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RE: COMBINED COMPANIES, INC., WINBACK & Conserve Program, Inc. vs. AT&T Corp., a New York corporation, et al.

Civil Action No. 95-908 (WGB)

Case 2:95-cv-00908-WGB-MF

**EXPARTE NOTICE**

**FCC OGC DETERMINED DUE TO THE FACT THE 1996 REFERRAL WAS RESOLVED IN 2005 and the 2006 REFERRAL HAS BEEN REMOVED FROM FCC CIRCULATION DUE TO BEING MOOT, THERE WILL BE NO PUBLIC NOTICE RELEASED ON PLAINTIFFS MOTION TO FIND AT&T VIOLATED the FCC EX PARTE RULES**

Based upon directions from the NJFDC Judge Chesler plaintiffs inquired with DC Court Counsels regarding the proper procedures for filing a writ of mandamus to force the FCC to interpret the 2006 Judge Bassler referral.

DC Court Counsels Rebecca Thompson, Robert Cavello, and Nancy Dunn agreed with the position of DC Court Legal Director Martha Tomich advising plaintiffs that the 2005 DC Order was not a remand (reversed back to FCC). The DC Court Order was a correction of the FCC on the sole issue of whether 2.1.8 allowed traffic only transfers as stated in the DC Order page 10 fn 1 and FCC 2007 Order. There were no open issues left to resolve as per the Third Circuit 1996 referral.

Plaintiffs were advised by the DC Court Counsels that if it filed a writ of mandamus that filing simply to have the DC Court and FCC elaborate on why the DC Court Order was not a remand it would be an improper purpose motion. Plaintiffs were advised that given the fact that both the DC Court 2005 Order and FCC 2007 Order explicitly state DC Court corrected the FCC and counsels from both the DC Court and FCC OGC and staff all advise the DC Order was not a remand a writ of mandamus filing would not only be denied but subject the filer of such a motion (plaintiffs or AT&T) to ethics violations and sanctions.

These DC Court conversations have been recently documented on the FCC server within case 06-210 with emails that included AT&T counsel, the DC Court counsels, FCC Counsels, and Ethics staffs of FCC and State Bars.

In addition to the DC Court feedback the FCC staff also provided plaintiffs with the FCC website that lists the DC Court proceedings and advised the DC Court Orders explicitly state the DC Court disposition status. If the case were a remand (reversed back to FCC) it would explicitly state such. The DC Court docket Entry case disposition status for the case at hand was **“Petition for Review Granted**---the DC Court’s consistent docket entry case disposition statement for a review in which it corrected the FCC. The NJFDC Judge Chesler was also not aware of this FCC fact as it was advised by the FCC staff only after plaintiffs submitted its NJFDC reply brief. AT&T counsel Richard Brown was only made aware of the FCC feedback the day of the NJFDC Oral Argument June 6, 2018. AT&T counsel as of this date has not filed any FCC comments refuting the FCC staff on this fact.

The emails were part of a motion to address AT&T’s violation of ex parte requirements for failure to disclose the FCC staff feedback during 3 in person FCC visits. AT&T’s argument to the FCC during these 3 visits was the FCC needed to interpret Judge Bassler’s 2006 Referral.

During the 3 meetings consistent with the DC Court Order and FCC 2007 Order the FCC staff advised AT&T counsels the scope of the 1996 referral was limited to whether 2.1.8 allowed traffic only transfers. The FCC staff advised AT&T in these meetings that as per the FCC 2003 Order AT&T’s obligation allocation defenses and 2.2.4 fraudulent use defenses as per the 2.1.8 traffic only transfer were withdrawn on June 2, 1995 never modifying the tariff---i.e. never becoming a part of the tariff for AT&T to assert.

The motion also covered the fact that AT&T violated the “persistent clause” within the ex parte rules. The DC Court Order of 2005 and FCC 2007 Order were explicit as to the scope of the 1996 account movement issue and that Judge Bassler’s referral “did not expand the scope of the 1996 referral.” AT&T should not have been granted 1 in person visit to the FCC to assert withdrawn defenses that had no evidentiary support let alone 3 FCC visits---each time the FCC advised AT&T the DC Court corrected the FCC that 2.1.8 allowed traffic only transfers as ordered by plaintiffs and the Judge Bassler referral was moot. Plaintiffs filed its violation of the ex parte rules motion to 2 weeks ago and AT&T has not, because it can’t, refute the fact that multiple FCC staff advised AT&T during the 3 in person visits that the Judge Bassler referral was moot as it did not meet the Administrative Procedures Act requirement of resolving a controversy or uncertainty.

AT&T’s ex parte filing only provided its position and not the FCC argument. The FCC ex parte rules required AT&T to disclose the FCC staff argument as to why the FCC would not interpret the moot Judge Bassler 2006 referral, but AT&T violated that requirement. AT&T did not want to disclose the FCC Staff argument why it would not interpret the moot Judge Bassler 2006 referral.

The purpose of the violation of the ex parte rules motion was also a way to appease NJFDC Judge Chesler without ethics violations and sanctions being imposed as would result with a writ of mandamus. It was anticipated that AT&T’s violation of the ex parte rules would result in the FCC disclosing in writing that the FCC staff advised AT&T during these 3 visits what the scope of the 1996 referral was, it was DC corrected that 2.1.8 allowed traffic only transfers as done by plaintiffs, no remand/no reverse back to FCC, and no appeal.

Plaintiffs motion was filed 2 weeks ago and AT&T has not opposed the motion and has not refuted it was advised by FCC staff it was explicitly advised the 1996 issue was resolved and the Judge Bassler referral moot. As per the FCC ex parte rules a PUBLIC NOTICE would need to be released seeking comment. Wireline Director Pam Arluk advised that her office cannot release PUBLIC NOTICE unless approved by the FCC Office of General Counsel (OGC).

The FCC OGC has decided that there will be no public notice released as the case is over. The 1996 referral was resolved with the DC Court correction in 2005; the FCC Commissioners had the opportunity to review the Judge Bassler 2006 referral for any open controversies/uncertainties per APA regarding the 1996 account movement referral.

Consistent with the District Court May 1995 non-vacated Order, the Third Circuit 1996 Order, the FCC 2003 Order, the DC Court 2005 Order, and the FCC 2007 Order all agree that the 2006 Judge Bassler referral “did not expand the scope of the 1996 referral.” and thus the Judge Bassler referral was removed from FCC circulation.

While plaintiffs wanted the FCC to address AT&T’s violation of the ex parte rules, there will be no PUBLIC NOTICE as the FCC OGC agrees with plaintiffs by taking the position the issue was resolved in 2005. There will be no more motions in a resolved case.

Respectfully submitted,

Al Inga President

Group Discounts, Inc.