

EXHIBIT A

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: March 10, 1994

TARIFF F.C.C. NO. 2
5th Revised Page 44
Cancels 4th Revised Page 44
Effective: March 11, 1994

2.8. VIOLATION OF REGULATIONS

2.8.1. General - The Company may take immediate action to protect its services or interests when certain regulations contained in this tariff are violated. The specific regulations involved and the action(s) which will be taken by this Company are as specified in 2.8.2 and 2.8.3 following.

2.8.2. Interference, Impairment or Improper Use - The Company may take immediate action to temporarily suspend service when a Customer violation results in any of the following:

- subjects Company or non-Company personnel to hazardous conditions as specified in Section 2.7.2.C (Interference and Hazard) preceding,
- circumvents the Company's ability to charge for its services as specified in Section 2.2.4. (Fraudulent Use) preceding, or
- results in an immediate harm to WATS or other Company services as specified in Section 2.7.9 (Minimum Protection Criteria).

In such cases, the Company will make reasonable effort to give the Customer prior notice before suspending service.

If a Customer fails to comply with Sections 2.2. (Use), 2.7.2.C (Interference and Hazard), 2.7.8.A (Answer Supervision), 2.7.8.D (Customer-provided Communications System Failures), and 2.7.9 (Minimum Protection Criteria) preceding, the Company may, on ten days' written notice by certified U.S. Mail to the Customer deny requests for additional service and/or temporarily suspend service to the non-complying Customer. If the Company does not deny or temporarily suspend the service involved on the date of the ten days' notice, and the Customer non-compliance continues, nothing contained herein shall preclude the Company's right to deny or temporarily suspend the service without further notice.

When a violation results in the temporary suspension of service and/or denial of additional service, these restrictions will be removed when the Customer is in compliance with the regulations and so advises the Company.

The Company may also temporarily restrict the ability to place AT&T 800 Service calls from certain telephone numbers when calls from those numbers are made to gain access to a WATS Customer's outbound calling capabilities on an unauthorized basis, or are otherwise made in violation of Sections 2.2.3. and 2.2.4.C of the tariff as described above. The Company will notify the party responsible for the affected telephone number by letter within 48 hours of the restriction. The restriction will be removed within six days, but will be reimposed if unauthorized access to a WATS Customer's outbound calling capabilities on an unauthorized basis or abusive calling recurs. After the second restriction, calling will only be reinstated after the Company discusses with the party responsible for the calling telephone number a method to prevent access to a WATS Customer's outbound calling capabilities on an unauthorized basis or abusive calling.

Issued on not less than one day's notice under authority of Special Permission No. 93-672

2.8. VIOLATION OF REGULATIONS

2.8.1. General - The Company may take immediate action to protect its services or interests when certain regulations contained in this tariff are violated. The specific regulations involved and the action(s) which will be taken by this Company are as specified in 2.8.2 and 2.8.3 following.

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- circumvents the Company's ability to charge for its services as specified in Section 2.2.4. (Fraudulent Use) preceding, or
- results in an immediate harm to WATS or other Company services as specified in Section 2.7.9 (Minimum Protection Criteria).

In such cases, the Company will make reasonable effort to give the Customer prior notice before suspending service.

If a Customer fails to comply with Sections 2.2. (Use), 2.7.2.C (Interference and Hazard), 2.7.8.A (Answer Supervision), 2.7.8.D (Customer-provided Communications System Failures), and 2.7.9 (Minimum Protection Criteria) preceding, the Company may, on ten days' written notice by certified U.S. Mail to the Customer deny requests for additional service and/or temporarily suspend service to the non-complying Customer. If the Company does not deny or temporarily suspend the service involved on the date of the ten days' notice, and the Customer non-compliance continues, nothing contained herein shall preclude the Company's right to deny or temporarily suspend the service without further notice.

When a violation results in the temporary suspension of service and/or denial of additional service, these restrictions will be removed when the Customer is in compliance with the regulations and so advises the Company.

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x Material filed under Transmittal No. 3950 is deferred until May 7, 1992.
y Issued on not less than one day's notice under authority of Special Permission No. 92-272.

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: March 10, 1994

TARIFF F.C.C. NO. 2
10th Revised Page 21
Cancels 9th Revised Page 21
Effective: March 11, 1994

2.2. USE

2.2.1. General - WATS may be used for any lawful purpose consistent with its transmission parameters. WATS is furnished for the transmission of voice and non-voice communications. For non-voice communications, typical uses are data, facsimile, signaling, metering, or other similar communications, subject to the transmission capabilities of the service.

2.2.2.

2.2.3. Abuse - The abuse of WATS is prohibited. The following activities constitute abuse:

A. Using WATS to make calls which might reasonably be expected to frighten, abuse, torment, or harass another, or

B. Using WATS in such a way that it interferes unreasonably with the use of the service by others.

C. Using AT&T 800 Service or any other telephone number advertised or widely understood to be toll free, in a manner that would result in (1) the calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for the call; (2) the calling party being connected to a pay-per-call service; (3) the calling party being charged for information conveyed during the call; unless in either (1), (2) or (3) the calling party has a presubscription or comparable arrangement or discloses a credit or charge card number during the call; or (4) the calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services or products. The Customer must also comply with (a) Titles II and III of the Telephone Disclosure and Dispute Resolution Act (Pub. L. No. 102-556) (TDDRA) and (b) the regulations prescribed by the Federal Communications Commission and the Federal Trade Commission pursuant to those Titles.

2.2.4. Fraudulent Use - The fraudulent use of, or the intended or attempted fraudulent use of, WATS is prohibited. The following activities constitute fraudulent use:

A. Using or attempting to use WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by:

1. Rearranging, tampering with, or making connections not authorized by this tariff to any WATS service component, or

2. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices, or electronic devices.

B. Using WATS in response to an incompleting LDMTS call, which was not completed in order to circumvent the payment of applicable LDMTS charges.

C. 800 callers using WATS with the intent of gaining access to a WATS Customer's outbound calling capabilities on an unauthorized basis.

Issued on not less than one day's notice under authority of Special Permission No. 93-672.

AT&T COMMUNICATIONS

Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: July 26, 1994

TARIFF F.C.C. NO. 2

11th Revised Page 21
Cancels 10th Revised Page 21
Effective: July 28, 1994

2.2 USE

2.2.1. General - WATS may be used for any lawful purpose consistent with its transmission parameters. WATS is furnished for the transmission of voice and non-voice communications. For non-voice communications, typical uses are data, facsimile, signaling, metering, or other similar communications, subject to the transmission capabilities of the service.

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A. Using WATS to make calls which might reasonably be expected to frighten, abuse, torment, or harass another, or

B. Using WATS in such a way that it interferes unreasonably with the use of the service by others.

C. Using AT&T 800 Service or any other telephone number advertised or widely understood to be toll free, in a manner that would result in (1) the calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for the call; (2) the calling party being connected to a pay-per-call service; (3) the calling party being charged for information conveyed during the call; unless in either (1), (2) or (3) the calling party has a presubscription or comparable arrangement or discloses a credit or charge card number during the call; or (4) the calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services or products. The Customer must also comply with (a) Titles II and III of the Telephone Disclosure and Dispute Resolution Act (Pub. L. No. 102-556) (TDDRA) and (b) the regulations prescribed by the Federal Communications Commission and the Federal Trade Commission pursuant to those Titles.

D. Acquiring or reserving an 800 number provided by AT&T for the primary purpose of selling, brokering, bartering or releasing it for a fee or other consideration. Cx
M
Cx

2.2.4. Fraudulent Use - The fraudulent use of, or the intended or attempted fraudulent use of, WATS is prohibited. The following activities constitute fraudulent use:

A. Using or attempting to use WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by:

1. Rearranging, tampering with, or making connections not authorized by this tariff to any WATS service component, or

Certain material previously found on this page can now be found on Page 22.
Certain material on this page formerly appeared on Page 22.
* Issued on not less than two days' notice under authority of Special Permission No. 94-872.

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: March 10, 1994

TARIFF F.C.C. NO. 2
3rd Revised Page 22
Cancels 2nd Revised Page 22
Effective: March 11, 1994

2.2.5. Use of WATS For Resale or Shared Use - When WATS is resold or shared, the Customer must comply with the following:

A. Reference to This Company - The Customer may advise its User that a portion of the Customer's service is provided by this Company. However, the Customer shall not represent that this Company jointly participates in the provision of the Customer's services.

Issued on not less than one day's notice under authority of Special Permission No. 93-672.

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: April 7, 1994

TARIFF F.C.C. NO. 2
4th Revised Page 22
Cancels 3rd Revised Page 22
Effective: April 21, 1994

2.2.4. Fraudulent Use (continued)

D. Acquiring or attempting to acquire an 800 number associated with inbound service provided by AT&T for the primary purpose of selling, brokering, bartering or releasing it for a fee (or other considerations). N

2.2.5. Use of WATS For Resale or Shared Use - When WATS is resold or shared, the Customer must comply with the following:

A. **Reference to This Company** - The Customer may advise its User that a portion of the Customer's service is provided by this Company. However, the Customer shall not represent that this Company jointly participates in the provision of the Customer's services.

AT&T COMMUNICATIONS

Adm. Rates and Tariffs

Bridgewater, NJ 08807

Issued: July 26, 1994

TARIFF F.C.C. NO. 2

5th Revised Page 22

Cancels 4th Revised Page 22

Effective: July 28, 1994

2.2.4. Fraudulent Use (continued)

2. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices. Mx
Cx

B. Using WATS in response to an incomplete LDMTS call, which was not completed in order to circumvent the payment of applicable LDMTS charges. Mx
||

C. 800 callers using WATS with the intent of gaining access to a WATS Customer's outbound calling capabilities on an unauthorized basis. Mx
||

D. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers. Nx
||
Nx

2.2.5. Use of WATS For Resale or Shared Use - When WATS is resold or shared, the Customer must comply with the following:

A. **Reference to This Company** - The Customer may advise its User that a portion of the Customer's service is provided by this Company. However, the Customer shall not represent that this Company jointly participates in the provision of the Customer's services.

Certain material previously found on this page can now be found on Page 21.

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x Issued on not less than two days' notice under authority of Special Permission No. 94-872.

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: September 25, 1995

TARIFF F.C.C. NO. 2
6th Revised Page 22
Cancels 5th Revised Page 22
Effective: September 26, 1995

2.2.4. Fraudulent Use (continued)

2. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices.

B. Using WATS in response to an incomplete CTS or LDMTS call, which was not completed in order to circumvent the payment of applicable CTS or LDMTS charges.

