September 5th, 2017

Commission’s Secretary

Marlene H. Dortch

Office of the Secretary

Federal Communications Commission

445 12th Street, SW

Room TW-A325

Washington, DC 20554

Deena Shetler: deena.shetler@fcc.gov

FCC Contractor: fcc@bcpiweb.com

Re: WC Docket No. 06-210

CCB/CPD 96-20

**This is tariff evidence that confirms the Pre-June 17th 1994 immunity lasted way past when AT&T put charges on the bills.**

Summary of Email Thread…and case….

The information provided in previous emails below is overkill as **the case has been over since the Commission properly decided in January 2017 to remove the case from circulation**. The reason why petitioners have not yet gone back to Judge Wigenton and advised her Court that the case is no longer on circulation was that petitioners wanted to first deal with FCC and Texas State Bar ethics complaint. In addition, I have been extremely busy with a startup business.

Petitioners of course have mixed feelings on the ethics issue as Texas Bar counsel said Stephanie Pan said she determined AT&T’s local counsel engaged in ethical misconduct as AT&T counsel insisted on a defense that was no longer tenable and without evidentiary support and intentionally caused delay. However the misconduct was outside Texas Bar statute of limitations 4 years after AT&T withdrew its 2.1.8 defense on June 2, 1995.

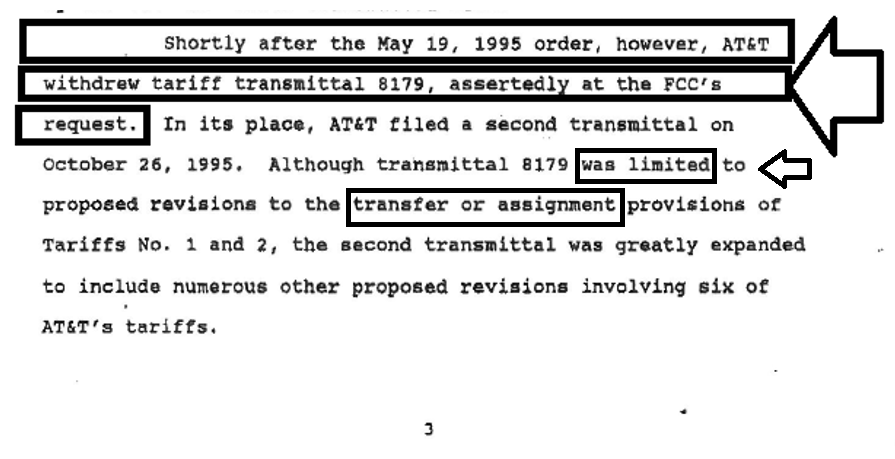
Stephanie Pan also determined that AT&T’s General Counsels within Texas Bar jurisdiction did not sign the briefs submitted in the Courts and FCC. Petitioners do not agree with either of the determinations as it should have been determined as a “Continuing Wrong” and it doesn’t make a difference whether AT&T general Counsel signed the briefs—under section 5 of Texas Bar rules the GC’s are responsible. The Board of Disciplinary Appeals is still reviewing whether they agree that Texas Bar can’t do anything about the ethical misconduct.

**CONTROVERSY I ---The TRAFFIC ONLY TRANFERS:**

The FCC Commissioners understood and agreed with the Wireline Division Order of January 12th 2007 that NJFDC Judge Bassler June 2006 referral on section 2.1.8 did not expand the scope of the Third Circuit Court’s referral of section 2.2.4 fraudulent use. “**The district court's June 2006 order does not expand the scope of the issue previously presented.”**

AT&T defense was dropped on June 2, 1995 as stated by the Third Circuit, the FCC 2003 Order, the FCC 2007 Order and AT&T’s own brief in 1995 conceded the 2.1.8 issue was over with the outcome of Tr8179.

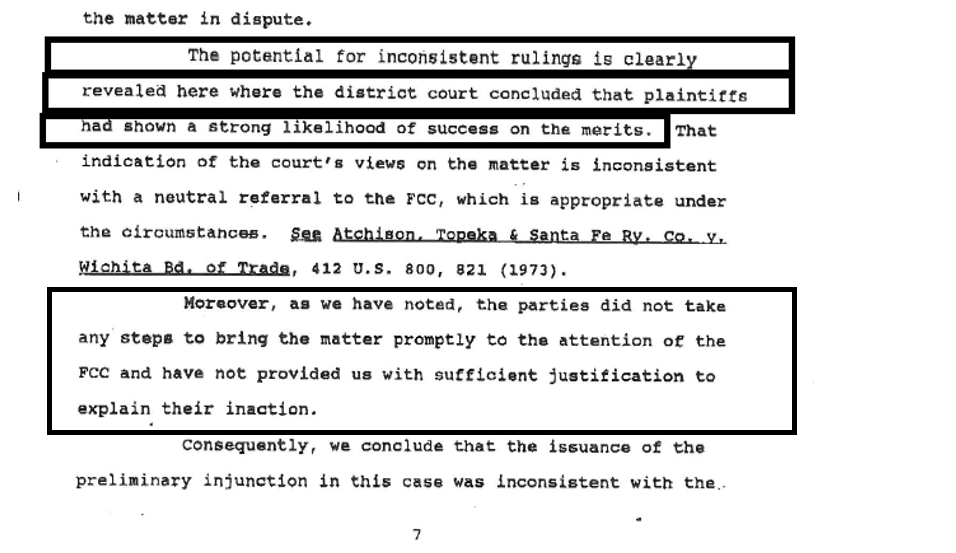
The Third Circuit Court Decision on page 3 explicitly states AT&T’s Tr8179 was withdrawn and **was limited** to section 2.1.8 (transfer or assignment). The second transmittal that is being referenced by the Third Circuit was Tr9229 which replaced Tr8179. Tr9229 became effective November 1995 on a prospective basis and was under the FCC October 1995 Order.



Below the Third Circuit pg. 7 states:

“Moreover, as we have noted, the parties **did not take any steps to bring the matter** promptly to the attention of the FCC…”

After AT&T withdrew its 2.1.8 defense the **only matter** that remained was the 2.2.4 fraudulent use matter.  The Third Circuit on page 3 just correctly stated the Tr8179 **was limited** to tariff section 2.1.8 (transfer or assignment) and correctly on page 7 confirmed that section 2.2.4 fraudulent use was not within AT&T’s Tr819 substantial cause pleading.



You can’t get more EXPLICIT THAN THIS----THE ONLY ISSUE REMAINING WAS 2.2.4. FRAUDULENT USE and Judge Politan had already made a judgement call that that defense HAD NO MERIT because the plans were pre June 17th 1994 Ordered and were immune from shortfall and termination charges.

THERE WAS NO REMAINING ISSUE AS PER SECTION 2.1.8. TRANSFER OF SERVICE!!! **Yet AT&T counsels intentionally scammed Judge Bassler and Judge Wigenton silly.**

AT&T tried to convince the FCC with its 2.16.95 Tr 8179 filing that it was ALREADY IMPLICT within section 2.1.8 that AT&T can deem the plan must be transferred if too many accounts are transferred away from the remaining tariffed revenue commitment of the non-transferred plan. If the FCC believed it was already implicit then AT&T could decide that the January 1995 transfer would have been prohibited as a traffic only transfer and only allowed as a **plan** transfer.

The FCC 2003 Order is explicit that AT&T withdrew its 2.1.8 defense on June 2, 1995 when the FCC decided against AT&T’s TR8179 Substantial Cause Pleading that was filed 2.16.95. The 2.16.95 filing of Tr8179 should not have even been considered by the FCC as it was filed outside the 15 day written denial requirement under 2.1.8.

The FCC determined that AT&T’s Tr8179 was a **substantive change** and thus would only be prospective and therefore not prohibit the January 1995 transfers of CCI to PSE and Inga Companies to PSE.

AT&T’s counsel Richard Meade certified in 1995 to Judge Politan and AT&T’s counsel David Carpenter advised the Third Circuit in 1996 that the FCC was going to deny AT&T’s implicit argument under 2.1.8 so AT&T withdrew Tr8179---to delay the case.

AT&T finally had to concede to NJFDC Judge Politan that AT&T lost its FCC TR8179 Substantial Cause pleading to “make explicit what AT&T claimed was implicit” under Section 2.1.8. AT&T counsel’s implicit argument actually failed on its face as the word implicit means that everyone already understands the terms and conditions—its implicit, its already understood---it doesn’t have to be said! If something is implicit then you would believe that AT&T counsel would have presented just 1 single transaction that had already been done to support its IMPLICIT argument. AT&T counsel before the FCC asserted a defense that had no evidentiary support in violation of Rule 11B. There was not 1 single shred of evidence presented to the FCC under TR8179 in which AT&T FORCED a conceded **traffic only transfer** be ordered to transfer the **entire plan** as AT&T did want, as per the tariff, the revenue and time commitment to remain with the non-transferred plan.

AT&T Counsel Richard Meade certification to the District Court in November 1995:

The FCC was concerned that the modified language in Section 2.1.8(c) would have had a broader effect than was needed to achieve AT&T's specific purpose, which was simply to clarify its existing right to prevent a location transfer intended to avoid payment of charges, and **so would constitute a “substantive tariff change”.** (page 4 para 9)

The FCC advised AT&T that it was a substantive tariff change and as such would not be retroactively provisioned. The FOIA Notes show the Commission did not want AT&T to **subjectively** determine which customers plans must transfer on a substantial traffic only transfer.

As the Third Circuit Court stated AT&T withdrew Transmittal 8179 and replaced it with Transmittal 9229 explaining how in the future AT&T would address the traffic transfer at hand.

AT&T Counsel Meade certified:

On October 26th 1995, AT&T Corp. filed Tariff Transmittal No 9229 with the FCC. Transmittal No 9229 addresses the problem implicated in the CCI-PSE transfer--- the segregation of assets (locations) from liabilities (plan commitments) --- in the following manner. pg.7 para 15.

AT&T Counsel certified to the District Court that Tr. 9229 **prospectively added** deposit requirements against potential shortfall and therefore there was nothing within Tr. 9229 that would be determinative of the issue presented on the CCI/PSE transfer. Mr Meade:

The Deposit for Shortfall Charges included in Transmittal No. 9229 is a “new concept” that meets AT&T's business concern more directly, **without addressing the question of intent.** **Because this is new, it will apply only to newly ordered term plans, and so would not be determinative of the issue presented on the CCI/PSE transfer. (pg.7 para 16)**

AT&T counsel Meade was referring to “new concept” and “addressing the question of intent” as the FCC had advised AT&T counsels that it did not like Tr8179 as AT&T could subjectively determine which customers traffic only transfers under section 2.1.8 it would force to do an entire plan transfer. Tr9229 was different as it used a mathematical formula instead of a subjective AT&T determination. Under Tr9229 prospectively effective in November 1995 a security deposit against potential shortfall had to be posted by the former customer of the transferred traffic that remained with the non-transferred plan which of course still had to meet tariffed customer commitments of Revenue and Time commitments. If the revenue commitment was not met there would be shortfall. So, the mathematical formula compared the remaining **commitment** to the remaining **revenue** after the accounts were transferred to determine the security deposit to be posted. This “new concept” that prevented AT&T to subjectively determine intent was acceptable to the FCC on a prospective basis as it was a substantive tariff change. The intent question was simply whether the traffic only transfer was done so the majority of the revenue stream could be transferred away but the non-transferred plans with their tariffed commitments could be defaulted on.

In this case the plans were pre-June 17th, 1994 and there should have been no shortfall applied. As the evidence shows the movement of traffic only to PSE’s 66% plan was to gain additional revenue and to put pressure on AT&T to give petitioners their own Contract Tariff. The 66% discount plan only had a $4.8 million revenue commitment. Petitioners were receiving 28% and had revenue of almost $100 Million in 1993. When CT 516 came to the market customers quickly moved to PSE or Tele-Save the 2 companies that brought action against AT&T to get CT-516.  AT&T simply refused to provide the Inga Companies with a contract tariff despite having the by far the most revenue of all resellers according to AT&T’s own Revenue At Risk Report.  AT&T wanted the Inga Companies OUT OF BUSINESS and did every possible tariff violation to not transfer the traffic. AT&T counsel since 2005 misrepresented to NJFDC Judges Bassler and Wigenton and the FCC that revenue and time commitments transfer on a traffic only transfer but of course provided no evidentiary support—as no such evidence exists.

When petitioners showed Judge Wigenton AT&T’s Tr9229 Tariff filing that EXPLICITLY shows that revenue commitment does not transfer AT&T’s counsel intentionally misled Judge Wigenton.

As soon as ATT’s 2.1.8 defense was withdrawn on **June 2, 1995**, AT&T’s order processing manager Joyce Suek sent the Inga Companies a fax in **June 1995** stating 2.1.8 “**no longer”** allow traffic only transfers no matter how many account locations were transferred---it had to be for the whole plan. There was no tariff revision to 2.1.8 in June 1995---- AT&T counsels simply ordered its business executives to **violate its tariff** as the November 1995 TR9229 security deposit against potential shortfall had not yet become effective.

**CONTROVERSY II ---The June 1996 Penalty Infliction.**

The FCC’s 2003 Order correctly states the June 17th 1994 exemption having to do with the duration of immunity was not referred by NJFDC Judge Politan. The reason why it was not referred makes perfect sense as Judge Politan held the plans were pre-June 17th, 1994 immune. The fact that the plans were pre-June 17th, 1994 immune **was the criterion used** by Judge Politan to issue the March 1996 injunction—denouncing AT&T’s remaining 2.2.4 fraudulent use argument.

It was a judgement call his Court made as Judge Politan explicitly stated AT&T had not properly substantiated its 2.2.4 fraudulent use defense which **was based on the premise of suspecting shortfall charges**.

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

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

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

Note that two of the three statements above are from the NON-VACATED first NJFDC Decision May 1995. A non-vacated judgement call had already been determined by Judge Politan, denouncing the merits of AT&T’s 2.2.4 defense. When AT&T’s counsel Richard Meade certified that AT&T’s 2.1.8 defense was withdrawn, Judge Politan issued the March 1996 injunction denouncing the 2.2.4 merits of AT&T total bullshit of suspecting shortfalls of non-rendered service.

As the FCC’s R.L Smith stated this case involves a judgement call by the NJFDC. R.L Smith understood the FCC’s job was to simply interpret the tariff as to whether AT&T could use section 2.2.4 to prevent a permissible direct transfer via 2.1.8 or a 3.3.1Q bullet 4 delete accounts from petitioners and add accounts to PSE traffic only transfer.

Judge Politan got vacated due to “primary jurisdiction” not legal error or bad judgement on the June 17th, 1994 immunity.  It did not make a bit of difference what the FCC or DC Circuit Court determined on the tariff interpretation. Judge Politan’s decision that the plans were pre-June 17th, 1994 and AT&T’s suspecting shortfall had NO MERIT!!!  The judgement decision by Judge Politan supersedes any FCC or DC Circuit Decision---- even **if** the DC Circuit had determined AT&T had the right to prevent a 2.1.8 traffic only transfer by using section 2.2.4.

