in 2.16.95 under Tr8179 would be more than codifications and only prospective and thus could not prohibit the January 1995 traffic only transfers.

**DC 2005 Order “de facto” resolved the moot obligations allocation Issue**

47) Inga reply brief page 12 also addressed the fact that AT&T, Inga and FCC all agreed 2.1.8 didn’t allow parties to alter obligation allocation. The parties stated revenue and term commitments do not transfer on a traffic only transfer. AT&T’s position to the DC Court was the same as Inga, NJFDC and FCC’s so there wasn’t a controversy per APA. The non-disputed facts show plaintiff orders did not impose obligation allocation conditions / stipulations. Plaintiffs simply asked for a traffic only transfer. Thus, when DC Order determined 2.1.8 allowed traffic only transfers and 2.1.8 shows there was no flexibility/ options to choose which obligations need to transfer,thus DC Court **de facto** answered the moot obligations allocation controversy. DC Court understood Obligations don’t transfer on a traffic only transfer even though it was not within its scope to review. The DC Court page 4 -5

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.**

48) Above the DC Court author Judge Roberts obviously understood AT&T’s position was that the revenue and term commitments do not transfer on the traffic only transfer as it cited AT&T’s withdrawn fraudulent use defense. AT&T and Inga agreed CCI would continue to keep the revenue and term commitment and be subjected to shortfall and termination penalties for failure to meet the tariffed commitments. Judge Politan understood the plans were immune from such penalties. Additionally, DC Court Judge Ginsburg and FCC Counsel Bourne also understood the revenue and term commitments do not transfer on the traffic only transfer. DC understood the answer to Judge Bassler’s moot referral. The plans were pre-6.17.94 grandfathered from shortfall of remaining revenue commitment: DC Oral Pg. 27 Line 2:

FCC Counsel MR. BOURNE: Well, CCI still had the obligation to pay its shortfall charges, and there's, there are **other aspects to this that the Commission didn't rule on**. I mean, for instance **DC JUDGE GINSBURG**: **Whether they were grandfathered?**  FCC MR. BOURNE: **Right.** So, it could well be that there were little or **no shortfall charges**.

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 counsel Carpenter educated Judge Roberts on what all obligations means even though this was not a reviewable issue.[[24]](#footnote-24) Some reason this Court is ignoring AT&T’s position to the DC Court was exactly as Plaintiffs and the FCC’s regarding obligation allocation.

**DC Order Determined Plaintiffs Transferred All Obligations within 2.1.8:**

49) Plaintiffs Post Oral motion to correct the DC record stated that plaintiffs were transferring all the obligations listed within 2.1.8. Plaintiffs orders did not impose any obligation conditions/ stipulations upon AT&T. Plaintiffs simply ordered a traffic only transfer and were willing to transfer whatever the tariff mandated---thus the Judge Bassler is moot from this standpoint as well. [[25]](#footnote-25)

“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.”** Intervenors Motion to Clarify and Correct the Facts of the Record at 4

DC Circuit pg. 11 footnote 2

50) DC Order corrected the only “part” of the 1996 referral that FCC needed to interpret on account movement. FCC did not see 2.1.8 allowed traffic only transfers and DC corrected the FCC. All obligation issues were off the table --outside the scope of the case once AT&T withdrew Tr8179. No remand. No appeals. Judge Bassler’s Order:

It is further ordered that plaintiffs, no later than August 1, 2006, file an appropriate proceeding under Part I of the FCC's rules to initiate an administrative proceeding to resolve the issue of precisely which obligations should have been transferred under Section 2.1.8 of Tariff No. 2 as well as any other issues left open by the D.C. Circuit's Opinion in AT&T Corp. v. Federal Communications Commission, 394 F.3d 933 (D.C. Cir. 2005).

51) There were simply no open issues within the 1996 Referral that were not resolved by the 2005 DC Order. The FCC 2003 Order was correct that –per 1995 non-vacated Judge Politan Order—the FCC only had to address account location movement. All 3 obligation controversies presented by AT&T within Tr8179 never modified and became part of the tariff as AT&T withdrew its defenses on June 2, 1995. The FCC was absolutely correct in its 2003 Order not interpreting AT&T’s 3 obligation defenses per 2.1.8. as these were (A) prohibited per 1995 “outcome of Tr8179” Court Order and (B) withdrawn from being considered as the defenses never modified and became part of the tariff. Even if considered these February 16, 1995 changes would need to be proved as implicit to prohibit the January 1995 traffic only transfers. AT&T conceded the FCC determined per Tr8179 that these defenses were not implicit changes and AT&T withdrew them.

51) AT&T is currently insisting the DC Order is a remand when DC Order and FCC 2007 Order explicitly indicated it is a correction. AT&T is asserting there are obligation issues that are open in the DC Order, but the DC Order explicitly stated obligation issue are beyond the scope of its decision. [[26]](#footnote-26) AT&T’s position to the FCC and DC Circuit was to assert one of its Tr8179 withdrawn defenses that never became part of its tariff. Per Tr8179 AT&T “deemed” the conceded traffic only transfer was deemed by AT&T as a **PLAN** transfer as revenue and term commitments only transfer on a plan transfer. AT&T to FCC/DC:

"We said that **in this case**, the relevant service are the CSTP **plans**.  That's because **in this case** what they transferred was **the plans**, all the locations, without the liabilities."

52) AT&T’s Tr8179 filing conceded the transaction was a traffic only transfer but wanted to deem it a plan transfer. The FCC 2003 Order agreed the transaction was a traffic only transfer not a plan transfer. Once obligations defenses were denied by non-vacated 1995 Court Order and withdrawn 6.2.95 and thus never tariffed. As the FCC 2003, DC 2005 and FCC 2007 Orders indicate the 1996 referral did not present –per Administrative Procedures Act (APA) an obligations controversy to interpret per 2.1.8. Judge Chesler Oral pg 23-24

25 **All these other things that were brought up by AT&T,**

1 such as **security,** those were all addressed because Judge

2 Politan ruled on that in -- **those were not part of the**

3 **tariff.**

53) Correct Your Honor Judge Politan’s non-vacated May 1995 Order determined new customer security deposits were not referred to by 2.1.8 and thus as you stated **“not part of the tariff.”** As FCC 2003 Order stated neither were AT&T’s Tr8179 defenses **part of the tariff**. “All these other things that were brought up by AT&T” to Judge Politan’s non-vacated 1995 Order included AT&T’s Tr8179 defenses. The May 1995 non-vacated Order, Third Circuit Referral, FCC 2003 Order, DC Court Order, FCC 2007 Order all agree: What was referred was only whether 2.1.8 allowed traffic only transfers and DC Court simply corrected the FCC. [[27]](#footnote-27) Judge Chesler Oral page 24:

4 THE COURT Now, when Judge Wigenton rules, Judge Wigenton 5 doesn't know about the FCC 2007 order. She never refers to 6 it.

54) Judge Wigenton was provided the FCC 2007 Order. [[28]](#footnote-28) Judge Chesler Oral pages 24-25

25 Is it two years ago that Judge Wigenton strongly

1 urged that a **mandamus petition be filed** with the D.C.

2 Circuit?

3 MR. GRIMES: Yes.

4 THE COURT: Yes.

5 MR. GRIMES: That's what she put in her order, yes.

6 THE COURT: Fine. Has any mandamus petition been

7 filed?

55) Plaintiffs detail the DC Court was contacted and said it did not make any sense to issue a writ of mandamus for the FCC to act in a non-remanded case. The whole point of mandamus was FCC Commissioners review and that was done. The FCC Commissioners removed the case from circulation as there was no controversy under APA; as DC Court resolved the only 1996 referred issue. Inga reply pg3. [[29]](#footnote-29)

16 MR. GRIMES: So, if there was a mandamus petition,

17 we'd be requesting the D.C. Circuit to review something

18 that had no issue, something that was moot.

19 THE COURT: You know something, then **the FCC would**

20 **issue something which actually told this Court why it was**

21 **moot and why there was nothing to decide if that's, in**

22 **fact, the case.**

56) The FCC has provided this Court both **the scope of the referral** and the reason why Judge Bassler’s referral was not interpreted since 2005---the FCC 2007 Order states it was **incorrect** and DC Court page 10 fn1 corrected the FCC. FCC 2007 Order Scope and Correction are explicit:

“Specifically, the Commission was asked to determine '''whether section 2.1.8 [of AT&T's Tariff FCC No.2] **permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction**.",6 In its *Order* 011 *Primary Jurisdiction Referral****,* the FCC initially concluded that section 2.1.8 did not apply to transfers oftraffic alone.'** The United States Court of Appeals for the District of Columbia Circuit, however, **found that conclusion to be incorrect.**

57) Both Orders from Judge Politan, the 1996 Third Circuit, FCC 2003, DC Court 2005, and FCC 2007 **all agree** the FCC only needed to interpret whether the tariff allows traffic only transfers---account movement--- once the non-tariffed obligation defenses were withdrawn. Obviously, just as the security deposit issue this Court referenced as not being part of the tariff, AT&T can’t assert non-tariffed obligations defenses. AT&T’s Meade and Mr Whitmer conceded once Tr8179 defenses were withdrawn “as a matter of law” AT&T could not prohibit the January 1995 traffic only transfers. This Court wanted to know why the FCC Commissioners removed the moot Judge Bassler referral from circulation. **AT&T can’t assert non-tariffed defenses.** The DC Court law pg 10 fn1 and FCC 2007 Order both agree the only issue was **DC Corrected**. Correction is Petition for review is granted. Not a remand. No Appeals. Per Supreme Court Law stay must lifted. This Court is asking for further “elaboration and details on why the DC Order is not a remand” that the FCC legally can’t provide. [[30]](#footnote-30)

58) Judge Chesler Oral pgs. 29-32

19 MR. INGA: Your Honor, the only thing I'd like to

20 say to you is I think there's been one major issue here

21 that has not been recognized, that the **2003 FCC order**

22 **definitively stated that the obligation issues were no**

23 **longer to be decided**. The defenses that AT&T raised in

24 2003 were off the table due to the **non-vacated 1995 Politan**

25 **decision;** that the non-vacated decision eliminated the

1 obligation aspects.

2 THE COURT: Sir, please, when you get your law

3 degree, you can argue. When you are properly here pro se,

4 **I'll hear you.[[31]](#footnote-31)**

5 Right now you are neither, and what I was going to

6 suggest is 1995 to 2015, which means this is 23 years --

7 MR. INGA: Correct.

8 THE COURT: **-- I hope you've got other things to do**

9 **with your life.**

10 MR. INGA: This is a major focus of my life, your

11 Honor.

12 THE COURT: **Well, I will tell you, quite frankly,**

13 **then I feel sorry for you.** **[[32]](#footnote-32)**

14 MR. INGA: Your Honor --

15 THE COURT: But after 23 years –have you ever

16 talked with them about actually seeing if there's some

17 amicable resolution of this case?

18 MR. INGA: We're always willing to talk, your Honor.

19 I think there's just one last statement I'd like to make is

20 simple. **If AT&T was correct, they would have been able to**

21 **do one single thing to end this case. If AT&T simply**

22 **provided evidence, we'll walk away from the case.**

23 **They can't produce evidence because the tariffs do**

24 **not allow what AT&T is saying; therefore, they have no**

25 **evidence and never been able to present evidence.**

1 THE COURT: Okay. Sir, it's 23 years, Mr. Inga.

2 Okay.

3 MR. INGA: **And no evidence has been presented in**

4 **years, your Honor.[[33]](#footnote-33)**

5 THE COURT: Mr. Inga, this case is very reminiscent

6 of a Charles Dickens novel. If you wish to pursue it, I've

7 told you how to do it. Do not come back here with another

8 application to lift the stay until the FCC has made a

9 **decision.** **[[34]](#footnote-34)**

**59)**

10 MR. INGA: I understand that, your Honor. There are

11 two other claims within this case that the FCC referred --

12 THE COURT: Mr. Inga, Mr. Inga --

13 MR. INGA: -- they're not our interpretation

14 issues --

15 THE COURT: Mr. Inga, Mr. Inga, I'm going to tell you

16 twice, two things. One, I am not going to entertain

17 argument from you. You want to become a lawyer, go to law

18 school.

19 MR. INGA: No. There's no argument. I was just

20 **stating a fact that's in the order.[[35]](#footnote-35)**

21 THE COURT: Mr. Inga, Mr. Inga, the case has been

22 stayed. It was stayed for a reason.Do not come back here

23 until the reason it was stayed has been **resolved**. **[[36]](#footnote-36)**

24 If in the interim you actually want to think about

25 **doing something else other than pursuing** what now appears

1 to be one of the longest running cases in this court, I

2 would suggest you have Mr. Grimes talk to your adversaries

3 because, Mr. Inga, you are **too wrapped up in this case.**

4 MR. INGA: Your Honor, you're right. I

5 up.

6 THE COURT: So, Mr. Inga, all I'm saying is if you

7 want to **get on with your life**, have Mr. Grimes talk to

8 them, ask them to see if there's something reasonable which

9 can be done here.

10 Otherwise, good luck. Good luck before the FCC.

11 Good luck with your mandamus before the D.C. Circuit.

12 MR. INGA: **There are two other issues, your Honor**.

13 THE COURT: There aren't. **There are not, Mr. Inga.[[37]](#footnote-37)**

**SUPREME COURT LAW MANDATES STAY MUST BE LIFTED**

60) This Court must adhere to Supreme Court law as cited by plaintiffs moving brief page 31. The FCC staff read AT&T’s misrepresentation that the DC Court reversed i.e. remanded the case to the FCC. The FCC staffer was more than pleased to provide the DC Court case list to show the NJFDC that AT&T’s “reverse” assertion was a misrepresentation. The case list explicitly details when a remand is a remand.

61) The DC Court Counsels suggested showing this Court the DC Court Docket Entry system to show the DC Court Order was **not** a remand. Judge Bassler first “loose language” instinct—was correct--no remand. AT&T counsel Guerra conceded to Judge Bassler that the DC Court case was not a remand. AT&T’s current counsel changed the word remand to “reverse,” which is simply a common term for a remand. Such a play on words (remand/reverse) was an attempt to disassociate AT&T with its counsels’ concession to Judge Bassler.

62) Judge Bassler was correct –even if AT&T won 203 claims---the evidence showed thousands of traffic only transfers were processed by AT&T in same manner submitted by plaintiffs to AT&T and AT&T discriminated against plaintiffs. Per Supreme Court Law the stay in this case should be lifted by successor Judge to Judge Chesler, that will also handle damages.[[38]](#footnote-38)

**Conclusion:**

1. This Court did not address the fact that 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. This Court did not address the fact 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. This Court did not address the fact that the 1995 non-vacated Court Order determined that the outcome of Tr8179 resolved the issue.
4. This Court did not address the fact that AT&T withdrew its defenses on June 2, 1995 and thus these defenses were not tariffed to assert.
5. This Court did not address the fact that AT&T unlawfully stopped all traffic only transfers in June 1995 when it understood it lost all its obligation defenses.
6. This Court did not address the fact AT&T’s counsel Whitmer conceded in January 1996 that as a matter of law AT&T could not prohibit the transfers.
7. This Court did not address the fact that the Third Circuit Referral explicitly stated these defenses were withdrawn and thus limited the scope of the referral.
8. This Court did not address the fact that the FCC 2003 Order explicitly stated the only issue it was to interpret was account movement.
9. This Court did not address the fact that 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.
10. This Court did not address the fact that the FCC 2007 Order defined the scope of the issue and also agreed that the FCC was incorrect and was corrected by the DC Court.
11. This Court did not address the fact that the Case went on FCC Circulation on 11.2.2015 and all FCC Commissioners reviewed it and it was pulled from circulation----the APA does not allow the FCC to interpret issues that are not 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.
12. This Court did not address the fact that as stated by DC Court Legal Director Martha Tomich and FCC General Counsel and all FCC staff and all DC Court staff are saying that the DC Court Order was not a remand. Yet this Court believes the FCC staff has simply been lazy since 2006 in not interpreting the 2006 moot Judge Bassler referral.
13. This Court suggested Plaintiffs follow Judge Wigenton’s advice of filing writ of mandamus to force the FCC to “elaborate” on why it pulled the case. The DC Court advised that **this NJFDC suggestion** subjects plaintiffs to ethics violations and sanctions as AT&T and plaintiffs know the case is not a remand.
14. This Court did not address the fact that AT&T ---despite its own counsel Whitmer stating it did thousands of traffic only transfers --- created a defense that has no evidentiary support because it was just a “big fib.” Whereas Judge Politan noted this obvious fact in 1996, this Court and Judge Wigenton did not address that AT&T has never provided evidence as none exists.

15) This Court did not address the fact that **the answer** to Judge Bassler’s moot question on which obligations transfer was provided via explicit tariff evidence (2.1.8 (former customer tariff analysis), Tr8179 force a plan to transfer to force commitments to transfer, and Tr9229 security deposit against potential shortfall goes where the revenue commitment remains).

16) This Court determined that it will not address plaintiffs 201 and 202 fact-based claims that the FCC 2007 Order explicitly stated must be handled by the NJFDC as they are not tariff interpretations issues. The FCC 2007 Order explicitly indicated that these claims are not disrupted by DC Court Order.

17) AT&T has already paid substantial cash to co-plaintiff (CCI) and credited back $80 million in charges it applied to the end-users for the exact set of facts plaintiffs have.

Plaintiffs asks this Court to review the new evidence referenced to plaintiffs by the DC Court Counsels and FCC to prove the DC Court simply corrected the FCC—no remand/reverse. Your Honor, plaintiff’s counsel or AT&T’s counsel can’t be placed in a position that a writ of mandamus be filed that will subject counsels to both ethics charges and sanctions. The FCC 2003 DC 2005 and FCC 2007 Orders are explicit what scope of the case was limited to and decided in the Inga companies favor, that 2.1.8 allows traffic only transfers.

The stay needs to be lifted and the damages scheduled. We are open to settlement as this Court suggested multiple times during oral argument. Hopefully since AT&T has not refuted the DC Court docket entry system evidence nor the FCC case listings evidence---AT&T will now be more open to resolving this issue amicably.

Alfonse Inga President

800 Discounts, Inc,

**EXHIBIT A**

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 read top down….

-----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

**EXHIBIT B**

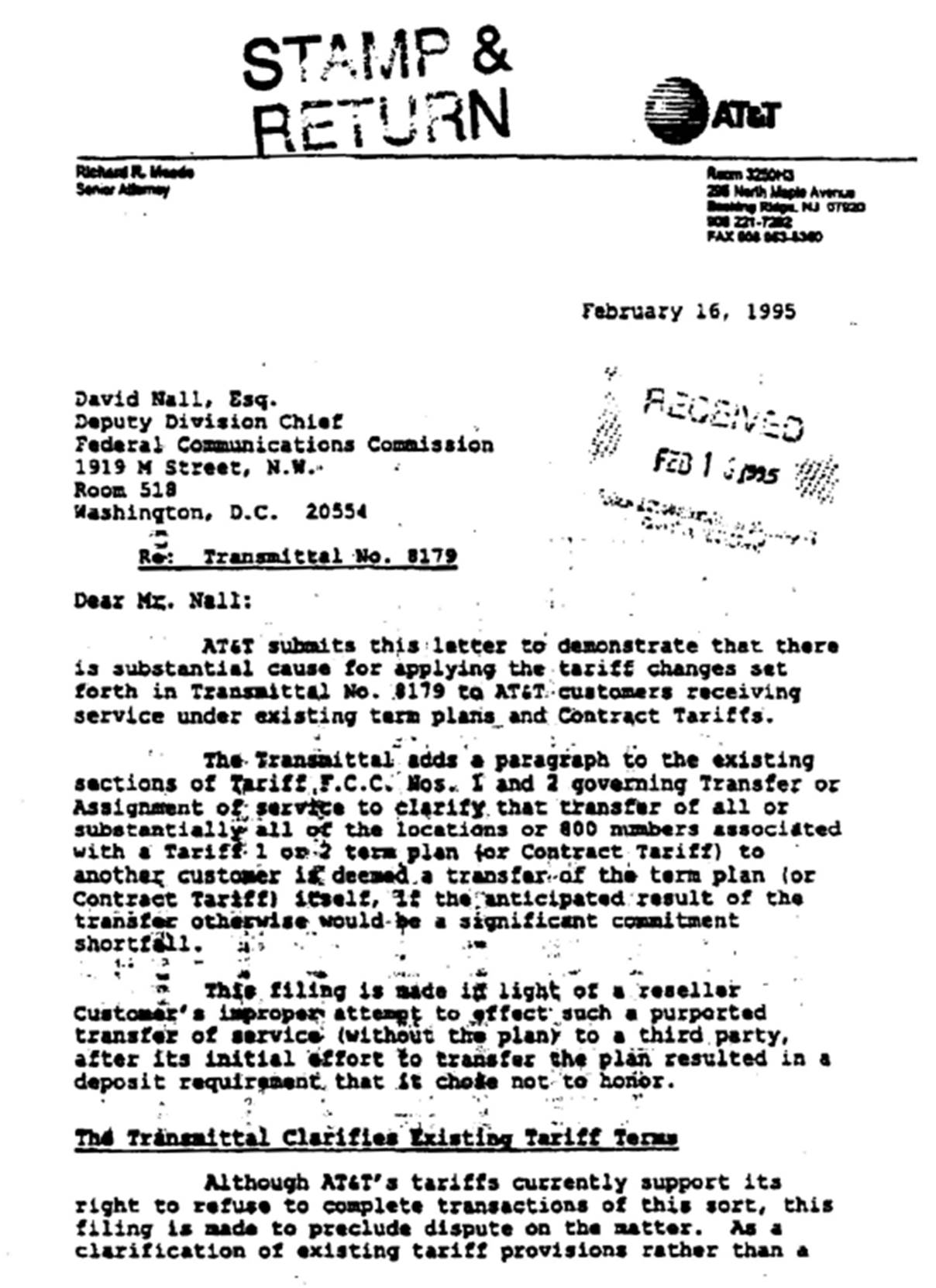
AT&T submitted 3 distinct defenses under Tr8179 --- AT&T’s 2.16.95 Tr8179 filing which was more than 15 days after 2.1.8(c) requirement to deny the January 13, 1995 (CCI-PSE, and January 30, 1995 Inga-PSE, transaction in writing.