C. 800 callers using WATS with the intent of gaining access to a WATS Customer's outbound calling capabilities on an unauthorized basis.

D. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers.

2.2.5. Use of WATS For Resale or Shared Use - When WATS is resold or shared, the Customer must comply with the following:

A. **Reference to This Company** - The Customer may advise its User that a portion of the Customer's service is provided by this Company. However, the Customer shall not represent that this Company jointly participates in the provision of the Customer's services.

AT&T COMMUNICATIONS

Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: June 14, 1996

TARIFF F.C.C. NO. 2

7th Revised Page 22
Cancels 6th Revised Page 22
Effective: June 15, 1996

2.2.4. Fraudulent Use (continued)

2. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices, or electronic devices, whether directed at the Company or others. C
C

B. Using WATS in response to an incomplete CTS or LDMTS call, which was not completed in order to circumvent the payment of applicable CTS or LDMTS charges.

C. 800 callers using WATS with the intent of gaining access to a WATS Customer's outbound calling capabilities on an unauthorized basis.

D. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers.

2.2.5. Use of WATS For Resale or Shared Use - When WATS is resold or shared, the Customer must comply with the following:

A. **Reference to This Company** - The Customer may advise its User that a portion of the Customer's service is provided by this Company. However, the Customer shall not represent that this Company jointly participates in the provision of the Customer's services.

EXHIBIT B

7
CLERK

FW8888

PITNEY, HARDIN, KIPP & SZUCH
(MAIL TO) P.O. BOX 1945, MORRISTOWN, N.J. 07962-1945
(DELIVERY TO) 200 CAMPUS DRIVE, FLORHAM PARK, N.J. 07932-0950
(201) 966-6300

ATTORNEYS FOR Defendant AT&T Corp.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC., :
a Florida corporation, :

AND :

WINBACK & CONSERVE PROGRAM, :
INC., ONE STOP FINANCIAL, :
INC., GROUP DISCOUNTS, INC., :
800 DISCOUNTS, INC. and :
New Jersey corporations, :

AND :

PUBLIC SERVICE ENTERPRISES :
OF PENNSYLVANIA, INC., :
a Pennsylvania corporation, :

Plaintiffs, :

v. :

AT&T CORP., :
a New York corporation, :

Defendant. :

CIVIL ACTION NO.
95-908 (NHP)

CERTIFICATION OF
RICHARD R. MEADE

RICHARD R. MEADE, of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey and am a Senior Attorney with defendant AT&T Corp. As such, I have personal knowledge of the facts and proceedings set forth herein.

2. I submit this Certification in connection with AT&T's Brief In Opposition To Plaintiffs' Motion For A Temporary Restraining Order.

3. On February 16, 1995, AT&T Corp. filed Tariff Transmittal No. 8179 with the Federal Communication Commission ("FCC"). A copy of that transmittal is attached hereto as Exhibit A. A copy of my letter to David Nall, Deputy Chief of the Commission's Common Carrier Bureau, Tariff Division regarding the transmittal is attached hereto at Exhibit B.

4. In connection with Tariff Transmittal No. 8179, seven entities (including three of the plaintiffs in this matter) filed Petitions to Reject or Suspend and Investigate with the FCC.

5. On February 21, 1995, I received a copy of the Petition To Reject or Suspend and Investigate of Winback & Conserve Program, Inc., which was filed with the FCC in connection with AT&T's Tariff Transmittal No. 8179. A copy of this petition is attached hereto as Exhibit C.

6. On February 22, 1995, I received a copy of the Petition To Reject of Combined Companies, Inc., which was filed with FCC in connection with AT&T's Tariff Transmittal No. 8179. A copy of this petition is attached hereto as Exhibit D.

7. On February 22, 1995, I received a copy of the Petition To Reject or Suspend and Investigate of Public Services Enterprises of Pennsylvania, Inc., which was filed with the FCC in connection with AT&T's Tariff Transmittal No. 8179. A copy of this petition is attached hereto as Exhibit E.

8. On February 27, 1995, AT&T Corp. filed with the FCC its Reply to the Petitions to Reject or Suspend and Investigate. A copy of this Reply is attached hereto as Exhibit F.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



RICHARD R. MEADE

DATED: March 6, 1995

- 3 -

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TOTAL P.04
P.04

AA177



M. F. DelCasino
Administrator - Rates and Tariffs

Room 3306
55 Corporate Drive
Bridgewater, NJ 08807
908 653-5541

February 18, 1995

Transmittal No. 0179

Secretary
Federal Communications Commission
Washington, DC 20554

Attention: Common Carrier Bureau

The accompanying tariff material issued by AT&T Communications and bearing Tariff F.C.C. Nos. 1 and 2, effective March 2, 1995, is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended. This material consists of tariff pages as indicated on the following check sheets:

Tariff F.C.C. No. 1 - 3326th Revised Page 1
Tariff F.C.C. No. 1 - 276th Revised Page 1.4
Tariff F.C.C. No. 2 - 1140th Revised Page 1

This filing modifies language pertaining to Transfer or Assignment regulations.

A continuing waiver of Section 61.74 of the Federal Communications Commission's Rules and Regulations was requested under Application No. 1528 and has been granted under Special Permission No. 93-38.

Notification to customers of rate increases is being made through advertisements scheduled to appear within the next two business days in general circulation daily newspapers in major metropolitan areas throughout the country (including USA Today and the national editions of the Wall Street Journal and the New York Times).

Acknowledgment and date of receipt of this filing are requested to the address below. A duplicate letter of transmittal is attached for this purpose. Petitions can be served either by facsimile (908-953-8360) to the attention of Mr. R. Moade or in person to Mr. M. F. DelCasino, Administrator - Rates and Tariffs, AT&T Communications, 55 Corporate Drive, Room 3306, Bridgewater, NJ 08807.


Administrator - Rates and Tariffs

Duplicate Letter

Attachment:

Tariff Pages (6)

Copy of Letter, with attachment, concurrently sent to:
Commercial Contractor
Chief, Tariff Review Branch, Public Reference Copy

 Revised Page

G3

P.02

AA178

AFSA COMMUNICATIONS
 Mr. H. P. Galtman
 Mr. R. H. and Mrs. J. W.
 Washington, D. C. 20540
 Lapsed: February 14, 1975

NAVJAG P.C.C. NO. 1
 112th Revised Page 1
 Sample 112th Revised Page 1
 Effective: March 1, 1968

NAVJAG P.C.C. NO. 1
 112th Revised Page 1
 Sample 112th Revised Page 1
 Effective: March 1, 1968

The Title Page and Pages 1 through 100 inclusive of this series are effective as of the date shown. Original and subsequent pages are dated below and AFSA Communications Supplement Nos. 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 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484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 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1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255,

NEW SUBSCRIPTIONS
BY U. S. MAIL
Add. Dates and Tariffs
Washington, D. C. 20547
Issued FEBRUARY 16, 1968

TABLE F C C 20 1
770th Revised Page 1.4
Cancels 77th Revised Page 1.4
Effective: March 1, 1968