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

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

The FCC is confirming it is a NJFDC **judgement call** to determine intent to evade paying shortfall charges. The FCC is making the point that it is interpreting the tariff but AT&T is forgetting the fact that it never got to 1st base by establishing with Judge Politan the merits of raising a defense that was premised on suspecting shortfalls.  AT&T just assumes INTENT IS THERE!!!  Both the 2.2.4 and withdrawn 2.1.8 defenses were premised on suspecting shortfalls.

The FCC Order stated the same thing:

FCC 2003 Order page 8 para 11:

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

The FCC only had fraudulent use controversy before it and had to ASSUME AT&T had the merits to rely upon fraudulent use because the injunction against AT&T shows Judge Politan clearly indicated AT&T’s premise of being deprived collecting “shortfall” i.e. charges for services NOT EVEN RENDERED was **“neither pivotal to the instant injunction nor properly substantiated by AT&T”**

As of the March 1996 NJFDC Decision AT&T never presented its 1 restructure “replacement plan” argument. It was already 15 MONTHS after the January 1995 traffic transfers and the plans continued to be restructured without penalty. There was no evidence presented by AT&T that the traffic only transfers should be stopped due to AT&T’s premise of shortfalls. So, whether the shortfalls should or should not have been applied in June 1996 (18 months after the January transfers) did not affect Judge Politan’s decision to order the traffic only transfer.

AT&T hit the plans with shortfalls on June 1st 1996 ---the day AFTER the Third Circuit May 31st Decision. Yet AT&T never presented evidence to the Third Circuit that it was about to hit the end-users with $80 Million in charges.

The FCC has seen the fraud AT&T’s counsel Richard Brown pulled on Judge Politan in the 800 Services, Inc case. AT&T scammed Judge Politan by asserting the July 22nd 1994 upgrade/restructure was **NEW** SERVICE that started August 1st 1994 and not retain the terms and conditions of being Pre June 17th 1994 immune from shortfall and termination charges. If Judge Politan understood that 800 Services, Inc’s plan was an upgrade and thus still retained its pre-June 17th 1994 immunity he would have determined as he did in the Inga Companies case that AT&T had no right to inflict shortfall if the plans were properly ---in his words: “restructured or refinanced.”

800 Services, Inc did not restructure again in 1995 as AT&T asserted it was still going to charge the customers whether he restructured or not. Judge Politan’s rulings were consistent in both cases. Richard H Brown III just scammed Judge Politan that 800 Services, Inc had NEW Service.

Given the fact that Judge Politan has already determined that properly restructured plans do **not** face shortfall and termination charges and that issue was not referred to the FCC--- at this point the FCC should wait for Judge Wigenton’s decision on the June 1996 infliction. The fact that the FCC in January 2017 also removed the August 11th 2016 Declaratory Ruling Requests that covered the June 1996 penalty infliction from FCC Circulation should be confirmation to Judge Wigenton that the FCC considers the non-referred June 17th 1994 immunity issue a **judgement call** that has already made in favor of petitioners by Judge Politan.

The 2.1.8 traffic only transfer has obviously been resolved in petitioner’s favor. Judge Wigenton will be shown explicit tariff evidence that the June 1996 penalty infliction was unlawful as the plans were immune for the entire 3-year contract into 1997.

The November 1995 Discontinuance without Liability revision clarified that the June 17th, 1994 immunity ended with the expiration date of the term of the plan. Thus, the pre-June 17th, 1994 plans were immune well into 1997. So, when AT&T whacked the plans with shortfall charges in June 1996 it violated its tariff.

Its explicit……..and **all rates, terms and conditions of the old plan will remain in effect** until that day, provided that the old plan shall not remain in effect **beyond the expiration of its term**.

Very simple the first of the plans was restructured for a 3-year period under the June 17th 1994 discontinuance without penalty version of the tariff in April 1st 1995 and as AT&T’s counsel Charles Fash had a fiscal year end stated of March 31st 1996. So that plans 3-year expiration ended **March 31st 1998.**

AT&T then files its tariff revision in November 1995 and limits the restructures to the 3-year term that was ordered prior to the November 1995 tariff revision. That started with the 1st restructure after November of 1995 and the terms and conditions are retained for the three-year period.

In petitioners case, the Restructure that was ordered to making March 1st 1996 a TERM ASSUMPTION STARTING DATE enabled petitioners to continue to restructure without penalty but only until the end of the 3 year term plan---November March 31st 1998—not 3 years added to March 1 1996 (March 1st 1999).

In petitioner’s case the maximum time to avoid any shortfall penalties ON THE FIRST PLAN is 1 fiscal year after from March 1998 and that of course is **February 28th 1999.**  Other plans did not need to be restructured and their shortfall immunity would be even longer than February 1999. AT&T put shortfall on all of petitioners plans and stopped paying on all plans despite acknowledging that all the other plans were over revenue commitment and did not need to be restructured.

In any event the fact that AT&T unlawfully put us out of business in June 1996 is YEARS before had the ability to do so.

This also confirms that the post November 1995 restructure ordered to start a new 3-year plan March 1st 1996 was under the November 1995 Version but shortfall immunity was grandfathered through the end of the 3 years term **March 31st 1998.**

This also means AT&T’s assertion in its 9.30.16 FCC Comments is incorrect that the June 17th, 1994 discontinuance version was controlling in early 1996. The November 1995 version terms and conditions were controlling but the November 1995 version considered the full duration of the three years that was ordered PRIOR TO THE EFFECTIVE DATE OF THE NOVEMBER VERSION.

This is also conclusive that AT&T was under the **FCC October 1995 Order** and if its interpretation as per the November 1995 terms and conditions was in dispute with petitioners, AT&T had to meet the substantial cause test. If AT&T’s interpretation of the November 1995 version is not the same as petitioners, AT&T loses as that triggers meeting the substantial cause test—so **AT&T is not even in a position to argue petitioners tariff interpretation.**

If you look at the August 29, 1996 version of Discontinuance without Liability Section/Restructure (below the November version) the tariff at (b) continues to recognize pre June 17th 1994 plans and at (c) provides a credit for any shortfall that was left over from the old plan. The FCC made sure that any AT&T customer that had a revenue commitment that had originated prior to June 17th 1994 was able to avoid shortfall as long as they continued with AT&T and the commitment that was being ordered was more than the remaining commitment of the OLD Plan.

It must also be remembered that when a CSTPII contract is restructured the COMMITMENT KEEPS GOING DOWN NO MATTER WHATTHE REVENUE ON THE PLAN IS!!!! So by February 1999 the base $600,000 commitment could have been used to attain the 28% CSTPII discount. In other words, the plans end would not have necessarily stopped in 1999. The CSTPPII offer continued until it had to eventually be rolled into a Contract Tariff in 2001.

The November 1995 tariff filing was part of the Tr9229 package that replaced the withdrawn Tr8179 filling. AT&T presented this filing –which Judge Politan referred to as the “morass.” If AT&T counsel in 1995 believed –as per its tariff---that the plans were going into shortfall, AT&T would have explicitly referenced the language in the November 1995 tariff version. AT&T counsel knew the November 1995 tariff version supported petitioners position that the plans continued to be shortfall charge immune, so AT&T counsel never pointed it out. Judge Politan’s March 1996 Decision stated that AT&T can come back and show his Court evidence to support its bond request but AT&T couldn’t.

To the extent however that **AT&T’s demand for fifteen million dollars’ security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)

AT&T STILL COULD NOT **substantiate** shortfalls were imminent in March of 1996 and yet it had asserted its bogus 2.2.4 fraudulent use defense since February 1995! AT&T is not only under the FCC October 1995 Order in March 1996 -----but even without considering the 1995 FCC Order ---how is AT&T going to argue to the NJFDC or FCC today that the November 1995 tariff version means it could assess charges on a plan that had already ordered an upgrade and the (TASD) would be March 1st, 1996. The order was prior to Judge Politan’s March 5th, 1996 Decision.

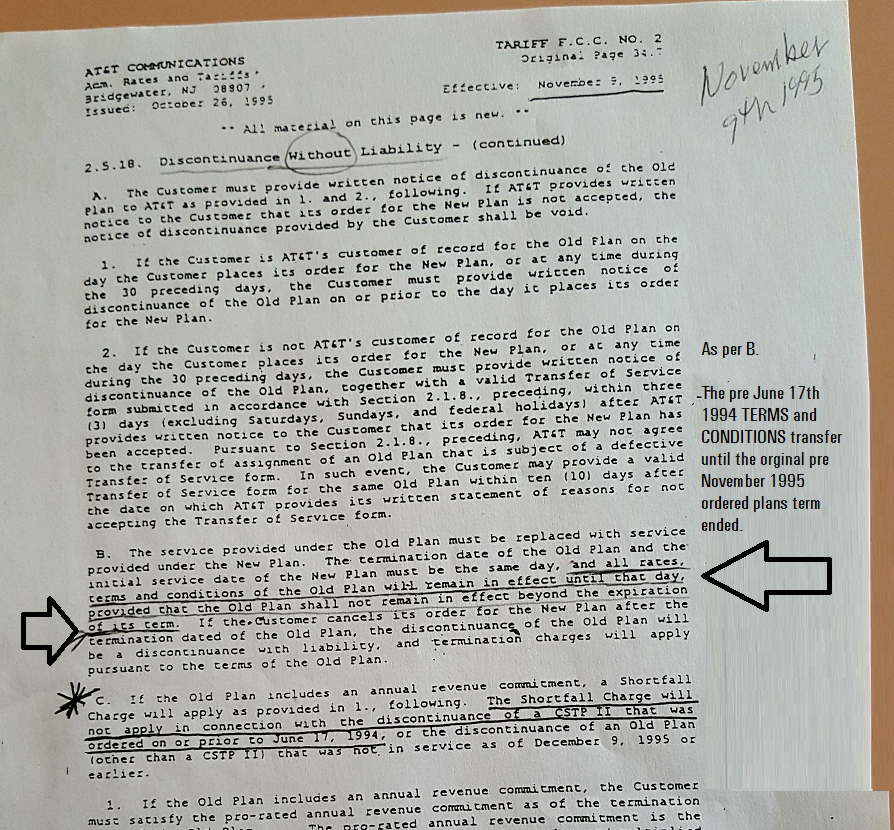
Furthermore, by law if the tariff is not explicit it must be ruled against AT&T. The FCC noted this in its 2003 Order:

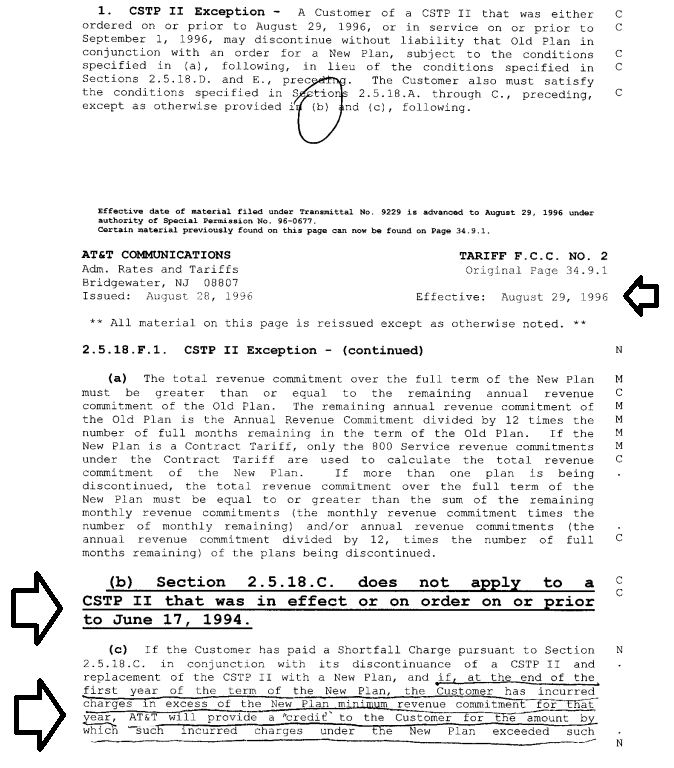
FCC Page 10 para 65:

We reject AT&T’s argument that these provisions authorized AT&T to “suspend the customer’s *right to transfer* service.” *See* Opposition at 11 n.11 (emphasis added); *see also* AT&T Further Comments at 11Pursuant to Rule 61.2, titled “Clear and explicit explanatory statements,” as in effect in January 1995, “[i]n order to remove all doubt as to their proper application, all tariff publications must contain clean [sic] and **explicit explanatory statements** regarding the rates and regulations.” 47 C.F.R. § 61.2 (1994). It is a well settled rule of tariff interpretation that “‘[t]ariffs are to be interpreted according to the reasonable construction of their language; **neither the intent of the framers nor the practice of the carrier controls, for the user cannot be charged with knowledge of such intent or with the carrier’s canon of construction.**’” *Associated Press Request for a Declaratory Ruling*, 72 FCC 2d at 764-65, para. 11 (quoting *Commodity News Services, Inc. v. Western Union*, 29 FCC at 1213, para. 2).

Therefore, we now have explicit tariff evidence showing that AT&T unlawfully put petitioners out of business in June 1996 and it is conclusive as per AT&T’s own 9.30.16 concession that it violated the FCC October 1995 Order.

Additionally, this also solidifies Judge Politan’s findings that AT&T’s 2.2.4 fraudulent use defense to prevent a 2.1.8 or 3.3.1Q Bullet 4 transfer was premised on suspecting shortfall had no merit.





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AT&T filed tariff changes to discontinuation w/o liability in November 1995 and there were obvious disputes and thus AT&T violated the FCC October 1995 Order and the FCC rules dictate the commitment is extinguished.

The additional quotes from the Third Circuit Court’s May 31st 1996 referral confirm there was **no AT&T defense that remained under section 2.1.8. after AT&T withdrew it on June 2, 1995.**

The DC Circuit Court only reviewed 2.2.4 fraudulent use and decided that it would only be fraudulent use if there weren’t any obligations transferred. The DC Circuit explicitly stated that the ordered transfer would transfer all of the obligations enumerated within section 2.1.8: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Regarding the June 1996 penalty infliction, the tariff is explicit that the plans would remain shortfall immune until the end of the 3-year contract that was ordered PRIOR to the November 1995 tariff revision. AT&T can’t dispute what petitioners and Judge Politan’s May 1995 and March 1996 decision was as doing so concedes AT&T violated the FCC October 1995 Order and the FCC has the right to extinguish the CSTPII/RVPP commitment.

Given the fact that Judge Politan has already made a determination that the plans were pre June 17th 1994 immune and thus did not refer the June 17th 1994 immunity duration to the FCC---- the FCC should wait to hear whether Judge Wigenton needs to have the June 17th 1994 immunity issue interpreted by the FCC. Especially now that AT&T’s own 9.30.16 FCC filing concedes it violated the FCC’s October 1995 Order by not meeting the substantial cause test.

Al Inga President

Group Discounts, Inc.

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Saturday, September 02, 2017 11:22 AM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>  
**Subject:** RE: Richard ---CATCH-22:

Richard

CATCH-22:

**OUTCOME (A)**

If the **March 1st, 1996** term assumption starting date is considered **new** (AT&T’s interpretation) then it’s a dispute under the November 1995 discontinuance tariff version and AT&T had to meet the substantial cause test. AT&T failed to disclose and failed to meet the substantial cause test and therefore as per the FCC October 1995 Order the FCC must **extinguish the entire commitment.**

**OUTCOME (B)**

If the **March 1st, 1996** term assumption starting date is considered a **discontinuation/upgrade/restructure** of the pre-June 17th, 1994 terms and conditions (Petitioners interpretation) then the plan remained “grandfathered” (shortfall/termination immune) and thus **no charges** should have been inflicted in **June 1996.**

As AT&T counsel Charles Fash asserted July 3rd, 1996 ---AT&T had no right in January 1995 to suspect shortfall until after the billing period was over in March 1996. It would be a violation of 201 of the code for being unreasonable.