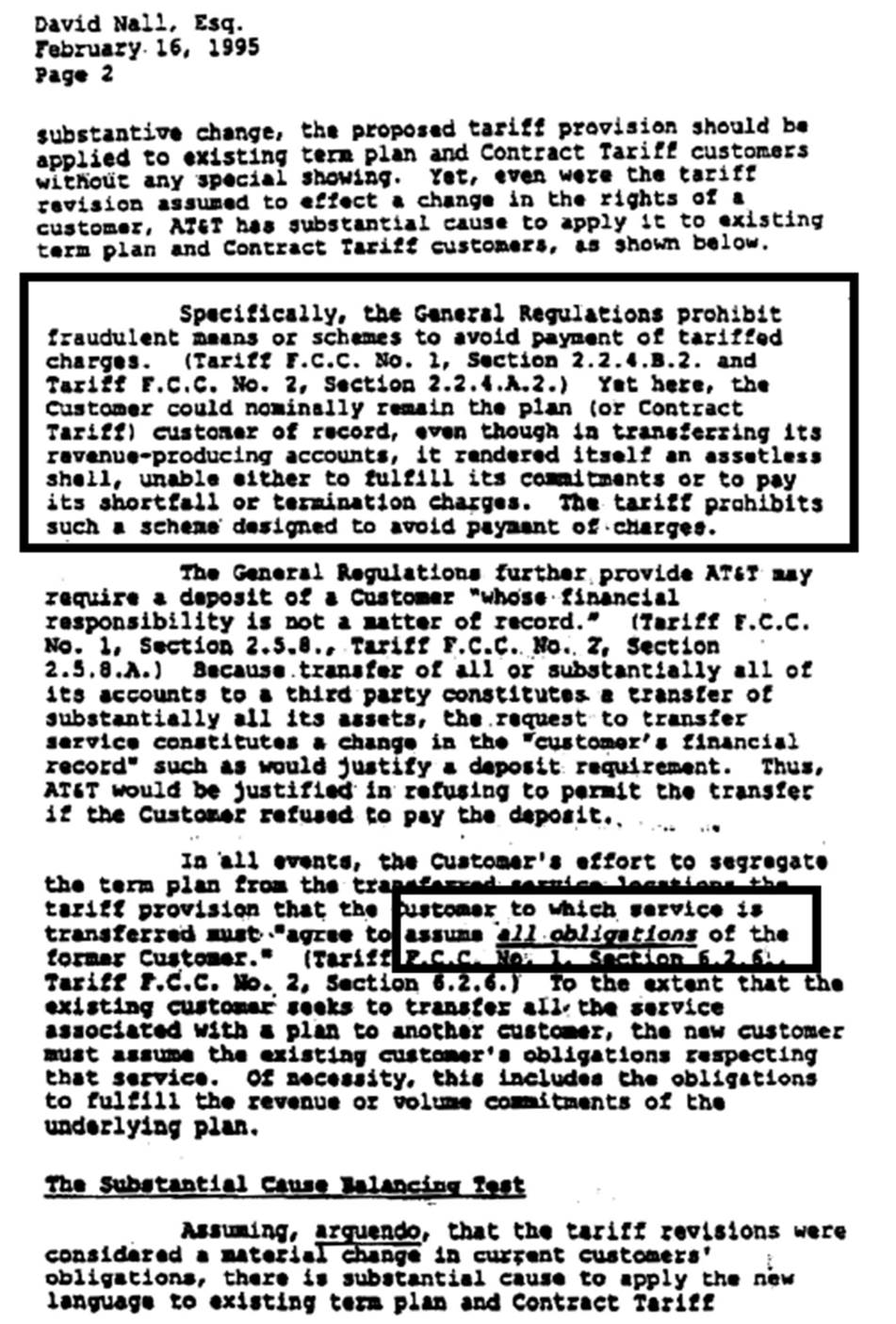
(1)AT&T can deem a traffic only transfer must be a plan transfer based upon whatever AT&T believes meets AT&T standard of “substantially all,” locations transferred. If the FCC determined this defense was implicit it would allow AT&T to force a conceded traffic only transfer be deemed a plan transfer to force the revenue commitment and term commitment to transfer:

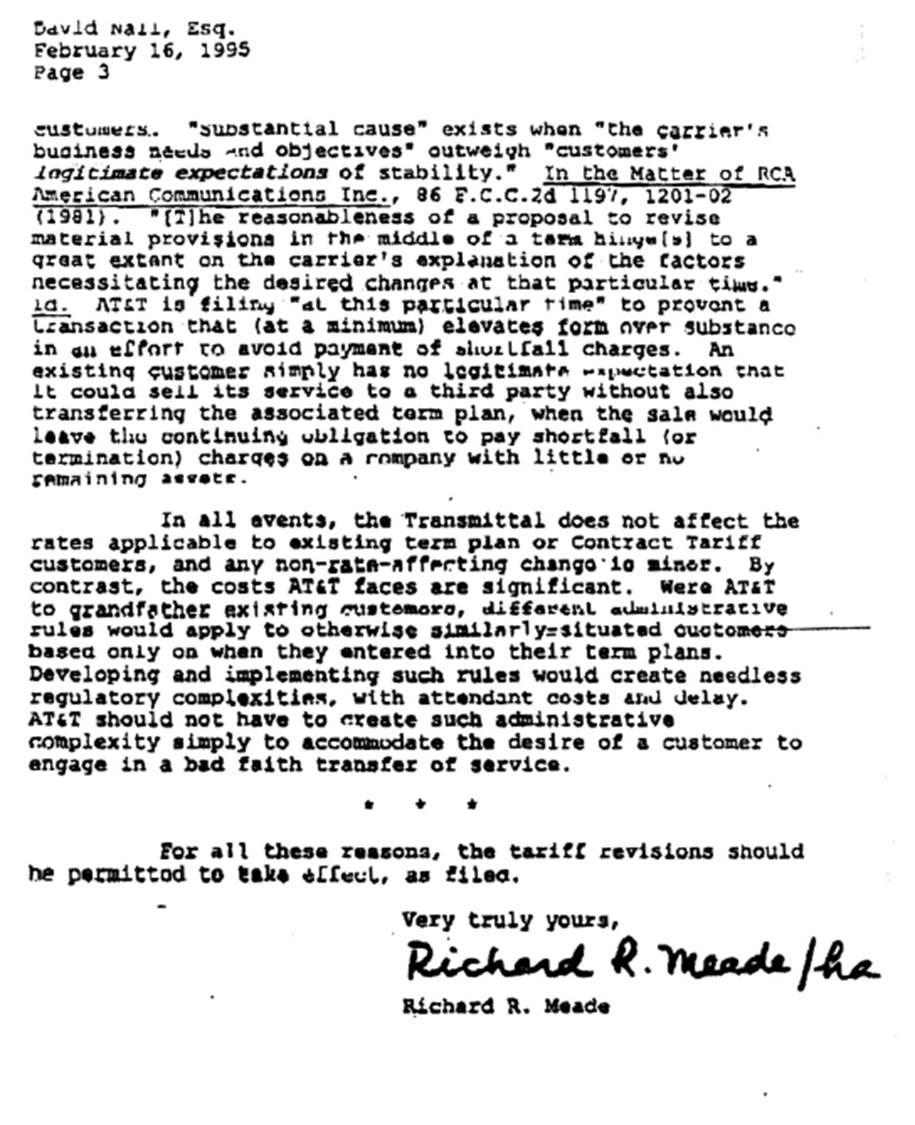
“If a Customer seeks to transfer, to one or more other Customers, all or **substantially all** of the 800 numbers associated with an existing AT&T 800 Service Term Plan or Contract Tariff, and the anticipated result of such a transfer would be that the usage and/or revenue from the remaining 800 numbers 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** or Contract Tariff, the transfer will be **deemed a transfer of the associated volume or term plan** or Contract Tariff to such other Customer(s), and may only be completed in accordance with this Section.

(2) Section 2.2.4 Fraudulent use. This defense asserted that because the revenue and commitment does not transfer on a traffic only transfer under 2.1.8, AT&T can assert 2.2.4 fraudulent use based upon AT&T’s premise/future speculation that there will be shortfalls on the non-transferred plans revenue commitment. Judge Politan denied this on its merits as the plans were all pre-June 17, 1994 shortfall immune. Also 2.1.8 was not conditioned upon first needing to meet 2.2.4. See 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item must be specifically referred to in connection with such item).

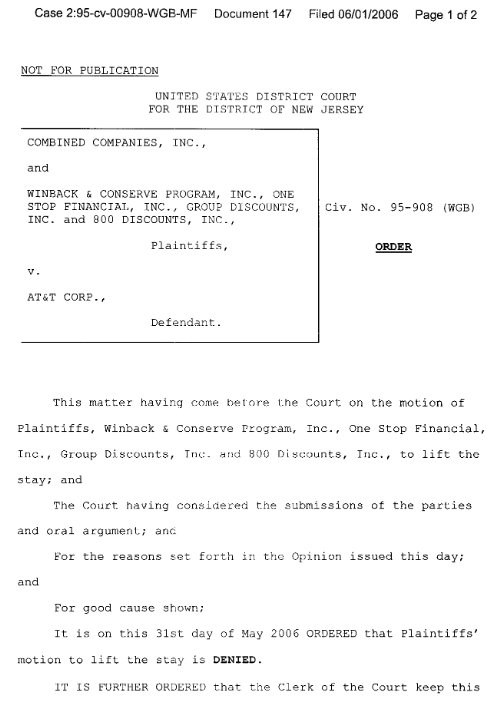
(3) The “all obligations of the **former** customer” language in section 2.1.8. While AT&T’s 2.2.4 defense claimed revenue and term commitments do not transfer on a traffic only transfer under 2.1.8; AT&T’s 3rd defense claimed that revenue and term commitments do transfer on a traffic only transfer under 2.1.8. No evidence exists of this as the tariff does not permit this. AT&T simply fabricated a defense with no transactional evidentiary support. On a traffic only transfer the new customer only assumes obligations on the WATS service that is “former” to the AT&T customer transferring locations. If the plan does not transfer the Customer is not former to its plan and must keep its tariffed revenue and term commitments. Likewise the new customer is only responsible for bad debt on the account locations transferred, and of course is not responsible for bad debt on accounts not transferred—as accounts not transferred are not “former” accounts, remaining accounts.

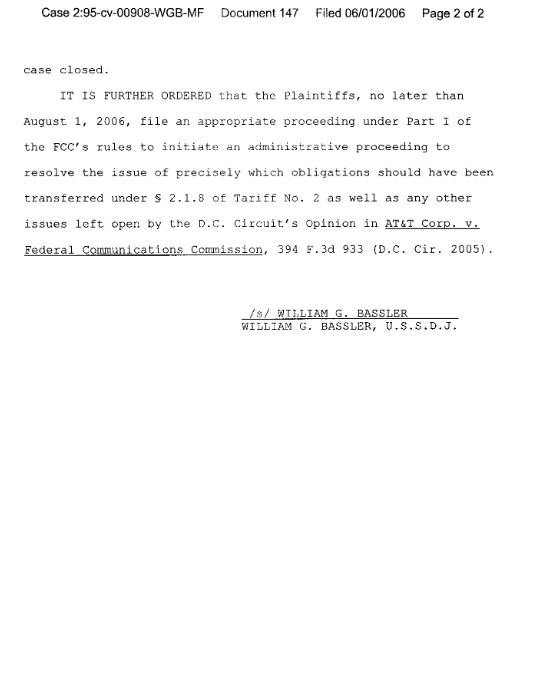






**EXHIBIT C**





**EXHIBIT D**

**From:** Town Newspaper Savings Directory <al@dbe.name>   
**Sent:** Wednesday, June 06, 2018 11:22 AM  
**To:** **'rbrown@daypitney.com' <rbrown@daypitney.com>;** ray@grimes4law.com  
**Cc:** 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; ray@grimes4law.com; 'Frank Arleo' <Frank.Arleo@ArleoDonohue.com>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.ORielly@fcc.gov' <Mike.ORielly@fcc.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov>; 'nick.degani@fcc.gov' <nick.degani@fcc.gov>; 'Amy.Bender@fcc.gov' <Amy.Bender@fcc.gov>; 'Deanne.Erwin@fcc.gov' <Deanne.Erwin@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'MeredithAttwell.Baker@fcc.gov' <MeredithAttwell.Baker@fcc.gov>; 'Jo Ann Dobransky' <JoAnn.Dobransky@arleodonohue.com>; 'Pamela Arluk' <Pamela.Arluk@fcc.gov>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'Phillip Okin' <pokin@giantpackaging.com>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; Deena Shetler <Deena.Shetler@fcc.gov>; Pamela Arluk <Pamela.Arluk@fcc.gov>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'Deena Shetler' <Deena.Shetler@fcc.gov>; 'Pamela Arluk' <Pamela.Arluk@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.ORielly@fcc.gov' <Mike.ORielly@fcc.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Frank Arleo' <Frank.Arleo@arleodonohue.com>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov>; 'nick.degani@fcc.gov' <nick.degani@fcc.gov>; 'Amy.Bender@fcc.gov' <Amy.Bender@fcc.gov>; 'Deanne.Erwin@fcc.gov' <Deanne.Erwin@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'MeredithAttwell.Baker@fcc.gov' <MeredithAttwell.Baker@fcc.gov>; 'Jo Ann Dobransky' <JoAnn.Dobransky@arleodonohue.com>; Deena Shetler <Deena.Shetler@fcc.gov>; Pamela Arluk <Pamela.Arluk@fcc.gov>; **'martha\_tomich@cadc.uscourts.gov' <martha\_tomich@cadc.uscourts.gov>;** 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; jcasello@cvclaw.net; 'William Ziff' <william.ziff@judiciary.state.nj.us>; 'Nancy\_Dunn@cadc.uscourts.gov' <Nancy\_Dunn@cadc.uscourts.gov>; 'Stephanie Pan' <Stephanie.Pan@TEXASBAR.COM>; 'Nancy\_Dunn@cadc.uscourts.gov' <Nancy\_Dunn@cadc.uscourts.gov>; 'jlegnard@nycourts.gov' <jlegnard@nycourts.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Stephanie Pan' <Stephanie.Pan@TEXASBAR.COM>; Deena Shetler <Deena.Shetler@fcc.gov>; 'nende@tlgdc.com' <nende@tlgdc.com>  
**Subject: RE: Ray---FCC gave me a reference list to DC Orders vs the FCC cases…**

Richard Brown

FCC and DC both agree DC Order simply corrected the FCC on account movement and there were no obligation issues once Tr8179 was withdrawn on June 2, 1995 as the FCC 2003 Order stated none of the AT&T obligation defenses modified the tariff.

FCC 2003:

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 is misrepresenting itself to the NJFDC that DC remanded the case. The FCC and DC Court both agree that DC did not remand the case. DC simply corrected the FCC on the sole issue of does 2.1.8 allow traffic only transfers as ordered by **Inga. AT&T is arguing obligation defenses that were not referred by Third Circuit in 1996 and as the FCC 2003 Order stated were not even part of the tariff!!!**

FCC 2007 Order:

“Specifically, the Commission was asked to determine '''whether section 2.1.8 [of AT&T's Tariff FCC No.2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.",6 In its *Order* 011 *Primary Jurisdiction Referral****,* the FCC initially concluded that section 2.1.8 did not apply to transfers oftraffic alone.'** The United States Court of Appeals for the District of Columbia Circuit, however, **found that conclusion to be incorrect.**

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**."

Al Inga

**From:** Town Newspaper Savings Directory <[al@dbe.name](mailto:al@dbe.name)>   
**Sent:** Tuesday, June 05, 2018 5:21 PM  
**To:** 'Jane.Halprin@fcc.gov' <[Jane.Halprin@fcc.gov](mailto:Jane.Halprin@fcc.gov)>; 'Jane.Halprin@fcc.gov' <[Jane.Halprin@fcc.gov](mailto:Jane.Halprin@fcc.gov)>; [ray@grimes4law.com](mailto:ray@grimes4law.com); 'Frank Arleo' <[Frank.Arleo@ArleoDonohue.com](mailto:Frank.Arleo@ArleoDonohue.com)>; 'Madelein.findley@fcc.gov' <[Madelein.findley@fcc.gov](mailto:Madelein.findley@fcc.gov)>; 'Matthew.Berry@fcc.gov' <[Matthew.Berry@fcc.gov](mailto:Matthew.Berry@fcc.gov)>; 'Meredith.AttwellBaker@fcc.gov' <[Meredith.AttwellBaker@fcc.gov](mailto:Meredith.AttwellBaker@fcc.gov)>; 'Michael.Copps@fcc.gov' <[Michael.Copps@fcc.gov](mailto:Michael.Copps@fcc.gov)>; 'Mignon.Clyburn@fcc.gov' <[Mignon.Clyburn@fcc.gov](mailto:Mignon.Clyburn@fcc.gov)>; 'Mike.ORielly@fcc.gov' <[Mike.ORielly@fcc.gov](mailto:Mike.ORielly@fcc.gov)>; 'Neil.Grace@fcc.gov' <[Neil.Grace@fcc.gov](mailto:Neil.Grace@fcc.gov)>; 'Richard.Welch@fcc.gov' <[Richard.Welch@fcc.gov](mailto:Richard.Welch@fcc.gov)>; 'Robert.McDowell@fcc.gov' <[Robert.McDowell@fcc.gov](mailto:Robert.McDowell@fcc.gov)>; 'Sharon.Gillett@fcc.gov' <[Sharon.Gillett@fcc.gov](mailto:Sharon.Gillett@fcc.gov)>; 'Sharon.Kelley@fcc.gov' <[Sharon.Kelley@fcc.gov](mailto:Sharon.Kelley@fcc.gov)>; 'Stephanie.Weiner@fcc.gov' <[Stephanie.Weiner@fcc.gov](mailto:Stephanie.Weiner@fcc.gov)>; 'Suzanne.Tetreault@fcc.gov' <[Suzanne.Tetreault@fcc.gov](mailto:Suzanne.Tetreault@fcc.gov)>; 'Zachary.Katz@fcc.gov' <[Zachary.Katz@fcc.gov](mailto:Zachary.Katz@fcc.gov)>; 'john.Ingle@fcc.gov' <[john.Ingle@fcc.gov](mailto:john.Ingle@fcc.gov)>; 'prosoftwarepack@yahoo.com' <[prosoftwarepack@yahoo.com](mailto:prosoftwarepack@yahoo.com)>; 'robert.ratcliffe@fcc.gov' <[robert.ratcliffe@fcc.gov](mailto:robert.ratcliffe@fcc.gov)>; 'Nicholas.Degani@fcc.gov' <[Nicholas.Degani@fcc.gov](mailto:Nicholas.Degani@fcc.gov)>; 'nick.degani@fcc.gov' <[nick.degani@fcc.gov](mailto:nick.degani@fcc.gov)>; 'Amy.Bender@fcc.gov' <[Amy.Bender@fcc.gov](mailto:Amy.Bender@fcc.gov)>; 'Deanne.Erwin@fcc.gov' <[Deanne.Erwin@fcc.gov](mailto:Deanne.Erwin@fcc.gov)>; 'eric.botker@fcc.gov' <[eric.botker@fcc.gov](mailto:eric.botker@fcc.gov)>; 'MeredithAttwell.Baker@fcc.gov' <[MeredithAttwell.Baker@fcc.gov](mailto:MeredithAttwell.Baker@fcc.gov)>; 'Jo Ann Dobransky' <[JoAnn.Dobransky@arleodonohue.com](mailto:JoAnn.Dobransky@arleodonohue.com)>; 'Pamela Arluk' <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; 'Phillip Okin' <[pokin@giantpackaging.com](mailto:pokin@giantpackaging.com)>; 'phillo@giantpackage.com' <[phillo@giantpackage.com](mailto:phillo@giantpackage.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; 'Deena Shetler' <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'Pamela Arluk' <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; 'Randolph.Smith@fcc.gov' <[Randolph.Smith@fcc.gov](mailto:Randolph.Smith@fcc.gov)>; 'Jay.Keithley@fcc.gov' <[Jay.Keithley@fcc.gov](mailto:Jay.Keithley@fcc.gov)>; 'David.Gossett@fcc.gov' <[David.Gossett@fcc.gov](mailto:David.Gossett@fcc.gov)>; 'Eddie.Lazarus@fcc.gov' <[Eddie.Lazarus@fcc.gov](mailto:Eddie.Lazarus@fcc.gov)>; 'Jamilla.ferris@fcc.gov' <[Jamilla.ferris@fcc.gov](mailto:Jamilla.ferris@fcc.gov)>; 'Jane.Halprin@fcc.gov' <[Jane.Halprin@fcc.gov](mailto:Jane.Halprin@fcc.gov)>; 'Jennifer.Tatel@fcc.gov' <[Jennifer.Tatel@fcc.gov](mailto:Jennifer.Tatel@fcc.gov)>; 'Jessica.Rosenworcel@fcc.gov' <[Jessica.Rosenworcel@fcc.gov](mailto:Jessica.Rosenworcel@fcc.gov)>; 'Jim.Bird@fcc.gov' <[Jim.Bird@fcc.gov](mailto:Jim.Bird@fcc.gov)>; 'John.Williams2@fcc.gov' <[John.Williams2@fcc.gov](mailto:John.Williams2@fcc.gov)>; 'Jonathan.Adelstein@fcc.gov' <[Jonathan.Adelstein@fcc.gov](mailto:Jonathan.Adelstein@fcc.gov)>; 'Julie.Veach@fcc.gov' <[Julie.Veach@fcc.gov](mailto:Julie.Veach@fcc.gov)>; 'KJMWEB@fcc.gov' <[KJMWEB@fcc.gov](mailto:KJMWEB@fcc.gov)>; 'Karen.onyeue@fcc.gov' <[Karen.onyeue@fcc.gov](mailto:Karen.onyeue@fcc.gov)>; 'Kay.Richman@fcc.gov' <[Kay.Richman@fcc.gov](mailto:Kay.Richman@fcc.gov)>; 'Linda.Oliver@fcc.gov' <[Linda.Oliver@fcc.gov](mailto:Linda.Oliver@fcc.gov)>; 'Madelein.findley@fcc.gov' <[Madelein.findley@fcc.gov](mailto:Madelein.findley@fcc.gov)>; 'Matthew.Berry@fcc.gov' <[Matthew.Berry@fcc.gov](mailto:Matthew.Berry@fcc.gov)>; 'Meredith.AttwellBaker@fcc.gov' <[Meredith.AttwellBaker@fcc.gov](mailto:Meredith.AttwellBaker@fcc.gov)>; 'Michael.Copps@fcc.gov' <[Michael.Copps@fcc.gov](mailto:Michael.Copps@fcc.gov)>; 'Mignon.Clyburn@fcc.gov' <[Mignon.Clyburn@fcc.gov](mailto:Mignon.Clyburn@fcc.gov)>; 'Mike.ORielly@fcc.gov' <[Mike.ORielly@fcc.gov](mailto:Mike.ORielly@fcc.gov)>; 'Neil.Grace@fcc.gov' <[Neil.Grace@fcc.gov](mailto:Neil.Grace@fcc.gov)>; 'Patrick.Carney@fcc.gov' <[Patrick.Carney@fcc.gov](mailto:Patrick.Carney@fcc.gov)>; 'Richard.Welch@fcc.gov' <[Richard.Welch@fcc.gov](mailto:Richard.Welch@fcc.gov)>; 'Robert.McDowell@fcc.gov' <[Robert.McDowell@fcc.gov](mailto:Robert.McDowell@fcc.gov)>; 'Sharon.Gillett@fcc.gov' <[Sharon.Gillett@fcc.gov](mailto:Sharon.Gillett@fcc.gov)>; 'Sharon.Kelley@fcc.gov' <[Sharon.Kelley@fcc.gov](mailto:Sharon.Kelley@fcc.gov)>; 'Stephanie.Weiner@fcc.gov' <[Stephanie.Weiner@fcc.gov](mailto:Stephanie.Weiner@fcc.gov)>; 'Suzanne.Tetreault@fcc.gov' <[Suzanne.Tetreault@fcc.gov](mailto:Suzanne.Tetreault@fcc.gov)>; 'Zachary.Katz@fcc.gov' <[Zachary.Katz@fcc.gov](mailto:Zachary.Katz@fcc.gov)>; 'john.Ingle@fcc.gov' <[john.Ingle@fcc.gov](mailto:john.Ingle@fcc.gov)>; 'prosoftwarepack@yahoo.com' <[prosoftwarepack@yahoo.com](mailto:prosoftwarepack@yahoo.com)>; 'robert.ratcliffe@fcc.gov' <[robert.ratcliffe@fcc.gov](mailto:robert.ratcliffe@fcc.gov)>; 'Frank Arleo' <[Frank.Arleo@arleodonohue.com](mailto:Frank.Arleo@arleodonohue.com)>; 'Nicholas.Degani@fcc.gov' <[Nicholas.Degani@fcc.gov](mailto:Nicholas.Degani@fcc.gov)>; 'nick.degani@fcc.gov' <[nick.degani@fcc.gov](mailto:nick.degani@fcc.gov)>; 'Amy.Bender@fcc.gov' <[Amy.Bender@fcc.gov](mailto:Amy.Bender@fcc.gov)>; 'Deanne.Erwin@fcc.gov' <[Deanne.Erwin@fcc.gov](mailto:Deanne.Erwin@fcc.gov)>; 'eric.botker@fcc.gov' <[eric.botker@fcc.gov](mailto:eric.botker@fcc.gov)>; 'MeredithAttwell.Baker@fcc.gov' <[MeredithAttwell.Baker@fcc.gov](mailto:MeredithAttwell.Baker@fcc.gov)>; 'Jo Ann Dobransky' <[JoAnn.Dobransky@arleodonohue.com](mailto:JoAnn.Dobransky@arleodonohue.com)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; **'martha\_tomich@cadc.uscourts.gov' <**[**martha\_tomich@cadc.uscourts.gov**](mailto:martha_tomich@cadc.uscourts.gov)**>;** 'Jane.Halprin@fcc.gov' <[Jane.Halprin@fcc.gov](mailto:Jane.Halprin@fcc.gov)>; [jcasello@cvclaw.net](mailto:jcasello@cvclaw.net); 'William Ziff' <[william.ziff@judiciary.state.nj.us](mailto:william.ziff@judiciary.state.nj.us)>; 'Nancy\_Dunn@cadc.uscourts.gov' <[Nancy\_Dunn@cadc.uscourts.gov](mailto:Nancy_Dunn@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; 'Nancy\_Dunn@cadc.uscourts.gov' <[Nancy\_Dunn@cadc.uscourts.gov](mailto:Nancy_Dunn@cadc.uscourts.gov)>; 'jlegnard@nycourts.gov' <[jlegnard@nycourts.gov](mailto:jlegnard@nycourts.gov)>; 'Jane.Halprin@fcc.gov' <[Jane.Halprin@fcc.gov](mailto:Jane.Halprin@fcc.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'nende@tlgdc.com' <[nende@tlgdc.com](mailto:nende@tlgdc.com)>  
**Subject:** Ray---FCC gave me a reference list to DC Orders vs the FCC cases…

This will further make your point to NJFDC…

The FCC reference lists agrees with the positions of DC Legal Director Tomich and FCC General Counsel Austin Schlick that the DC Courts 2005 Order was not a remand. As DC Legal Director Tomich stated: Remands will always say:  **remand.**

Like attached sample. No remand no open issue. Simple.