LONG DISTANCE UNITED STATES TELECOMMUNICATIONS SERVICE
CANCELS 77th Revised Page 1.4

Rate	Number of minutes included in allowance	Rate	Number of minutes included in allowance	Rate	Number of minutes included in allowance	Rate	Number of minutes included in allowance	Rate	Number of minutes included in allowance
150	10th	147.14	2nd	148	10th	148.1	2nd	148.50	7th
150.1	10th	147.15	1st	148.1	2nd	148.6	2nd	148.50.1	Original
150	10th	147.15.1	2nd	148.1	2nd	148.6	2nd	148.50.2	Original
151	10th	147.16	10th	148.1	2nd	148.6	2nd	148.50.3	Original
151.1	10th	147.17	10th	148.1	2nd	148.6	2nd	148.50.4	Original
152	10th	147.17.1	4th	148.2	2nd	148.6	2nd	148.50.5	Original
152.1	Original	147.18	2nd	148.2	2nd	148.6.1	Original	148.50.6	Original
153	10th	147.18.1	2nd	148.2	2nd	148.6.2	Original	148.50.7	Original
153.1	10th	147.19	2nd	148.2	2nd	148.6.3	Original	148.50.8	Original
153.1	10th	147.20	2nd	148.2	2nd	148.6.4	Original	148.50.9	Original
153.1.1	2nd	147.20.1	1st	148.2.1	2nd	148.6.5	Original	148.51	Original
153.1.2	Original	147.21	4th	148.2.2	10th	148.6.6	Original	148.51.1	Original
153.2	10th	147.22	10th	148.2.3	10th	148.6.7	Original	148.51.2	Original
153.2.1	10th	147.23	10th	148.2.4	7th	148.6.8	Original	148.51.3	Original
153.3	10th	147.24	4th	148.2.5	2nd	148.6.9	Original	148.51.4	Original
153.4	10th	147.25	7th	148.2.6	4th	148.6.10	Original	148.51.5	Original
153.4.1	10th	147.26	10th	148.2	2nd	148.6.11	Original	148.51.6	Original
153.4.2	7th	147.26.1	1st	148.2.1	10th	148.6.12	Original	148.51.7	Original
153.4.3	10th	147.27	2nd	148.2.2.1	1st	148.6.13	Original	148.51.8	Original
153.4.4	10th	147.27.1	2nd	148.2.2	10th	148.6.14	Original	148.51.9	Original
153.4.4.1	Original	147.28	2nd	148.2.3	2nd	148.6.15	Original	148.52	Original
153.4.4.2	Original	147.28.1	1st	148.2.4	10th	148.6.16	Original	148.52.1	Original
153.4.4.3	1st	147.29	10th	148.2.5	10th	148.6.17	Original	148.52.2	Original
153.5	2nd	147.30	10th	148.2.6	10th	148.6.18	Original	148.52.3	Original
153.6	2nd	147.30.1	1st	148.2.7	10th	148.6.19	Original	148.52.4	Original
153.7	2nd	147.31	7th	148.2.8	10th	148.6.20	Original	148.52.5	Original
153.8	Original	147.32	10th	148.2.9	Original	148.6.21	Original	148.52.6	Original
153.9	Original	147.33	10th	148.2.10	10th	148.6.22	Original	148.52.7	Original
154	10th	147.34	10th	148.2.11	10th	148.6.23	Original	148.52.8	Original
154.1	10th	147.34.1	1st	148.2.12	10th	148.6.24	Original	148.52.9	Original
154.2	10th	147.34.2	1st	148.2.13	10th	148.6.25	Original	148.52.10	Original
154.3	10th	147.34.3	1st	148.2.14	10th	148.6.26	Original	148.52.11	Original
154.4	10th	147.34.4	1st	148.2.15	10th	148.6.27	Original	148.52.12	Original
154.5	10th	147.35	10th	148.2.16	10th	148.6.28	Original	148.52.13	Original
154.6	10th	147.35.1	1st	148.2.17	10th	148.6.29	Original	148.52.14	Original
154.7	10th	147.35.2	1st	148.2.18	10th	148.6.30	Original	148.52.15	Original
154.8	10th	147.36	10th	148.2.19	10th	148.6.31	Original	148.52.16	Original
154.9	10th	147.37	10th	148.2.20	10th	148.6.32	Original	148.52.17	Original
155	10th	147.38	10th	148.2.21	10th	148.6.33	Original	148.52.18	Original
155.1	10th	147.39	10th	148.2.22	10th	148.6.34	Original	148.52.19	Original
155.2	10th	147.40	10th	148.2.23	10th	148.6.35	Original	148.52.20	Original
155.3	10th	147.41	10th	148.2.24	10th	148.6.36	Original	148.52.21	Original
155.4	10th	147.42	10th	148.2.25	10th	148.6.37	Original	148.52.22	Original
155.5	10th	147.43	10th	148.2.26	10th	148.6.38	Original	148.52.23	Original
155.6	10th	147.44	10th	148.2.27	10th	148.6.39	Original	148.52.24	Original
155.7	10th	147.45	10th	148.2.28	10th	148.6.40	Original	148.52.25	Original
155.8	10th	147.46	10th	148.2.29	10th	148.6.41	Original	148.52.26	Original
155.9	10th	147.47	10th	148.2.30	10th	148.6.42	Original	148.52.27	Original
156	10th	147.48	10th	148.2.31	10th	148.6.43	Original	148.52.28	Original
156.1	10th	147.49	10th	148.2.32	10th	148.6.44	Original	148.52.29	Original
156.2	10th	147.50	10th	148.2.33	10th	148.6.45	Original	148.52.30	Original
156.3	10th	147.51	10th	148.2.34	10th	148.6.46	Original	148.52.31	Original
156.4	10th	147.52	10th	148.2.35	10th	148.6.47	Original	148.52.32	Original
156.5	10th	147.53	10th	148.2.36	10th	148.6.48	Original	148.52.33	Original
156.6	10th	147.54	10th	148.2.37	10th	148.6.49	Original	148.52.34	Original
156.7	10th	147.55	10th	148.2.38	10th	148.6.50	Original	148.52.35	Original
156.8	10th	147.56	10th	148.2.39	10th	148.6.51	Original	148.52.36	Original
156.9	10th	147.57	10th	148.2.40	10th	148.6.52	Original	148.52.37	Original
157	10th	147.58	10th	148.2.41	10th	148.6.53	Original	148.52.38	Original
157.1	10th	147.59	10th	148.2.42	10th	148.6.54	Original	148.52.39	Original
157.2	10th	147.60	10th	148.2.43	10th	148.6.55	Original	148.52.40	Original
157.3	10th	147.61	10th	148.2.44	10th	148.6.56	Original	148.52.41	Original
157.4	10th	147.62	10th	148.2.45	10th	148.6.57	Original	148.52.42	Original
157.5	10th	147.63	10th	148.2.46	10th	148.6.58	Original	148.52.43	Original
157.6	10th	147.64	10th	148.2.47	10th	148.6.59	Original	148.52.44	Original
157.7	10th	147.65	10th	148.2.48	10th	148.6.60	Original	148.52.45	Original
157.8	10th	147.66	10th	148.2.49	10th	148.6.61	Original	148.52.46	Original
157.9	10th	147.67	10th	148.2.50	10th	148.6.62	Original	148.52.47	Original
158	10th	147.68	10th	148.2.51	10th	148.6.63	Original	148.52.48	Original
158.1	10th	147.69	10th	148.2.52	10th	148.6.64	Original	148.52.49	Original
158.2	10th	147.70	10th	148.2.53	10th	148.6.65	Original	148.52.50	Original
158.3	10th	147.71	10th	148.2.54	10th	148.6.66	Original	148.52.51	Original
158.4	10th	147.72	10th	148.2.55	10th	148.6.67	Original	148.52.52	Original
158.5	10th	147.73	10th	148.2.56	10th	148.6.68	Original	148.52.53	Original
158.6	10th	147.74	10th	148.2.57	10th	148.6.69	Original	148.52.54	Original
158.7	10th	147.75	10th	148.2.58	10th	148.6.70	Original	148.52.55	Original
158.8	10th	147.76	10th	148.2.59	10th	148.6.71	Original	148.52.56	Original
158.9	10th	147.77	10th	148.2.60	10th	148.6.72	Original	148.52.57	Original
159	10th	147.78	10th	148.2.61	10th	148.6.73	Original	148.52.58	Original
159.1	10th	147.79	10th	148.2.62	10th	148.6.74	Original	148.52.59	Original
159.2	10th	147.80	10th	148.2.63	10th	148.6.75	Original	148.52.60	Original
159.3	10th	147.81	10th	148.2.64	10th	148.6.76	Original	148.52.61	Original
159.4	10th	147.82	10th	148.2.65	10th	148.6.77	Original	148.52.62	Original
159.5	10th	147.83	10th	148.2.66	10th	148.6.78	Original	148.52.63	Original
159.6	10th	147.84	10th	148.2.67	10th	148.6.79	Original	148.52.64	Original
159.7	10th	147.85	10th	148.2.68	10th	148.6.80	Original	148.52.65	Original
159.8	10th	147.86	10th	148.2.69	10th	148.6.81	Original	148.52.66	Original
159.9	10th	147.87	10th	148.2.70	10th	148.6.82	Original	148.52.67	Original
160	10th	147.88	10th	148.2.71	10th	148.6.83	Original	148.52.68	Original
160.1	10th	147.89	10th	148.2.72	10th	148.6.84	Original	148.52.69	Original
160.2	10th	147.90	10th	148.2.73	10th	148.6.85	Original	148.52.70	Original
160.3	10th	147.91	10th	148.2.74	10th	148.6.86	Original	148.52.71	Original
160.4	10th	147.92	10th	148.2.75	10th	148.6.87	Original	148.52.72	Original
160.5	10th	147.93	10th	148.2.76	10th	148.6.88	Original	148.52.73	Original
160.6	10th	147.94	10th	148.2.77	10th	148.6.89	Original	148.52.74	Original
160.7	10th	147.95	10th	148.2.78	10th	148.6.90	Original	148.52.75	Original
160.8	10th	147.96	10th	148.2.79	10th	148.6.91	Original	148.52.76	Original
160.9	10th	147.97	10th	148.2.80	10th	148.6.92	Original	148.52.77	Original
161	10th	147.98	10th	148.2.81	10th	148.6.93	Original	148.52.78	Original
161.1	10th	147.99	10th	148.2.82	10th	148.6.94	Original	148.52.79	Original
161.2	10th	148.00	10th	148.2.83	10th	148.6.95	Original	148.52.80	Original
161.3	10th	148.01	10th	148.2.84	10th	148.6.96	Original	148.52.81	Original
161.4	10th	148.02	10th	148.2.85	10th	148.6.97	Original	148.52.82	Original
161.5	10th	148.03	10th	148.2.86	10th	148.6.98	Original	148.52.83	Original
161.6	10th	148.04	10th	148.2.87	10th	148.6.99	Original	148.52.84	Original
161.7	10th	148.05	10th	148.2.88	10th	148.7.00	Original	148.52.85	Original
161.8	10th	148.06	10th	148.2.89	10th	148.7.01	Original	148.52.86	Original
161.9	10th	148.07	10th	148.2.90	10th	148.7.02	Original	148.52.87	Original
162	10th	148.08	10th	148.2.91	10th	148.7.03	Original	148.52.88	Original
162.1	10th	148.09	10th	148.2.92	10th	148.7.04	Original	148.52.89	Original
162.2	10th	148.10	10th	148.2.93	10th	148.7.05	Original	148.52.90	Original
162.3	10th	148.11	10th	148.2.94	10th	148.7.06	Original	148.52.91	Original
162.4	10th	148.12	10th	148.2.95	10th	148.7.07	Original	148.52.92	Original
162.5	10th	148.13	10th	148.2.96	10th	148.7.08	Original	148.52.93	Original
162.6	10th	148.14	10th	148.2.97	10th	148.7.09	Original	148.52.94	Original
162.7	10th	148.15	10th	148.2.98	10th	148.7.10	Original	148.52.95	Original
162.8	10th	148.16	10th	148.2.99	10th	148.7.11	Original	148.52.96	Original
162.9	10th	148.17	10th	148.3.00	10th	148.7.12	Original	148.52.97	Original
163	10th	148.18	10th	148.3.01	10th	148.7.13	Original	148.52.98	Original

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: February 16, 1995

TARIFF F.C.C. NO. 1
11th Revised Page 150
Cancels 10th Revised Page 150
Effective: March 2, 1995

6.2.5. Provision of Services (continued)

B. Installation - When installation of a component is required it will be installed subject to the availability of installation personnel and equipment. Installations will usually be made during normal working hours. For AT&T OPTIMUM Service, an Installation Guarantee is provided as specified in Section 6.17.6. following. For AT&T CustomNet GOLD Service, an Installation Guarantee is provided as specified in Section 6.21.3., following.

C. Maintenance - The Company will maintain and repair the services which it provides, at no additional charge, except as specified in AT&T UNIPLAN Basic Service Option as specified in Section 6.19.5. following. For AT&T OPTIMUM Service, a Maintenance Guarantee is provided as specified in Section 6.17.5. following. For AT&T CustomNet GOLD Service a Maintenance Guarantee is provided as specified in Section 6.21.3., following.

D. Hazardous Locations - A Company-provided access line will not be furnished at a location the Company considers hazardous (e.g., explosive atmosphere environments). In such cases, the Company, if so requested, will terminate the access line at a mutually agreeable alternate location. The Customer will then be responsible for extension of the access line to the hazardous location.

6.2.6. Transfer or Assignment - Custom Network Services may be transferred or assigned to a new Customer, provided that:

A. The Customer of record (former Customer) requests in writing that the Company transfer or assign the service to the new Customer.

B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service, and (2) the unexpired portion of any applicable minimum payment period(s), including the unexpired portion of any term of service and usage or revenue commitment(s).