Thus, both outcomes also address the non-merits of AT&T asserting in **January 1995**. AT&T asserted that it could not transfer the traffic from 28% to 66% discount because AT&T suspected that it was going to be deprived of collecting shortfall for NON-RENDERED service in **June of 1996.** Shortfall charges are, by definition, charges for non-rendered service. As Judge Politan stated AT&T’s real costs were protected and AT&T’s January 1995 bullshit about being deprived shortfall charges was just that “not properly substantiated” total bullshit.

Al Inga President

Group Discounts, Inc.

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Saturday, September 02, 2017 10:11 AM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>  
**Subject:** RE: Richard ---See what happens when you lie and try to revise history. Nothing makes sense.

Richard

Here is yet another inconsistency in AT&T’s “story”…

We have already submitted AT&T counsel Charles Fash letter dated July 3,1996. The letter of course is during the FCC’s October 1995 Order. The Fash letter confirms there was a dispute involving shortfall infliction and illegal billing controversy:

You claim that AT&T, by placing tariffed shortfall charges on bills sent to CCI’s end-users, was somehow stepping outside the established forum for resolution of the collection dispute (supposedly, the pending lawsuit between the parties). In fact, however, this is a **new dispute** that has nothing to do with the pending suit. Indeed, the relevant period for calculation of the of the shortfall charges in issue did not expire until **March 31, 1996** and the charges were then billed on the **June 1, 1996 bills**. AT&T’s claim for payment of these charges obviously could not have been the subject of litigation until both of these events had occurred.

As CCI’s president Larry Shipp certified to the FCC he and I ordered the restructure of the plan for 3 years to make March 1st 1996 a Term Assumption Starting Date (TASD). Therefore, the plan would have never reached the previous March 31st 1996 true-up date.

At that point under AT&T’s interpretation, not only was there a dispute, but AT&T’s position was the restructure plan to start March 1st, 1996 was **NEW** and thus had to abide by the terms and conditions of the prevailing discontinuation without liability tariff version---- which at that point was the November 1995 version—which was under the FCC October 1995 Order.

AT&T’s 9.30.16 comments to the FCC stated:

“Paragraph 134 had nothing to do with the enforcement of AT&T’s existing tariffs or disputes over their meaning.”

AT&T took the position that the FCC October 1995 Order had nothing to do with the enforcement of the June 1994 discontinuance tariff version and AT&T had no obligation to meet the substantial cause test as of November 1995 because the plans were still pre June 17th 1994 plans. Petitioners do not agree with that position as detailed in the previous email.

By the second restructure March 1st 1996 the plans ----in AT&T’s world---NEW REPLACEMENT PLANS that no longer enjoyed the June 17th 1994 terms and conditions.

Thus following AT&T’s own logic that FCC Order paragraph 134 had nothing to do with the enforcement of AT&T’s **existing tariffs or disputes over their meaning------** the tariff version AT&T is referencing at that point has to be the prevailing November 1995 version.

Given the obvious fact that there was a dispute and given the fact that as of **March 1st 1996** with the second restructure what is AT&T’s excuse at that point using AT&T’s own interpretation of its tariff not to meet the substantial cause test?  In fact AT&T should have filed a substantial cause pleading when the second restructure was ordered in to make March 1st 1996 the start of another 3 year contract.

So AT&T’s cover-up for not meeting the substantial cause test in November 1995 was the plans were still under the June 17th 1994 tariff version. Then how is AT&T possibly asserting in January 1995 that it suspected shortfall and raised 2.2.4 fraudulent use defense and filed on February 16th 1995 its Tr8179 section 2.1.8 defense to force the plan to move because of the pending shortfall----when your own counsel Fash is saying one dispute has nothing to do with the other. You anticipated shortfalls over 18 months in advance? (Jan 1995- June 1996)

AT&T wants it both ways---It wants to assert the plans were under the grandfathered shortfall immune pre-June 17th 1994 terms and conditions as of the November 1995 tariff filings (2.1.8 and discontinuance) and thus AT&T did not have to meet the substantial cause test------but it simultaneously asserts the shortfall immune pre June 17th 1994 plans traffic could not be transferred due to potential shortfall 18 MONTHS LATER in June 1996!!!

Richard--- back to the point---- What new bullshit are you going to fling at the FCC as to why when the second restructure was filed –which according to AT&T makes the plan a new plan under the November 1995 version--- during a dispute as per pre-June 17th 1994 exemption ---did AT&T choose not meet the substantial cause test?  If AT&T filed it would have had an answer prior to deciding to put $80 million dollars of charges on end-users bills in June 1996 while a tariff interpretation dispute was going on!

Can’t wait to hear the new bullshit.

Al

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Saturday, September 02, 2017 6:52 AM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>  
**Subject:** RE: Richard ---See what happens when you lie and try to revise history. Nothing makes sense.

AT&T 9.30.16 FCC Comments page 2:

“Paragraph 134 had nothing to do with the *enforcement* of AT&T’s existing tariffs or disputes over their meaning.”

AT&T is taking the absurd position that because the June 1994 tariff version of discontinuation without liability is what the Inga Companies plans were under, it was not entitled to dispute the November 1995 version? My company was a reseller that already owned up to 9 plans and planned on being in business much longer, ordering additional plans in the future. As a reseller, I have the right to understand the tariff and plan for my business.

The FCC October 1995 Order does not say that if you already own a pre-June 17th, 1994 plan you have no right to have clarified the terms and conditions of the November 1995 version. The bottom-line is AT&T filed changes to discontinuance without liability and 2.1.8 in November 1995 while under the FCC October 1995 Order.

AT&T’s former counsels offered the NJFDC no evidence nor even asserted that a pre-June 17th, 1994 plan becomes a post June 17th, 1994 plan through the March 1996 NJFDC Decision. AT&T counsels on 8.26.96 created its only 1 post June 17th, 1994 restructure “replacement plan” interpretation for the June 1994 version of the tariff 26 MONTHS LATER!!!

AT&T asserted to the FCC in its 9.30.16 Comments that it had no requirement to go to the FCC in November 1995 but AT&T’s 8.26.96 FCC Comments indicates AT&T’s pre June 17th 1994 interpretation was in dispute with petitioners since June 17th 1994 and throughout the FCC October 1995 Order.

In reality, the prevailing tariff interpretation through the March 1996 NJFDC Decision and May 31st, 1996 Third Circuit Decision was the plans would continue to be pre-June 17th, 1994 immune. Read the March 1996 Decision. Judge Politan offered AT&T to come back with evidence to substantiate its shortfall assertion and AT&T did not.

AT&T’s position that Paragraph 134 had nothing to do with the *enforcement* of AT&T’s existing tariffs (1994) or disputes over its meaning is **NOT RELEVANT** to petitioners **right to dispute the November 1995 and August 1996 versions** of the pre-June 17th, 1994 issue. AT&T decided to revise history and claim the 1994 version only allowed 1 restructure—but simply never offered such evidence through Third Circuit Court’s May 31st, 1996 Decision.

AT&T claimed in its 8.26.96 FCC comments and its 9.30.2016 FCC Comments that its position SINCE June 17th, 1994 was ONLY 1 restructure. **That would obviously be in dispute with petitioner’s and NJFDC Judge Politan’s interpretation through March 1996.**

Therefore, if AT&T had its 1 restructure position since June 1994 and AT&T knew it was disputed---**why didn’t AT&T meet the substantial cause test under the FCC October 1995 Order when the November 1995 tariff changes were introduced?** Based upon what **AT&T advised the FCC since 8.26.96** there was no reason not to have filed in November 1995and August 1996 as AT&T is NOW claiming **there was a dispute since June 1994.**

Even though AT&T unlawfully charged the plans in June 1996, the AT&T /CCI settlement states the plans were not terminated until **July 1 1997.** AT&T needed to meet the substantial cause test when it filed both the November 1995 and the August 1996 version of Discontinuance without liability as the FCC October 1995 Order 1-year period ended September 30th, 1996.

AT&T’s 8.26.96 FCC Comments asserted the pre-June 17th, 1994 plans were no longer pre-June 17th 1994 grandfathered plans as they were “replacement plans.” Even if the plans according to AT&T’s 8.26.96 FCC Comments were “replacement plans” as of the November 1995 and August 1996 tariff filings, AT&T **was still obligated to meet the substantial cause test**, as AT&T’s 8.26.96 FCC comments conceded there was a dispute over the duration of immunity regarding the pre-June 17th, 1994 exemption and the plans were not terminated until **July 1st 1997.**

The reality is that even if petitioners KNEW ABOUT the FCC October 1995 Order it would not have expected AT&T to meet the substantial cause test as to the November 1995 filing, because **as of November 1995,** AT&T offered no dispute to the NJFDC or through the Third Circuit May 31st 1996 Decision, as to petitioner’s position that the plans would remain pre-June 17th, 1994 immune from shortfall and termination charges.

AT&T counsel is rewriting history. Its counsel and all AT&T executives position was that the pre-June 17th, 1994 plans would remain shortfall and termination charge immune through the May 31st 1996 Third Circuit case. Later AT&T counsel claims in its FCC Comments of 8.26.96 that **it had always been its interpretation** that the plans could only be restructured 1 time. AT&T simply **“forgot”** to tell Judge Politan about its pre-June 17th, 1994 “replacement plan” interpretation of AT&T’s tariff from January 1995 through March of 1996.

AT&T is claiming its position on the pre-June 17, 1994 immunity duration was **in dispute** with petitioners since the June 17th, 1994 tariff version. Therefore AT&T was obligated to meet the substantial cause test from **October 23rd, 1995** through **September 30th 1996** and bothtariff filings of November 1995 and August 1996 were in dispute during the FCC 1995 Order, as the plans were not terminated under the CCI/AT&T settlementuntil **July 1st 1997**.

Al Inga President

Group Discounts, Inc.

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Friday, September 01, 2017 6:18 PM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>  
**Subject:** FW: Richard ---See what happens when you lie and try to revise history. Nothing makes sense.

Richard

AT&T 9.30 .16 FCC Comments page 2 para 2

Rather, the plain language of paragraph 134 makes clear that **all AT&T was required to do was to continue, for a period of one year, to abide by notice requirements** similar to the notice requirements that apply to dominant carriers seeking to ***amend* the actual terms of an existing tariff**.

The FCC 1995 Order agrees that AT&T had to abide by notice requirements—however the FCC Order also states….

FCC Order Para 134

Where the affected customer objects to the change, AT&T will file the change with the Commission on 6 days' notice.  With respect to the 14 or 6 days’ notice filings, **the substantial cause test will be applicable** to the same extent as it is today.

AT&T’s November 1995 tariff filings did amend the 2 sections covered by the FCC October 1995 Order. But it was a **prospective tariff filing.** ( BELOW) The November 1995 tariff filing did not make anything explicit that was in the June 17th 1994 tariff.

AT&T did not assert through the March 1996 NJFDC Decision that the pre-June 17th 1994 plans became post June 17th 1994 plans upon the first post June 17th 1994 restructure. Judge Politan in fact stated in March 1996 that AT&T at that point still had not yet substantiated its shortfall charge premise.

So, AT&T could not have possibly been interpreting that the **June 17th 1994 version** of the tariff meant the plans became POST June 17th 1994 plans upon the 1st post June 17th 1994 restructure---as that argument was never presented to Judge Politan through March 1996.

FCC Oct 1995 Order:

**tariff revisions altering material terms and conditions of a long-term service tariff will be considered reasonable only if the carrier can make a showing of substantial cause for the revisions**.

Several of AT&T senior managers stated that the terms and conditions of discontinuation without penalty through 1995 was that our pre-June 17th 1994 plans would continue being immune from shortfall. See Joseph Fitzpatrick Audio tape and transcript and several other AT&T executives filed in petitioners Dec 2006 FCC Comments at exhibit: GG

That AT&T interpretation of the terms and conditions according to AT&T changed after the May 1995 Decision. **The May 1995 and March 1996 NJFDC Decisions were explicit that the plans would remain immune.**

What AT&T is claiming is that its tariff interpretation of the terms and conditions changed at some point!!! The only tariff change as per 2.1.8 and the pre-June 17th, 1994 discontinuance issue was in November 1995----when AT&T was under the October 1995 Order and the NJFDC Court’s determination was the plans were pre June 17th 1994 immune.

The FCC October 1995 Order states **tariff revisions altering material terms and conditions of a long-term service tariff will be considered reasonable only if the carrier can make a showing of substantial cause for the revisions**.

AT&T in 2016 stated: Rather, the plain language of paragraph 134 makes clear that **all AT&T was required to do was to continue, for a period of one year, to abide by notice requirements** similar to the notice requirements that apply to dominant carriers seeking to ***amend* the actual terms of an existing tariff**.

AT&T provided NJFDC Judge Politan no evidence that a pre-June 17th, 1994 Ordered plan becomes a post 1994 plan through his Courts March 1996 Decision. So, when did this change in the terms and conditions of pre-June 17th, 1994 plans happen? No evidence was provided to the Court that it happened with the November 1995 filing as Judge Politan stated in March 1996 shortfall was not properly substantiated.

AT&T’s brief of August 26th 1996 is the first time it asserts its “replacement plan” nonsense----but look at the effective date of the August 1996 discontinuation tariff amendment—**it is August 29th 1996**.

 We know AT&T did not provided Judge Politan any “replacement plan” evidence based upon previous versions of the tariff.

If the August 1996 Tariff change contained some replacement plan language how could AT&T be asserting its new replacement plan nonsense on 8.26.96 to the FCC, three days before the 8.29.96 tariff filing----and that 8.29.96 filing still stated:  The shortfall Charge will not apply in connection with the discontinuance of a CSTPPI that was ordered on or prior to June 17, 1994. The plans were hit in June 1996---the August 1996 tariff filing obviously did not retroactively determine anything regarding AT&T’s “replacement plan” nonsense. The August 1996 tariff change was prospective in any event and did not make explicit anything that was allegedly implicit in previsions versions.