Notice all the DC Court Orders vs the FCC.

[**https://www.fcc.gov/proceedings-actions/fcc-and-courts**](https://www.fcc.gov/proceedings-actions/fcc-and-courts)

The DC Court can correct the FCC and thus it grants a petition for review.

Here is a sample case of a REMAND: 8/29/17 [Court opinion **remanding** case - SNR Wireless v. FCC](https://docs.fcc.gov/public/attachments/DOC-346423A1.pdf) You will see at the end of they DC Order it says

The DC Order in Inga case simply **corrected the FCC** on account movement…

“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 page 10 Footnote 1

Inga stated DC corrected FCC on account movement. Outcome of Tr8179 resolved obligations.

**“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 is lifted.”  (See Inga 1st br pg 31)

FCC said 2.1.8 was meaningless to traffic only transfers. Sole remaining issue DC corrected:

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.** (Inga 1st br. pg 8 fn 1)

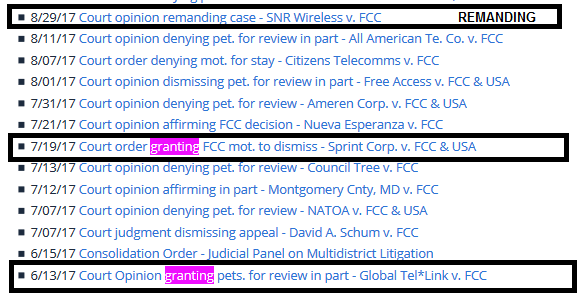
**EXHIBIT E**

DC Court explicit case concluding statements.<https://www.fcc.gov/proceedings-actions/fcc-and-courts>

Below is a screenshot of website that includes list of DC Court reviews of FCC Orders.

No guessing games. **“The petition for review is granted”** is a DC Correction of FCC.

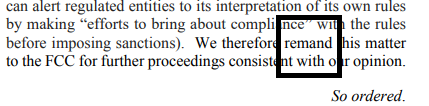
**A DC Court remand is a remand only when it explicitly states it is a remand.**



SAMPLE DC ORDER WHEN IT IS A REMAND:

See sample: 8/29/17 [Court opinion remanding case - SNR Wireless v. FCC](https://docs.fcc.gov/public/attachments/DOC-346423A1.pdf)

PG 46 of DC Order Remand matter to the FCC for further proceedings



**EXHIBIT F**

**1**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **1** |  | **UNITED** | **STATES DISTRICT COURT** | |  |
|  |  | **DISTRICT** | | **OF NEW JERSEY** |  |
| **2** |  | **CIVIL** | **NO. 95-cv-908-SRC-SCM** | |  |
| **3** | **COMBINED** | **COMPANIES, INC.,** | | **MOTION TO LIFT STAY** |  |
|  |  |
| **4** | **a Florida** | **corporation,** |  |  |  |
| **5** | **Plaintiff,** | |  |  |  |

1. **vs.**
2. **AT&T CORP.,**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **8** | **a** | **New** | **York** | **corporation,** | |  |  |  |
|  |  | **Defendant.** | | |  |  |  |
|  |  |  |  |  |  |
| **9** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | | | |  |  |
| **10** |  |  |  |  | **June** | **6,** | **2018** |  |
|  |  |  |  |  |  |
| **11** |  |  |  |  | **Newark,** | | **New Jersey** |  |
| **12** | **B** | **E F** | **O R** | **E:** | **HONORABLE** | **STANLEY R. CHESLER, USDJ** | |  |
| **13** |  |
|  |  |  |  |  |  |  |  |
| **14** |  |  |  |  |  |  |  |  |

1. **Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record**
2. **as taken stenographically in the above-entitled proceedings.**

**17**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **18** | **S/Jacqueline Kashmer** |  |  |  |
|  |  |  |  |
| **19** | **JACQUELINE KASHMER** |  |  |  |
| **20** | **Official Court Reporter** |  |  |  |
|  |  |  |  |
| **21** |  |  |  |  |
| **22** |  |  |  |  |
| **23** | **JACQUELINE** | **KASHMER, C.S.R.** | |  |
|  | **OFFICIAL** | **COURT** | **REPORTER** |  |
| **24** | **P. O. Box** | | **12** |  |
|  | **Pittstown, NJ** | | **08867** |  |
| **25** | **(908)** | **200-1040** | |  |

**2**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **1** |  |  |  |  |  |
| **2** | **A P P E A R A N C E S:** | | | |  |
| **3** |  |  |  |  |  |
| **4** | **RAYMOND** | | **ANDREW** | **GRIMES, ESQ.** |  |
|  | **1367** | **Route 202** | | **North** |  |
| **5** | **Neshanic Station, NJ 08853** | | | |  |
| **6** | **For** | **the** | **Plaintiff** | |  |
|  |  |  |  |  |
| **7** | **DAY** | **PITNEY, LLP** | | |  |
|  |  |
| **8** | **One** | **Jefferson** | | **Road** |  |
|  | **Parsippany, NJ** | | | **07014** |  |
| **9** | **BY: RICHARD H. BROWN, III, ESQ.** | | | |  |
| **10** |  |  | **AND** |  |  |
| **11** | **SIDLEY** | | **AUSTIN,** | **LLP** |  |
|  | **1501** | **K** | **Street,** | **N.W.** |  |
| **12** | **Washington, DC** | | | **20005** |  |
|  | **BY: JAMES F. BENDERNAGEL, JR., ESQ.** | | | |  |
| **13** | **For** | **the** | **Defendant** | |  |
| **14** |  |  |  |  |  |
| **15** |  |  |  |  |  |
| **16** |  |  |  |  |  |
| **17** |  |  |  |  |  |
| **18** |  |  |  |  |  |
| **19** |  |  |  |  |  |
| **20** |  |  |  |  |  |
| **21** |  |  |  |  |  |
| **22** |  |  |  |  |  |
| **23** |  |  |  |  |  |
| **24** |  |  |  |  |  |
| **25** |  |  |  |  |  |
|  |  |  |  |  |  |

**3**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **1** | **DEPUTY CLERK: This is Combined Companies vs. AT&T,** | | | |
| **2** | **95-908. Please note your appearances for the record.** | | | |
| **3** | **MR. GRIMES: Your Honor, Raymond Grimes here on** | | | |
| **4** | **behalf of Combined Companies, Inc.** | |  |  |
| **5** | **MR. BROWN:** | **Good afternoon, your Honor.** | **For** | |
| **6** | **defendant AT&T, Richard Brown from Day Pitney.** | | **To** | **my left** |
| **7** | **is James Bendernagel from the Sidley Austin firm.** | | | **He's** |
| **8** | **been admitted pro hac vice and just because I know** | | | **your** |
| **9** | **Honor is quite new** | **to the case, Combined Companies** | | **itself** |

1. **is a party that was dropped a long time ago. The actual**
2. **plaintiffs are the four other plaintiff entities.**

|  |  |
| --- | --- |
| **12** | **THE COURT: I understand that. Okay. Counsel, first** |

1. **of all, please make sure that you speak into the**
2. **microphone. Okay.**

|  |  |
| --- | --- |
| **15** | **Now, as you are aware, Judge Wigenton recused herself** |

1. **in this case and it has been reassigned to me, and I have**
2. **before me a motion to, in fact, lift the stay that was**
3. **previously imposed in this case.**

|  |  |  |
| --- | --- | --- |
| **19** | **Now, my first question is, Mr. Grimes --** | |
| **20** | **MR. GRIMES:** | **Yes.** |
| **21** | **THE COURT: -- your moving brief doesn't have any** | |
| **22** | **signature on it.** |  |
| **23** | **MR. GRIMES: I thought that was corrected, your** | |
| **24** | **Honor.** |  |
| **25** | **THE COURT:** | **What I have does not have any signature** |

**4**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **1** | **on it, and this was just printed off the docket just** | | | | |  |
| **2** | **moments ago.** |  |  |  |  |  |
| **3** | **If you could just -- Miss Trivino, if you could** | | | | |  |
| **4** | **please hand that to Mr. Grimes, I would appreciate it.** | | | | | |
| **5** | **Your reply brief apparently does, but the moving** | | | | | |
| **6** | **brief does not.** | |  |  |  |  |
| **7** | **MR. GRIMES:** | | **Your Honor, I'm sorry.** | | **I thought** | **that** |
| **8** | **was corrected** | **when** | **we submitted the reply brief also.** | | | **What** |
| **9** | **would you like** | **me** | **to do, your Honor?** | **Would** | **you like me** | |
| **10** | **to --** |  |  |  |  |  |
| **11** | **THE COURT: Well, it's usual to sign.** | | | |  |  |
| **12** | **MR. GRIMES: -- the papers then.** | | | |  |  |
| **13** | **THE COURT: And as counsel for defendant pointed out,** | | | | | |
| **14** | **that brief is a little bit strange --** | | |  |  |  |
| **15** | **MR. GRIMES: It is, your Honor.** | | |  |  |  |
| **16** | **THE COURT: -- because it references conversations** | | | | | |
| **17** | **which the author had with various individuals.** | | | | |  |
| **18** | **MR. GRIMES: Your Honor, I believe this was supposed** | | | | | |
| **19** | **to be signed by Mr. Inga and that --** | | |  |  |  |
| **20** | **THE COURT:** | | **Signed by who?** |  |  |  |
| **21** | **MR. GRIMES: Mr. Inga as a certification, and I** | | | | |  |
| **22** | **thought that that was submitted.** | | |  |  |  |
| **23** | **THE COURT:** | | **Well, what's there** | **does not purport** | | **to be** |

1. **a certification. What's there purports to be your moving**
2. **brief and, as counsel for defendant pointed out at page two**

**5**

|  |  |  |
| --- | --- | --- |
| **1** | **of defense brief, it appears that it refers to Mr. Inga in** | |
| **2** | **the** | **first person.** |
| **3** |  | **MR. GRIMES: Yes, it does, your Honor.** |
| **4** |  | **THE COURT: For example, at page five, referring to** |
| **5** | **what someone from the tax bar council told me on almost an** | |
| **6** | **hour** | **phone call.** |
| **7** |  | **Now, did you have a conversation with somebody from** |
| **8** | **the** | **tax bar?** |
| **9** |  | **MR. GRIMES: No, I did not.** |
| **10** |  | **THE COURT: Okay. And at page nine it refers to FCC** |

1. **e-mails to myself and counsel Frank Arleo, and I assume**
2. **those e-mails were not to you.**

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **13** | **MR. GRIMES: Not to me, your Honor.** | | | | | | | |  |  |  |
| **14** | **THE** | **COURT:** | **Okay.** | **So, how** | | **did** | **this** | | **find** | **its way** | **into** |
| **15** | **a brief?** |  |  |  |  |  |  |  |  |  |  |
| **16** | **MR. GRIMES:** | | **Your** | **Honor, I** | | **apologize** | | | **for** | **that.** | **It** |
| **17** | **was supposed to be a certification and it's not.** | | | | | | | | | |  |
| **18** | **THE** | **COURT:** | **No, it's** | | **not.** | **It's** | **a** | **brief.** | |  |  |
| **19** | **MR.** | **GRIMES:** | **It's** | **a** | **brief.** |  |  |  |  |  |  |
| **20** | **THE** | **COURT:** | **Before** | **we actually** | | | **get** | **to the** | | **merits, the** | |

1. **other thing which strikes me is there are a number of**
2. **references to Judge Bassler, and I see that Judge Bassler**
3. **denied a prior application to lift this stay and wrote an**
4. **opinion on that, if I recall correctly.**

|  |  |
| --- | --- |
| **25** | **MR. GRIMES: He did, your Honor.** |

**6**

|  |  |
| --- | --- |
| **1** | **THE COURT: All right. When I see references to** |

**2** **Judge Bassler, I mean, I, quite frankly, am taken a bit**

1. **aback because there's no "Judge" in front of "Bassler."**
2. **There is "Bassler," "Bassler was defrauded", "Bassler was**
3. **fooled", "Bassler" whatever.**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **6** | **Is that how** | **you, in your practice in court, refer to** | | | | |
| **7** | **judges who have made decisions?** | | |  |  |  |
| **8** | **MR. GRIMES:** | **No, your** | **Honor.** | |  |  |
| **9** | **THE COURT:** | **I didn't** | **think** | **so. Are** | **those** | **Mr. Inga's** |
| **10** | **words?** |  |  |  |  |  |
| **11** | **MR. GRIMES:** | **They are, your** | | **Honor,** | **and I** | **should have** |

1. **gone over them a little more thoroughly before submitting**
2. **the papers. There was no disrespect meant, your Honor.**

|  |  |
| --- | --- |
| **14** | **THE COURT: Well, I honestly have to tell you that I,** |

1. **quite frankly, am a bit dismayed that an officer of this**
2. **court would refer to a federal district judge in such a,**
3. **quite frankly, disrespectful manner.**

|  |  |
| --- | --- |
| **18** | **MR. GRIMES: Your Honor, it was not my -- I should** |

1. **have gone over it. There was no disrespect meant. It was**
2. **my -- it was my oversight.**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **21** | **THE COURT:** | **Well** | **--** |  |  |  |
| **22** | **MR. GRIMES:** | **My** | **oversight.** | **I take** | **responsibility** | **for** |
| **23** | **it.** |  |  |  |  |  |
| **24** | **THE COURT: I must tell you** | | | **-- all** | **right -- Mr.** |  |
| **25** | **Grimes, let me ask** | **you** | **this. When** | **were you admitted to** | | **the** |

**7**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **bar?** |  |  |  |  |  |  |  |  |
| **2** | **MR. GRIMES:** | **1988.** |  |  |  |  |  |  |  |
| **3** | **THE COURT:** | **So, that's** | | **30 years?** |  |  |  |  |  |
| **4** | **MR. GRIMES:** | **Yes,** | **your** | **Honor.** |  |  |  |  |  |
| **5** | **THE COURT:** | **And you're** | | **admitted** | **in** | **this** | | **court?** | |
| **6** | **MR. GRIMES:** | **Yes,** | **your** | **Honor.** |  |  |  |  |  |
| **7** | **THE COURT:** | **And you're** | | **admitted** | **in** | **the** | **Superior** | | |
| **8** | **Courts of the state of New Jersey?** | | | |  |  |  |  |  |
| **9** | **MR. GRIMES:** | **Yes,** | **your** | **Honor.** |  |  |  |  |  |
| **10** | **THE COURT:** | **Okay.** | **I take a look** | | **at** | **this** | | **and** | **I have** |
| **11** | **to ask myself, did you write these briefs?** | | | | | |  |  |  |
| **12** | **MR. GRIMES:** | **Your** | **Honor, I reviewed** | | | **a** | **lot of** | | **the --** |

1. **I've reviewed all the papers. Mr. Inga has lived this for**
2. **the last 23 years, so, a lot of the factual basis came from**
3. **Mr. Inga.**

|  |  |  |  |
| --- | --- | --- | --- |
| **16** | **THE** | **COURT:** | **Okay.** |
| **17** | **MR. GRIMES: It's mostly facts and citations from** | | |
| **18** | **prior rulings by the FCC and other courts.** | | |
| **19** | **THE** | **COURT:** | **Now, Mr. Grimes, when you submit** |

1. **something to this Court in your name, you're subject to**
2. **Rule 11. You know that, don't you? Correct?**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **22** | **MR.** | **GRIMES:** | **Correct,** | **your** | **Honor.** |
| **23** | **THE** | **COURT:** | **And that** | **means** | **that when you submit** |

1. **something like this, it is your reputation and your**
2. **professionalism which is on the line. Do you understand**

**8**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **that?** |  |  |  |  |  |  |
| **2** | **MR. GRIMES: I understand, your Honor, yes.** | | | | | |  |
| **3** | **THE COURT: Now, you've read this brief?** | | | | |  |  |
| **4** | **MR. GRIMES:** | **I have read the brief, yes.** | | | | **Yes.** | |
| **5** | **THE COURT: I can't count the number of times that** | | | | | | |
| **6** | **this moving brief and your reply brief refer to your** | | | | | | |
| **7** | **adversaries as liars, as people who have schemed, have** | | | | | | |
| **8** | **engaged in fraud, and similar ad hominem types of attacks.** | | | | | | |
| **9** | **And let me ask you** | **something.** | | **Is my** | **description** | **of** | **this** |
| **10** | **incorrect?** |  |  |  |  |  |  |
| **11** | **MR. GRIMES:** | **No,** | **your Honor.** | |  |  |  |
| **12** | **THE COURT:** | **Well,** | **I've** | **got to** | **tell you, that** | | **type of** |

1. **ad hominem attack on one's adversary does not promote**
2. **professionalism and collegiality in a profession.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **15** | **MR.** | **GRIMES:** | **Agreed,** | **your Honor.** |
| **16** | **THE** | **COURT:** | **And since** | **I have been blessed with this** |

1. **case now, what I will tell you is this will not be**
2. **tolerated.**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **19** | **MR.** | **GRIMES:** | **Understood, your** | **Honor.** |  |
| **20** | **THE** | **COURT:** | **Your adversaries** | **have to** | **be treated with** |

1. **respect. I, quite frankly, note that their opposition**
2. **papers contain nothing that are even remotely similar to**
3. **what these papers contain and, indeed, their reaction, if**
4. **anything, was mild, which was that footnote which, on**
5. **footnote one on page two, which referred to, in temperate**

**9**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **language,** | **baseless claims of fraud, and went on from** | **there.** |
| **2** | **Now, let me see if I understand what the history of** | | |
| **3** | **this case** | **is.** |  |
| **4** | **As I understand it, there was an effort by various** | | |
| **5** | **companies** | **which Mr. Inga owned or controlled to come** | **up** |
| **6** | **with an arrangement whereby the telephone traffic that his** | | |
| **7** | **companies** | **had under an AT&T tariff would be given to** | **the** |

1. **Combined Companies, Inc., and the Combined Companies, Inc.,**
2. **were then going to seek to have just the traffic but not**
3. **the plans transferred --**

|  |  |  |  |
| --- | --- | --- | --- |
| **11** | **MR.** | **GRIMES:** | **Correct.** |
| **12** | **THE** | **COURT:** | **-- to another company, and that other** |

1. **company had a much better tariff agreement with AT&T**
2. **because it had been individually negotiated to create a**
3. **more substantial discount for the 800 number traffic that**
4. **was involved. Is that correct?**

|  |  |  |  |
| --- | --- | --- | --- |
| **17** | **MR.** | **GRIMES:** | **That is correct.** |
| **18** | **THE** | **COURT:** | **My understanding is that that particular** |

1. **company, and when that deal was set up, AT&T refused to**
2. **accept the traffic and the transfer. Is that correct?**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **21** | **MR. GRIMES:** | **That** | **is** | **correct.** |
| **22** | **THE COURT: As a result, the Combined Companies, Inc.** | | | |
| **23** | **and Mr. Inga's companies sued AT&T in this court.** | | | |
| **24** | **MR. GRIMES:** | **That** | **is** | **correct.** |
| **25** | **THE COURT:** | **And if** | **I** | **recall correctly, at some point** |

**10**

|  |  |  |
| --- | --- | --- |
| **1** | **Judge Politan issued an order directing AT&T -- well, first** | |
| **2** | **of all, as I understand it, Judge Politan concluded that** | |
| **3** | **the key issue at stake was an issue of tariff** | |
| **4** | **interpretation. Correct?** | |
| **5** | **MR. GRIMES:** | **Yes.** |
| **6** | **THE COURT: And that the tariff involved was Tariff** | |
| **7** | **2. Is that correct?** | |
| **8** | **MR. GRIMES:** | **Correct.** |
| **9** | **THE COURT:** | **And he concluded that under the primary** |

1. **jurisdiction doctrine, that that should be referred to the**
2. **FCC to interpret whether or not this transfer was**
3. **permissible under Tariff No. 2. Is that correct?**

|  |  |
| --- | --- |
| **13** | **MR. GRIMES: Well, he said that there was nothing** |

1. **prohibiting the traffic from transferring, but he referred**
2. **it to the FCC for purposes of the obligations, whether all**
3. **obligations also had to transfer and the plan had to**
4. **transfer, but --**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **18** | **THE** | **COURT:** | **Okay.** | **So, the** | **answer** | **is** | **yes,** | **he referred** |
| **19** | **it to the** | **FCC.** |  |  |  |  |  |  |
| **20** | **MR.** | **GRIMES:** | **Yes.** |  |  |  |  |  |
| **21** | **THE** | **COURT:** | **Okay.** | **I gather** | **that** | **he** | **then** | **concluded** |

1. **that he was going to issue an order requiring AT&T to**
2. **accept the transfer pending FCC's determination on this.**
3. **Is that correct?**

|  |  |
| --- | --- |
| **25** | **MR. GRIMES: That he did.** |

**11**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **1** | **THE COURT:** | **Okay. That** | **was appealed by AT&T** | | **to** | **the** |
| **2** | **Third Circuit Court of Appeals and in an unpublished** | | | | |  |
| **3** | **opinion Judge Politan was reversed on that issue.** | | | | **Is** | **that** |
| **4** | **correct?** |  |  |  |  |  |
| **5** | **MR. GRIMES: What happened was AT&T had withdrawn** | | | | | |
| **6** | **Tariff 8179, which contained any and all defenses that they** | | | | | |
| **7** | **would have had in this matter,** | | **so, it** | **never became** | **part of** | |
| **8** | **a tariff.** |  |  |  |  |  |
| **9** | **It took them** | **so long to** | **do this** | **because Judge Politan** | | |

1. **had decided that 8179 was going to control this case when**
2. **it was out of the FCC, but then it was withdrawn by AT&T.**

|  |  |
| --- | --- |
| **12** | **Judge Politan, in another motion that was filed with** |

1. **him, and it was for injunctive relief, Judge Politan**
2. **entered injunctive relief because AT&T had then filed a**
3. **different tariff after they withdrew 8179 and Judge Politan**
4. **said either counsel just completely misunderstood what his**
5. **ruling was in the prior matter and just wanted to include**
6. **either the entire kitchen sink or it was something that was**
7. **done intentionally to avoid having to comply with the prior**
8. **ruling where Judge Politan ordered them to get**
9. **clarification from the FCC, and it had been 140 days since**
10. **that time and nothing had been done, so, Judge Politan**
11. **said, I'm going to now basically interpret it because,**
12. **quite frankly, 218 doesn't really need -- in such layman's**
13. **terms, it really doesn't need interpretation, so, he**

**12**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **decided to interpret himself and ruled in favor of** | **the** |  |
| **2** | **plaintiff, and then that decision was taken to the** | **Third** | |
| **3** | **Circuit and the Third Circuit said, No, it's going** | **to** | **go to** |
| **4** | **the FCC.** |  |  |
| **5** | **THE COURT: The Third Circuit held that Judge** | |  |
| **6** | **Politan's granting of that injunction was in conflict** | | **with** |