C. The service is not interrupted or relocated at the time the transfer or assignment is made.

D. The Company agrees in writing to the transfer or assignment.

The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service, and (2) the unexpired portion of any applicable minimum payment period(s), including the unexpired portion of any term of service and usage or revenue commitment(s).

Current regulations previously found on this page can now be found on Page 150.1.
* Original filed under Supplemental No. 0110 as submitted to Bureau on February 10, 1995.

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AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: February 16, 1995

TARIFF F.C.C. NO. 1
3rd Revised Page 150.1
Cancels 2nd Revised Page 150.1
Effective: March 2, 1995

6.2.6. Transfer or Assignment (continued)

If a Customer seeks to transfer, to one or more other Customers, all or substantially all of the locations associated with an existing Custom Network Service volume or term plan or Contract Tariff, and the anticipated result of such a transfer would be that the usage and/or revenue from the remaining locations associated with the volume or term plan or Contract Tariff (based on the past 12 months of usage) would not meet the usage and/or revenue commitment of the volume or term plan or Contract Tariff, the transfer will be deemed a transfer of the associated volume or term plan or Contract Tariff to such other Customer(s), and may only be completed in accordance with this section. If the transfer of service is to a group of two or more other Customers, the new Customer for the volume or term plan or Contract Tariff will be that group. Each Customer in the group will be jointly and severally liable for all of the obligations associated with the transferred service and volume or term plan or Contract Tariff.

6.2.7. Multi-Location Calling Plan (MLCP) - Certain Custom Network Services are available as part of the MLCP. The terms and conditions of the MLCP are described in Section 6.9. following.

Certain regulations on this page formerly appeared on Page 150.

Revised As U.S.A.

AGREEMENT
BY U. S. AIRCRAFT
AND AIRCRAFT
REPRESENTATIVE, 27 0001
Issued February 14, 1945

REPLY P. 4 C. 2
1100th Airborne Page 1
Came to 1100th Airborne Page 1
Effective: March 2, 1945

UNITED STATES TRANSPORTATION SERVICE

UNITED STATES

The title page and pages 1 through 723 inclusive of this tariff are effective as of the date shown. Original and revised pages as noted below and NOT Communications Supplement No. 107 contain all changes from the original tariff that are in effect on the date shown.

Page	Section of Tariff as Amended	Page	Section of Tariff as Amended	Page	Section of Tariff as Amended	Page	Section of Tariff as Amended	Page	Section of Tariff as Amended
1	1100th	21	100	41.5.1	100	60.2	100	72.2.1	Original
1.1	1100th	22	100	41.5.2	100	60.2.1	100	72.2.2	Original
1.2	100	23	100	41.6	100	60.2.1.1	Original	72.3	100
2	100	24	100	41.7	100	60.3	100	72.4	100
3	100	25	100	41.7.1	100	60.3.1	100	72.5	100
4	100	26	100	41.8	100	60.4	100	72.6	100
5	100	27	100	41.9	100	60.5	100	72.7	100
6	100	28	100	41.10	100	60.6	100	72.8	100
7	100	29	100	41.10.1	100	60.7	100	72.9	100
7.1	100	30	100	41.11	100	60.8	100	72.10	100
7.2	Original	31	100	41.12	100	60.9	100	72.11	100
8	100	32	100	41.13	100	60.10	100	72.12	100
8.1	100	33	100	41.14	100	60.11	100	72.13	100
8.1.1	Original	34	100	41.15	100	60.12	100	72.14	100
8.1.2	Original	35	100	41.16	100	60.13	100	72.15	100
8.2	100	36	100	41.17	100	60.14	100	72.16	100
8.3	100	37	100	41.18	100	60.15	100	72.17	100
8.4	100	38	100	41.19	100	60.16	100	72.18	100
8.5	100	39	100	41.20	100	60.17	100	72.19	100
8.6	100	40	100	41.21	100	60.18	100	72.20	100
8.7	100	41	100	41.22	100	60.19	100	72.21	100
8.8	100	42	100	41.23	100	60.20	100	72.22	100
8.9	100	43	100	41.24	100	60.21	100	72.23	100
8.10	100	44	100	41.25	100	60.22	100	72.24	100
8.11	100	45	100	41.26	100	60.23	100	72.25	100
8.12	100	46	100	41.27	100	60.24	100	72.26	100
8.13	100	47	100	41.28	100	60.25	100	72.27	100
8.14	100	48	100	41.29	100	60.26	100	72.28	100
8.15	100	49	100	41.30	100	60.27	100	72.29	100
8.16	100	50	100	41.31	100	60.28	100	72.30	100
8.17	100	51	100	41.32	100	60.29	100	72.31	100
8.18	100	52	100	41.33	100	60.30	100	72.32	100
8.19	100	53	100	41.34	100	60.31	100	72.33	100
8.20	100	54	100	41.35	100	60.32	100	72.34	100
8.21	100	55	100	41.36	100	60.33	100	72.35	100
8.22	100	56	100	41.37	100	60.34	100	72.36	100
8.23	100	57	100	41.38	100	60.35	100	72.37	100
8.24	100	58	100	41.39	100	60.36	100	72.38	100
8.25	100	59	100	41.40	100	60.37	100	72.39	100
8.26	100	60	100	41.41	100	60.38	100	72.40	100
8.27	100	61	100	41.42	100	60.39	100	72.41	100
8.28	100	62	100	41.43	100	60.40	100	72.42	100
8.29	100	63	100	41.44	100	60.41	100	72.43	100
8.30	100	64	100	41.45	100	60.42	100	72.44	100
8.31	100	65	100	41.46	100	60.43	100	72.45	100
8.32	100	66	100	41.47	100	60.44	100	72.46	100
8.33	100	67	100	41.48	100	60.45	100	72.47	100
8.34	100	68	100	41.49	100	60.46	100	72.48	100
8.35	100	69	100	41.50	100	60.47	100	72.49	100
8.36	100	70	100	41.51	100	60.48	100	72.50	100
8.37	100	71	100	41.52	100	60.49	100	72.51	100
8.38	100	72	100	41.53	100	60.50	100	72.52	100
8.39	100	73	100	41.54	100	60.51	100	72.53	100
8.40	100	74	100	41.55	100	60.52	100	72.54	100
8.41	100	75	100	41.56	100	60.53	100	72.55	100
8.42	100	76	100	41.57	100	60.54	100	72.56	100
8.43	100	77	100	41.58	100	60.55	100	72.57	100
8.44	100	78	100	41.59	100	60.56	100	72.58	100
8.45	100	79	100	41.60	100	60.57	100	72.59	100
8.46	100	80	100	41.61	100	60.58	100	72.60	100
8.47	100	81	100	41.62	100	60.59	100	72.61	100
8.48	100	82	100	41.63	100	60.60	100	72.62	100
8.49	100	83	100	41.64	100	60.61	100	72.63	100
8.50	100	84	100	41.65	100	60.62	100	72.64	100
8.51	100	85	100	41.66	100	60.63	100	72.65	100
8.52	100	86	100	41.67	100	60.64	100	72.66	100
8.53	100	87	100	41.68	100	60.65	100	72.67	100
8.54	100	88	100	41.69	100	60.66	100	72.68	100
8.55	100	89	100	41.70	100	60.67	100	72.69	100
8.56	100	90	100	41.71	100	60.68	100	72.70	100
8.57	100	91	100	41.72	100	60.69	100	72.71	100
8.58	100	92	100	41.73	100	60.70	100	72.72	100
8.59	100	93	100	41.74	100	60.71	100	72.73	100
8.60	100	94	100	41.75	100	60.72	100	72.74	100
8.61	100	95	100	41.76	100	60.73	100	72.75	100
8.62	100	96	100	41.77	100	60.74	100	72.76	100
8.63	100	97	100	41.78	100	60.75	100	72.77	100
8.64	100	98	100	41.79	100	60.76	100	72.78	100
8.65	100	99	100	41.80	100	60.77	100	72.79	100
8.66	100	100	100	41.81	100	60.78	100	72.80	100
8.67	100	101	100	41.82	100	60.79	100	72.81	100
8.68	100	102	100	41.83	100	60.80	100	72.82	100
8.69	100	103	100	41.84	100	60.81	100	72.83	100
8.70	100	104	100	41.85	100	60.82	100	72.84	100
8.71	100	105	100	41.86	100	60.83	100	72.85	100
8.72	100	106	100	41.87	100	60.84	100	72.86	100
8.73	100	107	100	41.88	100	60.85	100	72.87	100
8.74	100	108	100	41.89	100	60.86	100	72.88	100
8.75	100	109	100	41.90	100	60.87	100	72.89	100
8.76	100	110	100	41.91	100	60.88	100	72.90	100
8.77	100	111	100	41.92	100	60.89	100	72.91	100
8.78	100	112	100	41.93	100	60.90	100	72.92	100
8.79	100	113	100	41.94	100	60.91	100	72.93	100
8.80	100	114	100	41.95	100	60.92	100	72.94	100
8.81	100	115	100	41.96	100	60.93	100	72.95	100
8.82	100	116	100	41.97	100	60.94	100	72.96	100
8.83	100	117	100	41.98	100	60.95	100	72.97	100
8.84	100	118	100	41.99	100	60.96	100	72.98	100
8.85	100	119	100	42.00	100	60.97	100	72.99	100
8.86	100	120	100	42.01	100	60.98	100	73.00	100
8.87	100	121	100	42.02	100	60.99	100	73.01	100
8.88	100	122	100	42.03	100	61.00	100	73.02	100
8.89	100	123	100	42.04	100	61.01	100	73.03	100
8.90	100	124	100	42.05	100	61.02	100	73.04	100
8.91	100	125	100	42.06	100	61.03	100	73.05	100
8.92	100	126	100	42.07	100	61.04	100	73.06	100
8.93	100	127	100	42.08	100	61.05	100	73.07	100
8.94	100	128	100	42.09	100	61.06	100	73.08	100
8.95	100	129	100	42.10	100	61.07	100	73.09	100
8.96	100	130	100	42.11	100	61.08	100	73.10	100
8.97	100	131	100	42.12	100	61.09	100	73.11	100
8.98	100	132	100	42.13	100	61.10	100	73.12	100
8.99	100	133	100	42.14	100	61.11	100	73.13	100
9.00	100	134	100	42.15	100	61.12	100	73.14	100

See also revised page

Printed in U.S.A.

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: February 16, 1995

TARIFF F.C.C. NO. 2
15th Revised Page 20
Cancels 14th Revised Page 20
Effective: March 2, 1995

2.1.7. Limitations on the Provision of WATS (continued)

B. Restoration of Service - In the event of failure, WATS will be restored in compliance with Part 84, Subpart D, of the FCC's Rules and Regulations.