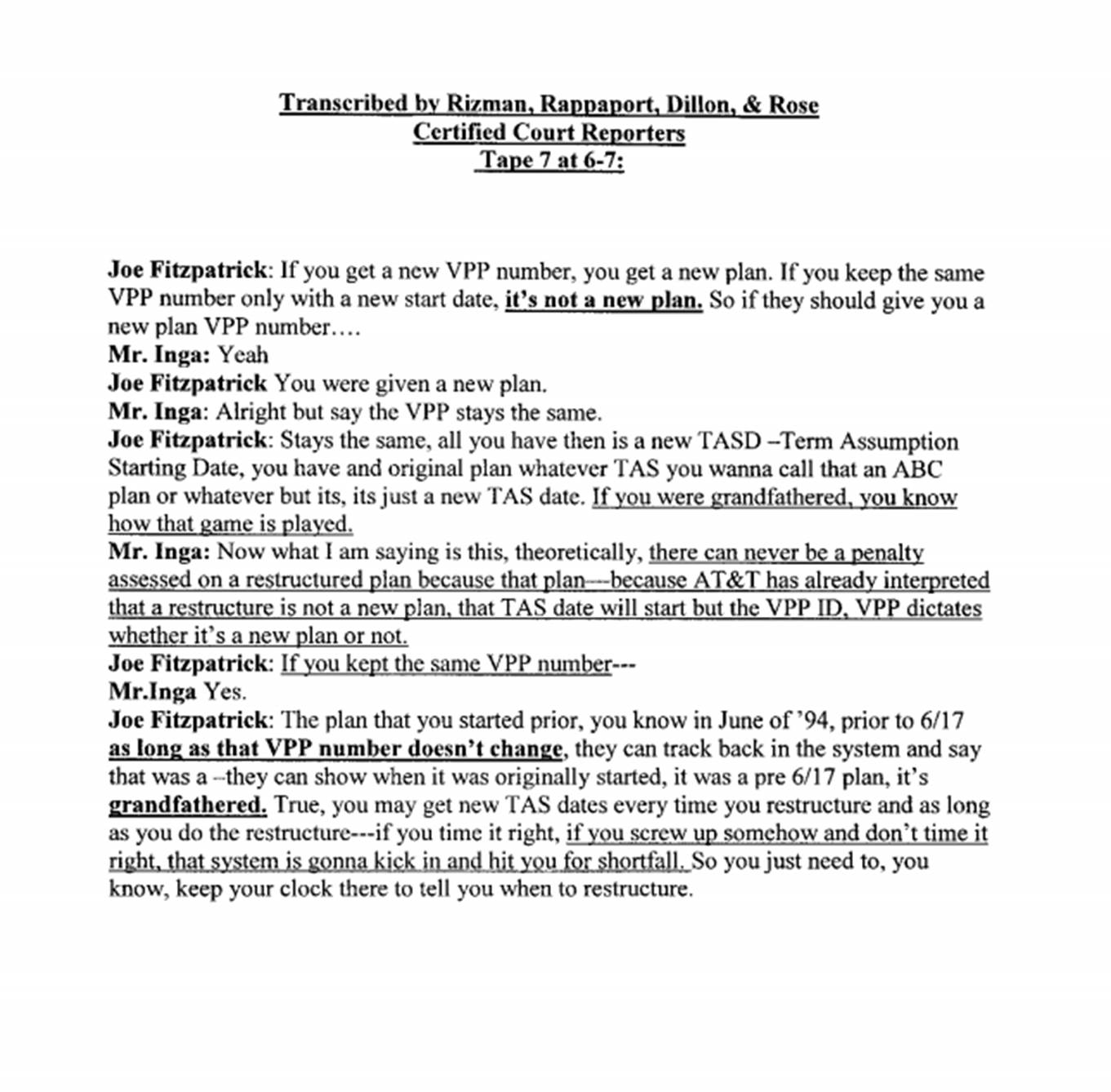
What the FCC would have ruled is not relevant. The only thing relevant is **AT&T conceding to the FCC in 2016 that it was required to meet the substantial cause test when there was an amendment to the tariff that changed the terms and conditions** ---which were made under the 1 year review period. Petitioners don’t see in either the November 1995 or the August 1996 tariff filings that the pre June 17th plans were no longer immune. However, AT&T obviously asserted this to the FCC in 1996 and AT&T could not have been asserting the August 29th 1996 filing changed the terms and conditions as the plans were hit in June 1996 and did not become effective until AFTER AT&T’s FCC assertions and was a prospective tariff filing.

The only tariff change after the June 17th 1994 tariff change was the prospective November 1995 tariff change and AT&T still had not presented any evidence through March 1996 Decision that the plans were no longer pre June 17th 1994 immune. At some point AT&T came up with its 1 post June 17th 1994 restructure nonsense—but it could not have been based on the June 17th 1994 version or the prospective November 1995 version as AT&T provided no argument or substantiated with evidence 1 post June restructure through March 1996 Decision.

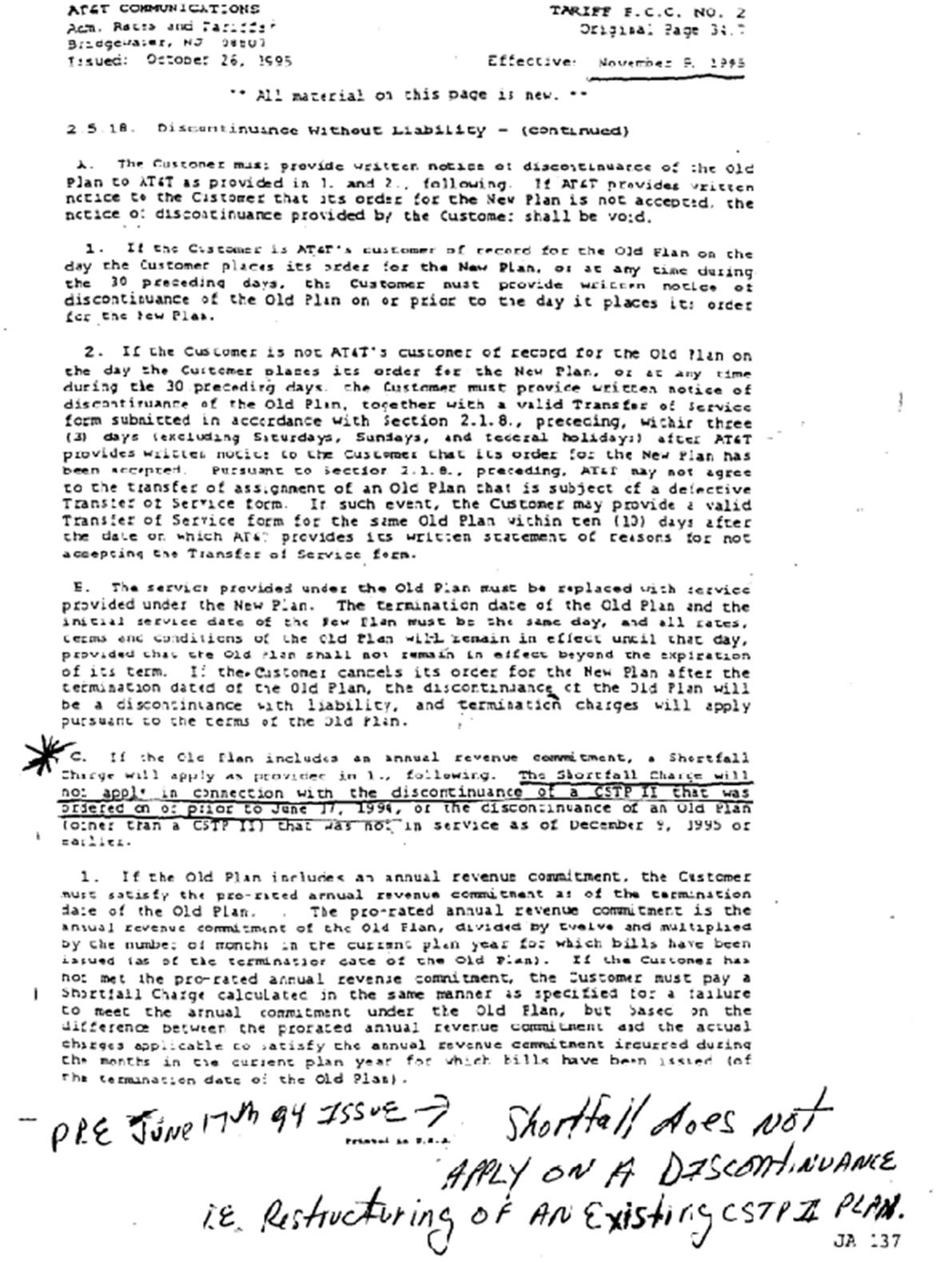
AT&T could not have possibly interpreted the June 17th 1994 tariff filing only allowed 1 post June 17th 1994 upgrade/restructure as **all the AT&T executives were claiming the terms and conditions dictated that the plans would continue to be pre June 17th 1994 immune** and **AT&T’s counsel’s presented zero evidence of its 1 post June 17th 1994 restructure “replacement plan” argument through NJFDC March 1996 decision**. The first “replacement plan argument” was 8.26.96 –before the 8.29.96 tariff amendment ---which was already **after** AT&T had already whacked the plans in June 1996.

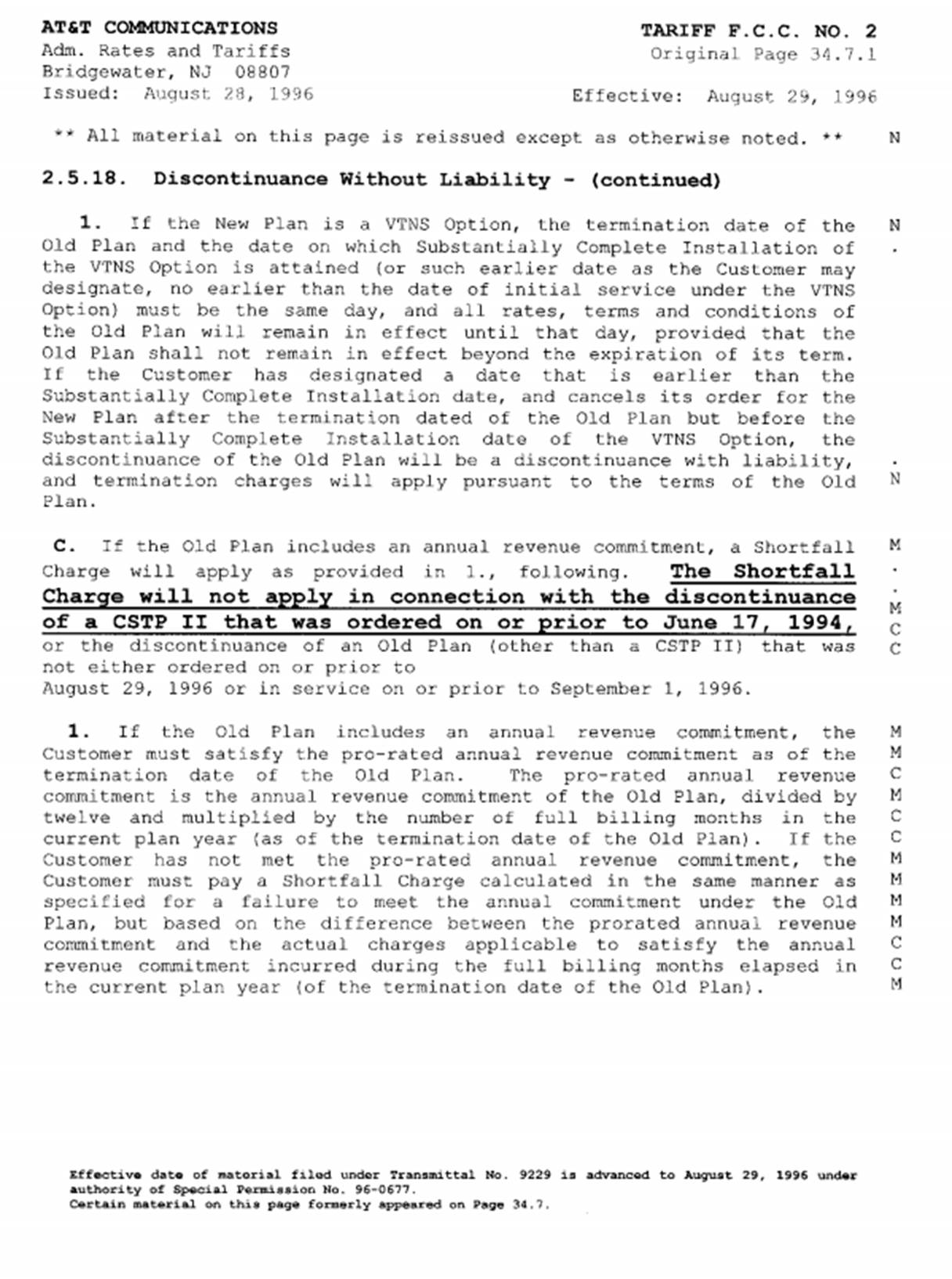
The November 1995 tariff filing and the August 1996 tariff filings were **prospective** tariff filings so they did not MAKE EXPLICIT ANYTHING THAT WAS IMPLICIT--retroactively to the June 17th 1994 version. If the AT&T executives were all wrong  and the June 17th 1994 version only allowed 1 post June 17th 1994 restructure then the plans would be exempt under 2.5.7  as a circumstance beyond the customers control as that was the prevailing interpretation of the terms and conditions.

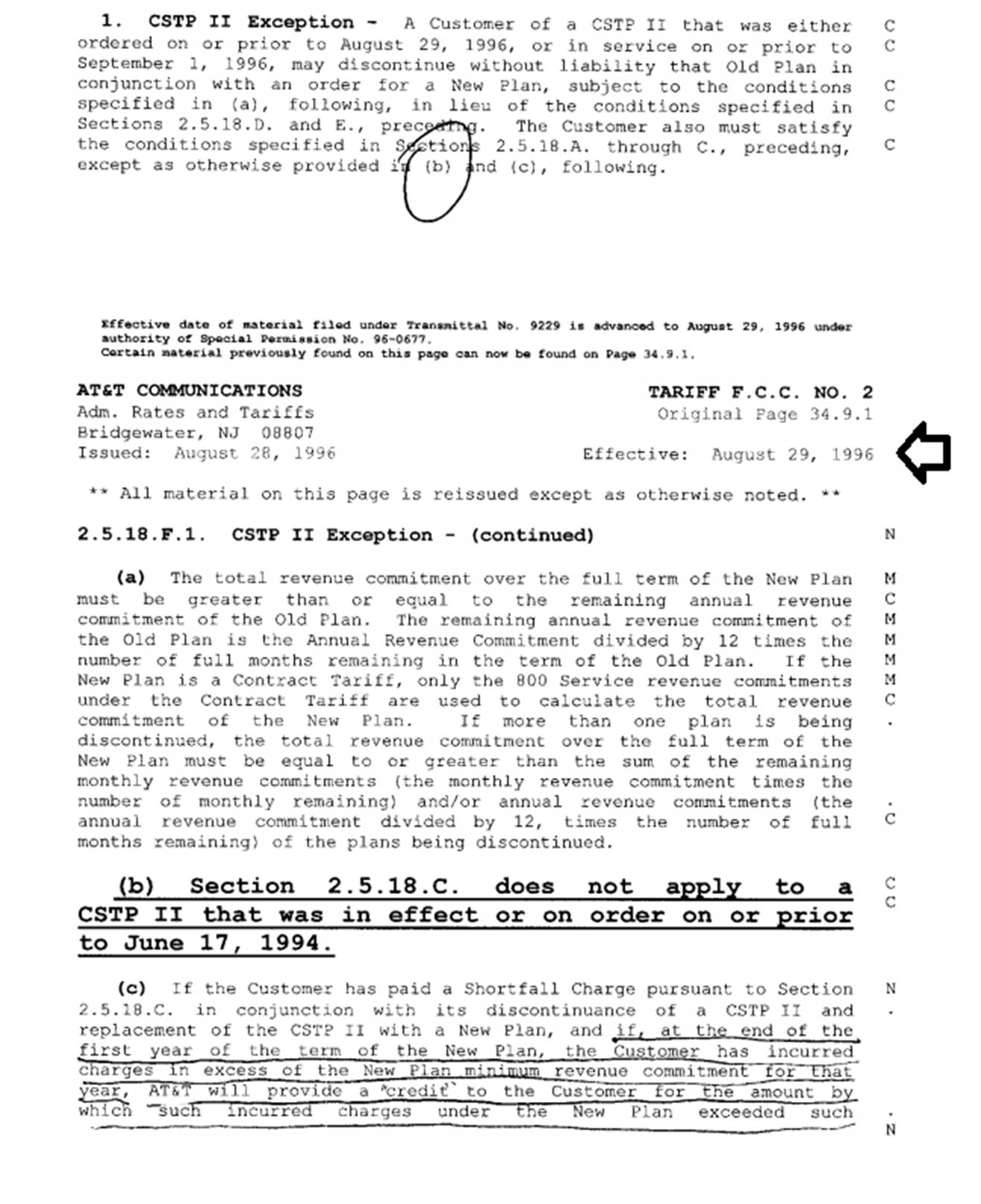
See…..