1. **his determination that primary jurisdiction required the**
2. **matter to be sent to the FCC. Correct?**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **9** | **MR. GRIMES:** | **I'm** | **sorry,** | | **your Honor.** | | **You** | **have to** |
| **10** | **repeat that.** |  |  |  |  |  |  |  |
| **11** | **THE COURT:** | **Okay.** | **Do** | **me** | **a** | **favor, is** | **that** | **Mr. Inga** |
| **12** | **next to you?** |  |  |  |  |  |  |  |
| **13** | **MR. GRIMES:** | **Yes,** | **it** | **is.** |  |  |  |  |
| **14** | **THE COURT:** | **Tell** | **Mr.** | **Inga,** | | **all right,** | **he** | **is there to** |

1. **sit. When he gets a law license, he can stand. And the**
2. **next time he decides ghost write a brief and submit it to**
3. **the Court, he can expect that the Court will see clearly**
4. **that he, in fact, is the author and determine whether or**
5. **not Rule 11 sanctions should be imposed on the client.**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **20** | **Understand** | **that,** | **Mr.** | **Inga?** | |
| **21** | **MR. INGA:** | **Your** | **Honor** | **--** |  |
| **22** | **MR. GRIMES:** | **Just --** | |  |  |
| **23** | **THE COURT:** | **Mr. Inga,** | | **do** | **you understand, you are not** |

1. **a lawyer. Your corporations cannot proceed pro se. All**
2. **right. And your efforts at lawyering, as reflected in**

**13**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **these papers, leave an awful lot to be desired, to put it** | | |
| **2** | **charitably. So --** |  |  |
| **3** | **MR. INGA:** | **Your Honor, I agree with you.** | **The** |
| **4** | **frustration level was over -- overwhelming, and just the** | | |
| **5** | **only comment I would like to make, I did use "Bassler", not** | | |
| **6** | **in a derogatory sense. I understand your point.** | | **It was** |
| **7** | **simply one reason. I was looking to try to get in as much** | | |
| **8** | **content into the page cap as possible and I simply said** | | |
| **9** | **"Bassler" instead of "Judge Bassler."** | |  |
| **10** | **I can understand where you --** | |  |
| **11** | **THE COURT:** | **Mr. Inga --** |  |
| **12** | **MR. INGA:** | **-- was thinking I was being derogatory.** | |
| **13** | **THE COURT:** | **Mr. Inga, let me tell you something.** | |

1. **Okay. You have put Mr. Grimes in an extremely difficult**
2. **situation. Okay. I am being kind.**

|  |  |
| --- | --- |
| **16** | **Mr. Grimes knows perfectly well what this Court could** |

1. **do in terms of referring matters for discipline and**
2. **otherwise as a result of what has been submitted to the**
3. **Court. So, please, sit there, keep quiet, and don't try**
4. **being a lawyer again.**

|  |  |  |
| --- | --- | --- |
| **21** | **MR. INGA:** | **Your Honor, I did transfer ownership for** |

1. **my corporation to me personally to answer any questions**
2. **that you might have on a pro se basis.**

|  |  |
| --- | --- |
| **24** | **As a corporate officer, I recognize that I have to be** |
| **25** | **represented by a counsel, my corporations.** |

**14**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **1** | **What I did do was my corporation -- one of the** | | | | | |
| **2** | **corporations -- there's four of them -- did transfer a** | | | | | |
| **3** | **personal percentage to me** | **as** | **an individual.** | | | **This way I** |
| **4** | **could answer any particular questions that you had and on a** | | | | | |
| **5** | **pro se basis, because the** | **case is very voluminous and I** | | | | |
| **6** | **lived it for 23 years. I** | **can** | **answer every** | | | **question that** |
| **7** | **you had if Mr. Grimes was** | **not** | **able to and, so, I did** | | | |
| **8** | **prepare a document that would** | | **allow me to answer any** | | | |
| **9** | **questions for you, and I will** | | **do it** | **on** | **a professional** | |
| **10** | **basis.** |  |  |  |  |  |
| **11** | **And I, again, I do** | **apologize** | | **for** | **the** | **"Bassler"** |

1. **citation. I can understand it coming off as derogatory or**
2. **demeaning. It wasn't done that way. It was simply word**
3. **count, trying to get as much content in the 30-page**
4. **allotment or the 15-page allotment that I was required.**
5. **I'm sorry.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **17** | **THE COURT:** | **Okay.** | **Now, Mr. Grimes --** | |
| **18** | **MR. GRIMES:** | **Yes,** | **sir.** |  |
| **19** | **THE COURT: -- Judge Politan was** | | | **reversed.** |
| **20** | **MR. GRIMES:** | **The** | **underlying 1995** | **order was never** |

1. **appealed or reversed. It was only the injunction from**
2. **1996.**

|  |  |  |  |
| --- | --- | --- | --- |
| **23** | **THE COURT: The injunction was reversed.** | | |
| **24** | **MR. GRIMES:** | **Yes,** | **that was.** |
| **25** | **THE COURT:** | **Judge** | **Hedges issued an order staying this** |

**15**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **case pending FCC resolution of** | | | | **the matter.** | | **Correct?** | |
| **2** |  | **MR. GRIMES:** | | **Right.** |  |  |  |  |
| **3** |  | **THE** | **COURT:** | **Fine. The next significant matter here** | | | | |
| **4** | **is that before the FCC did anything, CCC, in fact, settled** | | | | | | | |
| **5** | **with** | **AT&T.** | **Correct?** | |  |  |  |  |
| **6** |  | **MR. GRIMES:** | | **Correct.** |  |  |  |  |
| **7** |  | **THE COURT: And that was 15 years ago.** | | | | | |  |
| **8** |  | **MR. GRIMES: Then the matter -- the matter was not** | | | | | | |
| **9** | **taken up by the FCC. The FCC believed that all issues had** | | | | | | | |
| **10** | **been resolved because of that settlement.** | | | | | |  |  |
| **11** |  | **THE** | **COURT:** | **Mr. Grimes,** | **answer** | **my question.** | | **About 15** |
| **12** | **years** | **ago.** |  |  |  |  |  |  |
| **13** |  | **MR. GRIMES:** | | **Yes.** |  |  |  |  |
| **14** |  | **THE** | **COURT:** | **Fine. Seven** | **years** | **after** | **it was** | **referred** |

1. **to the FCC, the FCC finally came down with a decision. Is**
2. **that correct?**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **17** | **MR.** | **GRIMES:** | **That's** | **correct.** |
| **18** | **THE** | **COURT:** | **Okay.** | **During that period of time, did** |

1. **Mr. Inga's companies contact the FCC to try to get a**
2. **decision?**

|  |  |  |  |
| --- | --- | --- | --- |
| **21** | **MR. GRIMES: Your Honor,** | **I was --** | **I believe they did.** |
| **22** | **I was not counsel back --** |  |  |
| **23** | **THE COURT: Did they file a mandamus?** | | |
| **24** | **MR. GRIMES: There was a** | **petition** | **made to the D.C.** |
| **25** | **Circuit Court.** |  |  |

**16**

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **THE COURT:** | | **Mr.** | **Inga** | | **is** | **--** | |  |  |  |  |
| **2** | **MR. GRIMES:** | | **Not** | **for** | | **mandamus.** | | |  |  |  |  |
| **3** | **THE COURT:** | | **-- vigorously** | | | | | **--** |  |  |  |  |
| **4** | **MR. INGA:** | | **Sir, I did this. Can I please answer** | | | | | | | | | |
| **5** | **your question for you?** | | | **I** | **will** | | **clear** | | **it** | **up.** | **Can** | **I give** |
| **6** | **this to you, submit it to** | | | | **the** | | **Court?** | |  |  |  |  |
| **7** | **THE COURT:** | | **First of all, please don't and, second of** | | | | | | | | | |
| **8** | **all, I don't get anything** | | | | **until** | | | **opposing** | | **counsel** | | **sees what** |
| **9** | **you're handing** | **up.** | **Okay.** | |  |  |  |  |  |  |  |  |
| **10** | **While we** | **are** | **doing** | | **that,** | | | **does** | **anybody** | | **have** | **the** |

1. **citation to the D.C. Circuit's decision reversing the FCC**
2. **on this? I looked at it last night. Unfortunately, I left**
3. **some papers back in my car.**

|  |  |
| --- | --- |
| **14** | **MR. GRIMES: Your Honor, just first, there was never** |
| **15** | **a reversal of the FCC by the D.C. Circuit Court.** |
| **16** | **THE COURT: Excuse me. That is patently incorrect** |

1. **and that is patently a mischaracterization of what the D.C.**
2. **Circuit did. The D.C. Circuit concluded that the FCC had**
3. **made a totally erroneous decision. That's what reversal**
4. **is.**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **21** | **MR. GRIMES: They** | | **-- well, here,** | | **your Honor.** |
| **22** | **THE COURT:** | **Mr. Grimes, Mr. Grimes --** | | | |
| **23** | **MR. GRIMES: Yes,** | | **your** | **Honor.** |  |
| **24** | **THE COURT:** | **-- the FCC** | | **reached a** | **determination that** |
| **25** | **the tariff did not apply at all to this** | | | | **transfer. Correct?** |

**17**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **MR.** | **GRIMES:** | **No, that's** | | **not** | **correct.** |  |  |
| **2** | **THE** | **COURT: Do you** | | **have** | **the** | **--** |  |  |
| **3** | **MR.** | **GRIMES:** | **Your Honor, I have the citation.** | | | | |  |
| **4** | **THE** | **COURT: Please** | | **give** | **it** | **to me.** |  |  |
| **5** | **MR.** | **GRIMES:** | **I have the** | | **citation.** | |  |  |
| **6** | **THE** | **COURT: Please** | | **give** | **it** | **to me.** |  |  |
| **7** | **MR.** | **GRIMES:** | **394.** |  |  |  |  |  |
| **8** | **THE** | **COURT:** | **394.** |  |  |  |  |  |
| **9** | **MR.** | **GRIMES:** | **F.3d.** |  |  |  |  |  |
| **10** | **THE** | **COURT:** | **F.3d.** |  |  |  |  |  |
| **11** | **MR.** | **GRIMES:** | **933.** |  |  |  |  |  |
| **12** | **THE** | **COURT:** | **933.** | **The final** | | **paragraph of** | **the** | **decision** |
| **13** | **reads as follows:** | |  |  |  |  |  |  |
| **14** | **"In** | **sum, the** | **FCC clearly** | | **erred in ruling** | | **that** | **Section** |

1. **2.1.8 of AT&T's tariff FCC number 2 does not apply to a**
2. **transfer of 'traffic'. As this was the threshold**
3. **determination of the FCC's order, we do not reach the**
4. **remaining issues addressed by the commission and argued by**
5. **the parties before us. We also do not decide precisely**
6. **which obligation should have been transferred in this case,**
7. **as this question was neither addressed by the commission,**
8. **nor adequately presented to us. All we decide is that**
9. **Section 2.1.8 cannot be read to allow parties to transfer**
10. **the benefits associated with 800 service without assuming**
11. **any obligations. The petition for review is granted."**

**18**

|  |  |  |
| --- | --- | --- |
| **1** | **That is a very nice way of saying that the FCC's** | |
| **2** | **determination was reversed.** | |
| **3** | **Now, the footnote then goes on to say in Footnote No.** | |
| **4** | **2, "At oral argument,** | **AT&T's counsel repeatedly stated that** |
| **5** | **Tariff No. 2 expressly required PSE" -- which is the entity** | |
| **6** | **which was essentially** | **the recipient of these transfers --** |
| **7** | **"to assume the volume** | **commitments that form the heart of** |

1. **AT&T's concerns in this case. See transcript of oral**
2. **argument at 11 and 13. In a motion submitted after the**
3. **argument, however, the Inga companies note that the only**
4. **obligations enumerated by Section 2.1.8 are outstanding**
5. **indebtedness for the service" and "the unexpired portion of**
6. **any applicable minimum payment period". Intervenor's**
7. **motion to clarify and correct the facts of the record at**
8. **four. How this enumeration affect the requirements that**
9. **new customers assume "all obligations of the former**
10. **customers", emphasis added, "is beyond the scope of our**
11. **opinion."**

|  |  |
| --- | --- |
| **19** | **Now, that clearly sent this matter back to the FCC.** |

1. **All right. Subsequently, a motion was made before Judge**
2. **Bassler to lift the stay. Judge Bassler wrote an**
3. **opinion --**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **23** | **MR.** | **GRIMES:** | **I** | **see** | **that.** |
| **24** | **THE** | **COURT:** | **--** | **and** | **his opinion, among other things,** |
| **25** | **if I recall correctly, referred to some of the aspects of** | | | | |

**19**

**1** **the D.C. Circuit's opinion that I just referred to, and he**

1. **concluded that the FCC's role under the primary**
2. **jurisdiction doctrine still continued; in short, that an**
3. **interpretation of what requirements Section 2.1.8 impose**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **5** | **concerning the assumption of all obligations of the former** | | | | | |
| **6** | **customer was something which the FCC in the first instance** | | | | | |
| **7** | **should determine. Is that not correct?** | | | | |  |
| **8** | **MR. GRIMES:** | | **Yes,** | **your Honor.** | |  |
| **9** | **THE** | **COURT:** | **Fine.** | **Now,** | **he denied that.** | **That's** |
| **10** | **somewhere** | **around 2005.** | |  |  |  |
| **11** | **MR. GRIMES:** | | **Your** | **Honor, it's our position that --** | | |
| **12** | **THE COURT: Let me -- please answer my question.** | | | | | |
| **13** | **2005.** |  |  |  |  |  |
| **14** | **MR. GRIMES:** | | **2005.** |  |  |  |
| **15** | **THE** | **COURT:** | **Okay.** | **Fine.** | **Now, nothing** | **happens after** |

1. **that for years in terms of the FCC issuing a decision.**
2. **Correct?**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **18** | **MR.** | **GRIMES:** | **Correct.** | |  |  |
| **19** | **THE** | **COURT:** | **Fine.** |  |  |  |
| **20** | **MR. GRIMES:** | | **But** | **there** | **was an** | **opinion in 2007 as a** |
| **21** | **result of the referral by Judge Bassler to the FCC.** | | | | | |
| **22** | **MR. BENDERNAGEL:** | | | **Your** | **Honor,** | **Jim Bendernagel. Can I** |

1. **just fill in a blank because the statement that he said**
2. **nothing happened isn't accurate as to what occurred during**
3. **this time period and rather than wait till the end and then**

**20**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **have** | **to** | **go back to the beginning** | | | **of** | **this story, can** | **I** | **just** |
| **2** | **fill** | **in** | **the blank?** |  |  |  |  |  |  |
| **3** |  | **THE COURT:** | | **Go right** | **ahead.** | |  |  |  |
| **4** |  | **MR. BENDERNAGEL: As** | | | **I understand it, Judge Bassler** | | | | |
| **5** | **had** | **two** | **decisions** | **in 2006,** | **along** | **the** | **lines of what** | **you** | **just** |

1. **stated because they asked for reconsideration, and he**
2. **denied that.**

|  |  |
| --- | --- |
| **8** | **At that juncture they went back to the FCC and, in** |
| **9** | **September of 2006, filed a fairly lengthy document asking** |

1. **for guidance from the FCC on the issue that Judge Bassler**
2. **had referred.**

|  |  |
| --- | --- |
| **12** | **AT&T responded to that in December with a fairly** |

1. **lengthy brief and in that brief, we pointed out that there**
2. **was a -- that they were trying to expand the referral by**
3. **adding some additional issues and the Inga companies, the**
4. **plaintiffs at that juncture, filed a motion in late**
5. **September of 2006, to ask for a brief time period in which**
6. **to go back to Judge Bassler and ask, Do you want these**
7. **other issues addressed?**

|  |  |
| --- | --- |
| **20** | **And in early January the FCC said, No, that they** |

1. **understood what Judge Bassler wanted and liked. That**
2. **decision is attached to the brief that we put in. And they**
3. **gave them a short period of time to reply, at which point**
4. **there was a lot more activity in the docket where there was**
5. **an attempt to expand the number of issues that were before**

**21**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **1** | **the Court, and then from** | | | **about 2008 to about 2014, there** | | |
| **2** | **wasn't much activity. That's my understanding.** | | | | | |
| **3** | **THE COURT:** | | **Okay.** | **Thank you.** | **Now, that's followed** | |
| **4** | **by an application** | | **before** | **Judge Wigenton,** | | **an application to** |
| **5** | **lift the stay, and Judge** | | | **Wigenton denied** | | **that application** |
| **6** | **in an oral decision and then did a short** | | | | | **memorandum opinion** |
| **7** | **in connection** | **with** | **that.** |  |  |  |
| **8** | **And the** | **gist of it** | | **was, as I** | **understood it, that the** | |

1. **same reasons which warranted the District Court in**
2. **referring this matter to the FCC to start off with was**
3. **still relevant, which is to determine, indeed, what**
4. **obligations were required to be transferred under Section**
5. **2.1.8, and she denied the stay. Correct?**

|  |  |
| --- | --- |
| **14** | **MR. GRIMES: That's correct. But that's -- 2.1.8** |

1. **didn't have to be interpreted. It was the -- the**
2. **obligations weren't an issue -- everything had been**
3. **withdrawn in TR 8179. The obligation issue wasn't before**
4. **the D.C. Court of Appeals and they made no decision on that**
5. **because they said it wasn't before them. And if I may,**
6. **Judge --**

|  |  |
| --- | --- |
| **21** | **THE COURT: Stop, stop, stop. They said it wasn't** |

1. **before them because the FCC's decision made that resolution**
2. **irrelevant, and once the D.C. Circuit reversed the FCC**
3. **decision, then it obviously did become relevant. They said**
4. **they weren't going to address it because FCC had not**

**22**

|  |  |
| --- | --- |
| **1** | **addressed it at the commission level and, therefore, they** |
| **2** | **had nothing to review.** |
| **3** | **They don't sit as a court of original jurisdiction.** |
| **4** | **They review other procedures and other agencies.** |
| **5** | **The FCC had not decided that because, based upon** |
| **6** | **their decision, what obligations had to be assumed was** |

1. **irrelevant since they simply said this transfer wasn't**
2. **covered by 2.1.8.**

|  |  |
| --- | --- |
| **9** | **The D.C. Circuit said you're wrong. This Court sent** |

1. **this matter to the FCC to decide, in fact, to what extent**
2. **that tariff and its limitations applied to this transfer,**
3. **and to this day the FCC has not given us an answer. And as**
4. **far as I can see, the only thing which changed between**
5. **Judge Wigenton denying the motion to lift the stay and now**
6. **is that, apparently, the FCC issued a draft opinion, as it**
7. **were, and then took it back.**

|  |  |  |  |
| --- | --- | --- | --- |
| **17** | **Now,** | **is that** | **correct?** |
| **18** | **MR.** | **GRIMES:** | **Yes.** |
| **19** | **THE** | **COURT:** | **Okay.** |
| **20** | **MR.** | **GRIMES:** | **They took it back but now it came off of** |

1. **circulation since -- first of all, Judge Wigenton never**
2. **referred to the 2007 FCC order, which was stating that**
3. **Judge Bassler's order for referral in June 2006 does not**
4. **expand the scope of the issue previously presented.**

|  |  |
| --- | --- |
| **25** | **THE COURT: It doesn't. The issue which was** |

**23**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **presented** | **was the** | **effect** | **of 2.1.8 on** | | **this** | **transfer. That** |
| **2** | **was what was sent to the FCC.** | | | |  |  |  |
| **3** | **MR. GRIMES:** | | **Right. But 2.1.8, the only thing in** | | | | |
| **4** | **2.1.8 required two things to be transferred with the** | | | | | | |
| **5** | **traffic. The other things that AT&T was saying was in** | | | | | | |
| **6** | **TR --** |  |  |  |  |  |  |
| **7** | **THE** | **COURT:** | **Mr. Grimes** | | **--** |  |  |
| **8** | **MR.** | **GRIMES:** | **Yes,** | **your** | **Honor.** |  |  |
| **9** | **THE** | **COURT:** | **-- the** | **problem is** | | **that** | **you are asking** |

1. **this Court in the first instance to answer the question**
2. **which this Court asked the FCC to answer and the FCC hasn't**
3. **answered it, and you're telling me your interpretation of**
4. **2.1.8, as opposed to AT&T's interpretation of the**
5. **obligations under 2.1.8, are all very interesting but, you**
6. **know something, in their infinite wisdom, Judge Politan,**
7. **followed by Judge Bassler, followed by Judge Wigenton,**
8. **decided that the determination in the first instance should**
9. **be by the FCC, and nothing has changed.**

|  |  |
| --- | --- |
| **19** | **MR. GRIMES: Your Honor, the FCC took it off of** |

1. **circulation, so, what our interpretation of this is is**
2. **because there is no issue, Judge Politan originally ruled**
3. **that the traffic transfer should be allowed. Any**
4. **obligations that were required under 2.1.8 were**
5. **transferred.**

|  |  |
| --- | --- |
| **25** | **All these other things that were brought up by AT&T,** |

**24**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **1** | **such as** | **security, those were all addressed because Judge** | | |
| **2** | **Politan** | **ruled on** | **that in -- those were not part of the** | |
| **3** | **tariff.** |  |  |  |
| **4** | **Now, when Judge Wigenton rules, Judge Wigenton** | | | |
| **5** | **doesn't** | **know about the FCC 2007 order.** | | **She never refers to** |
| **6** | **it.** |  |  |  |
| **7** | **THE COURT:** | | **Look, does the tariff** | **have as one of its** |

1. **provisions that customers assume all obligations of the**
2. **former customer?**

|  |  |  |  |
| --- | --- | --- | --- |
| **10** | **MR.** | **GRIMES:** | **Yes.** |
| **11** | **THE** | **COURT:** | **Fine.** |
| **12** | **MR.** | **GRIMES:** | **Not 2.1.8, not all obligations. All** |

1. **obligations that are in effect which were transferred.**
2. **AT&T was bringing up --**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **15** | **THE COURT:** | **Mr. Grimes,** | | | **look, I've** | | | **got to tell you --** | | |
| **16** | **no, Mr. Inga, you are not going to do that.** | | | | | | | |  |  |
| **17** | **MR. INGA:** | **Your** | **Honor,** | | **I'm** | **pro** | **se** | **--** |  |  |
| **18** | **THE COURT:** | **No,** | **no,** | **no.** |  |  |  |  |  |  |
| **19** | **MR. INGA:** | **I filed** | | **the** | **form** | **to** | **be** | **able** | **to** | **answer** |
| **20** | **your question.** |  |  |  |  |  |  |  |  |  |
| **21** | **THE COURT:** | **No.** | **No.** | **Look,** | | **this** | **Court** | | **has** | **a complete** |

1. **record. It seems for some reason that the plaintiff in**
2. **this case wishes to ignore the explicit directions of this**
3. **Court.**

|  |  |
| --- | --- |
| **25** | **Is it two years ago that Judge Wigenton strongly** |

**25**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **1** | **urged that a mandamus petition be filed with the D.C.** | | | | | |
| **2** | **Circuit?** |  |  |  |  |  |
| **3** | **MR. GRIMES:** | | **Yes.** |  |  |  |
| **4** | **THE** | **COURT:** | **Yes.** |  |  |  |
| **5** | **MR. GRIMES: That's what she put in her order, yes.** | | | | | |
| **6** | **THE** | **COURT:** | **Fine.** | **Has** | **any mandamus** | **petition been** |
| **7** | **filed?** |  |  |  |  |  |
| **8** | **MR. GRIMES: Your Honor, the reason --** | | | | | |
| **9** | **THE COURT: All I'm asking is --** | | | | |  |
| **10** | **MR. GRIMES:** | | **No,** | **no.** |  |  |
| **11** | **THE** | **COURT:** | **-- did it.** | | **No.** |  |
| **12** | **MR.** | **GRIMES:** | **But** | **the case came off** | | **of circulation** |

