

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
JOINT MOTION FOR EXPEDITED CONSIDERATION)
OF THE JOINT PETITION FOR DECLARATORY RULING)
ON THE ASSIGNMENT OF ACCOUNTS (TRAFFIC))
WITHOUT THE ASSOCIATED CSTP II PLANS)
UNDER AT&T TARIFF F.C.C. NO. 2)
)
ON REFERRAL BY THE UNITED STATES COURT OF)
APPEALS FOR THE THIRD CIRCUIT)
)
COMBINED COMPANIES, INC.)
and)
WINBACK & CONSERVE PROGRAM, INC.,)
ONE STOP FINANCIAL, INC.,)
GROUP DISCOUNTS, INC.)
800 DISCOUNTS, INC.,)
)
Petitioners,)
)
and)
)
AT&T CORP.,)
)
Respondent.)
_____)

To the Commission:

JOINT MOTION FOR EXPEDITED CONSIDERATION

Petitioners Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc., by its attorneys, and Combined Companies, Inc., by its attorneys

(collectively, "Petitioners"), submit this Joint Motion for Expedited Consideration for their pending Joint Petition for Declaratory Ruling. In support whereof, the following is shown.

Petitioners filed suit against AT&T in February, 1995 for violations of the Communications Act of 1934, as amended, that threatened the very existence of Petitioners' businesses. At the time suit was filed, Petitioners' aggregation programs included 15,000 end user accounts. In May of 1996, Petitioners had only 3,500 accounts remaining, this diminution caused by AT&T's actions complained of in the lawsuit. For the reasons explained below, Petitioners now have even fewer accounts than in May as a result of AT&T's continued wrongful activity.

Beginning in June of this year, and despite direct and repeated objections of Petitioners, AT&T unlawfully billed each of Petitioners' end users for hundreds, and in some cases, thousands of dollars in shortfall, or "true up" charges. AT&T unilaterally imposed these shortfall charges on Petitioner CCI's pre-June 17, 1994 CSTP II plans. AT&T's conduct is all the more reprehensible because it can and will be shown that these "shortfall" charges are unlawful. For example, subsequent tariff changes notwithstanding, pre-June 17, 1994 CSTP II plans, as are involved here, may never have shortfall charges imposed, as long as the plans are restructured prior to each one-year anniversary¹. Further, the shortfall charges as now tariffed by AT&T are unreasonable², in violation of 47 U.S.C. § 201 as they recover full payment for the entire "run of the contract" commitment of the customer. Further, such charges bear no relation whatsoever to AT&T's legitimate cost recover needs losses when commitments are not met; violate standard contractual law

¹ See *In the Matter of RCA American Communications, Inc.*, 84 F.C.C.2d 353 (1980).

² *In the Matter of RCA American Communications, Inc.*, 86 F.C.C.2d 1197 (1981).

requiring mitigation and constitute an unconscionable windfall for AT&T. The end-using public, mostly small businesses, who were allocated and billed for these charges, are justifiable outraged, but too often their vitriol has been misdirected at Petitioners, rather than AT&T.

The need for expedited consideration is further underscored by the fact that the litigation in the District Court has been prosecuted for over eighteen months due, in significant part, to AT&T's deliberate actions to delay resolution of the issues presented whenever possible. The Court of Appeals, while directing Petitioners to obtain a ruling from the Commission, specifically noted that the District Court's finding that AT&T had engaged in tactics to delay the Commission's ruling was supported by the record. The Commission may take official notice that delay works to AT&T's advantage and to the serious disadvantage of Petitioners.

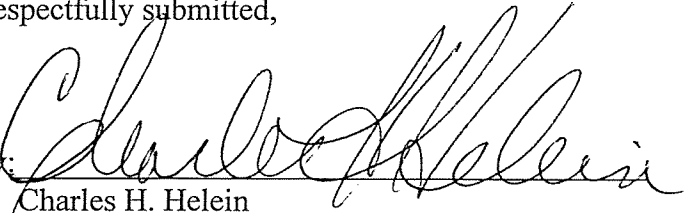
Finally, it may be noted that the Third Circuit permits litigants to return to the District Court without action by an expert agency in cases where the agency does not undertake proceedings, within a reasonable time, to resolve an issue the Court has referred. While the Third Circuit noted that the original primary jurisdiction referral was appropriate here, that doctrine nonetheless incorporates a substantial public interest in securing an agency ruling on the matter in dispute as promptly as possible.

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For the foregoing reasons, it is important that Petitioners get an expedited resolution of their Petition for a Declaratory Ruling, so that they may return to District Court and resolve all remaining issues between themselves and AT&T. Petitioners, therefore, respectfully ask the Commission to consider their Petition for Declaratory Ruling on an expedited basis.

Respectfully submitted,

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