See exhibit FF in petitioners initial Dec 2006 FCC Comments showing the tariff amendments to discontinuation section in both November 1995 and August 1996. Both of these tariff filing dates are under the 1 year review period of the FCC October 1995 Order.







**Enjoy the Labor Day weekend. 😊**

**Al Inga President**

**Group Discounts, Inc.**

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Friday, September 01, 2017 1:03 PM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>  
**Subject:** RE: Richard -- WHEN THEN DID THE FCC OCTOBER 1995 Order Require AT&T to meet substantial cause test?

**Richard:**

Attached is the full relevant text of the FCC October 1995 Order. According to the FCC when AT&T made tariff changes in November 1995 that its customer did not find reasonable it subjected AT&T meet the substantial cause test.

<https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1995/fcc95427.txt>

**FCC October 1995 Order:**

133.  Certain commenters raise issues implicating the "substantial cause" test.  The

"substantial cause" test holds that **tariff revisions altering material terms and conditions of a**

**long-term service tariff will be considered reasonable only if the carrier can make a showing of substantial cause for the revisions**.  In response to concerns of IBM and API that AT&Tbe required to justify any changes to contract-based tariffs, we note that **we recently affirmed the applicability of the "substantial cause" test to tariff revisions that alter material terms and conditions of a long-term contract, and we clarified that this test applies to any unilateral tariff modification by non-dominant as well as dominant carriers**.

**AT&T’s September 30, 2016 comments to the FCC page 2:**

A centerpiece of Petitioners’ reply is a blatant misreading of the Commission’s *October* *1995 Order*,which found that AT&T was no longer a dominant carrier. Contrary to Petitioners’claim, that *Order* did not impose upon AT&T an obligation to make a substantial cause filing with the Commission **every time** a reseller objected to **AT&T’s position** regarding the meaning of an existing AT&T tariff.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

Indeed, the requirement Petitioners purport to derive from this provision would have resulted in total **chaos**: **every dispute** AT&T had with any and all resellers over the course of a 12-month period **would have resulted in substantial cause filings,** which in turn would have wasted Commission resources.

Richard –**When?** When then was AT&T subjected to meet the substantial cause test if not “**every time**” and **every dispute**.”  How about giving the FCC an example of **1 time** and **1 dispute**? Not enough of a “dispute” going on? The fact that there was a federal lawsuit pending in which these tariff sections were at issue was not enough of a dispute? This pre June 17th 1994 dispute was apparent in BOTH NJFDC Decisions May 1995-March 1996:

1. Judge Politan: “Commitments and shortfalls are little more than illusionary concepts in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that AT&T’s demand for fifteen million dollars’ security is premised on the danger of shortfalls, the Court finds that threat neither pivotal to the instant injunction nor properly substantiated by AT&T. **March 1996 Politan Decision (page 19 para 1)**
2. Judge Politan: **“**Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T’s own tariff.” **May 1995 NJFDC Decision pg. 11**

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

AT&T counsels failed to disclose and failed to meet the substantial cause test despite federal lawsuits going on regarding the reasonableness of the very 2 tariff sections the October 1995 Order covered.

Al Inga President

Group Discounts, Inc.

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**Sent:** Friday, September 01, 2017 11:59 AM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>  
**Subject:** RE: AT&T's 8.26.96 brief to FCC insisting on 2.1.8 defense no longer tenable without evidentiary support

Richard

Thank you for confirmation.

**Below are 2 tariff filings on Sections 2.1.8 and Discontinuance without liability both effective November 9th 1995.** AT&T was already under the FCC October 1995 Order to meet the substantial cause test.

AT&T’s 2016 FCC comments never did address the explicit language in the FCC October 1995 Order:

**“With respect to the 14 or 6 days’ notice filings, the substantial cause test will be applicable to the same extent as it is today.”**

If AT&T believed there was still a controversy over 2.1.8 even after AT&T withdrew its 2.1.8 defense on June 2, 1995, there would have been no justification for AT&T under the FCC October 1995 Order for AT&T NOT TO VOLUNATRILY FILE a substantial cause pleading.  Likewise, there was no justification for AT&T to have not met the substantial cause test to have the FCC determine the duration of the pre June 17th 1994 immunity for restructuring. The discontinuance tariff language states: **“A CSTPII expires when the three-year term ends**.”  It does not say AT&T’s interpretation….once you (discontinue/restructure/upgrade) the very first time after June 17th 1994 that your grandfathered terms and conditions are abandoned.

It is petitioner’s position that AT&T was mandated in November 1995 to meet the substantial cause test **only as to the discontinuance section** as AT&T’s 2.1.8 defense had already been withdrawn June 2, 1995. However, if AT&T believed 2.1.8 was still a controversy then it was AT&T’s obligation to meet the substantial cause test.

The FCC October 1995 Order is EXPLICIT: **“With respect to the 14 or 6 days’ notice filings, the substantial cause test will be applicable to the same extent as it is today.”**

Based upon AT&T’s own briefs in which it asserted there was a controversy as per these tariff sections AT&T violated the FCC October 1995 Order. The fact that AT&T counsel failed to disclose to the NJFDC, Third Circuit, FCC, DC Circuit Court that it was under and FCC Order to meet the Substantial cause –even going through discovery with 800 Services, Inc---is a clear attorney ethics issue.

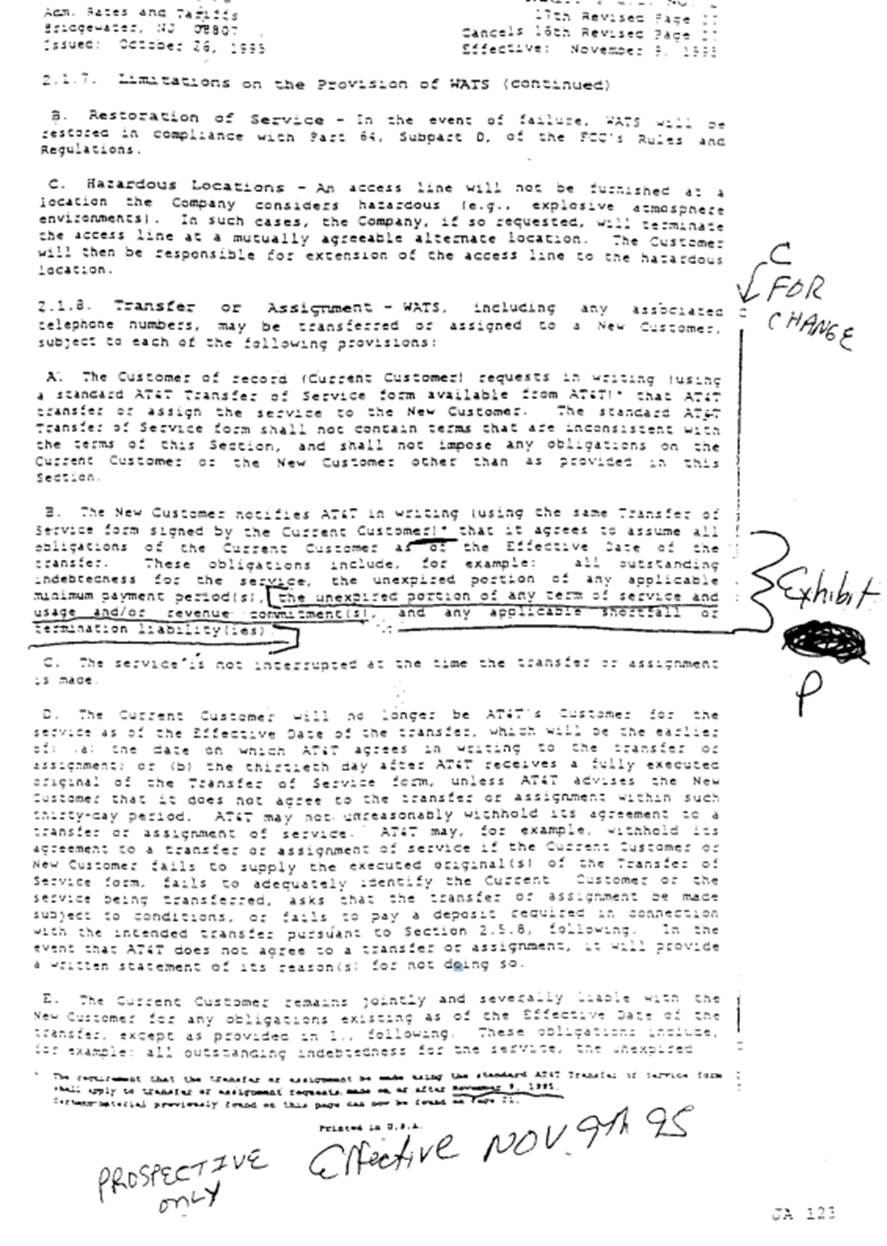
AT&T was asserting to the Third Circuit in 1996 that it had the right to primary jurisdiction – the (FCC)—when AT&T as of October 23rd 1995 was mandated to go to the FCC—months prior to the March 1996 NJFDC Decision. It was only after the injunction was issued that AT&T screamed “primary jurisdiction”. The when AT&T got to the FCC in 1996 it claimed the FCC had no right to interpreted the fraudulent use issue---claiming there were disputed facts! Yes, we now understand the game now. Hindsight is always 20-20. The cons-the comical intentional cover-ups of the tariff language---the intentional fraud on the Courts, they failure to disclose and file under the FCC October 1995 Order.

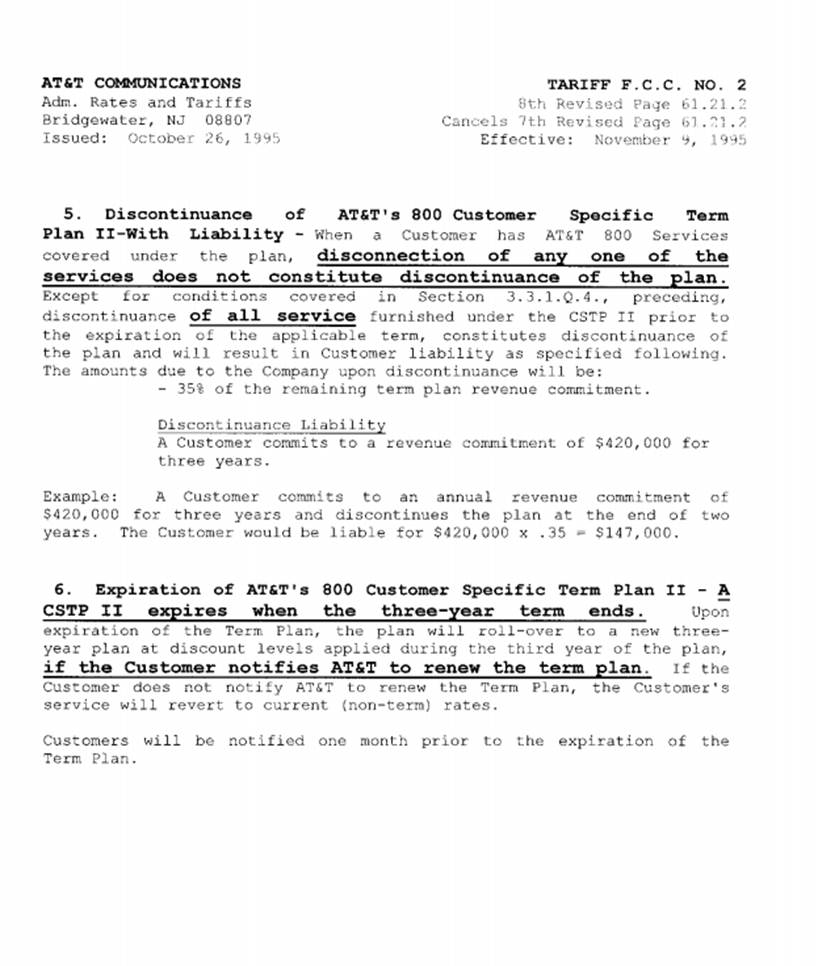
The Texas Bar counsel Stephanie Pan claims she understands AT&T counsel is involved in an intentional fraud on all Courts and the FCC---however, Ms. Pan claims Texas Bar simply can’t do anything about it, as the AT&T fraud is really just an **OLD AT&T FRUAD**--- outside the 4-years Texas Bar statute of limitations. Stephanie Pan’s position is AT&T can keep scamming Judge Wigenton that 2.1.8 is still a controversy and Texas simply can’t do anything about it because the statute of limitations ran out 4 years after AT&T withdrew its 2.1.8 defense on June 2, 1995---- but continued to insist on a defense that was no longer tenable.

The lower right corner of the 2.1.8 tariff change shows JA 123. It was page 123 of the JOINT APPENDIX before the DC Circuit Court. AT&T made 2.1.8 an issue ---insisting on a defense that was no longer tenable without any evidentiary support ---before the DC Circuit when the only remaining issue was 2.2.4 fraudulent use. If AT&T had met the substantial cause test as per the discontinuance /pre June 17th 1994 exemption section in November 1995 it would have further solidified Judge Politan’s decision that AT&T had no merit to raise a fraudulent use defense premised on suspecting shortfall.

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

AT&T’s 2016 FCC comments never did address the fact that tariff filings were made and there were controversies under these tariff sections.





Al Inga President

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**Cc:** [ray@grimes4law.com](mailto:ray@grimes4law.com)  
**Subject:** RE: AT&T's 8.26.96 brief to FCC insisting on 2.1.8 defense no longer tenable without evidentiary support

Received.

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Thursday, August 31, 2017 11:23 PM  
**To:** Brown, Richard H.; [ray@grimes4law.com](mailto:ray@grimes4law.com); Pamela Arluk; Deena Shetler; [martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)  
**Subject:** RE: AT&T's 8.26.96 brief to FCC insisting on 2.1.8 defense no longer tenable without evidentiary support

Richard

FCC 1995 Order simply states: **“ introduces a change to a term plan”**

It does not say AT&T files a tariff change. Obviously AT&T can introduce an interpretation of its tariff without filing anything. If AT&T and its customers believed it was already implicit with the tariff section what the terms and conditions meant---then there was no reason for a tariff filing if everyone agreed what it meant. In this case AT&T’s interpretation change w/o a tariff filing is still AT&T introducing a change to a term plan. Again AT&T did file changes but AT&T’s interpretation that it only had to meet the substantial cause test when a tariff filing was done ---is not what the FCC 1995 Order states.