1. **from the FCC, which we interpret to mean that there are no**
2. **further issues to be decided.**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **15** | **THE** | **COURT:** | **And** | **the** | **answer** | **is** | **--** |
| **16** | **MR.** | **GRIMES:** | **So,** | **if** | **there** | **was** | **a mandamus petition,** |

1. **we'd be requesting the D.C. Circuit to review something**
2. **that had no issue, something that was moot.**

|  |  |
| --- | --- |
| **19** | **THE COURT: You know something, then the FCC would** |

1. **issue something which actually told this Court why it was**
2. **moot and why there was nothing to decide if that's, in**
3. **fact, the case.**

|  |  |
| --- | --- |
| **23** | **The point is, I've got a set of papers from you,** |

1. **courtesy of Mr. Inga, which has all sorts of conversations**
2. **with staff people, which are not in the record, about**

**26**

|  |  |
| --- | --- |
| **1** | **various opinions about everything under the sun, including** |
| **2** | **whether or not the Texas Bar Association believes that** |
| **3** | **attorneys on the other side have practiced in violation of** |
| **4** | **their ethical obligations or not, all sorts of opinions** |
| **5** | **about staff members at the FCC about what they think.** |
| **6** | **I can honestly tell you there is no judge in this** |
| **7** | **court who considers the opinions of agency staff members** |
| **8** | **which are not reduced to formal decisions by the agency as** |
| **9** | **having the slightest significance before this court.** |
| **10** | **If you want this stay to be lifted, you have the** |

1. **agency issue a formal decision on this case which tells**
2. **this Court that those proceedings are over for whatever**
3. **reason so this Court can then decide what it is going to do**
4. **with the FCC's determination.**

|  |  |
| --- | --- |
| **15** | **But until it does that, this Court does not see any** |

1. **reason to disturb the reference. We sent it to the FCC**
2. **because they are experts in this field. That's why it was**
3. **done. That is the whole rationale behind the primary**
4. **jurisdiction doctrine.**

|  |  |
| --- | --- |
| **20** | **If Mr. Inga wants this case to be resolved in this** |

1. **court, the first thing to do is to get a final resolution**
2. **before the FCC.**

|  |  |
| --- | --- |
| **23** | **I have no idea why they lifted that decision from** |

1. **circulation. For all I know, and it was suggested I guess**
2. **to a certain degree in the opposing papers, is they may not**

**27**

|  |  |
| --- | --- |
| **1** | **even have a quorum anymore, for all I know. All right.** |

**2** **But this stay is not going to be lifted until the FCC has**

1. **spoken. Nothing has changed. And Judge Wigenton was**
2. **extremely gracious in actually issuing a written opinion**
3. **following oral argument.**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **6** | **I'm not going to be so gracious.** | | | | **As** | **far** | **as** | **this** |
| **7** | **Court is** | **concerned,** | **Judge** | **Wigenton's suggestion** | | | **was the** | |
| **8** | **appropriate one. Do** | | **what** | **you have to do to** | | **get** | **a** | **decision** |
| **9** | **from the** | **FCC. When** | **that** | **has occurred,** | **come** | **back.** | | **Do not** |

1. **try to persuade me that somehow this is moot. If the FCC**
2. **tells me it's moot, then I will listen.**

|  |  |
| --- | --- |
| **12** | **Your application to lift the stay is denied in all** |

1. **respects. There will be no further opinion. We will issue**
2. **our own order.**

|  |  |  |  |
| --- | --- | --- | --- |
| **15** | **Now** | **--** |  |
| **16** | **MR.** | **GRIMES:** | **Understood.** |
| **17** | **THE** | **COURT:** | **-- I don't expect to see another** |

1. **application of this nature until the FCC has made a ruling,**
2. **and I will tell you that at this point, the Court indeed**
3. **has been extraordinarily indulgent about exercising its**
4. **prerogative of pursuing Rule 11 sanctions sui sponte. I'm**
5. **not going to do it. But I can honestly tell you if I have**
6. **a repetition of this while I have this case, it is**
7. **something I will consider.**

|  |  |
| --- | --- |
| **25** | **MR. GRIMES: Understood, your Honor.** |

**28**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **THE COURT: Now, finally, there is one additional** | |  |
| **2** | **issue and, that is, Mr. Inga, if you want to appear pro** | | **se,** |
| **3** | **that can be done if you are suing in your individual** | |  |
| **4** | **capacity. Don't tell me about I've transferred X, Y or** | | **Z.** |
| **5** | **The plaintiffs in this case in which you apparently** | | |
| **6** | **have the sole equity ownership interest are still legal** | |  |
| **7** | **entities. If they become sole proprietors owned** | **by you** | **as** |
| **8** | **a sole proprietor, that's something different.** |  |  |
| **9** | **But you know something, when that happens,** | **the** |  |

1. **caption of this case is going to change. You are going to**
2. **have to substitute in as a party, and those parties are**
3. **going to be dismissed.**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **13** | **MR.** | **INGA:** | **I want to** | **add** | **parties, your Honor.** |
| **14** | **THE** | **COURT:** | **Sir, sir,** | **I am** | **extremely doubtful that** |

1. **you can "add a party" as you suggest, but you do what you**
2. **think is appropriate. I have four entities here. Correct?**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **17** | **MR.** | **INGA:** | **My four corporations, correct.** |  |
| **18** | **THE** | **COURT:** | **Four corporations. All right.** | **If you** |

1. **think or your attorneys think that there is a way in which**
2. **you can participate pro se, you can take whatever steps you**
3. **believe are appropriate and your adversaries can take**
4. **whatever steps they believe are appropriate with regard to**
5. **whether or not you can proceed pro se, but understand**
6. **something also, even if somehow this is set up so that you**
7. **somehow have a party in this case in which you are, in**

**29**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **fact, suing** | **in your own capacity, these other entities** | |
| **2** | **still need legal counsel and, what's more, Mr. Inga, if and** | | |
| **3** | **when you do** | **that, if I get papers like this again --** | |
| **4** | **MR. INGA:** | | **I understand.** |
| **5** | **THE COURT:** | | **-- with all sorts of attacks on opposing** |
| **6** | **parties and** | **similar type of conduct, I give you the same** | |
| **7** | **warning I gave Mr. Grimes.** | | |
| **8** | **MR. INGA:** | | **It won't happen again, your Honor.** |

1. **You're absolutely right. I'm frustrated and it shouldn't**
2. **have come out in the papers.**

|  |  |
| --- | --- |
| **11** | **THE COURT: Sir, this is a court of law. That kind** |

1. **of conduct will not be tolerated. As I said, you've got**
2. **ways to dispose of this. Go ahead and do it.**

|  |  |  |  |
| --- | --- | --- | --- |
| **14** | **The other thing, quite frankly, is, and I tell you** | | |
| **15** | **candidly, this goes back to what year was the transfer?** | | |
| **16** | **MR. INGA:** | | **The transfer was in '95, and '96 was** |
| **17** | **Politan's** | **injunction.** | |
| **18** | **THE** | **COURT:** | **Fine.** |
| **19** | **MR.** | **INGA:** | **Your Honor, the only thing I'd like to** |

1. **say to you is I think there's been one major issue here**
2. **that has not been recognized, that the 2003 FCC order**
3. **definitively stated that the obligation issues were no**
4. **longer to be decided. The defenses that AT&T raised in**
5. **2003 were off the table due to the non-vacated 1995 Politan**
6. **decision; that the non-vacated decision eliminated the**

**30**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1** | **obligation aspects.** | | |  |  |  |  |  |  |
| **2** |  | **THE COURT:** | **Sir, please, when you get your law** | | | | | |  |
| **3** | **degree, you can argue. When you are properly here pro se,** | | | | | | | | |
| **4** | **I'll** | **hear you.** |  |  |  |  |  |  |  |
| **5** |  | **Right now you are neither, and what I was going to** | | | | | | | |
| **6** | **suggest is 1995 to 2015, which means this is 23 years --** | | | | | | | | |
| **7** |  | **MR. INGA:** | **Correct.** | |  |  |  |  |  |
| **8** |  | **THE COURT:** | **-- I** | **hope** | **you've** | **got** | **other** | **things** | **to do** |
| **9** | **with** | **your life.** |  |  |  |  |  |  |  |
| **10** |  | **MR. INGA:** | **This** | **is a** | **major** | **focus** | **of my** | **life,** | **your** |
| **11** | **Honor.** | |  |  |  |  |  |  |  |
| **12** |  | **THE COURT:** | **Well, I will tell you, quite frankly,** | | | | | | |
| **13** | **then I feel sorry for you.** | | | |  |  |  |  |  |
| **14** |  | **MR. INGA:** | **Your** | **Honor** | **--** |  |  |  |  |
| **15** |  | **THE COURT:** | **But** | **after** | **23 years --** | | **have** | **you ever** | |

1. **talked with them about actually seeing if there's some**
2. **amicable resolution of this case?**

|  |  |  |
| --- | --- | --- |
| **18** | **MR. INGA:** | **We're always willing to talk, your Honor.** |

1. **I think there's just one last statement I'd like to make is**
2. **simple. If AT&T was correct, they would have been able to**
3. **do one single thing to end this case. If AT&T simply**
4. **provided evidence, we'll walk away from the case.**

|  |  |
| --- | --- |
| **23** | **They can't produce evidence because the tariffs do** |

1. **not allow what AT&T is saying; therefore, they have no**
2. **evidence and never been able to present evidence.**

**31**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1** |  | **THE COURT:** | **Okay.** | **Sir, it's** | **23** | **years, Mr. Inga.** | |  |
| **2** | **Okay.** |  |  |  |  |  |  |  |
| **3** |  | **MR. INGA:** | **And no** | **evidence** | **has** | **been presented in** | | **23** |
| **4** | **years,** | **your Honor.** |  |  |  |  |  |  |
| **5** |  | **THE COURT:** | **Mr. Inga, this case is very reminiscent** | | | | | |
| **6** | **of a Charles Dickens novel. If you wish to pursue it, I've** | | | | | | | |
| **7** | **told you how to do it. Do not come back here with another** | | | | | | | |
| **8** | **application to lift the stay until the FCC has made a** | | | | | | |  |
| **9** | **decision.** | |  |  |  |  |  |  |
| **10** |  | **MR. INGA:** | **I understand that,** | | | **your Honor.** | **There** | **are** |
| **11** | **two other claims within this case that the FCC referred --** | | | | | | | |
| **12** |  | **THE COURT:** | **Mr. Inga, Mr. Inga --** | | | |  |  |
| **13** |  | **MR. INGA: -- they're not our interpretation** | | | | |  |  |
| **14** | **issues** | **--** |  |  |  |  |  |  |
| **15** |  | **THE COURT:** | **Mr. Inga, Mr. Inga,** | | | **I'm going to** | **tell** | **you** |

1. **twice, two things. One, I am not going to entertain**
2. **argument from you. You want to become a lawyer, go to law**
3. **school.**

|  |  |  |
| --- | --- | --- |
| **19** | **MR. INGA:** | **No. There's no argument. I was just** |

**20** **stating a fact that's in the order.**

|  |  |
| --- | --- |
| **21** | **THE COURT: Mr. Inga, Mr. Inga, the case has been** |

1. **stayed. It was stayed for a reason. Do not come back here**
2. **until the reason it was stayed has been resolved.**

|  |  |
| --- | --- |
| **24** | **If in the interim you actually want to think about** |

**25** **doing something else other than pursuing what now appears**

**32**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **to be one of the longest running cases in this court, I** | | |
| **2** | **would suggest you have Mr. Grimes talk to your adversaries** | | |
| **3** | **because, Mr. Inga, you are too wrapped up in this case.** | | |
| **4** | **MR. INGA:** | **Your Honor, you're right. I** | **am wrapped** |
| **5** | **up.** |  |  |
| **6** | **THE COURT: So, Mr. Inga, all I'm saying is if you** | | |
| **7** | **want to get on with your life, have Mr. Grimes talk to** | | |
| **8** | **them, ask them to see if there's something reasonable which** | | |
| **9** | **can be done here.** |  |  |
| **10** | **Otherwise, good luck. Good luck before the FCC.** | | |
| **11** | **Good luck with your mandamus before the D.C. Circuit.** | | |
| **12** | **MR. INGA:** | **There are two other issues, your Honor.** | |
| **13** | **THE COURT:** | **There aren't. There are not, Mr. Inga.** | |
| **14** | **Mr. Inga, this matter is concluded.** | |  |
| **15** | **Thank you.** | **We will draw our own order.** | **Thank you,** |
| **16** | **counsel.** |  |  |
| **17** | **MR. BENDERNAGEL: Thank you, your Honor.** | |  |
| **18** | **(Whereupon** | **the proceedings are adjourned.)** | |
| **19** |  |  |  |
| **20** |  |  |  |
| **21** |  |  |  |
| **22** |  |  |  |
| **23** |  |  |  |
| **24** |  |  |  |
| **25** |  |  |  |
|  |  |  |  |

**EXHIBIT H**



**DC Orders/Judgments and Opinions**

The following is from the DC Court accessed by PACER.

Below is a sample case in which the DC Court remanded the case back to FCC that AT&T was a party.

The DC Court explicitly must state the case is remanded when it is a remand (reversed back to FCC).

AT&T is aware of that DC Court must explicitly state it is a remand (reverse), yet misleads this Court the case at issue: 03-1431 is remanded--- when it explicitly states it is “The petition for review is granted”---which is simply a correction of the FCC, all issues within the scope of the 1996 referral were resolved.

|  |
| --- |
| PER CURIAM ORDER [1690574] granting |
| motion for voluntary **remand** [1679494-2] and |
| these cases are **remanded to the Federal** |
| **Communications Commission for further** |
| **proceedings**; withholding issuance of the |
| mandate. Before Judges: Brown, Kavanaugh |
| and Srinivasan. [16-1145, 16-1166, 16-1177] |
|  |
|  |

**PACER Service Center**

**Transaction Receipt**

DC Circuit (USCA) - 06/27/2018 18:45:17



**DC Orders/Judgments and Opinions**

The following is from the DC Court accessed by PACER. First plaintiffs will evidence its DC Court case and show the DC Docket entry is Petition for review granted---correction of the FCC. It is not a remand (reversed) to FCC. Then plaintiffs will show a sample of a remanded case.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 6/29/2018 | | | 03-1431 Docket | |
|  |  |  | **General Docket** | |
|  |  | **United States Court of Appeals for District of Columbia Circuit** | | |
|  |  | **Court of Appeals Docket #:** 03-1431 | **Docketed:** 12/01/2003 |  |
|  |  | AT&T Corp v. FCC, et al | **Termed:** 01/14/2005 |  |
|  |  | **Appeal From:** Federal Communications Commission |  |  |
|  |  | **Fee Status:** Fee Paid |  |  |



**Case Type Information:**

1. Petition for Review
2. Review

**3)**



**Originating Court Information:**

**District:** FCC-1 : FCC-03-244



**Prior Cases:**

None

**Current Cases:**

None

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Panel Assignment:** |  |  |
|  | **Panel:** DHG DST JGR |  |  |
|  | **Date of Hearing:** 11/12/2004 **Date of Decision:** 01/14/2005 | **Date Completed:** 01/14/2005 |  |
|  |  |  |  |
|  |  |  |  |
|  | AT&T Corporation | Michael J. Hunseder, Attorney |  |
|  | Petitioner | Direct: 202-736-8000 | |
|  |  | Email: mhunseder@sidley.com | |
|  |  | [COR LD NTC Retained] | |
|  |  | Sidley Austin LLP | |
|  |  | Firm: 202-736-8000 | |
|  |  | 1501 K Street, NW | |
|  |  | Washington, DC 20005 | |
|  |  | James F. Bendernagel, Jr., Esquire | |
|  |  | Direct: 202-736-8137 | |
|  |  | Email: jbendernagel@sidley.com | |
|  |  | [COR Retained] | |
|  |  | Sidley Austin LLP | |
|  |  | Firm: 202-736-8000 | |
|  |  | 1501 K Street, NW | |
|  |  | Washington, DC 20005 | |
|  |  | C. John Buresh | |
|  |  | Direct: 202-736-8000 | |
|  |  | [COR Retained] | |
|  |  | Sidley Austin LLP | |
|  |  | Firm: 202-736-8000 | |
|  |  | 1501 K Street, NW | |
|  |  | Washington, DC 20005 | |
|  |  | David W. Carpenter | |
|  |  | Direct: 312-853-7000 | |
|  |  | Email: dcarpenter@sidley.com | |
|  |  | Fax: 312-853-7036 | |
|  |  | [COR Retained] | |
|  |  | Sidley Austin LLP | |
|  |  | Firm: 312-853-7000 | |
|  |  | One South Dearborn Street | |
|  |  | Chicago, IL 60603 | |
|  |  | Peter Herbert Jacoby | |
|  |  | [COR Retained] | |
|  |  | American Telephone & Telegraph | |
|  |  | 900 Routes 202/206 North | |
|  |  | Bedminster, NJ 07921-0000 | |
|  | v. |  |  |



https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom 1/8

|  |  |
| --- | --- |
| 6/29/2018 | 03-1431 Docket |
| Federal Communications Commission | John A. Rogovin |
| Respondent | Direct: 202-663-6270 |
|  | Email: john.rogovin@wilmerhale.com |
|  | Fax: 202-663-6363 |
|  | [COR LD NTC Gvt US Agency] |
|  | Wilmer Cutler Pickering Hale and Dorr LLP |
|  | Firm: 202-663-6000 |
|  | 1875 Pennsylvania Avenue, NW |
|  | Washington, DC 20006-1420 |
|  | Laurel R. Bergold, Attorney |
|  | Direct: 202-418-1747 |
|  | Email: laurel.bergold@fcc.gov |
|  | [COR Gvt US Agency] |
|  | Federal Communications Commission |
|  | (FCC) Office of General Counsel |
|  | Room 8-C862 |
|  | Firm: 202-418-1720 |
|  | 445 12th Street, SW |
|  | Washington, DC 20554 |
|  | Laurence Nicholas Bourne |
|  | Direct: 202-418-1750 |
|  | Email: laurence.bourne@fcc.gov |
|  | [COR Gvt US Agency] |
|  | Federal Communications Commission |
|  | (FCC) Office of General Counsel |
|  | Firm: 202-418-1720 |
|  | 445 12th Street, SW |
|  | Washington, DC 20554 |
|  | Rodger D. Citron |
|  | Direct: 202-418-1748 |
|  | [COR Gvt US Agency] |
|  | Federal Communications Commission |
|  | (FCC) Office of General Counsel |
|  | Firm: 202-418-1720 |
|  | 445 12th Street, SW |
|  | Washington, DC 20554 |
|  | John Edward Ingle, Deputy Associate General Counsel |
|  | Direct: 202-418-1746 |
|  | [COR Gvt US Agency] |
|  | Federal Communications Commission |
|  | (FCC) Office of General Counsel |
|  | Room 8-A741 |
|  | Firm: 202-418-1720 |
|  | 445 12th Street, SW |
|  | Washington, DC 20554 |
|  | Richard Kiser Welch, Deputy Associate General Counsel |
|  | Direct: 202-418-7225 |
|  | Email: Richard.Welch@fcc.gov |
|  | Fax: 202-418-2819 |
|  | [COR Gvt US Agency] |
|  | Federal Communications Commission |
|  | (FCC) Office of General Counsel |
|  | Room 8-A765 |
|  | Firm: 202-418-1720 |
|  | 445 12th Street, SW |
|  | Washington, DC 20554 |
| United States of America | Robert B. Nicholson, Attorney |
| Respondent | Direct: 202-514-2489 |
|  | Email: robert.nicholson@usdoj.gov |
|  | [COR LD NTC Gvt US Agency] |
|  | U.S. Department of Justice |
|  | (DOJ) Antitrust Division, Appellate Section |
|  | Room 3228 |

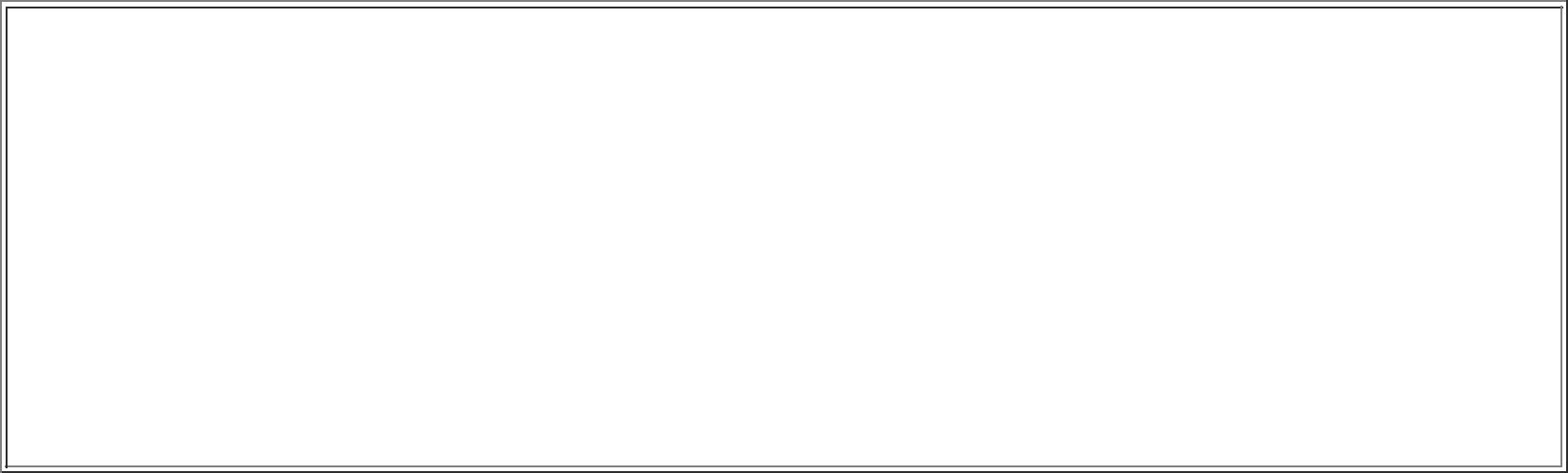


https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom 2/8

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | 6/29/2018 | 03-1431 Docket |  |
|  |  |  | Firm: 202-514-2413 |  |
|  |  |  | 950 Pennsylvania Avenue, NW |  |
|  |  |  | Washington, DC 20530-0001 |  |
|  |  |  | Steven Jeffrey Mintz, Esquire, Attorney |  |
|  |  |  | Email: steven.mintz@usdoj.gov |  |
|  |  |  | [COR Gvt US Agency] |  |
|  |  |  | Hahn Loeser & Parks LLP |  |
|  |  |  | Firm: 216-621-0150 |  |
|  |  |  | 200 Public Square |  |
|  |  |  | Suite 2800 |  |
|  |  |  | Cleveland, OH 44114-0000 |  |
|  |  | ------------------------------ |  |  |
|  |  | Winback & Conserve Program, Inc. | Charles H. Helein |  |
|  |  | Intervenor | Email: chelein@heleinlaw.com |  |
|  |  |  | [COR LD NTC Retained] |  |
|  |  |  | Helein Law Group, PLLC |  |
|  |  |  | Firm: 703-676-3838 |  |
|  |  |  | 43674 Warbler Square |  |
|  |  |  | Leesburg, VA 20176 |  |
|  |  | One Stop Financial, Inc. | Charles H. Helein |  |
|  |  | Intervenor | [COR LD NTC Retained] |  |
|  |  |  | (see above) |  |
|  |  | Group Discounts, Inc. | Charles H. Helein |  |
|  |  | Intervenor | [COR LD NTC Retained] |  |
|  |  |  | (see above) |  |
|  |  | 800 Discounts, Inc. | Charles H. Helein |  |
|  |  | Intervenor | [COR LD NTC Retained] |  |
|  |  |  | (see above) |  |
|  |  |  |  |  |
|  |  |  |  |  |

https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom 3/8

6/29/2018 03-1431 Docket



AT&T Corporation,

Petitioner

v.