C. Hazardous Locations - An access line will not be furnished at a location the Company considers hazardous (e.g., explosive atmosphere environments). In such cases, the Company, if so requested, will terminate the access line at a mutually agreeable alternate location. The Customer will then be responsible for extension of the access line to the hazardous location.

2.1.8. Transfer or Assignment - WATS, including any associated telephone number(s), may be transferred or assigned to a new Customer, provided that:

A. The Customer of record (former Customer) requests in writing that the Company transfer or assign WATS to the new Customer.

B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s), including the unexpired portion of any term of service and usage or revenue commitment(s).

C. The Company acknowledges the transfer or assignment in writing. The acknowledgment will be made within 15 days of receipt of notification.

The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s). When a transfer or assignment occurs, a Record Change Only Charge applies (see Record Change Only, Section 3).

Nothing herein or elsewhere in this tariff shall give any Customer, assignee, or transferee any interest or proprietary right in any 800 Service telephone number.

If a Customer seeks to transfer, to one or more other Customers, all or substantially all of the 800 numbers associated with an existing AT&T 800 Service Term Plan or Contract Tariff, and the anticipated result of such a transfer would be that the usage and/or revenue from the remaining 800 numbers associated with the Term Plan or Contract Tariff (based on the past 12 months of usage) would not meet the usage and/or revenue commitment of the Term Plan or Contract Tariff, the transfer will be deemed a transfer of the associated Term Plan or Contract Tariff to such other Customer(s), and may only be completed in accordance with this Section. If the transfer of service is to a group of two or more other Customers, the new Customer for the Term Plan or Contract Tariff will be that group. Each Customer in the group will be jointly and severally liable for all of the obligations associated with the transferred service and Term Plan or Contract Tariff.

2.1.9. Retention of 800 Service Telephone Numbers - Customers may retain the same 800 Service telephone number when moving to another location within the Mainland or Hawaii.

Revised to 7.5.2.

STAMP & RETURN

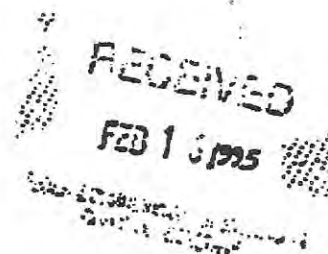


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February 16, 1995

David Nall, Esq.
Deputy Division Chief
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554



Re: Transmittal No. 8179

Dear Mr. Nall:

AT&T submits this letter to demonstrate that there is substantial cause for applying the tariff changes set forth in Transmittal No. 8179 to AT&T customers receiving service under existing term plans and Contract Tariffs.

The Transmittal adds a paragraph to the existing sections of Tariff F.C.C. Nos. 1 and 2 governing Transfer or Assignment of service to clarify that transfer of all or substantially all of the locations or 800 numbers associated with a Tariff 1 or 2 term plan (or Contract Tariff) to another customer is deemed a transfer of the term plan (or Contract Tariff) itself, if the anticipated result of the transfer otherwise would be a significant commitment shortfall.

This filing is made in light of a reseller Customer's improper attempt to effect such a purported transfer of service (without the plan) to a third party, after its initial effort to transfer the plan resulted in a deposit requirement that it chose not to honor.

The Transmittal Clarifies Existing Tariff Terms

Although AT&T's tariffs currently support its right to refuse to complete transactions of this sort, this filing is made to preclude dispute on the matter. As a clarification of existing tariff provisions rather than a

substantive change, the proposed tariff provision should be applied to existing term plan and Contract Tariff customers without any special showing. Yet, even were the tariff revision assumed to effect a change in the rights of a customer, AT&T has substantial cause to apply it to existing term plan and Contract Tariff customers, as shown below.

Specifically, the General Regulations prohibit fraudulent means or schemes to avoid payment of tariffed charges. (Tariff F.C.C. No. 1, Section 2.2.4.B.2. and Tariff F.C.C. No. 2, Section 2.2.4.A.2.) Yet here, the Customer could nominally remain the plan (or Contract Tariff) customer of record, even though in transferring its revenue-producing accounts, it rendered itself an assetless shell, unable either to fulfill its commitments or to pay its shortfall or termination charges. The tariff prohibits such a scheme designed to avoid payment of charges.

The General Regulations further provide AT&T may require a deposit of a Customer "whose financial responsibility is not a matter of record." (Tariff F.C.C. No. 1, Section 2.5.8., Tariff F.C.C. No. 2, Section 2.5.8.A.) Because transfer of all or substantially all of its accounts to a third party constitutes a transfer of substantially all its assets, the request to transfer service constitutes a change in the "customer's financial record" such as would justify a deposit requirement. Thus, AT&T would be justified in refusing to permit the transfer if the Customer refused to pay the deposit.

In all events, the Customer's effort to segregate the term plan from the transferred service locations the tariff provision that the Customer to which service is transferred must "agree to assume all obligations of the former Customer." (Tariff F.C.C. No. 1, Section 6.2.6., Tariff F.C.C. No. 2, Section 6.2.6.) To the extent that the existing customer seeks to transfer all the service associated with a plan to another customer, the new customer must assume the existing customer's obligations respecting that service. Of necessity, this includes the obligations to fulfill the revenue or volume commitments of the underlying plan.

The Substantial Cause Balancing Test

Assuming, arguendo, that the tariff revisions were considered a material change in current customers' obligations, there is substantial cause to apply the new language to existing term plan and Contract Tariff

David Nall, Esq.
February 16, 1995
Page 3

customers. "Substantial cause" exists when "the carrier's business needs and objectives" outweigh "customers' legitimate expectations of stability." In the Matter of RCA American Communications Inc., 86 F.C.C.2d 1197, 1201-02 (1981). "[T]he reasonableness of a proposal to revise material provisions in the middle of a term hinge[s] to a great extent on the carrier's explanation of the factors necessitating the desired changes at that particular time." Id. AT&T is filing "at this particular time" to prevent a transaction that (at a minimum) elevates form over substance in an effort to avoid payment of shortfall charges. An existing customer simply has no legitimate expectation that it could sell its service to a third party without also transferring the associated term plan, when the sale would leave the continuing obligation to pay shortfall (or termination) charges on a company with little or no remaining assets.

In all events, the Transmittal does not affect the rates applicable to existing term plan or Contract Tariff customers, and any non-rates-affecting change is minor. By contrast, the costs AT&T faces are significant. Were AT&T to grandfather existing customers, different administrative rules would apply to otherwise similarly-situated customers based only on when they entered into their term plans. Developing and implementing such rules would create needless regulatory complexities, with attendant costs and delay. AT&T should not have to create such administrative complexity simply to accommodate the desire of a customer to engage in a bad faith transfer of service.

* * *

For all these reasons, the tariff revisions should be permitted to take effect, as filed.

Very truly yours,

Richard R. Meade /ha

Richard R. Meade

CERTIFICATE OF SERVICE

I, Leah Moebius, hereby certify that on this 22nd day of February, 1995, true and correct copies of the foregoing Petition to Reject or Suspend and Investigate AT&T's Revisions to AT&T F.C.C. No. 1 and AT&T F.C.C. No. 2, Transmittal No. 8179 were served by facsimile, hand delivery, or first class mail upon the following parties:

R. Meade*
M. F. DeCasino*
American Telephone & Telegraph Co.
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Room 32D55
Bridgewater, NJ 08807
908/953-8360

Geraldine Matisse**
David Nail**
Debra Sabourin**
R. L. Smith**
Tariff Division, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554


Leah Moebius

* By facsimile and first class mail
**By hand delivery

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EXHIBIT C

27037141330

HELEIN ASSOC.

0004

ARICANT & YESKOO, P.C.
Attorneys for Plaintiff
Combined Companies, Inc.
86 Hudson Street
Hoboken, New Jersey 07030
(201) 420-8650
By: Richard C. Yaskoo (RY7329)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC.
A Florida Corporation,

AND

WINBACK & CONSERVE PROGRAM, INC.
and its related entities,
ONE STOP FINANCIAL, INC.,
GROUP DISCOUNTS, INC.,
800 DISCOUNTS, INC.,
New Jersey Corporations,

AND

PUBLIC SERVICE ENTERPRISES
OF PENNSYLVANIA, INC.,
A Pennsylvania Corporation,

Plaintiffs,

v.

AT&T CORP.,
A New York Corporation,

Defendant.

95-908 (NHP)

REPLY MEMORANDUM OF PLAINTIFF
COMBINED COMPANIES, INC.
IN SUPPORT OF APPLICATION
FOR PRELIMINARY INJUNCTION

Plaintiff Combined Companies, Inc. ("CCI") submits this
reply memorandum in support of plaintiffs' application for a
preliminary injunction. AT&T's papers confirm that the TSA's to
move CCI's traffic to Public Service Enterprises of Pennsylvania,
Inc. ("PSE") are valid under the controlling tariff and that AT&T

PAGE.000

FROM FABRICANT YESKOO COLA

NOV 20, 1995 15:59

has done everything in its power to delay and frustrate resolution of the issue.

1. AT&T Has Withdrawn the Fractionalization Issue From The FCC To Prevent An Adverse Determination

AT&T's account of its reasons for withdrawing Tariff Transmittal 8179 and the filing of Tariff Transmittal 9329 demonstrates that AT&T acted to stave off rejection of its position by the FCC.

AT&T submitted Transmittal No. 8179 to "clarify" its purported "existing right" under the tariff to reject the CCI-FSE ISA's. Second Supplemental Certification of Richard R. Meade dated November 28, 1995 ("Meade 2d Supp. Cert.") ¶ 9. As AT&T has consistently represented to the Court, this is "the identical issue" raised by plaintiffs in this litigation. AT&T's Brief in Opposition to Plaintiffs' Motion for TRO at 11-12. The issue is "fractionalization," whether end-user locations -- traffic -- can be transferred independent of the underlying plans' shortfall and termination liabilities. Transmittal No. 8179 would have added language to AT&T Tariff FCC No. 2 § 2.1.9.3, providing that when traffic is transferred from one customer to another, the new customer would assume responsibility for shortfall and termination penalties.