Al Inga Pres

Group Discounts, Inc

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Thursday, August 31, 2017 9:57 PM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>  
**Subject:** RE: AT&T's 8.26.96 brief to FCC insisting on 2.1.8 defense no longer tenable without evidentiary support

Richard

FCC October 1995 ORDER:

“Where the affected customer objects to the change, AT&T will file the change with the Commission on 6 days' notice.  With respect to the 14 or 6 days’ notice filings, **the substantial cause test will be applicable to the same extent as it is today.”**

Many of AT&T’s account managers are on audio tape stating that if you owned a pre June 17th 1994 plan you can continually restructure. AT&T is in possession of those audio tapes and the independent transcription done by NJFDC transcriber Mr.  Rizman. Copies of those 1995 audio transcripts are in the Inga Companies initial FCC filing in December 2006.  When AT&T filed in November 1995 a change to the discontinuation without liability section pre June 17th 1994 exemption ----any change in the duration of the immunity period from the terms and conditions that had previously been in effect—as per the transcribed audio tapes--- was vehemently objected to as you are aware. AT&T’s own 8.26.96 FCC Comments asserts there was a controversy as per the duration of immunity of the pre-June 17th, 1994 exemption. Obviously, AT&T counsels unilateral “change in the interpretation of the terms and conditions” filed in November 1995 MANDATED AT&T under the FCC October 1995 Order **to meet the substantial cause test.** AT&T did not file.

Both AT&T’s 2.2.4 (fraudulent use) and 2.1.8 withdrawn defense on June 2, 1995 were premised on suspecting shortfall. If AT&T can’t rely upon the shortfall it certainly can’t rely upon the merits of either defense.

**AT&T’s September 30, 2016 comments to the FCC page 2:**

A centerpiece of Petitioners’ reply is a blatant misreading of the Commission’s *October* *1995 Order*,which found that AT&T was no longer a dominant carrier. Contrary to Petitioners’claim, that *Order* did not impose upon AT&T an obligation to make a substantial cause filing with the Commission every time a reseller objected to AT&T’s position regarding the meaning of an existing AT&T tariff.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

Indeed, the requirement Petitioners purport to derive from this provision would have resulted in total **chaos**: every dispute AT&T had with any and all resellers over the course of a 12-month period would have resulted in substantial cause filings, which in turn would have wasted Commission resources.

See petitioners September 12th 2016 comments page 15 para 28: Exhibit A and additional excerpts below.

133. Certain commenters raise issues implicating the **"substantial cause"** test. The "substantial cause" test holds that tariff revisions altering material terms and conditions of a long-term service tariff will be considered reasonable only if the carrier can make a showing of substantial cause for the revisions. In response to concerns of IBM and API that AT&T be required to justify any changes to contract-based tariffs, we note that we recently affirmed the applicability of the "substantial cause" test to tariff revisions that alter material terms and

conditions of a long-term contract, and we clarified that **this test applies to any unilateral tariff modification by non-dominant as well as dominant carriers.** Accordingly, if AT&T files a modification to a contract-based tariff, we will take into account that the original tariff terms were the product of negotiation and mutual agreement, and we will consider on a case-by-case basis, in light of all the relevant circumstances, whether a substantial cause showing has been made. We will apply the substantial cause test in this way in any post effective tariff investigation, pursuant to Section 205, and in complaint proceedings. We also will consider, on a case-by-case basis, whether to allow customers to terminate contracts without

liability.

134. Finally, we note that AT&T has voluntarily committed to implement certain measures that are designed to address criticisms of its business practices that resellers have raised in this proceeding and elsewhere. AT&T represents that the following reflects an agreement with the Telecommunications Resellers Association, and AT&T has committed to comply with this agreement:As a general practice, **AT&T grandfathers both existing customers and subscribed customers** (i.e., customers who have submitted a signed order for service) when it **introduces a change to a term plan** (including Contract Tariffs, term plans under Tariffs 1, **2**, 9, and 11, Tariff 12 Options and Tariff 15 CPPs), and it commits to continue that process. In exceptional cases, however, grandfathering may not be appropriate either because: (1) a change is necessitated by typographical errors, a service inadvertently priced below costs, rate changes where no individual rates (post-discount) are increased, or other comparable circumstances, or (2) the change is necessary to bring clarity to a non- rate term or condition, where it is necessary to treat all customers alike (such as a change to the provisions for how orders are processed, but not including changes to the body of Contract Tariffs, Tariff 12 Options or Tariff 15 CPPs). In such circumstances, AT&T commits **for a twelve-month period** to offer its customers the following additional protections not required of non-dominant carriers: **- where AT&T makes any change to an existing term plan,** AT&T will afford the affected customers 5 days meaningful advance notice of the tariff filing to give the customer the opportunity to object; provided, however, that for **changes to discontinuance with or without liability**, deposits and advance payments, **or transfer or assignment of service,** AT&T will file on 14-days' notice.  (AT&T would have the unaffected right to change underlying tariff rates -- such as a general change to SDN rates -- unless the term plan protected the customer from such changes.)  Where the affected customer(s) agrees to the revision, AT&T will note that agreement in its transmittal letter and file the change on 1 day's notice.  **Where the affected customer objects to the change, AT&T will file the change with the Commission on 6 days' notice.**  **With respect to the 14 or 6 days notice filings, the substantial cause test will be applicable to the same extent as it is today.**

Petitioners interpret the FCC October 1995 Order to mean that any time there was an objection to either tariff section AT&T must meet the substantial cause test. AT&T seems to be arguing that **ONLY WHEN there was a tariff filing that** was still not explicit and an interpretation issue existed did AT&T have to meet the substantial cause test. It really is not relevant as changes to both tariff sections were made in November 1995 ( the pre June 17th 1994 issue) and May 1996 ( section 2.1.8). So even using AT&T counsel OWN interpretation that a filing had to be made ---that criterion was met---and of course there was a controversy.  You can’t get any clearer: **“the substantial cause test will be applicable to the same extent as it is today”**

FCC *October 1995 Order* Further States that AT&T must **voluntarily** comply so it did not make difference that 800 Services, Inc. or the 4 Inga Companies did not know about the *Order*.

FCC *October 1995 Order* at 134:

134.  Finally, we note that AT&T has **voluntarily** committed to implement certain measures that are designed to address criticisms of its business practices that resellers have raised in this proceeding **and elsewhere.**  AT&T represents that the following reflects an agreement with the Telecommunications Resellers Association, and **AT&T has committed** to comply with this agreement.

FCC *October 1995 Order* Para 136:

We believe that the commitments proffered by AT&T in its October 5, 1995 Ex Parte Letter contribute to addressing the tariff-related concerns raised by the commenters in this proceeding, and **we therefore order AT&T to comply with these voluntary commitments.**

Al Inga President

Group Discounts, Inc

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Thursday, August 31, 2017 8:40 AM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'ray@grimes4law.com' <[ray@grimes4law.com](mailto:ray@grimes4law.com)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>  
**Subject:** RE: AT&T's 8.26.96 brief to FCC insisting on 2.1.8 defense no longer tenable without evidentiary support

Richard

Thank you for confirming receipt of the email I sent yesterday.

AT&T’s 2016 FCC Comments claimed that the FCC October 1995 Order did not mean that any time there was an issue under the 2 tariff sections that AT&T had to go to the FCC to meet the Substantial Cause test. AT&T claimed to the FCC in 2016 that it would have been in AT&T’s word **“chaos”** to interpret the FCC October 1995 Order in that manner. However, AT&T did concede to the FCC that only during the 1-year period (October 23rd, 1995 through September 30th 1996) was AT&T mandated to adhere to the FCC Order **ONLY WHEN** a tariff filing was made to the 2 tariff sections covered that did not explicitly resolve any controversies.

Given the fact that there was a tariff change to the discontinuation without liability /pre-June 17th, 1994 in November 1995 and a tariff change to 2.1.8 in May 1996 prior to the Third Circuit 5.31.96 referral what is AT&T’s new excuse?

Richard if you look at AT&T’s May 1996 section 2.1.8 filing was part of TR9229 which replaced the withdrawn Tr8179.

Certain material on this page formerly appeared on Page 20**.**

Effective date of material filed under Transmittal No. 9229 is advanced to May 10, 1996 under authority of Special Permission No. 96-0468.

x  Issued on not less than one day's notice under authority of Special Permission No. 96-0468**.**

According to AT&T’s briefs to NJFDC Judge Politan AT&T was “working on” Tr9229 for many months as it was getting feedback from Telecom Resellers Association etc. So AT&T knew as soon as the FCC October 1995 Order was adopted that at minimum it needed to file a substantial cause pleading as there was obviously a controversy as per pre June 17th 1994 immunity duration from the first NJFDC Decision in May 1995. If AT&T believed 2.1.8 was still a controversy even AFTER AT&T withdrew it then the fact that the May 1995 2.1.8 tariff change was part of the TR9229 filing means AT&T by its own concession needed to file the meet the substantial cause test within 6 days of the tariff change filings.

The penalty infliction on the plans was not until June 1996. If AT&T had adhered to the October 1995 Order on the pre June 17th 1994 duration of the immunity issue---everyone (NJFDC, AT&T and all resellers) would have had an FCC determination. AT&T knew the plans were immune for the life of the plan (3 years) and AT&T knew it would NEVER win its nonsensical “replacement plan” assertion it tried to pull on the FCC in 1996.

It doesn’t make a bit of difference WHAT THE FCC WOULD HAVE RULED. Just the mere fact that AT&T counsel has now conceded to the FCC in 2016 that it should have filed when the tariff changes were made means AT&T is precluded from raising any defenses to both tariff sections covered by the FCC Order.

Petitioners believe that this is also an ethics issue. Failing to disclose to NJFDC, Third Circuit, FCC and DC Circuit that AT&T intentionally violated the FCC 1995 Order is an ethics issue. AT&T failed to disclose the FCC 1995 Order **during discovery** in the 800 Services, Inc case.  AT&T hit 800 Services, Inc with charges in November 1995. AT&T had already filed the tariff change to the discontinuation without liability /pre-June 17th 1994 section in November 1995. Months earlier **the issue** of whether 800 Services, Inc could restructure again was presented as Mr Okin questioned the duration of the pre-June 17th 1994 immunity and AT&T told Mr Okin no there will be charges.

If I was 800 Services, Inc’s President, Mr Okin I would file an FCC Ethics complaint under Rule 1.24 for AT&T counsels July 1st 2016 misrepresentation to the FCC. AT&T counsel claimed 800 Services, Inc had not presented any evidence that its plan was an immune pre June 17th 1994 plan when AT&T hit 800 Services, Inc with charges in November 1995.

AT&T is in a catch -22 with 800 Services, Inc. The July 1994 800 Services/AT&T Contract was clearly marked UPGRADE not NEW PLAN. If AT&T counsel says it made an error that 800 Services, Inc really did not have a NEW PLAN it had an upgrade then AT&T is conceding it unlawfully put 800 Services, Inc out of business. AT&T counsel of course will not do that. AT&T counsel will take the position that an UPGRADE is a NEW PLAN. However, that is a highly controversial issue and subjects AT&T to the FCC October 1995 Order. Given the fact that AT&T has conceded that the 2 FCC 1995 Order triggers were met (Controversy and November 1995 tariff filing) it means AT&T has a real issue. It failed to disclose the FCC 1995 Order during Discovery and failed to file and thus is precluded from raising its “replacement plan” assertion.

AT&T appears to be in a **catch-22** in both the Inga Company case and the 800 Services, Inc case.

Al Inga President

Group Discounts, Inc.

**From:** Brown, Richard H. [<mailto:rbrown@daypitney.com>]   
**Sent:** Wednesday, August 30, 2017 7:16 PM  
**To:** 'Savings Sites' <[al@databaseemailer.info](mailto:al@databaseemailer.info)>; [ray@grimes4law.com](mailto:ray@grimes4law.com)  
**Subject:** RE: AT&T's 8.26.96 brief to FCC insisting on 2.1.8 defense no longer tenable without evidentiary support

Received.

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Wednesday, August 30, 2017 3:01 PM  
**To:** Brown, Richard H.; Deena Shetler; Pamela Arluk; [ray@grimes4law.com](mailto:ray@grimes4law.com)  
**Subject:** FW: AT&T's 8.26.96 brief to FCC insisting on 2.1.8 defense no longer tenable without evidentiary support

Richard

My counsel and I requested that you provide a copy of AT&T’s 8.26.96 FCC Comments. We now understand why you confirmed receipt of the request but refused to furnish a copy.

It reminded me of when you refused to provide the AT&T Network Services Commitment Form that 800 Services, Inc signed on July 22, 1994 in which it restructured its 3-year CSTPII plan and **clearly marked upgrade**. AT&T counsel egregiously lied to the FCC in its July 1st 2016 comments that 800 Services Inc. never provided any evidence that it was not a new plan—when AT&T had the explicit evidence all along. So when you refused to provide AT&T’s 8.26.96 FCC comments we knew AT&T was trying to hide something—we were right.

The attached PDF is AT&T’s 8.26.96 FCC comments that AT&T refused to provide a copy.

AT&T was before the FCC in 1996 continuing to assert a 2.1.8 defense that was no longer tenable and had no evidentiary support. If AT&T really believed 2.1.8 was still tenable then AT&T thus conceded to the FCC in 2016 that AT&T violated the FCC October 1995 Order by not meeting the substantial cause test.

Texas Bar has determined that AT&T counsels engaged in a fraud on the NJFDC and FCC but it can’t do anything about it because AT&T’s General Counsels (David McAtee and D. Wayne Watts) did not SIGN THE BRIEFS and the fraud was outside the statute of limitations. However, the FCC Ethics Staff has no statute of limitations issue and the counsels that insisted on a defense that was no longer tenable and had no evidentiary support---made such assertions to the FCC 1996 and 2003 and since 2006 to the FCC---so there isn’t an FCC ethics jurisdiction issue.

The attached word doc addresses just a couple of pages of AT&T’s 8.26.96 comments. We will upload to the FCC server a more detailed analysis of AT&T’s 8.26.96 filing in a few days and AT&T can respond.

Al Inga President

Group Discounts, Inc.

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Friday, August 18, 2017 5:01 PM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.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)>  
**Subject:** RE: AT&T Counsel Richard Brown --BODA--FCC--DC Circuit Court

Richard

Here are several Exparte letters AT&T had to file when it sent in the teams of local attorneys into the FCC. These AT&T counsels insisted that the FCC needed to interpret section 2.1.8 after AT&T had withdrawn that defense on June 2, 1995.

You would think that after the first-time AT&T would get the hint that the FCC was not going to interpret a 2006 referral that was moot. You were advised with the FCC 2007 Order that the 2.1.8 defense did not expand the scope of the original 2.2.4 referral by the Third Circuit.

But no, AT&T sent in its local counsels **3 times** on personal visits to urge the FCC Commissioners to interpret a 2.1.8 referral that the FCC 2007 Order explicitly stated was outside the scope of the original referral.