Federal Communications Commission; United States of America,

Respondents

------------------------------

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

https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom 4/8

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 6/29/2018 | | | 03-1431 Docket | |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  | 12/01/2003 | **PETITION FOR REVIEW CASE docketed.** Petition for Review filed by Petitioner AT&T Corp. [788456-1] |  |
|  |  |  | [Entered: 12/02/2003 01:22 PM] | |
| 12/01/2003 | | | STATEMENT filed by Petitioner AT&T Corp pursuant to FRAP 26.1 providing corporate disclosure listing | |
|  |  |  | [788458-1] Certificate of Service date 11/26/03. (Attached to petition for review) [Entered: 12/02/2003 01:22 | |
|  |  |  | PM] | |
| 12/02/2003 | | | CLERK'S ORDER filed [788461] directing Petitioner to file [788461-1] : docketing statement due 1/2/04 for | |
|  |  | 1 pg, 29.98 KB | AT&T Corp ; certificate of counsel due 1/2/04 for AT&T Corp ; statement of issues due 1/2/04 for AT&T Corp | |
|  |  |  | ; any procedural motions due 1/2/04 for AT&T Corp ; deferred appendix notice due 1/2/04 for AT&T Corp ; | |
|  |  |  | any dispositive motions due 1/16/04 for AT&T Corp ;, directing Respondent to file [788461-2] : any | |
|  |  |  | procedural motions due 1/2/04 for FCC ; appearance form due 1/16/04 for FCC ; certified index to the record | |
|  |  |  | due 1/16/04 for FCC ; any dispositive motions due 1/16/04 for FCC ; . [Entry Date: 12/2/03] [Entered: | |
|  |  |  | 12/02/2003 01:26 PM] | |
| 12/24/2003 | | | MOTION (styled "notice of intent to intervene") filed (5 copies) (certificate of service dated 12/24/03 ) to | |
|  |  |  | allow to intervene [797598-1] . Motion filed by Winback Conserve, One Stop Fincl Inc, Grp Discounts Inc, | |
|  |  |  | 800 Discounts Inc (Lister, Mary) [Entered: 01/16/2004 11:25 AM] | |
| 12/30/2003 | | | INITIAL SUBMISSIONS filed by Petitioner AT&T Corp [793954-1] : docketing statement; certificate of | |
|  |  |  | counsel; statement of issues; deferred appendix notice (Deferred Appendix needed = Y). [Entered: | |
|  |  |  | 12/31/2003 11:03 AM] | |
| 12/30/2003 | | | ENTRY OF APPEARANCE filed by Attorney Laurel R. Bergold for Respondent FCC, John Edward Ingle for | |
|  |  |  | Respondent FCC, John A. Rogovin for Respondent FCC [793990-1] . [Entered: 12/31/2003 12:08 PM] | |
| 01/16/2004 | | | STATEMENT filed by Movant-Intervenor Winback Conserve, Movant-Intervenor One Stop Fincl Inc, Movant- | |
|  |  |  | Intervenor Grp Discounts Inc, Movant-Intervenor 800 Discounts Inc pursuant to FRAP 26.1 providing | |
|  |  |  | corporate disclosure listing [798500-1]. They have no parent companies, no publicly held companies owns | |
|  |  |  | 10 perscent or more of the stock. Certificate of Service date 1/16/04 [Entered: 01/21/2004 12:58 PM] | |



01/16/2004



01/16/2004



01/29/2004



1 pg, 31.9 KB

02/12/2004



1 pg, 7.46 KB

04/01/2004



04/02/2004



04/08/2004



2 pg, 7.09 KB

04/19/2004



04/29/2004



1 pg, 6.33 KB

05/18/2004



05/18/2004



05/21/2004



1 pg, 6.23 KB

05/21/2004



INITIAL SUBMISSIONS filed by Respondent FCC [798508-1] : certified index to the record. [Entered: 01/21/2004 01:16 PM]

ENTRY OF APPEARANCE filed by Attorney Steven Jeffrey Mintz for Respondent USA [798768-1] . [Entered: 01/22/2004 10:48 AM]

CLERK'S ORDER filed [800027] granting non-party motion to intervene filed by Winback Conserve, One Stop Fincl Inc, Grp Discounts Inc, 800 Discounts Inc [797598-1]. [Entry Date: 1/29/04] [Entered: 01/29/2004 04:25 PM]

CLERK'S ORDER filed [802900] establishing the initial briefing schedule [802900-1] : Petitioner's brief due on 4/1/04 ; Respondent's brief due on 5/3/04 ; Intervenor supportg Respondent's brief due 5/18/04 ; Petitioner's reply brief due on 6/1/04 ; Deferred appendix due on 6/8/04 ; Final briefs due on 6/22/04. [Entry Date: 2/12/04] [Entered: 02/12/2004 11:03 AM]

BRIEF filed by Petitioner AT&T Corp [814001-1] . Copies: 7 Certificate of service date 4/1/04 . [Entered: 04/05/2004 03:42 PM]

CONSENT MOTION filed (5 copies) by Respondent FCC (certificate of service dated 4/2/04, by mail) for extension of time to file respondents' brief and for corresponding changes to the remainder of the briefing schedule [814342-1] until 5/17/04. [Entered: 04/07/2004 08:52 AM]

CLERK'S ORDER filed [814840] granting motion extend time filed by FCC [814342-1] regarding the clerk order establishing the initial briefing schedule [ [802900-](https://ecf.cadc.uscourts.gov/docs1/012013838?caseId=16704)1] . Respondent's brief due on 5/17/04 ; Intervenor supportg Respondent's brief due 6/1/04 ; Petitioner's reply brief due on 6/15/04 ; Deferred appendix due on 6/22/04 ; final briefs due on 7/6/04. [Entry Date: 4/8/04] (Lister, Mary) [Entered: 04/08/2004 04:17 PM]

ENTRY OF APPEARANCE filed by Attorney Robert B. Nicholson for Respondent USA [818287-1]. [Entered: 04/26/2004 10:30 AM]

CLERK'S ORDER filed [819404] to schedule oral argument [819404-1] before Judge Initials: DHG DST JGR on 11/12/04 at 9:30 AM . [Entry Date: 4/29/04] [Entered: 04/29/2004 02:46 PM]

BRIEF lodged by Respondents FCC, USA [823178-1]. Copies: 7. Certificate of service date 5/17/04, by mail. [Entered: 05/20/2004 10:24 AM]

MOTION filed (5 copies) by Respondent FCC (certificate of service dated 5/18/04, by mail) for leave to file [823180-1] LODGED brief [823178-1]. [Entered: 05/20/2004 10:29 AM]

CLERK'S ORDER filed [823552] granting motion for leave to file brief out of time filed by FCC [823180-1] Directing Clerk to file the lodged brief of respondent FCC [823178-1] [Entry Date: 5/21/04] [Entered: 05/21/2004 11:34 AM]

PER ABOVE ORDER lodged respondent's brief [823178-1] is filed. [Entered: 05/21/2004 11:36 AM]

https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom 5/8

|  |  |
| --- | --- |
| 6/29/2018 | 03-1431 Docket |
| 05/25/2004 | LETTER filed by Intervenor Winback Conserve, Intervenor One Stop Fincl Inc, Intervenor Grp Discounts Inc, |
|  | Intervenor 800 Discounts Inc [824219-1]. The intervenors do not intend to file an intervenor's brief in this |
|  | case. Certificate of service date 5/25/04 . [Entered: 05/26/2004 03:12 PM] |
| 06/15/2004 | REPLY BRIEF filed by Petitioner AT&T Corp [831711-1]. Copies: 7. Certificate of service date 6/15/04. |
|  | [Entered: 06/23/2004 09:10 AM] |
| 06/22/2004 | JOINT DEFERRED APPENDIX filed by Petitioner AT&T Corp [831803-1] Copies: 14 . Certificate of service |
|  | date 6/22/04 . [Entered: 06/23/2004 11:37 AM] |
| 06/30/2004 | FINAL BRIEF filed by Petitioner AT&T Corp [833427-1]. Copies: 14. Certificate of service date 6/30/04. |
|  | [Entered: 07/01/2004 10:41 AM] |
| 06/30/2004 | FINAL REPLY BRIEF filed by Petitioner AT&T Corp [833438-1] . Copies: 14. Certificate of service date |
|  | 6/30/04. [Entered: 07/01/2004 10:52 AM] |
| 07/06/2004 | FINAL BRIEF filed by Respondent FCC, Respondent USA [834434-1]. Copies: 14. Certificate of service |
|  | date 7/2/04 [Entered: 07/08/2004 10:29 AM] |
| 11/03/2004 | PER CURIAM ORDER filed [857523] to allocate oral argument times: APET minutes- 15 ERES minutes- 15. |
| 2 pg, 7.16 KB | [857523-1], one counsel per side to argue. [857523-2] Oral argument scheduled for 11/12/04, Form 72 |
|  | notice of attorney arguing case - [857523-3] due 11/5/04. [Entry Date: 11/3/04] [Entered: 11/03/2004 09:07 |
|  | AM] |
| 11/08/2004 | FORM 72 filed by Attorney David W. Carpenter on behalf of petitioner AT&T Corp. [858529-1] [858529-2] . |
|  | [Entered: 11/08/2004 01:12 PM] |
| 11/08/2004 | LETTER filed by Respondent FCC pursuant to FRAP 28j advising of additional authorities [858977-1] . |
|  | Certificate of service date 11/8/04 . [Entered: 11/10/2004 09:59 AM] |
| 11/12/2004 | LETTER filed by Petitioner AT&T Corp pursuant to FRAP 28j advising of additional authorities [859309-1] . |
|  | Certificate of service date 11/11/04 . [Entered: 11/12/2004 09:04 AM] |
| 11/12/2004 | ORAL ARGUMENT HELD before Ginsburg, Tatel, Roberts . [Entered: 11/12/2004 09:59 AM] |
| 11/12/2004 | LETTER filed by Petitioner AT&T Corp responding to questions at oral argument [859499-1] . Certificate of |
|  | service date 11/12/04 . [Entered: 11/12/2004 03:19 PM] |
| 11/19/2004 | TRANSCRIPT of oral argument held on 11/12/04 . [788452-1] (Lister, Mary) [Entered: 11/29/2004 05:06 PM] |
| 12/07/2004 | MOTION (styled "motion for order granting leave to make this motion a part of the record or to file a |
|  | supplemental brief to clarify and correct the facts of record") lodged (5 copies) by Intervenors Winback |
|  | Conserve et al. (certificate of service by mail dated 12/6/04) to supplement the record or to file supplemental |
|  | brief. (Lister, Mary) [Entered: 12/14/2004 05:13 PM] |
| 12/07/2004 | MOTION filed (5 copies) by Intervenors Winback Conserve et al. (certificate of service by mail dated |
|  | 12/6/04) for leave to file [865481-1] a motion supplement record [865480-1], motion establishing the initial |
|  | briefing schedule [865480-2] out of time. (Lister, Mary) [Entered: 12/14/2004 05:17 PM] |
| 12/20/2004 | OPPOSITION (styled "opposition to motion of INGA intervenors for leave to file supplemental pleadings out |
|  | of time filed [867677-1] (5 copies) by Petitioner AT&T Corp (certificate of service by mail dated 12/20/04) to |
|  | a motion for leave to file [865481-1] motion to supplement record out of time. (Lister, Mary) [Entered: |
|  | 12/28/2004 03:02 PM] |
| 12/27/2004 | REPLY filed [867729-1] (5 copies) by Intervenors Winback Conserve, One Stop Fincl Inc, Grp Discounts Inc |
|  | and 800 Discounts Inc (certificate of service dated 12/23/04 ) to a response to the motion leave to file |
|  | [865481-1] . (Lister, Mary) [Entered: 12/28/2004 05:02 PM] |
| 12/28/2004 | SUPPLEMENT (styled "errata") to [869876-1] reply [867729-1] filed by Intervenors Winback Conserve, One |
|  | Stop Fincl Inc, Grp Discounts Inc and 800 Discounts Inc. (Lister, Mary) [Entered: 01/10/2005 12:40 PM] |
| 01/14/2005 | JUDGMENT that the petition for review be granted for the reasons in the accompanying opinion. Before |
|  | Judges Ginsburg, Tatel, Roberts . [Entry Date: 1/14/05] [Entered: 01/14/2005 10:33 AM] |
| 01/14/2005 | OPINION filed [870874] ( 11 pgs ) for the Court by Judge Roberts [Entered: 01/14/2005 10:34 AM] |
| 11 pg, 49.64 KB |  |



01/14/2005



1 pg, 6.4 KB

01/18/2005



2 pg, 7.3 KB

01/18/2005



CLERK'S ORDER filed [870875] The Clerk is directed to withhold issuance of the mandate [870875-1] pending disposition of any timely petition for rehearing. [Entry Date: 1/14/05] [Entered: 01/14/2005 10:34 AM]

PER CURIAM ORDER filed [871336] granting motion leave to file filed by Winback Conserve [865481-1] Directing Clerk to file the lodged motion to supplement the record [865480-1] Granting motion to supplement the record filed Winback Conserve [865480-1]. Before Judges Ginsburg, Tatel, Roberts. [Entry Date: 1/18/05] [Entered: 01/18/2005 02:05 PM]

Per Above Order lodged motion to supplement the record [865480-1] is filed. [Entered: 01/18/2005 02:08

https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom 6/8

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | 6/29/2018 | 03-1431 Docket |  |
|  |  |  | PM] |  |
|  |  | 03/11/2005 | MANDATE ISSUED to FCC [883358-1]. [Entered: 03/11/2005 03:18 PM] |  |
|  |  | 07/09/2012 | MERITS BRIEFS RETIRED [1382632] - The following NARA information may be used to locate the archived |  |
|  |  |  | merits briefs at the Federal Records Center - Accession Number: 276-08-0001; Location Number: 07/37-26- |  |
|  |  |  | 4-4; Box Number: 9. [03-1376, 03-1397, 03-1426, 04-1016, 03-1431, 03-1439] [Entered: 07/09/2012 02:08 |  |
|  |  |  | PM] |  |
|  |  |  |  |  |
|  |  |  |  |  |



https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom 7/8

6/29/2018 03-1431 Docket



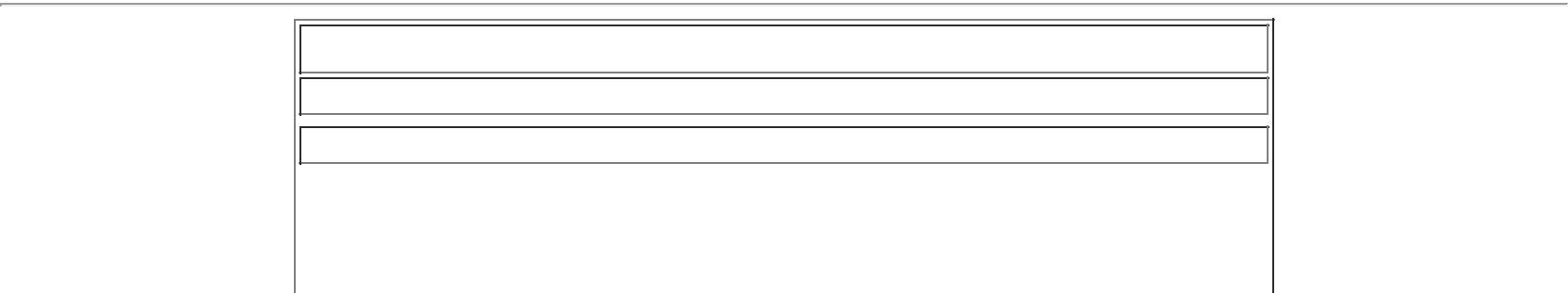
Clear All

 **Documents and Docket Summary**

 **Documents Only**

 **Include Page Numbers**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Selected Pages:** | | 0 | **Selected Size:** | 0 KB |
|  |  | |  |  |
| View Selected |  | |  |  |



**PACER Service Center**

**Transaction Receipt**

DC Circuit (USCA) - 06/29/2018 10:10:47

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **PACER Login:** |  | lm2950 |  | **Client Code:** |  |  |  |
|  | **Description:** |  | Docket Report (full) |  | **Search Criteria:** |  | 03-1431 |  |
|  | **Billable Pages:** |  | 3 |  | **Cost:** |  | 0.30 |  |

https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom

Below is a sample case in which the DC Court actually remanded (reversed) the case back to FCC that AT&T was a party.

The DC Court explicitly must state the case is remanded when it is a remand (reversed back to FCC).

AT&T is aware of that DC Court must explicitly state it is a remand (reverse), yet misleads this Court the case at issue: 03-1431 is remanded--- when it explicitly states it is “The petition for review is granted”---which is simply a correction of the FCC, all issues within the scope of the 1996 referral were resolved.

|  |
| --- |
| PER CURIAM ORDER [1690574] granting |
| motion for voluntary **remand** [1679494-2] and |
| these cases are **remanded to the Federal** |
| **Communications Commission for further** |
| **proceedings**; withholding issuance of the |
| mandate. Before Judges: Brown, Kavanaugh |
| and Srinivasan. [16-1145, 16-1166, 16-1177] |
|  |
|  |

**PACER Service Center**

**Transaction Receipt**

DC Circuit (USCA) - 06/27/2018 18:45:17

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  | Brown, Srinivasan and Ginsburg. [17-7086] |  |
| [17-702](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=17-7026)6 |  | 08/29/2017 | 08/29/2017 14:14:44 | Order | PER CURIAM ORDER [1690569] It is |  |
| [Saleem El-Amin v. D](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=17-7026)C |  |  |  |  | ORDERED that appellant show cause, within |  |
|  |  |  |  |  | 30 days of the date of this order, why this |  |
|  |  |  |  |  | appeal should not be dismissed as moot, as |  |
|  |  |  |  |  | the order on appeal has now been vacated. |  |
|  |  |  |  |  | The response to the order to show cause may |  |
|  |  |  |  |  | not exceed the length limitations established |  |
|  |  |  |  |  | by Federal Rule of Appellate Procedure 27(d) |  |
|  |  |  |  |  | (2) (5,200 words if produced using a |  |
|  |  |  |  |  | computer; 20 pages if handwritten or |  |
|  |  |  |  |  | typewritten). Failure to comply with this order |  |
|  |  |  |  |  | will result in dismissal of the appeal for lack of |  |
|  |  |  |  |  | prosecution. The Clerk is directed to send a |  |
|  |  |  |  |  | copy of this order to appellant by whatever |  |
|  |  |  |  |  | means necessary to ensure receipt. Response |  |
|  |  |  |  |  | to Order due 09/28/2017. Before Judges: |  |
|  |  |  |  |  | Brown, Srinivasan and Ginsburg. [17-7026] |  |
| [16-114](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=16-1145)5 |  | 08/29/2017 | 08/29/2017 14:26:40 | Order | PER CURIAM ORDER [1690574] granting |  |
| [AT&T, Inc., et al v. FCC, et a](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=16-1145)l |  |  |  |  | motion for voluntary **remand** [1679494-2] and |  |
|  |  |  |  |  | these cases are **remanded to the Federal** |  |
| [16-116](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=16-1166)6 |  |  |  |  | **Communications Commission for further** |  |
| [AT&T Inc., et al v. FCC, et a](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=16-1166)l |  |  |  |  | **proceedings**; withholding issuance of the |  |
|  |  |  |  |  | mandate. Before Judges: Brown, Kavanaugh |  |
| [16-117](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=16-1177)7 |  |  |  |  | and Srinivasan. [16-1145, 16-1166, 16-1177] |  |
| [AT&T Inc., et al v. FCC, et a](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=16-1177)l |  |  |  |  |  |  |
| [16-520](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=16-5204)4 |  | 08/29/2017 | 08/29/2017 14:33:15 | Order | PER CURIAM ORDER [1690577] granting |  |
| [Roger Day, Jr. v. Executive Office o](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=16-5204)f |  |  |  |  | motion to end abeyance [1682641-3]; |  |
| President |  |  |  |  | concluding that the court will dispose of the |  |
|  |  |  |  |  | appeal without oral argument on the basis of |  |
|  |  |  |  |  | the record and the presentations in appellant’s |  |
|  |  |  |  |  | brief pursuant to Fed. R. App. 34(a)(2); |  |
|  |  |  |  |  | D.C.Cir.Rule 34(j). Before Judges: Brown, |  |
|  |  |  |  |  | Srinivasan and Ginsburg. [16-5204] |  |
| [17-300](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=17-3005)5 |  | 08/29/2017 | 08/29/2017 14:38:17 | Order | PER CURIAM ORDER [1690578] It is |  |
| [USA v. Eric Hick](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=17-3005)s |  |  |  |  | ORDERED that the motion for appointment of |  |
|  |  |  |  |  | counsel [1687302-2] be **granted**, and that this |  |
|  |  |  |  |  | case be referred to the Office of the Federal |  |
|  |  |  |  |  | Public Defender for the appointment of |  |
|  |  |  |  |  | appellate counsel pursuant to the court’s |  |
|  |  |  |  |  | Criminal Justice Act Plan. Before Judges: |  |
|  |  |  |  |  | Brown, Srinivasan and Ginsburg. [17-3005] |  |
| [17-304](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=17-3040)0 |  | 08/29/2017 | 08/29/2017 14:45:38 | Order | PER CURIAM ORDER [1690580] granting |  |
| [In re: James Matthew](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=17-3040)s |  |  |  |  | motion for leave to proceed in forma pauperis |  |
|  |  |  |  |  | [1686397-2]; transferring petition for writ of |  |
|  |  |  |  |  | mandamus [1677475-2] to the United States |  |
|  |  |  |  |  | District Court for the District of Columbia, for |  |
|  |  |  |  |  | consideration as a petition for writ of habeas |  |
|  |  |  |  |  | corpus. The Clerk is directed to transmit to the |  |
|  |  |  |  |  | district court appellant’s original request for |  |
|  |  |  |  |  | release and the supplement thereto, and a |  |
|  |  |  |  |  | copy of this order. Before Judges: Brown, |  |
|  |  |  |  |  | Srinivasan and Ginsburg. [17-3040] |  |
| [17-301](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=17-3010)0 |  | 08/29/2017 | 08/29/2017 15:13:32 | Order | CLERK'S ORDER [1690586] filed considering |  |
| [USA v. Kevin Brow](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=17-3010)n |  |  |  |  | Clerk order [1684513-4], dismissing case for |  |
|  |  |  |  |  | lack of prosecution, withholding issuance of |  |
|  |  |  |  |  | the mandate. [17-3010] |  |
| [15-111](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=15-1115)5 |  | 08/29/2017 | 08/29/2017 17:01:06 | Order | PER CURIAM ORDER [1690632] granting |  |
| [South Coast Air Quality Manage v](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=15-1115). |  |  |  |  | Environmental Intervenors' motion for |  |
| EPA |  |  |  |  | allocation of oral argument time. The oral |  |
|  |  |  |  |  | argument time in these consolidated cases is |  |
| [15-112](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=15-1123)3 |  |  |  |  | as follows: Petitioner South Coast Quality |  |
| [Sierra Club, et al v. EPA, et a](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=15-1123)l |  |  |  |  | Management District - 15 Minutes, |  |
|  |  |  |  |  | Respondents - 13 Minutes, Environmental |  |
|  |  |  |  |  |  |  |