As Mr. Meade concedes, the FCC expressed "concern[]" that Transmittal No. 8179 would have "prohibited a location transfer" -- i.e., fractionalization of a plan. Meade 2d Supp. Cert. ¶ 9. The FCC told AT&T that this "would constitute a

substantive tariff changes," and in the face of the FCC's position, AT&T withdrew Transmittal 8179. Meade 2d Supp. Cert. ¶¶ 7, 11. Thus it is obvious that the reason for the withdrawal was that AT&T knew that the FCC would reject Transmittal No. 8179 if it were not withdrawn, and that the FCC disagreed with AT&T's contention that the existing tariff language prohibits fractionalization.

Mr. Meade also concedes that Tariff Transmittal NO. 9229 does not contain any provisions dealing with the issue of fractionalization. Meade 2d Supp. Cert. ¶¶ 15-16. Even if Transmittal 9229 did address fractionalization, it would apply only to newly-ordered plans, "and so would not be determinative of the issue presented on the CCI/TSE transfer." Meade 2d Supp. Cert. ¶ 16.1 Nor can Mr. Meade point to any other proceeding pending before the FCC that would provide the Court with the guidance that it has sought on the fractionalization issue.

Thus it is clear that AT&T's actions have frustrated the Court's intent as expressed in its previous decision to obtain speedy guidance from the FCC on the issues presented in this litigation. Mr. Meade's apologetic explanation that he read the Court's May 19 order but failed to read the accompanying decision, Meade 2d Supp. Cert. ¶ 12, can be charitably described as

1 As the Court has previously ruled, "[t]his matter involves a simple interpretation and application of the language of section 2.1.8 -- as it exists now and at the time of the Inga companies/CCI transfer -- and nothing more." May 19, 1995 Decision at 16-17 n.11.

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irrelevant, since presumably other AT&T attorneys did read the decision.

2. A Preliminary Injunction Should Issue

The admissions contained in AT&T's papers only strengthen the case for a preliminary injunction enforcing the CCI-PSE TSA's.² Indeed, AT&T's evident belief that the FCC would rule against its position by rejecting Transmittal 8179 is a telling indication of plaintiffs' very strong likelihood of success on the merits. Moreover, it would be fair to characterize the interaction between the FCC and AT&T leading to the withdrawal of Transmittal 8179 as an informal FCC resolution of the fractionalization issue. In light of the shocking delay created by AT&T's actions, the Court may wish to consider whether this constitutes sufficient FCC guidance to inform its final resolution of the issue. In any event, the Court should issue the preliminary injunction requested by plaintiffs.

3. No Additional Security Should Be Required

AT&T audaciously demands that the Court impose a \$20 Million bond in connection with the injunction. Such a bond would

² AT&T has offered no authority suggesting that the Court lacks power to issue a preliminary injunction pending FCC determination. AT&T's failure to cite National Communications Ass'n ("NCA") v. AT&T, 813 F. Supp. 259 (S.D.N.Y. 1993), which squarely holds that the Court does have such power, is remarkable in light of the fact that Pitney, Hardin, AT&T's lead counsel in the present action, also represented AT&T in NCA v. AT&T. AT&T's argument that the Court should simply decline to exercise its power to issue an injunction, in deference to the FCC's theoretical power to grant similar relief in a hypothetical proceeding that has not been commenced, is a transparent attempt to create further delay.

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Function functional equivalent of the deposit-against-shortfall action proposed in Transmittal 9229 for newly-ordered terms. Meade 2d Supp. Cert. ¶ 15. AT&T concedes that the existing tariff does not authorize such a deposit, and AT&T should not be permitted to bootstrap an amendment to that tariff in the guise of a request for an injunction bond. As the Court has previously stated, in ruling that section 2.1.8 of the tariff dealing with transfer does not impliedly cross-reference the tariff's deposit provisions: "Words mean what they say. Rules should not be changed in the middle of the game" May 19, 1995 Decision at 21.

CCI submits that no additional security should be required beyond the \$100,000 already posted in connection with the Court's earlier injunction. As explained in plaintiffs' previous submissions,³ AT&T's rhetoric about "stripped assets" and "empty shells" are complete red herrings. All of the traffic transferred will remain on AT&T's ultimate service under PSE's Contract Tariff 516. It is undisputed that the CCI-PSE TSAs will not alter the credit-worthiness of the plans' and users or interfere with AT&T's ability to pay itself for usage charges from the cash flow paid directly from the end users to AT&T. Indeed, these very considerations were the basis for the Court's previous determination setting the amount of the existing bond. May 19, 1995 Order at 24. AT&T's contention that the transfer would strip

³ See, e.g., CCI's Post-Hearing Memorandum dated March 30, 1995 at 12-14.

CCI of its cash flow is utterly false.⁴ The effect of the transfer will be to increase CCI's cash flow, since CCI will now enjoy the more favorable prices available under PSE's Contract Tariff 516.⁵ In addition, access to lower pricing represents CCI's best chance of preserving a sufficient customer base to be able to meet or restructure its commitments under the plans.⁶ Finally, although AT&T persists in labeling the transaction as a scheme to avoid payment of usage charges, this characterization is completely unsupported by the record. See CCI's Post-Hearing Brief dated March 30, 1995 at 5-6.

⁴ AT&T's factual assertions concerning CCI's CSTP II plans are riddled with errors. For instance, there are now only five plans, not eight, due to CCI's successful execution of plan restructurings that retired substantial amounts of CCI's previous commitments to AT&T. (This is elliptically reflected in Exhibit A of the Second Supplemental Certification of Carl Williams by the words "not found" under the "Estimated Shortfall" heading.) In light of the Court's admonition to the parties on November 15 that the presentations on this application be "brief," CCI will not burden the record with a full refutation of the inaccurate and misleading statements contained in AT&T's descriptions of CCI and its plans.

⁵ As the Court found in describing the CCI-PSE transfer in its previous decision: "Only the traffic was to be transferred, not the plans themselves. In this way, CCI would maintain control over the plans while at the same time benefitting from the much larger discounts enjoyed by PSE under KT-516." May 19, 1995 Decision at 10.

⁶ As noted above, CCI has already retired three of the plans, by using restructuring techniques of the sort referred to in the Court's previous decision. May 19, 1995 Decision at 24.

No Additional Testimony Is Necessary

AT&T has not suggested the need for any additional testimony. In light of this, CCI agrees that the Court should resolve this issue on the existing record.

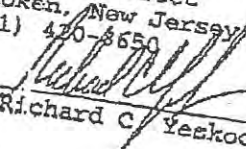
CONCLUSION

For the reasons stated above, as well as in its initial brief, the Court should issue a preliminary injunction ordering defendant AT&T to honor the TSA's for traffic between CCI and PSE, and to provide service to the end users covered by such TSA's at the favorable rates enjoyed by PSE.

Dated: Hoboken, New Jersey
November 30, 1995

Respectfully submitted,

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By: 
Richard C. Yeskoo (RY7329)

Of Counsel:

Thomas T. Tamlyn, Jr.

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December 1, 1995

Federal ExpressHonorable Nicholas H. Politan
United States District Judge
M.L. King Fed. Building & Court House
Room 5076
50 Walnut Street
Newark, New Jersey 07101Re: Combined Companies, Inc. v.
AT&T Corp., No. 95-908 (NHPI)

Dear Judge Politan:

I write to correct a typographical error on page 4 of the Reply Memorandum of Plaintiff Combined Companies, Inc. in support of Application for Preliminary Injunction, which was filed yesterday evening. The amount of security bond proposed by AT&T in its papers is \$15 million, not \$20 million. CCI respectfully requests that its brief be deemed amended accordingly.

Respectfully submitted,



Thomas P. Tamlyn, Jr.

cc: (Teletype & Mail)

Frederick L. Whitmer, Esq.
H. Curtis Meanor, Esq.
Charles H. Helein, Esq.

PAGE.002

DEC 1 95 1112 FROM FABRICANT YESKOC COLA

EXHIBIT D

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 96-5185

COMBINED CO, INC., a Florida corporation;
WINBACK & CONSERVE PROGRAM, INC.,
ONE STOP FIN INC.; 800 DISCOUNTS INC.,
New Jersey corporations; GROUP DISCOUNTS, INC.

Plaintiffs-Appellees

v.

AT&T CORP, a New York corporation,

Defendant-Appellant

On Appeal from the
United States District Court
for the District of New Jersey

REPLY BRIEF OF APPELLANT AT&T CORP.

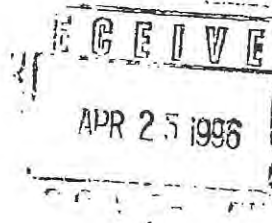
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EDWARD R. BARILLARI
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Attorneys for Appellant AT&T Corp.

April 25, 1996



to describe the proposed transfer of a plan without its liabilities and then asked whether AT&T's tariff prohibits "fractionalization."

The District Court asked and answered the wrong questions. First, the threshold question is whether a transfer of all a plan's traffic without its liabilities is permitted by the Tariff's Transfer Provision (Section 2.1.8), and, as AT&T's opening brief explains, the answer is that the tariff allows transfers only if the "new customer" (PSE) assumes "all" of the old customer's (here, CCI's) obligations, which obviously include shortfall and termination commitments when all the plan's traffic is transferred. See AT&T Br. at 26-27.

The Inga Brief offers no response to this point. The CCI Brief, by contrast, has offered arguments that were not accepted by the District Court, but that confirm the District Court's error. CCI notes that a transfer of service can apply either to individual end user locations or to entire plans. See CCI Br. at 31-32 & n.13. CCI then, incongruously, seeks to defend the District Court by citing "record evidence" that addressed transfers of individual end user locations (not entire plan's liabilities), and showed that the only "obligation" transferred to the "new customer" in that event is the unpaid liability associated with the individual end user location that is transferred.

But that is self-evident under the tariff. By contrast, when all the plan's traffic and locations are being transferred to a new customer and when the "plan" would then exist only as an empty shell, then the "new customer" would not be assuming "all" the associated "obligations" unless it assumed the "existing customer's" shortfall and termination commitments.

AT&T Initial Brief to Third Circuit

responsibilities it maintained after the CCI/PSE transfer." May 19, 1995 Order at 10 (AA 1037). AT&T estimates that the Inga companies currently owe AT&T shortfall charges of approximately \$20 million. See Williams 2d Supp. Cert. ¶ 4 (AA 1260). Moreover, Mr. Inga has represented to AT&T on several occasions that he might leave AT&T with a substantial financial loss and no recourse, by leaving his liabilities in companies with no assets and then having these companies file for bankruptcy. See Meade 2d Supp. Cert. ¶ 4 (AA 1266); Fitzpatrick Cert. ¶ 4 (AA 166); Umholtz Cert. ¶ 4 (AA 173).