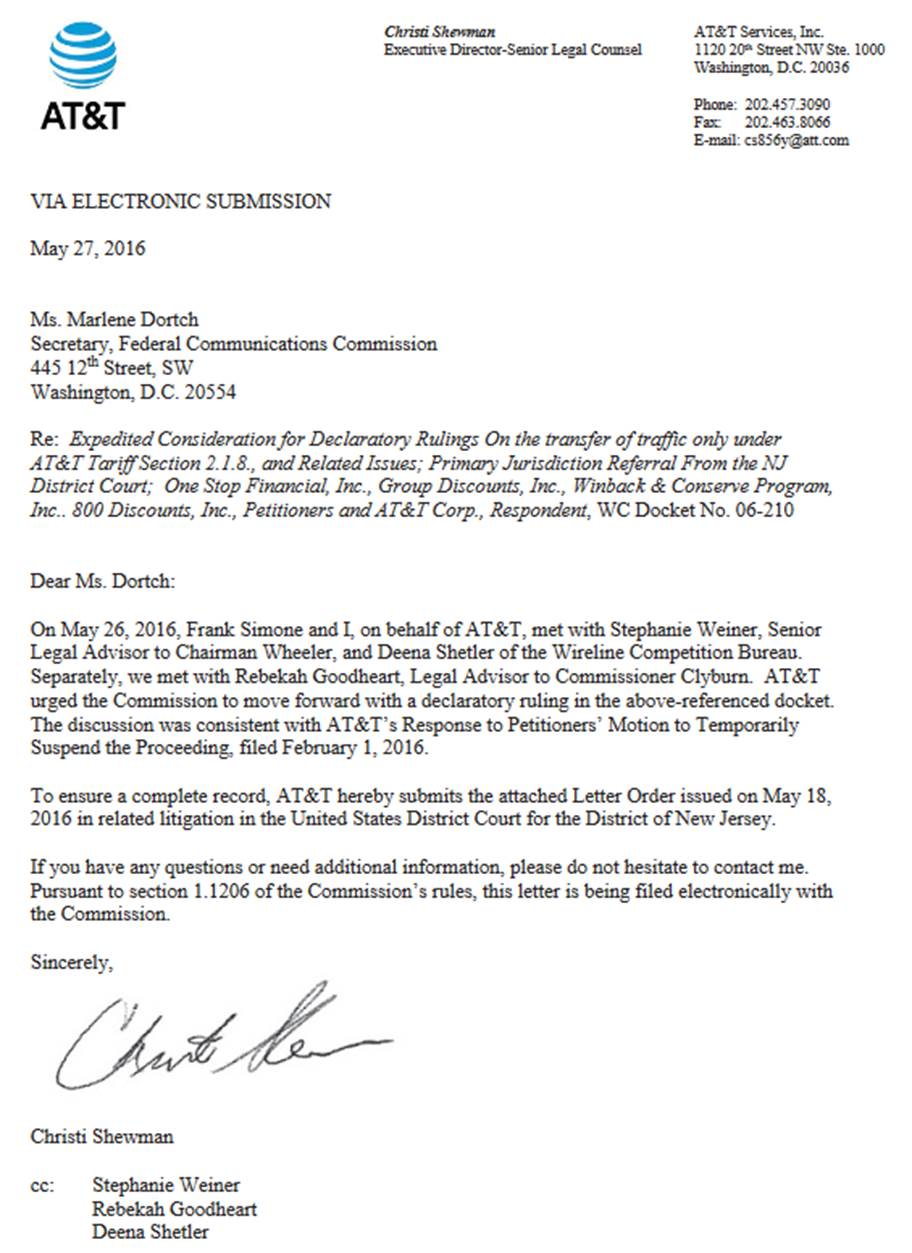
Talk about violating Rule 11B for **INSISTING** ON A POSITION THAT WAS NO LONGER TENABLE!!! Imagine a **DEFENDANT** being so anxious for an FCC Ruling!!!

The AT&T fraud worked on NJFDC Judges Bassler and Wigenton but the FCC was not about to interpret section 2.1.8 when AT&T had already withdrawn the defense on June 2, 1995 and thus there was no longer a 2.1.8 controversy under the Administrative Procedures Act. The Third Circuit explicitly stated that AT&T had withdrawn its 2.1.8 defense AND that 2.1.8 defense was filed after the 15-days requirement under 2.1.8 (c) in any event.

This is the definition of **INSISTING**…. Personal visits to the FCC because AT&T did not want to make its case in WRITING to the FCC as AT&T counsel knew it was engaged in an intentional fraud, loaded with attempted cover-ups and did not want to document it due to attorney ethics violations.

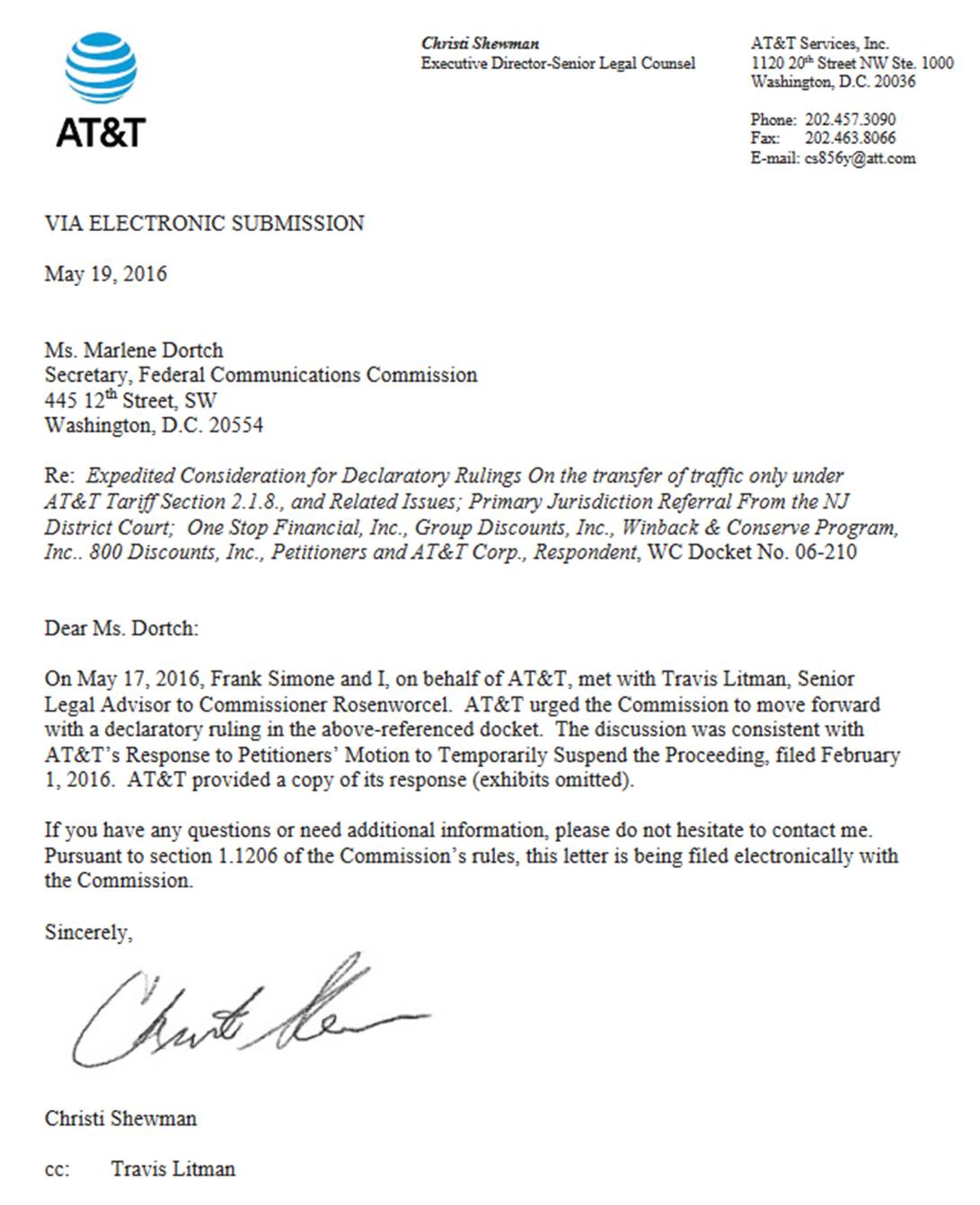
AT&T tries the 2.1.8 scam FCC Commissioner’s…

ON FCC SERVER AT:  
<https://ecfsapi.fcc.gov/file/60002079099.pdf>



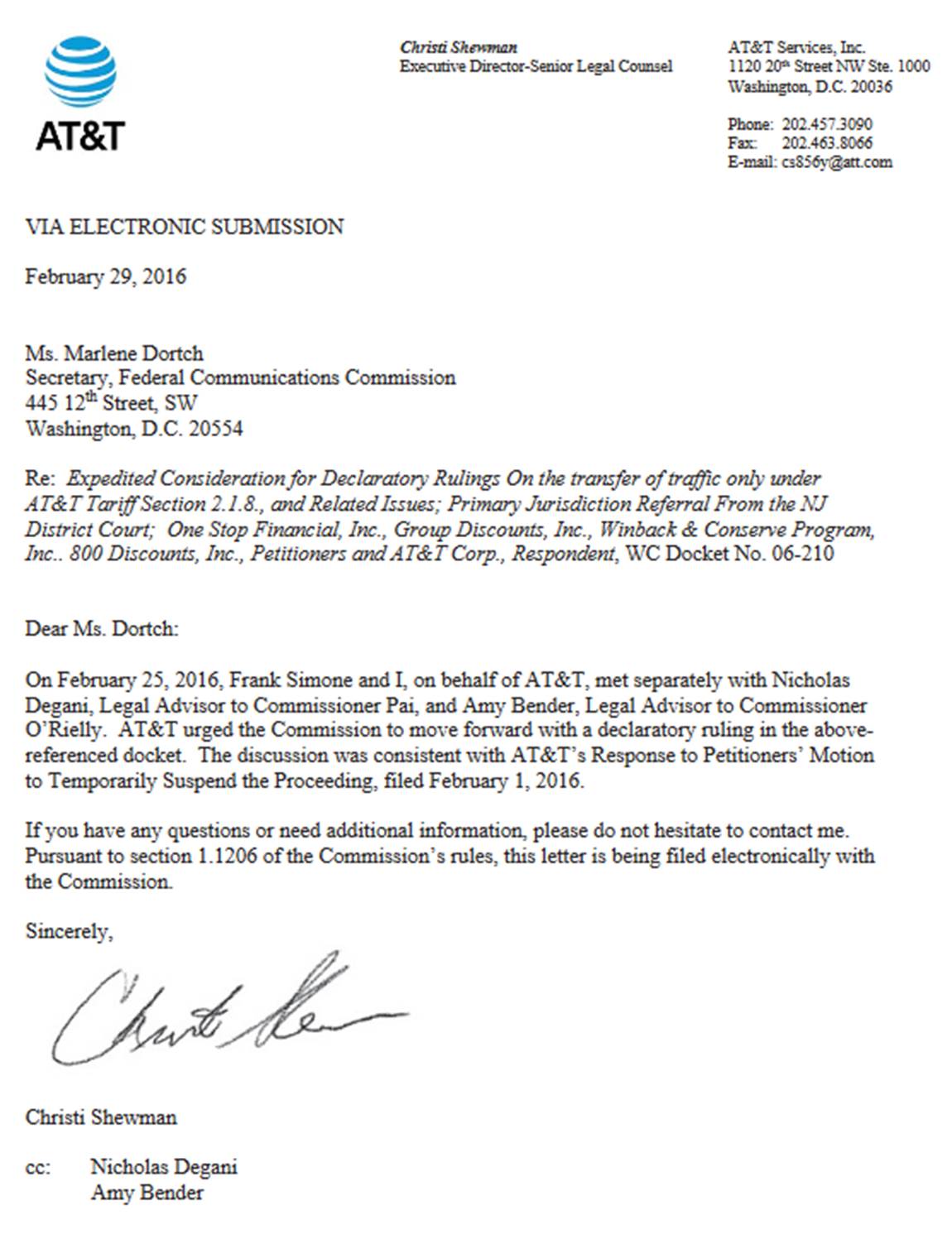
HERE IS ANOTHER FCC Personal Visit by AT&T local counsel to the FCC trying to get the FCC to rule on the 2006 referral on the 2005 created defense that was NOT ONLY outside the scope of the original referral but was an obvious fraud!

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



Here is another AT&T personal visit:

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



**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Friday, August 18, 2017 3:57 PM  
**To:** 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.COM)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; Pamela Arluk <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>  
**Subject:** RE: AT&T Counsel Richard Brown --BODA--FCC--DC Circuit Court

Richard Brown

Before ethics filings are done with the FCC Ethics Staff, the DC Circuit Court ethics staff, the DC Bar Counsel Ethics Staff, and the NY Bar Ethics staff, I wanted to give AT&T the opportunity to respond.

Texas Bar has a 4-year statute of limitations which Texas Bar claims it prevented to act against AT&T general counsel who supervised the fraud you pulled on the FCC and Judge Wigenton.

The other State ethics staffs do not have a statute of limitations. Nor do we have to be concerned with Texas Bar interpretation that the counsel engaged in the fraud has to sign the briefs or speak during oral argument.

Richard please address the fact that AT&T counsel Meade certified to Judge Politan that AT&T withdrew its 2.1.8 defense on June 2, 1995 and replaced it with Tr9229 that had only prospective impact only----- and yet AT&T violated Rule 11B by insisting on a defense that was no longer tenable and had no evidentiary support---especially when the Third Circuit explicitly stated AT&T withdrew its 2.1.8 defense.

Please review:

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

Richard H Brown petitioners are giving AT&T the opportunity to provide a rational explanation how AT&T could insist on this 2.1.8 position that it withdrew on June 2, 1995 at the behest of the FCC.

Please also explain how AT&T could file its defense –as the May 1995 Judge Politan Decision states ---on February 16th 1995 and still comply with section 2.1.8 (c) which states AT&T must provide a denial in writing with 15 days.

The evidence shows the CCI to PSE traffic only transfer was (Jan 13th 1995) and Inga to PSE traffic only transfer was Jan 30th 1995). Even IF AT&T did not withdraw the 2.1.8 defense on June 2, 1995, AT&T needed to file the Tr8179 defense as per section 2.1.8 by January 28th 1995 for the CCI to PSE traffic only transfer and by February 14th 1995 for the Inga to PSE traffic only transfer.

So AT&T counsel is insisting upon a 2.1.8 defense that was (A) Not filed on time to begin with and (B) then withdrawn because the FOIA Notes show the FCC’s R.L. Smith told AT&T you were not going to be allowed to **subjectively decide** when to force a plan to transfer. Therefore AT&T had to come up with a **non-subjective** way to protect itself from substantial traffic only transfers.  Thus, Tr9229 was developed and became a prospective tariff filing in November 1995.

In the mean time between June 2nd 1995 and November 1995 AT&T counsel ordered –as per the 6.9.95 Joyce Suek letter ---that NO MORE TRAFFIC ONLY TRANFERS are allowed under 2.1.8. AT&T counsel ordered the Minnesota Front End Center Order Processing Department to violate the tariff and prevent accounts moving from 28% discount to 66% discount.

Amazing when you are right how the pieces all fit in place. When you try to revise history with cover-ups it all eventually blows up in your face.