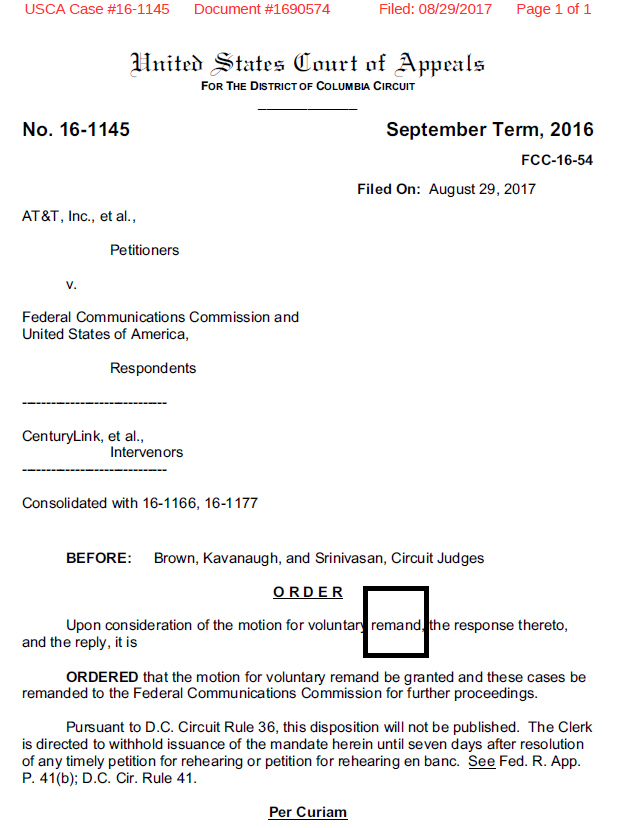


|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  | Intervenors - 2 Minutes; Petitioners Sierra |  |
|  |  |  |  |  | Club, et al. - 15 Minutes, Respondents - 15 |  |
|  |  |  |  |  | Minutes. Directing party to file Form 72 notice |  |
|  |  |  |  |  | of arguing attorney by 09/07/2017 [15-1115, |  |
|  |  |  |  |  | 15-1123] |  |
|  |  |  |  |  |  |  |
| [17-105](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&incOrigDkt=Y&incDktEntries=Y&caseNum=17-1054)4 |  | 08/29/2017 | 08/29/2017 17:30:15 | Order | CLERK'S ORDER [1690634] filed granting the |  |
| [Nat'l Business Aviation Assoc., et a](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=17-1054)l |  |  |  |  | motion of General Aviation Manufacturers |  |
| [v. Michael Huerta, et a](https://ecf.cadc.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseQuery.jsp&csnum1=17-1054)l |  |  |  |  | Association for leave to file brief amicus curiae |  |
|  |  |  |  |  | in support of petitioners [1689923-2]; The |  |
|  |  |  |  |  | Clerk is directed to file the lodged Amicus brief |  |
|  |  |  |  |  | [1689924-2]; granting respondents' unopposed |  |
|  |  |  |  |  | motion to extend time [1690174-2], The |  |
|  |  |  |  |  | following revised briefing schedule will now |  |
|  |  |  |  |  | apply: RESPONDENT Brief due on |  |
|  |  |  |  |  | 10/23/2017. INTERVENOR FOR |  |
|  |  |  |  |  | RESPONDENT Brief due 10/30/2017. |  |
|  |  |  |  |  | PETITIONER Reply Brief due 11/13/2017. |  |
|  |  |  |  |  | DEFERRED APPENDIX due 11/20/2017. Final |  |
|  |  |  |  |  | Briefs due 12/04/2017. [17-1054] |  |

**Note:**

1. Click on Case No. to get Case Summary
2. Click on Short Title to get Case Query

The following explicitly indicates when a case is remanded/ reversed to FCC:



**From:** al@snapdining.com <al@snapdining.com>   
**Sent:** Wednesday, June 27, 2018 11:11 AM  
**To:** **'rbrown@daypitney.com' <rbrown@daypitney.com>**  
**Cc:** 'tipsdbe' <tipsdbe@gmail.com>; 'Phillip Okin' <pokin@giantpackaging.com>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'William Ziff' <william.ziff@judiciary.state.nj.us>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'Deena Shetler' <Deena.Shetler@fcc.gov>; 'Deanne.Erwin@fcc.gov' <Deanne.Erwin@fcc.gov>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov>; 'Pamela Arluk' <Pamela.Arluk@fcc.gov>; 'Frank Arleo' <Frank.Arleo@ArleoDonohue.com>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.ORielly@fcc.gov' <Mike.ORielly@fcc.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Amy.Bender@fcc.gov' <Amy.Bender@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'MeredithAttwell.Baker@fcc.gov' <MeredithAttwell.Baker@fcc.gov>; 'Jo Ann Dobransky' <JoAnn.Dobransky@arleodonohue.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'Nancy\_Dunn@cadc.uscourts.gov' <Nancy\_Dunn@cadc.uscourts.gov>; 'Stephanie Pan' <Stephanie.Pan@TEXASBAR.COM>; 'jlegnard@nycourts.gov' <jlegnard@nycourts.gov>; Pamela Arluk <Pamela.Arluk@fcc.gov>; Deena Shetler <Deena.Shetler@fcc.gov>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov**>; 'robert\_cavello@cadc.uscourts.gov'** **<robert\_cavello@cadc.uscourts.gov>; 'rebecca\_thompson@cadc.uscourts.gov'** **<rebecca\_thompson@cadc.uscourts.gov>;** 'lgshippjr@gmail.com' <lgshippjr@gmail.com>  
**Subject:** RE: DC COURT COUNSELS: Robert Cavello & Rebecca Thompson

Richard Brown

As per Judge Chesler’s instructions at Oral argument on June 6, 2018 plaintiffs contacted the DC Court to adhere to DC Court procedural guidelines in filing writ of mandamus to force the FCC to interpret the NJFDC June 2006 referral.

The issue presented to the DC Court was very unusual in that plaintiffs would be requesting DC Court to force the FCC to interpret the moot 2006 referral BUT within plaintiff’s motion incredibly be arguing that DC Court should **not** be forcing the FCC to interpret the 2006 referral.

DC Court counsels pointed out that filing such a motion, subjects plaintiffs to both **multiple ethics violations and clearly sanctions**. DC Court will not put up with a motion that is done simply to have the DC Court and FCC elaborate why they did what they did when the DC Order and FCC 203 and 2007 Orders both state the DC Court corrected the FCC and there is no remand.

DC Counsels agreed with former DC legal Director Martha Tomich and FCC GC Austin Schlick and John Ingle that the 2005 Order must explicitly state the case is a remand if it was a remand.

DC Counsels also stated that the DC Court Docket Entry system accessible via PACER would also conclusively indicate for NJFDC whether a case was a remand. If you look at case No. 03-1431 the DC Court Docket entry system confirms no remand/reverse.  Simple DC Court petition for review granted DC Corrected FCC on the sole 1996 referred issue of does 2.1.8 allow traffic only transfers. DC Court counsels suggested simply taking a screenshot of the DC Court docket entry and showing it as an exhibit to the NJFDC.

The DC Court and FCC obviously know plaintiffs position and the FCC also has ethics and sanction laws for filing a motion simply to make the FCC opine/elaborate.

Martha Tomich stated AT&T should have appealed the DC Court decision if it was unhappy. The FCC and DC Court Counsels all understand AT&T counsels are also subjected to ethics and sanctions at both the DC Court and FCC for filing a writ of mandamus in a case that is not remanded and which the sole account movement issue was DC corrected. If AT&T would like to file with DC Court a writ of mandamus to have DC Court and FCC address both ethics violations and impose sanctions go right ahead.

Plaintiffs will advise Judge Chesler that plaintiffs followed his Courts directive explicitly and the DC Court Counsels as DC Legal Director Tomich had stated the case is NOT REVERSED/ REMANDED and the 1996 referral has been resolved. Filing a writ of mandamus will subject either party to ethics and sanctions.

AT&T’s briefs to the NJFDC state that if the mandamus was filed it would allow AT&T to understand why the FCC took the 2006 referral off circulation.

The DC Court 2005 Order and the FCC 2007 Order tells AT&T that. The FCC Order defined the scope of the 1996 referral once AT&T failed to tariff its Tr8179 defenses. AT&T obviously cannot assert defenses that as the FCC 2003 Order state were withdrawn June 2, 1995 and thus never modified the tariff (i.e. made part of the tariff) to argue. AT&T is requesting the DC Court and FCC to elaborate, but the DC Court and FCC have provided the NJFDC with the explicit answer. DC Court corrected the FCC on account movement. Done. No Remand. No appeal.

FCC 2007 Order makes it clear as can be. DC Corrected the FCC on account movement:

“Specifically, the Commission was asked to determine '''whether section 2.1.8 [of AT&T's Tariff FCC No.2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.",6 In its *Order* 011 *Primary Jurisdiction Referral****,* the FCC initially concluded that section 2.1.8 did not apply to transfers oftraffic alone.'** The United States Court of Appeals for the District of Columbia Circuit, however, **found that conclusion to be incorrect.**

The Judge Bassler 2006 referral on the June 2, 1995 withdrawn obligations issues, did not expand the 1996 referral on account movement:

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**."

Therefore, my counsel will advise Judge Chesler that the DC Court and FCC are sticking with its ORDERS that the case was not reversed/remanded----and forcing plaintiffs to file writ to force DC Court and FCC discussion will be met with ethics and sanctions on either plaintiffs or AT&T.

In keeping with the permit but disclose Declaratory Ruling process ---below are emails discussing the abuse of DC Court and FCC resources and an additional way to prove to Judge Chesler the DC Court case was not a remand.

Al Inga President

800 Discounts, Inc.

**From:** [al@snapdining.com](mailto:al@snapdining.com) <[al@snapdining.com](mailto:al@snapdining.com)>   
**Sent:** Wednesday, June 27, 2018 10:02 AM  
**To:** 'robert\_cavello@cadc.uscourts.gov' <[robert\_cavello@cadc.uscourts.gov](mailto:robert_cavello@cadc.uscourts.gov)>; 'rebecca\_thompson@cadc.uscourts.gov' <[rebecca\_thompson@cadc.uscourts.gov](mailto:rebecca_thompson@cadc.uscourts.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'nick.degani@fcc.gov' <[nick.degani@fcc.gov](mailto:nick.degani@fcc.gov)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>  
**Cc:** [ray@grimes4law.com](mailto:ray@grimes4law.com); 'Frank Arleo' <[Frank.Arleo@ArleoDonohue.com](mailto:Frank.Arleo@ArleoDonohue.com)>; Jo Ann Dobransky ([JoAnn.Dobransky@arleodonohue.com](mailto:JoAnn.Dobransky@arleodonohue.com)) <[JoAnn.Dobransky@arleodonohue.com](mailto:JoAnn.Dobransky@arleodonohue.com)>  
**Subject:** RE: DC Court --Circuit Rule 38 Sanctions

Either Rebecca Thompson or Robert Cavello mentioned yesterday that in addition to ethics laws being violated by filing writ of mandamus in a non-remanded case, that sanctions may be assessed.  I researched this and I see this is true per Circuit Rule 38.

**Circuit Rule 38 Sanctions**

“When any party to a proceeding before this court or any attorney practicing before the court fails to comply with the FRAP, these rules, or an order of this court, or takes an appeal or **files a petition or motion that is frivolous or interposed for an improper purpose**, such as to harass or to cause unnecessary delay, the court may, on its own motion, or on motion of a party, impose appropriate sanctions on the offending party, the attorney, or both. Sanctions include dismissal for failure to prosecute; imposition of costs, expenses, and attorneys' fees; and disciplinary proceedings. See 28 U.S.C. §§ 1912, 1927.”

Sanctions would result as the filing would clearly be for an **improper purpose** of the mandamus process. It would be an improper purpose to file simply have the FCC and DC Court “opine/elaborate” why they did what they did when the mandamus motion vociferously agrees the DC Court should not force the FCC to interpret the 2006 moot NJFDC referral.

Al Inga President

800 Discounts, Inc.

**From:** [al@snapdining.com](mailto:al@snapdining.com) <[al@snapdining.com](mailto:al@snapdining.com)>   
**Sent:** Wednesday, June 27, 2018 8:53 AM  
**To:** 'robert\_cavello@cadc.uscourts.gov' <[robert\_cavello@cadc.uscourts.gov](mailto:robert_cavello@cadc.uscourts.gov)>; 'rebecca\_thompson@cadc.uscourts.gov' <[rebecca\_thompson@cadc.uscourts.gov](mailto:rebecca_thompson@cadc.uscourts.gov)>  
**Cc:** [ray@grimes4law.com](mailto:ray@grimes4law.com); 'Frank Arleo' <[Frank.Arleo@ArleoDonohue.com](mailto:Frank.Arleo@ArleoDonohue.com)>; Jo Ann Dobransky ([JoAnn.Dobransky@arleodonohue.com](mailto:JoAnn.Dobransky@arleodonohue.com)) <[JoAnn.Dobransky@arleodonohue.com](mailto:JoAnn.Dobransky@arleodonohue.com)>; Lawrence Coven <[lcoven@optonline.net](mailto:lcoven@optonline.net)>  
**Subject:** Robert Cavello & Rebecca Thompson

The 3rd link on your site is broken…. Can you cite the particular rule/regulation that would be violated by plaintiffs submitting a mandamus for which plaintiffs position is the FCC can’t rule as issue has been resolved (i.e. no remand).

Rebecca you made a great point that plaintiffs filing mandamus to make the FCC rule when plaintiffs are on record having been advised by DC Legal Director and FCC General Counsel and DC Court Orders and FCC 2007 Orders show the case was not remanded would be **ethics issue.** Submitting a motion to interpret an issue when it is plaintiffs position that the FCC should not issue an interpretation—but merely doing it to have the FCC/DC Court “elaborate” why it did what it did to appease the NJFDC is a waste of DC Court and FCC resources and a clear ethics violation if plaintiffs were to do this.

Thanks to Rebecca we now understand this clearly and researched on the DC Court site

<http://www.ca3.uscourts.gov/rules-and-requirements> Rules And Requirements this link is broken:

All litigants in this Court must follow the [Federal Rules of Appellate Procedure](http://www.uscourts.gov/RulesAndPolicies/rules.aspx) (FRAP) and the [Third Circuit Local Appellate Rules](http://www2.ca3.uscourts.gov/legacyfiles/2011_lar_final.pdf) (3rd Cir. LAR).  In addition, the [Third Circuit Internal Operating Procedures](http://www2.ca3.uscourts.gov/legacyfiles/iop_2010_final2.pdf) (IOP) apply to all cases.

Al Inga President

800 Discounts, Inc.

**From:** [al@snapdining.com](mailto:al@snapdining.com) <[al@snapdining.com](mailto:al@snapdining.com)>   
**Sent:** Tuesday, June 26, 2018 1:02 PM  
**To:** 'robert\_cavello@cadc.uscourts.gov' <[robert\_cavello@cadc.uscourts.gov](mailto:robert_cavello@cadc.uscourts.gov)>; 'rebecca\_thompson@cadc.uscourts.gov' <[rebecca\_thompson@cadc.uscourts.gov](mailto:rebecca_thompson@cadc.uscourts.gov)>  
**Cc:** 'tipsdbe' <[tipsdbe@gmail.com](mailto:tipsdbe@gmail.com)>; 'Phillip Okin' <[pokin@giantpackaging.com](mailto:pokin@giantpackaging.com)>; 'Jane.Halprin@fcc.gov' <[Jane.Halprin@fcc.gov](mailto:Jane.Halprin@fcc.gov)>; 'William Ziff' <[william.ziff@judiciary.state.nj.us](mailto:william.ziff@judiciary.state.nj.us)>; 'jcasello@cvclaw.net' <[jcasello@cvclaw.net](mailto:jcasello@cvclaw.net)>; 'Deena Shetler' <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'Deanne.Erwin@fcc.gov' <[Deanne.Erwin@fcc.gov](mailto:Deanne.Erwin@fcc.gov)>; 'Nicholas.Degani@fcc.gov' <[Nicholas.Degani@fcc.gov](mailto:Nicholas.Degani@fcc.gov)>; 'Pamela Arluk' <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; 'Frank Arleo' <[Frank.Arleo@ArleoDonohue.com](mailto:Frank.Arleo@ArleoDonohue.com)>; 'Madelein.findley@fcc.gov' <[Madelein.findley@fcc.gov](mailto:Madelein.findley@fcc.gov)>; 'Matthew.Berry@fcc.gov' <[Matthew.Berry@fcc.gov](mailto:Matthew.Berry@fcc.gov)>; 'Meredith.AttwellBaker@fcc.gov' <[Meredith.AttwellBaker@fcc.gov](mailto:Meredith.AttwellBaker@fcc.gov)>; 'Michael.Copps@fcc.gov' <[Michael.Copps@fcc.gov](mailto:Michael.Copps@fcc.gov)>; 'Mignon.Clyburn@fcc.gov' <[Mignon.Clyburn@fcc.gov](mailto:Mignon.Clyburn@fcc.gov)>; 'Mike.ORielly@fcc.gov' <[Mike.ORielly@fcc.gov](mailto:Mike.ORielly@fcc.gov)>; 'Neil.Grace@fcc.gov' <[Neil.Grace@fcc.gov](mailto:Neil.Grace@fcc.gov)>; 'Richard.Welch@fcc.gov' <[Richard.Welch@fcc.gov](mailto:Richard.Welch@fcc.gov)>; 'Robert.McDowell@fcc.gov' <[Robert.McDowell@fcc.gov](mailto:Robert.McDowell@fcc.gov)>; 'Sharon.Gillett@fcc.gov' <[Sharon.Gillett@fcc.gov](mailto:Sharon.Gillett@fcc.gov)>; 'Sharon.Kelley@fcc.gov' <[Sharon.Kelley@fcc.gov](mailto:Sharon.Kelley@fcc.gov)>; 'Stephanie.Weiner@fcc.gov' <[Stephanie.Weiner@fcc.gov](mailto:Stephanie.Weiner@fcc.gov)>; 'Suzanne.Tetreault@fcc.gov' <[Suzanne.Tetreault@fcc.gov](mailto:Suzanne.Tetreault@fcc.gov)>; 'Amy.Bender@fcc.gov' <[Amy.Bender@fcc.gov](mailto:Amy.Bender@fcc.gov)>; 'eric.botker@fcc.gov' <[eric.botker@fcc.gov](mailto:eric.botker@fcc.gov)>; 'MeredithAttwell.Baker@fcc.gov' <[MeredithAttwell.Baker@fcc.gov](mailto:MeredithAttwell.Baker@fcc.gov)>; 'Jo Ann Dobransky' <[JoAnn.Dobransky@arleodonohue.com](mailto:JoAnn.Dobransky@arleodonohue.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; 'Randolph.Smith@fcc.gov' <[Randolph.Smith@fcc.gov](mailto:Randolph.Smith@fcc.gov)>; 'Jay.Keithley@fcc.gov' <[Jay.Keithley@fcc.gov](mailto:Jay.Keithley@fcc.gov)>; 'David.Gossett@fcc.gov' <[David.Gossett@fcc.gov](mailto:David.Gossett@fcc.gov)>; 'Eddie.Lazarus@fcc.gov' <[Eddie.Lazarus@fcc.gov](mailto:Eddie.Lazarus@fcc.gov)>; 'Jamilla.ferris@fcc.gov' <[Jamilla.ferris@fcc.gov](mailto:Jamilla.ferris@fcc.gov)>; 'Jennifer.Tatel@fcc.gov' <[Jennifer.Tatel@fcc.gov](mailto:Jennifer.Tatel@fcc.gov)>; 'Jessica.Rosenworcel@fcc.gov' <[Jessica.Rosenworcel@fcc.gov](mailto:Jessica.Rosenworcel@fcc.gov)>; 'Jim.Bird@fcc.gov' <[Jim.Bird@fcc.gov](mailto:Jim.Bird@fcc.gov)>; 'John.Williams2@fcc.gov' <[John.Williams2@fcc.gov](mailto:John.Williams2@fcc.gov)>; 'Jonathan.Adelstein@fcc.gov' <[Jonathan.Adelstein@fcc.gov](mailto:Jonathan.Adelstein@fcc.gov)>; 'Julie.Veach@fcc.gov' <[Julie.Veach@fcc.gov](mailto:Julie.Veach@fcc.gov)>; 'KJMWEB@fcc.gov' <[KJMWEB@fcc.gov](mailto:KJMWEB@fcc.gov)>; 'Karen.onyeue@fcc.gov' <[Karen.onyeue@fcc.gov](mailto:Karen.onyeue@fcc.gov)>; 'Kay.Richman@fcc.gov' <[Kay.Richman@fcc.gov](mailto:Kay.Richman@fcc.gov)>; 'Linda.Oliver@fcc.gov' <[Linda.Oliver@fcc.gov](mailto:Linda.Oliver@fcc.gov)>; 'Patrick.Carney@fcc.gov' <[Patrick.Carney@fcc.gov](mailto:Patrick.Carney@fcc.gov)>; 'Zachary.Katz@fcc.gov' <[Zachary.Katz@fcc.gov](mailto:Zachary.Katz@fcc.gov)>; 'john.Ingle@fcc.gov' <[john.Ingle@fcc.gov](mailto:john.Ingle@fcc.gov)>; 'Nancy\_Dunn@cadc.uscourts.gov' <[Nancy\_Dunn@cadc.uscourts.gov](mailto:Nancy_Dunn@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; 'jlegnard@nycourts.gov' <[jlegnard@nycourts.gov](mailto:jlegnard@nycourts.gov)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'john.Ingle@fcc.gov' <[john.Ingle@fcc.gov](mailto:john.Ingle@fcc.gov)>; 'Nicholas.Degani@fcc.gov' <[Nicholas.Degani@fcc.gov](mailto:Nicholas.Degani@fcc.gov)>  
**Subject:** RE: DC COURT COUNSELS: Robert Cavello & Rebecca Thompson

FCC Staff----FCC Ethics Staff--- State Bar Ethics Staffs etc…

A couple of weeks ago I suggested to FCC counsel a joint writ of mandamus to DC Court because we both understood the DC Court Order was not a remand.

It did not make any sense to force the FCC to issue another interpretation in a non-remanded case in which the AT&T defenses were withdrawn June 2, 1995 and **the defenses never were made part of the tariff**, as the FCC 2003 Order explicitly pointed out. The Third Circuit Court of course also stated the defenses were withdrawn. The NJFDC was shown the FCC 2007 Order explicitly stated the FCC was corrected by the DC Court and the DC Court explicitly shows page 10 fn 1 it corrected the FCC---but NJFDC ignored what the Orders stated.

Judge Chesler said the case was reversed (remanded) to the FCC, which we all understand is not correct.

Today Rob Cavello and Rebecca Thompson at the DC Court pointed out that **the DC COURT Docket Entry would explicitly state it is remand if it was remanded. That conclusively means the case was not remanded.**

The DC Court, the FCC and plaintiffs of course all understand there was no remand---just a DC Court correction of account movement. However, AT&T is misrepresenting to the NJFDC that it was remanded/reversed.

So, we can now go back to NJFDC with this information.

Thanks again to DC Court counsel for a procedural data entry way to show the case was not remanded/reversed back to FCC. The FCC’s CASE listing information also will be helpful.

FCC staffer referenced this FCC page <https://www.fcc.gov/proceedings-actions/fcc-and-courts> to show NJFDC the **specific language** used by the DC Court when a case is really a remand. See sample: 8/29/17 [Court opinion **remanding** case - SNR Wireless v. FCC](https://docs.fcc.gov/public/attachments/DOC-346423A1.pdf) DC Court and FCC have told plaintiffs DC always explicitly states remand when it is a remand as it did in above case. EXAMPLE:

**“We therefore** **remand** **this matter** **to the FCC**

**for further proceedings consistent with our opinion.”**

Robert and Rebecca thank you again for the additional evidence to show NJFDC Judge.

Al Inga President

800 Discounts, Inc.

**From:** [al@snapdining.com](mailto:al@snapdining.com) <[al@snapdining.com](mailto:al@snapdining.com)>   
**Sent:** Tuesday, June 26, 2018 12:03 PM  
**To:** 'robert\_cavello@cadc.uscourts.gov' <[robert\_cavello@cadc.uscourts.gov](mailto:robert_cavello@cadc.uscourts.gov)>; 'rebecca\_thompson@cadc.uscourts.gov' <[rebecca\_thompson@cadc.uscourts.gov](mailto:rebecca_thompson@cadc.uscourts.gov)>  
**Cc:** [ray@grimes4law.com](mailto:ray@grimes4law.com); Lawrence Coven <[lcoven@optonline.net](mailto:lcoven@optonline.net)>; Phillip Okin ([pokin@giantpackaging.com](mailto:pokin@giantpackaging.com)) <[pokin@giantpackaging.com](mailto:pokin@giantpackaging.com)>; 'Frank Arleo' <[Frank.Arleo@ArleoDonohue.com](mailto:Frank.Arleo@ArleoDonohue.com)>; 'phillo@giantpackage.com' <[phillo@giantpackage.com](mailto:phillo@giantpackage.com)>  
**Subject:** DC COURT COUNSELS: Robert Cavello & Rebecca Thompson

Rob Cavello and Rebecca Thompson

Thank you so much for taking the time with me to indicate the case No. 03-1431is not a remand and I can use the PACER to access the DOCKET ENTRY.

