7.13.17

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

**REQUEST FOR DECLARATORY RULING**

Did AT&T violate its tariff No 2 or FCC Rule under either or both sections 2.1.8 Transfer of Service or Section 3.3.1Q Bullet 4 (Delete and Add) as to either the Inga Companies to PSE or the CCI to PSE traffic only transfers by conditioning sections 2.1.8 or 3.3.1Q Bullet 4 upon section 2.2.4. (fraudulent use) when sections 2.1.8 or 3.3.1Q Bullet 4 did not explicitly REFER to section 2.2.4. (fraudulent use)

The FCC 2003 Order simply ruled that AT&T used an illegal remedy by permanently denying the traffic only transfers instead of the tariffed remedy of temporarily suspending service. The FCC did not get the opportunity to interpret whether AT&T would be precluded from relying upon 2.2.4. as 2.2.4 was not referred to as a condition/stipulation/exception within sections 2.1.8 and 3.3.1Q Bullet 4.

The FCC 2003 Order Page 10 FN 67 addresses this long standing Rule:

As discussed in n.65, *supra*, Commission Rule 61.2 requires that tariff provisions be explicit. **Rule 61.54(j) further required that “[a] special rule, regulation, exception or condition affecting a particular item or rate *must be specifically referred to in connection with such item or rate.”* 47 C.F.R. § 61.54 (1994) (emphasis added).** Consistent with these rules, section 2.8 of AT&T’s tariff specified the precise remedy to be applied upon the occurrence of different enumerated events. For example, section 2.8.2 provided that when a customer failed to comply with sections 2.2 (Use), 2.7.2.C (Interference and Hazard), 2.7.8.A (Answer Supervision), 2.7.8.D (Customer-provided Communications System Failures), or 2.7.9 (Minimum Protection Criteria), the remedy was to deny requests for additional service and/or temporarily suspend service “on ten days’ written notice by certified U.S. Mail to the Customer.” *See* AT&T Further Comments at Attachment 5 (AT&T Tariff FCC No. 2 at § 2.8.2, 6th rev. p. 44 (eff. July 28, 1994)). Section 2.8.3 provided for disconnection of service and/or denial of requests for additional WATS in the event of a violation of section 2.5.3, governing nonpayment of charges. *See* Attachment 5 to AT&T Further Comments (AT&T Tariff FCC No. 2, 4th rev. p. 44.1 at § 2.8.3 (eff. Aug. 11, 1994)). Section 2.8.4 permitted AT&T, “immediately and upon written notice to the Customer,” to “restrict, suspend or discontinue providing … service” for violations of section 2.2.3.C or D. *Id.*

If AT&T wanted to rely upon section 2.2.4 (fraudulent use), AT&T by law must condition sections 2.1.8 and 3.3.1Q Bullet 4 (delete and Add) on first meeting the conditions outlined under 2.2.4., prior to proceeding with the traffic only transfer under either 2.1.8 or 3.3.1Q Bullet 4.

AL Inga President Group Discounts, Inc.

Larry Shipp President Combined Companies, Inc.