You’re laughing that you scammed Judge Wigenton silly and that Texas Bar understands you’re a con artist but can’t go after D. Wayne Watts and David R. McAtee?  Hopefully BODA wipes the smile off your face. If not there are several other State Ethics staffs that do not have the walls that Stephanie Pan claims she had to deal with.

Al Inga President

Group Discounts, Inc.

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Thursday, August 17, 2017 1:11 PM  
**To:** 'appeal@txboda.org' <[appeal@txboda.org](mailto:appeal@txboda.org)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.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)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>; 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>  
**Subject:** RE: AT&T Counsel Richard Brown --BODA--FCC--DC Circuit Court

Richard

Thank you for confirming receipt.

My below email did not even cover the post 2005 fraud on Judges Bassler, the 2015/2016 fraud on Judge Wigenton and the numerous frauds on the FCC since 2006 that revenue and time commitments transfer on a traffic only transfers.

Not only did you create a 2.1.8 defense outside the scope of the case but it was a fraudulent one besides!

“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**." FCC Jan 12th 2007 Order Pg. 2 para 3 Exhibit B

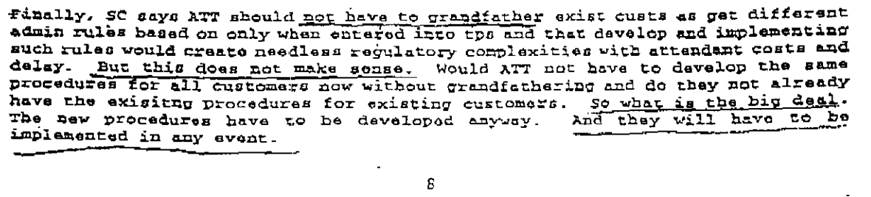
You created in 2005 a brand new 2.1.8 defense that has zero evidentiary support in violation of Rule 11B. Obviously, you and Joseph Guerra presented no evidentiary support of revenue and time commitments transferring on a traffic only transfer because no such evidence exists. You advised Judge Wigenton that you addressed these “alleged traffic only transfers” evidence at the FCC but of course that was a lie as well.  It’s been one scam after another.

AT&T counsel advised Judge Wigenton that the transfer was not done because Traffic Only was written on the forms. That makes no sense as AT&T itself has always stated that 2.1.8 allows traffic only and plan transfers. So why would an Order for a traffic only transfer as opposed to a plan transfer cause AT&T not to process the transaction? AT&T has no evidence at the time of the January 1995 transfers from CCI to PSE and Inga to PSE that it was denying the transfers because Traffic Only was written on the order form. If AT&T counsels assertion to Judge Wigenton was in reference to AT&T’s 2.1.8 defense---that defense was not even filed until 2.16.95 ---after the 15 days statute of limitations under section 2.1.8 (c) and was then withdrawn in any event on June 2, 1995.

AT&T was incredibly asserting before Judge Wigenton a defense it filed after the 15 days statute of limitations--had no evidentiary support for being implicit---and was withdrawn because the FOIA notes show the FCC’s R.L. Smith advised AT&T’s position not to grandfather already ordered traffic only transfers did not make sense.

The FOIA notes show AT&T tried to scam the FCC’s R.L. Smith, asserting AT&T’s Tr8179 section 2.1.8 defense should not have to grandfather the Inga Companies as existing customers.

“Finally SC (Substantial Cause pleading) says AT&T should not have to **grandfather** exist cust…… “**But this does not make sense.”**



The key issue the FCC R.L Smith stated when AT&T filed its 2.18 defense via Tr8179 was:

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

The FCC’s R.L. Smith knew in 1995 that **it did not make a difference what the FCC or DC Circuit Court determined** because the issue of whether AT&T could raise a 2.1.8 defense or a 2.2.4 fraudulent use defense **was a judgement call** of then Judge Politan.  Judge Politan correctly determined that the plans were pre-June 17th 1994 Ordered and thus AT&T’s premise of being deprived of shortfall was “not properly substantiated,” and thus issued the March 1996 injunction. As you are aware Judge Politan as the FCC October 2003 Order stated didn’t even refer the pre-June 17th, 1994 issue and went ahead and issued the injunction.

AT&T was mandated under the FCC October 1995 Order to file a substantial cause pleading in November of 1995 when AT&T filed its tariff revision to that tariff section.  AT&T violated that FCC Order because it knew that if it went to the FCC, the Commission would have determined the plans retain their pre-June 17th 1994 immunity under the pre June 17th 1994 exemption for at least 3 years—not the 1 year AT&T counsel decided.

Your position to Judge Wigenton was that her Court needed to wait because the case was in FCC circulation. That FCC circulation properly and finally ended. As the FCC 2003 and 2007 Orders state….By law the FCC under the Administrative Procedures Act can only interpret controversies and uncertainties that were within the scope of the original 1996 Third Circuit referral. The FCC could not issue an interpretation on Judge Bassler’s 2006 referred 2.1.8 controversy because after AT&T withdrew its 2.1.8 defense on June 2, 1995 there was---as the FCC 2007 Order indicates no controversy/uncertainty to resolve.

How about the misquotes of the tariff language to cover up the word “former” with “the OLD PLAN” and the TRANSFERROR” to perpetuate the fraud on the Courts and FCC. AT&T counsel misquoted the tariff language dozens of times because the word “former” was much too long! Your cover-up excuse to the FCC. “We were just paraphrasing because the word “former” was too long.”

You simply scammed all Judges and the FCC. It was an AT&T fraud right from the beginning.

The best maneuver on Judge Wigenton was AT&T looking like the good guy… “Judge Wigenton AT&T will not oppose petitioners seeking a writ of mandamus at the DC Circuit Court to force they FCC to interpret section 2.1.8!”

Of course, AT&T will not oppose interpreting 2.1.8 as it was a defense that was not even within the scope of the Third Circuit Court referral. You made Judge Wigenton believe you were the **good guys** wanting resolution of the case, when in fact you were **scamming Judge Wigenton silly!!!**

Judge Wigenton erroneously believed that over the last 11 years since 2006 the FCC simply didn’t have the time to get around to issuing a decision on 2.1.8. When in fact the 2007 FCC Order ---issued within a month of the December 2006 plaintiffs FCC filing---explicitly made it clear that 2.1.8 issues were outside the scope of the case. When plaintiffs filed a motion to make it even CLEARER to Judge Wigenton that Judge Bassler’s referral was moot---AT&T opposed simply clarifying the FCC’s January 12, 2007 Order.  Why? Because AT&T manipulated and short quoted and sliced and diced and misled Judge Wigenton regarding that FCC 2007 Order.

I will upload these comments to the FCC server. You are free to respond.

Al Inga President

Group Discounts, Inc.

**From:** Brown, Richard H. [<mailto:rbrown@daypitney.com>]   
**Sent:** Thursday, August 17, 2017 11:37 AM  
**To:** 'Savings Sites' <[al@databaseemailer.info](mailto:al@databaseemailer.info)>  
**Cc:** [ray@grimes4law.com](mailto:ray@grimes4law.com)  
**Subject:** RE: AT&T Counsel Richard Brown --BODA--FCC--DC Circuit Court

Received.

**From:** Savings Sites [<mailto:al@databaseemailer.info>]   
**Sent:** Thursday, August 17, 2017 11:12 AM  
**To:** 'appeal@txboda.org' <[appeal@txboda.org](mailto:appeal@txboda.org)>; 'martha\_tomich@cadc.uscourts.gov' <[martha\_tomich@cadc.uscourts.gov](mailto:martha_tomich@cadc.uscourts.gov)>; 'Stephanie Pan' <[Stephanie.Pan@TEXASBAR.COM](mailto:Stephanie.Pan@TEXASBAR.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)>; 'CAAP' <[Mail.CAAP@TEXASBAR.COM](mailto:Mail.CAAP@TEXASBAR.COM)>; 'Brown, Richard H.' <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>  
**Subject:** AT&T Counsel Richard Brown --BODA--FCC--DC Circuit Court

Texas Board of Disciplinary Appeals (BODA)

My ethics filing against AT&T general Counsel D. Wayne Watts and David R. McAtee were rejected by Texas Bar counsel Stephanie Pan simply because AT&T’s general counsels did not sign the briefs in 2015 and 2016 to the NJFDC Judge Wigenton and due to Texas Bar 4-year statute of limitations.

Stephanie agrees that AT&T counsel violated Rule 11b by insisting upon a defense (Section 2.1.8) that was no longer tenable and had no evidentiary support. Stephanie understood AT&T’s own counsel Richard Meade certified to Judge Politan that AT&T withdrew its 2.1.8 defense at the behest of the FCC on June 2, 1995. Stephanie plainly saw the Third Circuit Referral in 1996 explicitly states that AT&T withdrew its 2.1.8 defense in 1995. Thus, any insistence upon a 2.1.8 defense after June 2nd 1995 was a violation of Rule 11B for insisting upon a defense that was no longer tenable. Additionally, AT&T’s 2.1.8 defense filed on February 16th 1995 via TR8179 had no evidentiary support. AT&T’s assertion to the FCC was that it was already implicit with 2.1.8 that AT&T could force a substantial traffic only transfer be deemed an ENTIRE PLAN transfer in order to force the non-transferred plans tariffed revenue and time commitment to transfer. If it were already implicit within 2.1.8 that AT&T could actually force a conceded traffic only transfer be deemed a plan transfer than AT&T obviously would have lots of evidence of what it asserted was already implicit. The fact is AT&T never did present to the FCC in 1995 within its substantial cause pleading any evidence, as none existed. Thus AT&T counsel clearly violated Rule 11B for providing no evidentiary support. It was simply a delaying tactic as Judge Politan’s March 1996 Decision spent numerous paragraphs detailing AT&T counsels delaying the Court. AT&T never even notified plaintiffs when it did withdraw its 2.1.8 defense on June 2, 1995—yet another ethics infraction.

I agree D. Wayne Watts did not sign the AT&T briefs in 2015, but if you look at Texas Bar rules AT&T’s general counsel is responsible under section 5 as a supervisor. Obviously 2015 is within the 4-year statute of limitations under Texas Bar Rules.

Stephanie Pan also has advised me that AT&T’s 2015 and 2016 insistence upon a position that was no longer tenable (AT&T 2.1.8 defense) to Judge Wigenton is the same ethics 11B infraction it asserted to the Third Circuit and FCC in 1996, again to the FCC in 2003 and the DC Circuit in 2005 and Judge Bassler in 2005.

Stephanie Pan is taking the position that the 4-year statute of limitations for insisting upon a position that was no longer tenable ended 4 years after AT&T withdrew its 2.1.8 defense on June 2, 1995.

When counsel continues to assert a defense that causes additional and different injury it should be considered a new event. The misrepresentation to Judge Bassler in 2005 that AT&T still had a 2.1.8 defense caused the injury of issuing a referral that the FCC in January has now determined as a moot referral—removing AT&T’s scam from FCC circulation.

When AT&T insisted upon its June 2, 1995 withdrawn 2.1.8 defense in Judge Wigenton’s Court in 2015 and 2016 it caused a different injury than causing a moot referral. It caused Judge Wigenton to deny lifting the stay and going to damages.

Based upon Stephanie Pan’s analysis Mr Brown had total immunity from insisting upon a 2.1.8 defense and creating additional damage and wrong doing since we did not report it to the Texas Bar by June 2, 2000 ---4 years after AT&T withdrew the 2.1.8 defense filed via Tr8179. When additional wrongdoing adds to the injury, the action accrues with each wrongful act.

Additionally, AT&T’s general counsel was able to continue orchestrating the scam on the NJFDC and the FCC and as long as he did not sign the AT&T’s briefs he has zero responsibility!

SEE…Section 5 of Texas Bar Rules:

AT&T General Counsels (D. Wayne Watts in 2015 and David R. McAtee in 2016) are responsible for the misrepresentations by counsels such as Mr Richard H. Brown etc.

<https://www.texasbar.com/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=27271>

2. In the normal course of practice **the senior lawyer has the responsibility for making the decisions involving professional judgment as to procedures to be taken, the status of the law, *and the propriety of actions to be taken by the lawyers.*** Otherwise a consistent course of action could not be taken on behalf of clients. The junior lawyer reasonably can be expected to acquiesce in the decisions made by the senior lawyer unless the decision is clearly wrong.

5. The defense provided by this Rule is available without regard to whether the conduct in question was originally proposed by the supervised lawyer or another person. Nevertheless, the supervised lawyer is not permitted to accept an unreasonable decision as to the propriety of professional conduct. The Rule obviously provides no defense to the supervised lawyer who participates in clearly wrongful conduct. Reliance can be placed only upon a reasonable resolution made by the supervisory lawyer.

**BODA needs to assess the Continuing Wrong Doctrine:**

<http://www.morrisjames.com/blogs-Delaware-Business-Litigation-Report,REDUS-Peninsula-Millsboro-Mayer>

**Court Of Chancery Explains The Continuing Wrong Doctrine**

By [Edward M. McNally](http://www.morrisjames.com/blogs-Delaware-Business-Litigation-Report,author,Edward-McNally) on July 15, 2015

Posted In [Fiduciary Duty](http://www.morrisjames.com/blogs-Delaware-Business-Litigation-Report,category,fiduciary-duty)

[**REDUS Peninsula Millsboro LLC v. Mayer, C.A. No. 8835-VCN (July 13, 2015)**](http://www.morrisjames.com/assets/htmldocuments/REDUS%20v%20Mayer.pdf)

“It is settled law that a cause of action accrues when the wrong is committed, not when its effects continue to be felt in the future. But as this decision makes clear, that is not always the case. **When additional wrongdoing adds to the injury, the action accrues with each wrongful act.”**

AT&T counsels continued to assert it had a 2.1.8 defense over the last 4 years and thus it continued to engage in intentional misrepresentation.

The continued AT&T misrepresentations to Judge Wigenton and the FCC **caused the delay in the NJFDC lifting the stay and going to damages.** Plaintiffs sought to lift the stay in 2015 and 2016 and AT&T scammed Judge Wigenton AT THAT TIME. That effect of the 2015 and 2016 wrongful act caused Judge Susan D. Wigenton in 2015 and 2016 to **NOT LIFT THE STAY** and proceed to damages AT THAT TIME.

The AT&T counsel scam on Judge Wigenton is a wrongful act in 2015 and 2016 which caused **a NEW EFFECT** (not lifting the STAY and going to damages) not the 2005 continued effect of having Judge Bassler **refer a moot 2.1.8 issue** due to AT&T counsel’s fraud on Judge Bassler in 2005.

While we do appreciate that Texas Bar counsel agrees that AT&T’s counsels have obviously engaged in a fraud on the FCC and NJFDC by asserting a defense its own counsel Meade certified it withdrew on June 2, 1995, I think Stephanie Pan missed these critical points that are not allowing Texas Bar to act.

Texas Bar Rules do not provide immunity to AT&T’s counsels to continue wrong doing and cause different injury and general counsel can’t escape responsibility by simply not signing the AT&T briefs.

Hopefully BODA takes a clear look at the position of Texas Bar counsel Stephanie Pan ---which is tantamount to the issuance to AT&T counsel of a permanent license to continue the fraud.

It really is inequitable and non-sensical and is inconsistent with Texas Bar Rules.

Al Inga President

Group Discounts, Inc.