In these circumstances, where the party from whom AT&T would be required to seek recourse would be effectively "insolvent and its assets in danger of dissipation or depletion," the law is clear that AT&T would be irreparably harmed. Hoxworth v. Blinder Robinson & Co., Inc., 903 F.2d 186, 205 (3d Cir. 1990) (quoting Deckert v. Independent Shares Corp., 311 U.S. 282, 290 (1940)).

The District Court's two reasons for its conclusion that AT&T would suffer "little or no harm" if the injunction issued were both incorrect. First, it reasoned that end users would continue to pay AT&T for the service they took regardless of whether they took service under a CSTP II plan held by CCI or Contract Tariff 516 held by PSE. In fact, AT&T is not merely at risk for nonpayment of the usage charges themselves, which are indeed paid by end users directly to AT&T, but also for plaintiffs' shortfall and termination charges, which can only be paid by plaintiffs from the revenues they would lose as a result of the transfer. Williams 2d Supp. Cert. ¶ 5 (AA 1261). Moreover, plaintiffs' proposed transfer would greatly increase the probability that plaintiffs would in fact become responsible for shortfall charges. This is because the traffic that would be shifted to PSE's Contract Tariff 516 cannot be simultaneously used to satisfy both

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May 22, 2006

Via E-Filing and UPS Overnight Delivery

Hon. William G. Bassler, U.S.D.J.
United States District Court for the District of New Jersey
M.L. King, Jr. Federal Bldg. & U.S. Courthouse
50 Walnut Street, Room 5060
Newark, New Jersey 07102

Re: Combined Companies, Inc., *et al.* v. AT&T Corp.
Civil Action No. 95-908 (WGB)

Dear Judge Bassler:

We represent AT&T Corp. and submit this letter in response to the May 11, 2006 supplemental papers filed by plaintiffs Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. Far from demonstrating that the stay should be lifted, plaintiffs' latest arguments confirm that the issues they seek to litigate should be resolved by the Federal Communications Commission ("FCC"). Plaintiffs made the same arguments to the FCC that they are now raising in this Court. Their prior submissions to the agency confirm that the issues they ask this Court to decide are all encompassed within this Court's primary jurisdiction referral. And all of these issues and arguments are best decided by the agency: the FCC understands the meaning of and practice under the regulations plaintiffs cite; the FCC know what weight to accord the staff notes plaintiffs cite; and the FCC stands ready to resolve such issues should plaintiffs chose to initiate proceedings before it. See June 13, 2005 Affidavit of Richard Brown, Exh. K. Accordingly, the motion to vacate should be denied.

Plaintiffs briefly assert, once again, that the only issue referred to the FCC was the "narrow question" of whether Section 2.1.8 of Tariff No. 2 "permits traffic-only transfers." May 11, 2006 Letter ("Arleo Letter") at 1. That claim is wrong. The issue this Court referred to the

PITNEY HARDIN LLP

Hon. William G. Bassler, U.S.D.J.

May 22, 2006

Page 2

FCC was whether a proposed transfer of certain service plans “and/or their traffic” was in “compliance or not with the terms of the governing tariff.” See May 19, 1995 Preliminary Injunction, Ex. C to May 31, 2005 Arleo Certification. As AT&T has previously explained, the FCC ruled that Section 2.1.8 did not apply to the transfer at all, and the D.C. Circuit reversed. That Court held that Section 2.1.8 did apply, but left open the question whether a transfer in which a new customer would receive all of the old customer’s traffic but not the old customer’s obligation to pay shortfall and termination charges was permissible in light of Section 2.1.8, which requires a new customer to assume “all obligations of the former Customer.” D.C. Cir. Opinion at 11 n.2 (quoting § 2.1.8; emphasis added by the Court).¹ Because there has been no agency resolution of the issue of whether such a transfer is in “compliance or not with the terms of the governing tariff,” the stay should not be lifted.

The Inga Companies now claim that “AT&T already lost” the issue of whether the phrase “all obligations” encompasses liability for shortfall and termination charges. Arleo Letter at 3. According to plaintiffs, the FCC made this determination when AT&T submitted a proposed revision of Section 2.1.8 that would have stated explicitly that liability for shortfall and termination charges was encompassed by the phrase “all obligations.” Citing the regulatory symbols AT&T used when it submitted its revision to Section 2.1.8, plaintiffs argue that the inclusion of shortfall and termination liabilities could not have been a clarification of the phrase “all obligations,” *id.* at 4-5, and that any such claim by AT&T is a “newly-minted” and “bogus” defense. They then cite unauthenticated internal notes of an agency staffer to show that the FCC rejected this “clarification” claim in February of 1995. *Id.* at 5-7.

To begin with, there is nothing new about AT&T’s contention that the proposed revision was simply a clarification. Plaintiffs rely on the regulatory meaning of symbols that AT&T affixed to the proposed changes in an effort to show that AT&T was tacitly admitting that the revision would constitute a substantive change, not a clarification. *Id.* at 4-5. But the very

¹ Plaintiffs are flatly wrong in suggesting that the question of which obligations had to be transferred was “never an issue” prior to the D.C. Circuit. Arleo Letter at 2. From the outset, a central issue was whether AT&T had to process a “traffic-only” transfer when PSE did not agree to assume all obligations. E.g., AT&T’s March 30, 1995 Post-Hearing Memorandum at 2 (plaintiffs improperly sought to persuade Court to order a transfer to PSE without requiring them to accept the plans “and all of their liabilities”), attached as Ex. A to the June 13, 2005 Brown Affidavit; Third Circuit Opinion at 2 (“AT&T objected to the [proposed transfer] because plaintiffs did not intend to transfer their potential liability for shortfall and termination charges”), Ex. H to May 31, 2005 Arleo Certification; Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling and Joint Motion for Expedited Consideration (FCC CCB/CPD 96-20) (Aug. 26, 1996) at 5 (objecting because transfer “would have transferred the entire revenue stream to PSE without the corresponding obligations to pay any shortfall and termination charges”), May 19, 2006 Supplemental Affidavit of Richard H. Brown, Ex. A.

PITNEY HARDIN LLP

Hon. William G. Bassler, U.S.D.J.

May 22, 2006

Page 3

definition of the word “all” dictates that any enumeration of obligations a transferee must assume had to be a clarification of the phrase “all obligations;” that phrase cannot be substantively modified to mean “all obligations plus other obligations.”² Accordingly, while plaintiffs attempt to infer an admission from AT&T’s use of certain regulatory symbols, AT&T explicitly and consistently maintained that the proposed change was a clarification. That is what it told the FCC when it filed the proposed revision, (see Letter from Richard Meade, AT&T Senior Attorney to David Nall, FCC Deputy Division Chief (Feb. 16, 1995) at 2, Brown Supp. Aff., Ex. B), and what it told this Court. See AT&T’s Supplemental Brief in Opposition to Plaintiffs’ Motion for a Preliminary Injunction and in Further Support of Its Motion to Dismiss the Complaint on Grounds of Primary Jurisdiction at 20-21 (“AT&T’s brief opposing the temporary restraining order demonstrated that Tariff Transmittal 8179[’s] purpose to clarify AT&T’s subscribers’ existing obligations concerning transfer of service”).

Nor is there any basis for plaintiffs’ claim that the FCC rejected the position that the proposed revision was a clarification. That argument is based entirely on speculation concerning certain documents attached to their latest submission, in particular Exhibit B to Mr. Arleo’s letter, which plaintiffs describe as FCC notes. Arleo Letter at 5. Not only is this document unauthenticated and inadmissible, but there is absolutely no basis for concluding that the document reflects or embodies an official position taken by the agency concerning AT&T’s proposed tariff changes. See, e.g., *Appelby v. Glaxo Wellcome, Inc.*, 2005 WL 3440440, *2 (D.N.J., Dec. 13, 2005) (court should not consider several “FDA documents of an unspecified nature” offered by plaintiff’s counsel as attachments to an affidavit submitted in support of a summary judgment motion).³ In fact, plaintiffs neglect to tell this Court that, in responding to their Freedom of Information Act (“FOIA”) request, the FCC invoked the “deliberative process privilege of Exemption 5 [of FOIA] [to] shield[] predecisional materials that reflect the consultative and decision-making process through which agency positions are developed.” Letter of Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC to Charles H. Helein, Esq. (Dec. 14, 1995) at 2, Brown Supp. Aff., Ex. C. When the FCC produced the notes plaintiffs cite, it reiterated that it was relying on Exemption 5 and had therefore redacted handwritten notes from the document. Letter of Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC to Charles H. Helein, Esq. (Dec. 15, 1995) at 1, Brown Supp. Aff., Ex. D.

² Contrary to plaintiffs’ suggestion, the fact that AT&T sought to clarify the phrase “all obligations” is not “an admission by AT&T that its tariff was ambiguous.” Letter at 8. The “core meaning” of the verb to clarify is “to make clear or clearer.” Webster’s II New Riverside University Dictionary (1984) at 267 (emphasis added).

³ Likewise, the Court should disregard Exhibits C and D to the May 11, 2006 letter, as plaintiffs do not explain how a single page from an October 1995 Order that reclassified AT&T as a non-dominant carrier (Exhibit C) is germane to any of the issues raised in this motion or attempt to authenticate, or explain the relevance of Exhibit D, which purports to refer to communications involving Mr. Inga.

PITNEY HARDIN LLP

Hon. William G. Bassler, U.S.D.J.

May 22, 2006

Page 4

Obviously, hand-written pre-decisional and deliberative notes would not be appended to a *final* decision. The clear import of these withholdings and redactions, therefore, is that the FCC produced the notes precisely because they reflected neither a final decision nor even “the consultative and decision-making process through which [such a] position[]” was developed. Indeed, this is confirmed by the final sentence of the notes, which states only that “[t]hese are some things to think about before the meetings.” See Arleo Letter, Ex. B at JA 118.

Finally, and most fundamentally, the issue of whether the FCC concluded that AT&T’s proposed revision could not be a clarification, and thus that the phrase “all obligations” did not include the obligation to pay shortfall and termination charges, should be resolved by the FCC, not this Court. The FCC knows better than any court what the tariff symbols for coding tariff revisions mean, what practice carriers have followed when employing those symbols and whether it is reasonable to infer from AT&T’s use of those symbols in Transmittal 8197 that it was admitting that shortfall and termination charges were not included in the phrase “all obligations.” Only the FCC knows what weight to give the staff notes plaintiffs cite. And only the FCC knows whether it reached a decision about whether AT&T’s proposed revision was a clarification, what that decision was, and whether it has any bearing on the interpretation of the prior versions of Section 2.1.8.