It is now understood explicitly **that the Docket Entry would explicitly state it is remand if it was remanded**.

The Order and Judgement would say remanded and never just inferred.

Rob your idea of using PACER and just accessing docket entry and taking a screenshot as an exhibit to simply show the NJFDC Judge is what I will have counsel do.

Rebecca, I appreciate your statement that plaintiff should not be filing a writ of mandamus to force the FCC to interpret an issue that it knows does not have open issues. The FCC GC Austin Schlick and FCC senior counsel John Ingle agreed with DC Legal Director Tomich that the case was not remanded/reversed---just DC Court corrected the FCC on the account movement scope of the case.

Rebecca---Additionally you pointed out the Remand section 41. Rule 41 Issuance of a mandate and Remand If the DC Court remanded a record in the case the DC Court would retain jurisdiction.

Remand. If the record in any case is remanded to the district court or to an agency, this court retains jurisdiction over the case.

You noted the docket shows not only wasn’t the case remanded but if the record was remanded there would not have been a case termination date.

The Docket record shows: Case Termination Date: January 14th, 2005, in the UPPER RIGHT Corner. Therefore, there isn’t a need to go through Rule 15 Review of Petition for review of Agency Action when the Docket Entry is conclusive the case was not remanded/reversed. Hey Rob--- Go CAPS!!!

Al Inga President

800 Discounts, Inc.

1. <http://www.ca3.uscourts.gov/rules-and-requirements> Rules And Requirements

   All litigants in this Court must follow the Federal Rules of Appellate Procedure (FRAP) and the Third Circuit Local Appellate Rules (3rd Cir. LAR). In addition, the Third Circuit Internal Operating Procedures (IOP) apply to all cases. [↑](#footnote-ref-1)
2. Circuit Rule 38 Sanctions

   When any party to a proceeding before this court or any attorney practicing before the court fails to comply with the FRAP, these rules, or an order of this court, or takes an appeal **or files a petition or motion that is frivolous or interposed for an improper purpose**, such as to harass or to cause unnecessary delay, the court may, on its own motion, or on motion of a party, impose appropriate sanctions on the offending party, the attorney, or both. Sanctions include dismissal for failure to prosecute; imposition of costs, expenses, and attorneys' fees; **and disciplinary proceedings.** See 28 U.S.C. §§ 1912, 1927. [↑](#footnote-ref-2)
3. AT&T March 1995 NJFDC Brief Page 20

   **The proceeding regarding tariff transmittal No. 8179, which is now before the FCC with the parties to this action participating,** **will, in fact, dispose of the critical issue in this case**: do the existing tariffs permit AT&T to protect itself by requiring security deposits or preventing subscribers from separating shortfall and termination liability from the accounts whose revenue secure such liabilities? The application of Tariff Transmittal No. 8179 would affect both issues in this case and thousands of subscribers to AT&T's Tariffs.

   See Inga moving brief **EXH B** AT&T’s March 1995 NJFDC Brief Page 21 at **EXH J**.

   The FCC proceeding regarding Tariff Transmittal 8179 deals squarely with issues at the heart of the plaintiff's application to force transfer of the service to PSE without transferring the underlined plans. [Footnote 15] AT&T FN 15: Both Inga Companies January 30, 1995 traffic only transfer to PSE and CCI’s January 13, 1995 traffic only transfer to PSE **depend upon Tr8179,** but Inga to PSE traffic only transfer does not face the hurdle of the new customer security deposit that CCI was required: The court should also recall that plaintiff attempted **two separate transactions** to achieve the same result. The first, involved CCI was to accept the plans but transfer the service, involved AT&T **requirement of security deposit from CCI** pursuant to the Tariff. The **second transaction** that Inga and Ship structured when **CCI was unable to make the required deposit**, involved AT&T's refusal to transfer service away from the plans, leaving them unable to meet service commitments. As to the first, there is no question of AT&T's right pursuant to tariff to act; **as to the second**, **tariff transmittal 8179 addresses that issue** to make explicit AT&T's implicit rights under the Tariff. Accordingly, **the proceeding in the FCC will resolve that issue**, the **only issue of meaningful controversy open in these transactions.** [↑](#footnote-ref-3)
4. Third Circuit (Oral Pg. 43) the FCC Rejected Tr8179 AT&T counsel Carpenter:

   “We thought the issue would be decided. 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. [↑](#footnote-ref-4)
5. FCC 2003 Order Pg 13 ¶ 19: **“Subsection 203(c)** forbids a carrier from employing or enforcing any classifications, regulations, or practices affecting its charges unless they are **“specified” in the tariff** and makes it unlawful for a carrier to deviate, in the rendition of tariffed services, from the charges, regulations, and practices set out in its filed tariff. We agree that, when AT&T **availed itself of a remedy not “specified” under its tariff**, it violated section 203 of the Act.” When 2.1.8 was shut down to all traffic only transfers AT&T availed itself of a remedy not specified under its tariff and thus violated 203(c). [↑](#footnote-ref-5)
6. 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 pg.19 para 1)

   Judge Politan: “The Court finds **nothing** in the Tariff F.C.C. No. 2 which prevents fractionalization, and contemplates a like finding by the F.C.C. Cleary, therefore, plaintiffs have established a strong likelihood of success on the merits. **March 1996 Pg. 16 para 1.**

   FCC FOIA: “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. What AT&T seems to propose in **new provisions** might well go beyond this situation in that **‘it does not even take intent into account but assumes it is there.** Mr Smith FCC FOIA Notes February1995.

   FCC 2003 Order pg 8 para 11 stated FCC “assumed” merit as it doesn’t decide judgement calls: “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.

   FCC/DC doesn’t decide merit. NJFDC decided it: “danger of shortfalls not substantiated!” “the Court finds nothing,” the Court is satisfied,” “do escape termination and also shortfall charges.” [↑](#footnote-ref-6)
7. This Court is allowing AT&T to assert a defense that: (A) By 1995 Court Order was denied (B) was withdrawn 6.2.95 and not tariffed and (C) the animal doesn’t exist. **Rule 11b** **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**.” Why is this Court allowing AT&T to assert a denied defense with no evidentiary support? [↑](#footnote-ref-7)
8. [2]  *Second District Court Opinion* at 4. [↑](#footnote-ref-8)
9. DC Circuit Decision 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 Circuit Decision 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-9)
10. Legal definition of remand: “v. to send back. An appeals court may **remand** a case to the trial court for further action if it **reverses** the judgment of the lower court.” [↑](#footnote-ref-10)
11. The DC Court simply corrected the FCC that 2.1.8 allows traffic only transfers. The only issue the FCC had to determine was account movement once Tr8179 was withdrawn on June 2, 1995. The scope of the Third Circuit referral was limited to account movement based upon the non-vacated May 1995 Order and Third Circuit Referral that is why the 2003 FCC Order correctly stated “the part” it needed to address was account movement. DC Court clearly did not remand/reverse the FCC—it corrected the FCC—sole issue resolved. [↑](#footnote-ref-11)
12. All these facts have either never been seen or never cited by Inga: **(A)** Inga never cited FCC 2003 Order that cited NJFDC non-vacated 1995 Order determined, outcome of Tr8179 ends issue (Inga1st.br pg 6 ¶9). **(B)** Never saw AT&T’s 1995 “outcome of Tr8179” concession brief (Inga 1st br pg7-8 ¶10) as 3 counsels conceded, and Third Circuit stated, FCC denied its defenses, forcing June 2, 1995 withdrawal of all defenses. **(C)** Never saw: Whitmer in January 1996 Oral **“as a matter of law”** AT&T could not prohibit the transfers. **(D)** Never saw: Inga 1br EXH A pgs 14-17 explicitly shows AT&T’s 2.16.95 TR8179 FCC filing and explicitly all AT&T’s defenses were asserted and Inga 1st br. Pg 5 thru pg 6 ¶ 8 covers the non-disputed fact that Third Circuit Referral could not have included Tr8179 defenses: “Shortly after the May 19, 1995 Order, however, AT&T withdrew tariff transmittal 8179, assertedly at the FCC's request.” FOIA shows not only denied as not being implicit to obtain retroactive application to Inga but denied prospectively. **(E)** Never detailed FCC 1.12.07 Order. **(F)** Never cited Tomich cited DC Law that DC didn’t remand/reverse but corrected FCC that 2.1.8 does allow traffic only transfers. (DC Order pg 10 fn1) and “obligations not issue” and **(G)** Now 17 months off FCC Circulation. (**H**) Never saw former customer tariff analysis **Here as EXH P**. AT&T replaced 2.1.8’s critical word: “former,” with **Old** and **Transferor** etc. The day after Inga’s 2007 FCC filing detailing 2.1.8’s obligation allocation exposing the coverup, Mr Brown called to offer hush money. (Inga.1st br.pg 14¶ 22 thru 18 ¶ 27). **(I) See Exhibits B, C D E.** FCC ethics could not start till liability i.e. Circulation ended January 2017 and then March 2017 FCC ethics Director/FCC Case managers immediately were “happy to assist” State Bars. **(J)** Tr8179/Tr9229 law explicitly answers the moot Judge Bassler referral revenue and term commitments don’t transfer on traffic only transfers. **(K)** AT&T lied to this Court that it addressed evidence (Inga 1st br 25 pg ¶43). AT&T never presented evidence as none exists to support AT&T’s fraud. **(L)** No controversy: AT&T position to DC on obligations was exactly as Inga. (Inga 1st b pg18 ¶29) **(M)** Ms. Suek and counsel Fash notices that AT&T unlawfully shut down 2.1.8 in June 1995 when it knew it lost all its defenses. (Inga 1st pg23 ¶ 43) **(N)**Tr8179 defenses denied and abandoned as Tr8179 can’t coexist with Tr9229 defenses. (Inga1st br pg25 ¶43) **(O)** Audio tapes AT&T has showing 1995 attack to get Inga users off plan before AT&T was ordered to transfer users from 28% to 66%. (Inga 1st br.pg 25fn7). **(P)** AT&T loses Tr8719 then AT&T’s 11.1.95 letter to NJFDC says “outcome of Tr9229 resolve issue.” Tr9229 prospective only so Mr. Guerra’s twice misleads this Court to evade “outcome of Tr9229 concession and evade explicit law that answered moot Bassler referral. (Inga 1st pg21¶37). **(Q)** Case moot as no obligation stipulations were imposed to alter 2.1.8 traffic only transfer. (R) AT&T can’t refute plans were pre-6.17.94 shortfall immune, as Politan made judgement call that AT&T had no merit to raise defenses.  [↑](#footnote-ref-12)
13. The Judge Chesler Court was provided with substantial quotes from the record showing AT&T’s position to the DC Court was revenue and term commitments under 2.1.8 don’t transfer.

    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 March 1995 brief 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. [↑](#footnote-ref-13)
14. Inga moving brief pg 25:

    AT&T Counsel Whitmer as of March 8, 1995 said it had already done **thousands** of traffic only transfers among aggregators NJFDC March 8, Oral pg. 53

    MR. WHITMER: “But there are literally - - my guess is hundreds, **if not thousands,** of transfers that have happened **among aggregators** and aggregations plans.” [↑](#footnote-ref-14)
15. Your Honor admonished plaintiffs for using the word “fraud” and plaintiffs and counsel **sincerely apologized** and will no longer use “fraud” language in this Court no matter how obvious the “big fib” is. [↑](#footnote-ref-15)
16. Perhaps this Court did not have the opportunity to understand the scope of the referred question because in one day it could not have understood the scope of the referral. The 1995 non-vacated Court Order determined the outcome of Tr8179--- based upon AT&T’s own 1995 concessions----would resolve the traffic only transfer issue. AT&T withdrew all the defenses under Tr8179 and thus no defenses were tariffed to assert after withdrawn June 2, 1995. The Third Circuit explicitly referenced the withdrawal. The FCC 2003 & 2007 Orders explicitly show account movement only referred. [↑](#footnote-ref-16)
17. The FCC did answer the question in 2003 finding the tariff did allow accounts to be deleted from 28% and added to 66% plan and thus ruled in favor of plaintiffs even though plaintiffs used 2.1.8. The FCC erroneously determined that 2.1.8 did not allow traffic only transfers and was corrected by the DC Court. This does not mean the FCC needs to interpret a now corrected and non-remanded issue. The FCC Commissioners have reviewed the case over 13 months and have made their decision to remove the moot referral. [↑](#footnote-ref-17)
18. AT&T’s interpretation of 2.1.8 obligation allocation was exactly as plaintiffs before the DC Court. AT&T counsel Meade 11.28.95 conceded AT&T could not use Tr8179 defenses as FCC said those defenses enabled AT&T to measure intent to not pay shortfall on the non-transferred plans---again answering the moot Judge Bassler Referral. [↑](#footnote-ref-18)
19. Judge Politan non-vacated 1995 Court Order determined the outcome of Tr8179 resolved AT&T’s defenses. January 1996 AT&T counsel Whitmer concedes to Judge Politan that “as a matter of law” it cannot prohibit the transfers. Judge Politan issues injunction after and says he finds nothing in the tariff to prohibit traffic only transfers. [↑](#footnote-ref-19)
20. Judge Bassler 1st instinct of **no remand** was correct –his Court made several key errors as pointed out by plaintiffs because he did not have the information this Court now has. [↑](#footnote-ref-20)
21. A lot has changed since AT&T withdrew its defenses on June 2, 1995 and the defenses were no longer tariffed to assert. The Third Circuit 1996 referral on account movement was FCC interpreted. The DC Court Corrected the FCC. The case went on FCC Commissioner Circulation on 11.2.15 and properly removed. The FCC Commissioners can only issue an order ---as per the APA---if there is a controversy /uncertainty within the scope of the 1996 Third Circuit Referral. The FCC Commissioners by removing the case from circulation in January 2017 have determined ---the DC Court corrected the only controversy. Additionally, the FCC Ethics Director Patrick Carney began recruiting State Bar Ethics staffs –as soon as the Commissioner Circulation ended ---because the FCC did not have jurisdiction on “big fibs” that were asserted to the NJFDC. The DC Court and FCC have also provided additional evidence to show the DC Court Order was not a remand/reversal with DC Docket Entry and FCC case listings. [↑](#footnote-ref-21)
22. Both the FCC 2003 and FCC 2007 Orders explicitly advise that per Administrative Procedures Act the FCC must have a controversial issue / uncertainty to interpret that was within the scope of the 1996 referral. The FCC Commissioners did not have one within scope of 1996 referral as DC Court corrected the FCC on account movement. [↑](#footnote-ref-22)
23. The Chesler Court did not comment on the fact that the DC Court Order explicitly pointed out that section 2.1.8 as required by law did not enumerate any obligations other than bad debt and minimum payment period. The Chesler Court also did not address the non-disputed fact that plaintiffs **did not impose any stipulation /condition** upon AT&T as per obligation allocation when ordering the 2.1.8 traffic only transfer. AT&T was simply responsible for processing the traffic only transfer within 15 days as per section 2.1.8 (c). Thus, the Judge Bassler referral is moot from the standpoint that whatever the obligation allocation was the parties were willing to adhere to the tariff. See Inga moving brief page 6 fn 5 “(Q) Case moot as no obligation stipulations were imposed to alter 2.1.8 traffic only transfer.” Also, page 12 para 19 in plaintiff reply brief. [↑](#footnote-ref-23)
24. 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.)

    **EXH B pg 20.** 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.

    AT&T Counsel Carpenter during Third Circuit Oral:

    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. (Pg 15 line 9)

    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 [↑](#footnote-ref-24)
25. AT&T had 15 days per 2.1.8 (c) to deny the traffic only transfer in writing and did not meet that requirement as it lied to the DC Court –without evidence of course--that it denied the transfer on January 27, 1995, but it did not. AT&T conceded to the FCC in 2007 that there was no January 27, 1995 denial letter. AT&T tried to pass off a different letter dated January 23, 1995 but that was not a written denial. It was a “we will see” letter. If the January 23, 1995 letter was valid AT&T would have submitted it to the DC Court. [↑](#footnote-ref-25)
26. AT&T is asserting defenses: (A) that 3 AT&T counsels conceded the FCC denied and AT&T thus withdrew June 2, 1995 under Tr8179. (B) Violate the non-vacated May 1995 Order ---based upon AT&T’s own 1995 concessions--- determined the ‘outcome of Tr8179” would resolve the issue. (C) The FCC 2003 and 2007 Order state it can’t interpret these 3 defenses as there was no longer a controversy /uncertainty under the APA to issue an order. (D) AT&T claims defenses are implicit/routine but can’t show evidence as none exists. (E) Judge Politan made a judgement call that the defenses had no merit as the plans were immune from penalties. [↑](#footnote-ref-26)
27. AT&T filed Tr8179 on February 16, 1995 and Judge Politan waited for the FCC to determine whether AT&T’s defenses were implicit to achieve retroactively prohibiting the January 1995 traffic only transfers; as those defenses on the face of 2.1.8 were not explicit as already being within the tariff. As FCC 2003 Order and Third Circuit Referral stated Judge Politan’s non-vacated May 1995 Order determined the “outcome of Tr8179” resolved those defenses. As the FCC 2003 Order stated those defenses never modified the tariff and never became part of the tariff. The Third Circuit explicitly stated Inga moving brief page 5 para 8 gave this Court a screenshot of the Third Circuit Order to draw attention to it.

    **“Shortly after the May 19, 1995 Order, however, AT&T withdrew tariff transmittal 8179, assertedly at the FCC's request.”**  [↑](#footnote-ref-27)
28. Whether Judge Wigenton referenced the FCC 2007 Order or not is not relevant as the DC Court Order explicitly at pg 10 fn 1 states it **corrected** the FCC. Judge Wigenton did not need the FCC 2007 Order that just re-affirmed DC Order corrected the F [↑](#footnote-ref-28)
29. AT&T 5.17.18 Introduction:

    This Court has properly rejected these claims, and suggested, **in its last two rulings**, that Plaintiff seek mandamus

    Incorrect. Judge Wigenton’s Court knew mandamus was moot as circulation as Judge Wigenton’s Orders stated:

    “To date, Plaintiffs have not sought mandamus. **However,** on November 2, 2015, the FCC posted notice on its website that Plaintiffs’ petition has been **circulated** and **is “pending action by the full Commission.**”2 *Fn2 ….*is a “Commission level item[] that ha[s] been circulated and [is] **pending action by the full Commission”).**

    **“significant development** since this Court’s March 2015 decision, the FCC’s announcement of pending action regarding this matter” [↑](#footnote-ref-29)
30. The FCC 2003 and FCC 2007 Orders both explicitly explain that per the APA, the FCC can only issue a DC reviewable declaratory ruling order that resolves controversies and uncertainties that are within the scope of the 1996 referral. The FCC Commissioners understood that the 3 obligation issues under Tr8179 were not within the scope of the 1996 referral. This is a primary jurisdiction referral and the FCC experts and DC Court experts that review FCC cases have spoken. By removing the case from circulation after 13 months review the FCC agrees that the only issue was DC Court decided. The case was removed back in January 2017, ----this is a primary jurisdiction referral--- It’s quite obvious why Judge Bassler’s referral is moot. It is based on defenses not tariffed and never implicit –which are based on AT&T’s “big fib,” and that is why no AT&T evidence exists. [↑](#footnote-ref-30)
31. Plaintiff counsel also made the same exact statement as Mr Inga. Mr Inga provided AT&T counsel his individual equity stake in the claims to appear pro se. AT&T has not and can’t prevent transfer of claims on an individual basis. [↑](#footnote-ref-31)
32. Plaintiff has won each Court decision from 1995 through DC Court 2005. When all evidence favors plaintiff and AT&T has none, the admonishing of plaintiffs 23-year pursuit of justice, was not expected. [↑](#footnote-ref-32)
33. This Court obviously understands, that if AT&T was being truthful it would have been able to provide transactional evidence as its Counsel Whitmer claimed it did thousands of these transactions. This Court ignored AT&T’s defense already was FCC denied/AT&T withdrawn, had no merit per Judge Politan, and had no evidence as AT&T’s defense itself was a “big fib.” [↑](#footnote-ref-33)
34. The FCC has made a decision in 2003 and the DC Court in 2005 corrected it and there was no remand. The FCC Commissioners pulled the case from circulation as it cannot by law issue another interpretation per APA as there is no controversy uncertainty presented by Judge Bassler’s 2006 referral within the scope of the 1996 referral. [↑](#footnote-ref-34)
35. This Court is ignoring the 2007 FCC Order stated that there are still **judgement based** 201 and 202 Communications Act claims that must be addressed by NJFDC as they are **not tariff interpretation issues**. This is covered in plaintiff moving brief page 4 claims “**weren’t disrupted by DC Decision.”** These claims are valid even if AT&T had won the 203 claims. These 201 and 202 fact-based claims do not have to be decided as AT&T violated 203 of the Communications Act. [↑](#footnote-ref-35)
36. The issue has been resolved. The DC Court’s 2005 Petition for Review is Granted corrected the FCC’s 2003 Order on the sole issue of 2.1.8 account movement. No remand. No Appeal. By Supreme Court Law stay is lifted. [↑](#footnote-ref-36)
37. The fact-based 201 unreasonable practices and 202 discrimination claims must be addressed by NJFDC and are independent of 203 tariff interpretation claims if plaintiffs lost the 203 claims. Given the fact AT&T violated 203 the 201 and 202 claims are moot. Judge Bassler agreed the record showed AT&T allowed thousands of other transfers to go through but not Inga Companies. That’s discrimination. The FCC and Judge Bassler understood that even if AT&T won the 203 claims it still is subjected to 201/202 claims, and AT&T agreed. Judge Bassler Oral Pg. 20 line 22:

    Judge Bassler: **What the FCC is saying there**, there's a question of unlawful **discrimination**. They've **already decided** the question of interpretation, but the plaintiffs put **another issue** in front of them. They said to the extent we're supposed to transfer all these obligations under 2.1.8. **AT&T has allowed thousands of other transfers to go through where they didn't require that**. **That's a form of discrimination** under Section 203.

    MR. GUERRA: The FCC says, we're not going to resolve discrimination claims here because A: We don't need to; B, it's inefficient because discrimination **is a fact question and you can litigate those fact questions.**

    THE COURT: Let's assume it goes back to the agency and **it agrees with your position**. Still going to have this issue of discrimination in this Court. Right?

    MR. GUERRA: You would, your Honor. I believe you would.

    See plaintiff moving brief pg 4 citing FCC 2007 Order position that DC Court decision **did not disturb** plaintiffs **201** and **202** claims as it also cites its 2003 Order—and states these fact-based claims must be addressed by the NJFDC:

    Moreover, in the *Order on Primary Jurisdiction Referral,* the Commission declined to rule on **factual** disputes between the parties, finding resolution of such facts was unnecessary on the primary jurisdiction referral, which requested an interpretation of section 2.1.8. *Id.,* 18 FCC Rcd at 21825, **para. 18 & n.87**. The Commission concluded that **any disputed facts should be addressed by the district court**, which -- as petitioners themselves previously argued -- was the original forum before which an evidentiary record had been compiled. ***id.* at n.87. These decisions were not disturbed by the Court of Appeals.** FCC 1.12.07 Order pg 3 fn 12. [↑](#footnote-ref-37)
38. 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). DC 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 addressed the scope of the 1996 issue and stated DC Court Corrected the FCC. The proceeding was over. **By law it can only have been continued if** (1) DC issued a remand which it did not. It issued a Petition for review granted correction. DC Legal Director Tomich and FCC GC Schlick wrote DC Decision was no remand. AT&T counsel Guerra conceded no remand. (2) the FCC voluntarily addressed it; or (3) a party filed for a clarification. None of these 3 things happened. DC simply determined 2.1.8 traffic only transfers are permissible. Per Supreme Court Law the stay is lifted and on to damages. [↑](#footnote-ref-38)