Indeed, the obvious propriety of allowing the FCC to resolve the issues plaintiffs now seek to raise is confirmed by the fact that plaintiffs themselves raised these very arguments before the FCC. In their Joint Petition for a Declaratory Ruling, plaintiffs argued, as they do here, that AT&T could not “avoid the consequences of its having filed Transmittal 8179 . . . by calling the filing a clarification.” *Id.* at 19 n.8, Brown Supp. Aff., Ex. D. Plaintiffs argued to the FCC, as they do here, that the filing of Transmittal 8179 “established” that the prohibitions AT&T sought to impose on the proposed transfer were not contained in Tariff No. 2 “prior to the submission of Transmittal 8179.” *Id.* at 23-24; *see also id.* at 24 (arguing that 1996 revision, which made explicit that “all obligations” included liability for shortfall and termination charges, “confirms that no similar conditions or requirements as set forth in these revisions existed in AT&T’s tariff when the CCI transactions were made”). And, citing the same staff notes they cite here, plaintiffs argued to the FCC, as they do here, that the “withdrawal of [AT&T’s] Transmittal No. 8179 was prompted by AT&T’s failure to satisfy or eliminate the Commission’s Tariff staff’s objections to Transmittal 8179.” *Id.* at 24. Plaintiffs’ arguments to the agency confirm that the interpretive significance, if any, of AT&T’s proposed revision to 2.1.8 is a matter that can and should be submitted to the FCC.⁴

⁴ Contrary to plaintiffs’ claim, the wording of the transfer form does not show either that AT&T thought that shortfall and termination charge liabilities fell outside the scope of the “all obligations” language, or that PSE agreed to assume those liabilities. PSE wrote “traffic only” on the transfer forms to make clear that it was not accepting the plans and the associated

PITNEY HARDIN LLP

Hon. William G. Bassler, U.S.D.J.

May 22, 2006

Page 5

In the final analysis, the Inga Companies' recent submissions improperly invite this Court to again decide issues that should be handled by the FCC, which is what Judge Politan did in issuing the preliminary injunction in 1996. Having properly referred the issue of whether the proposed transfers were permissible under the tariff, Judge Politan granted "plaintiffs' request to transfer traffic without the accompanying liability for shortfall and termination charges" based on what he viewed to be a "reasonable construction of the Tariff by a lay person." Third Circuit Op. at 4 (internal quotation marks omitted). The Third Circuit reversed, explaining that there was "a substantial public interest in securing an agency ruling on the matter in dispute," and that a judicial interpretation of the tariff would "invade the FCC's area of expertise." *Id.* at 4, 7 (internal quotation marks omitted). Plaintiffs now ask this Court to invade the FCC's area of expertise again, this time on the basis of (1) mistaken interpretive inferences they attempt to draw from an AT&T tariff filing and (2) sheer speculation about what the agency itself thought about that filing. The Court should decline this invitation and deny the Inga Companies' motion to vacate the stay in this matter.

Respectfully,



RICHARD H. BROWN

cc: Frank P. Arleo, Esq. (via electronic service and regular mail)

obligations for shortfall and termination charges. See Arleo May 31, 2005 Cert., Ex. I. The suggestion that this all could have been avoided if AT&T had asked "which obligations were being transferred" (Arleo letter at 8), is patently disingenuous and refuted by the exhaustive record in this case.

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Attorneys for Defendant AT&T Corp.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC., a Florida :
corporation, :

and :

Civil Action No. 95-908 (WGB)

WINBACK & CONSERVE PROGRAM, :
INC., ONE STOP FINANCIAL, INC. :
GROUP DISCOUNTS, INC. and 800 :
DISCOUNTS, INC., New Jersey corporations, :

**SUPPLEMENTAL AFFIDAVIT OF
RICHARD H. BROWN**

Plaintiffs, :

v. :

(Electronically Filed)

AT&T CORP., a New York corporation, :

Defendant. :

STATE OF NEW JERSEY)
)SS.:
COUNTY OF MORRIS)

RICHARD H. BROWN, being duly sworn, according to law, upon his oath, deposes and
says:

1. I am an attorney-at-law of the State of New Jersey and a member of the firm of Pitney Hardin LLP, attorneys for Defendant AT&T Corp. ("AT&T") in the above matter. I submit this Supplemental Affidavit in further opposition to the motion of Plaintiffs Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. ("Plaintiffs") to vacate the stay of this matter. The information set forth below is based on personal knowledge or the review of documents.

2. I attach hereto as Exhibit A a copy of the Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling and Joint Motion for Expedited Consideration submitted by AT&T in the Matter of Joint Petition 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 before the Federal Communications Commission, CCB/CPD 96-20 (the "FCC Matter").

3. I attach hereto as Exhibit B a copy of a letter dated February 16, 1995 from Richard R. Meade, AT&T Senior Attorney, to David Nall, FCC Deputy Division Chief.

4. I attach hereto as Exhibit C a copy of a letter dated December 14, 1995 from Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC, to Charles H. Helein, Esq.

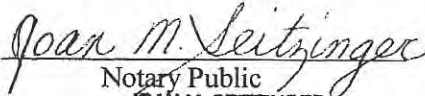
5. I attach hereto as Exhibit D a copy of a letter dated December 15, 1995 from Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC, to Charles H. Helein, Esq.

6. I attach hereto as Exhibit D a copy of a relevant portion of the July 15, 1996 Joint Petition for Declaratory Ruling submitted by Plaintiffs in the FCC Matter.



RICHARD H. BROWN

Sworn and subscribed to before me
this 19th day of May, 2006



Notary Public
JOAN M. SEITZINGER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 04/22/2008

Exhibit A

COMBINED COMPANIES, INC.)
and)
WINBACK & CONSERVE PROGRAM, INC.)
ONE STOP FINANCIAL, INC.,)
GROUP DISCOUNTS, INC.)
800 DISCOUNTS, INC.,)
)
Petitioners,)
)
and)
)
AT&T CORP.)
)
Respondent.)

COMMENTS OF AT&T CORP. IN OPPOSITION TO
JOINT PETITION FOR DECLARATORY RULING AND
JOINT MOTION FOR EXPEDITED CONSIDERATION

Pursuant to the Commission's Public Notice released July 26, 1996 and Section 1.415 of the Commission's Rules, 47 C.F. §1.415, Respondent AT&T Corp. ("AT&T") hereby submits its Comments in Opposition to (1) 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 ("Joint Petition"); and (2) the Joint Motion for Expedited Consideration of the Joint Petition for Declaratory Ruling ("Joint Motion"), filed by Combined Companies, Inc., ("CCI") and four other companies owned by Alfonse G. Inga, ("Inga"), Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. (the five companies are collectively referred to herein as the "Petitioners").

AT&T opposes the Joint Petition for Declaratory Ruling because the material facts relevant to the requested rulings are disputed. A formal complaint

EXHIBIT F

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
AT&T Corp.) Tariff Transmittal No. 8179
Revisions to Tariff)
F.C.C. Nos. 1 and 2)

REPLY OF AT&T CORP.

Daniel Stark
David J. Ritchie
Richard R. Meade

Attorneys for AT&T Corp.

Room 3252H3
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-7297

February 27, 1995

SUMMARY

Transmittal 8179 simply clarifies that transfer of all or substantially all of the locations or 800 numbers associated with a term plan (or Contract Tariff) constitutes a transfer of the plan itself, when it will likely result in a commitment shortfall. The filing was made in response to an existing Customer's announced intent to transfer substantially all its locations (without the associated term plans) to a third party, after its initial effort to transfer the plans themselves to a different customer (which had no established credit history) resulted in a deposit request that was not honored.

AT&T filed these revisions to clarify its existing tariff rights, not to change them. AT&T already has the right to protect itself against shams such as that being attempted here under two provisions of the General Regulations of Tariff F.C.C. Nos. 1 and 2: the prohibition against fraudulent means or schemes to avoid payment of tariffed charges, and the deposit requirement for a customer "whose financial responsibility is not a matter of record."

AT&T made these revisions now to inform customers specifically how AT&T will interpret and enforce the tariff so that customers cannot claim that they "innocently" developed business plans based on mistaken expectations of how the tariff would be enforced.

In all events, moreover, AT&T has shown substantial cause for the filing. Indeed, were this one customer to abandon its existing term plan commitments in an assetless shell, rendering AT&T unable to collect shortfall charges, AT&T would suffer revenue losses exceeding \$100 million.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
AT&T Corp.) Tariff Transmittal No. 6179
)
)
Revisions to Tariff)
F.C.C. Nos. 1 and 2)

REPLY OF AT&T CORP.

Pursuant to Section 1.773(b) of the Commission's Rules (47 C.F.R. § 1.773(b)), AT&T Corp. ("AT&T") hereby replies to the seven petitions to reject or suspend and investigate the above-referenced revisions to Tariff F.C.C. Nos. 1 and 2.¹ The petitions entirely fail to justify rejection or suspension of the tariff revisions.²

¹ Petitions to Reject or Suspend and Investigate were filed by Advanced Telecommunications Network, Inc. ("ATN"), Combined Companies, Inc. ("CCI"), Public Services Enterprises of Pennsylvania, Inc. ("PSE"), Tel-Save, Inc. ("Tel-Save"), Telecommunications Reseller Association ("TRA"), The Furst Group, Inc. ("TFG"), and Winback & Conserve Program, Inc. ("Winback & Conserve") (collectively, "Petitioners").

² To justify rejection, a petitioner must prove that a tariff is unlawful on its face because it demonstrably conflicts with the Communications Act or a Commission rule or order. See, e.g., American Broadcasting Companies Inc. v. FCC, 633 F.2d 133, 138 (D.C. Cir. 1980); Associated Press v. FCC, 448 F.2d 1095, 1103 (D.C. Cir. 1971); MCI v. AT&T, 94 F.C.C.2d 332, 340-41 (1983). To overcome the presumption of lawfulness and justify suspension, moreover, the petitioner must show each of the following: (1) that there is a high

(footnote continued on following page)

Factual Background

Transmittal 8179 adds a paragraph to the existing sections of Tariff F.C.C. Nos. 1 and 2 on Transfer or Assignment of Service to clarify that transfer of all or substantially all of the locations or 800 numbers associated with a Tariff 1 or 2 term plan (or Contract Tariff) to another customer itself constitutes a transfer of the term plan (or Contract Tariff), but only when the transfer is anticipated -- based on the customer's actual usage history (viz., the past 12 months of usage at the remaining locations) -- to result in a commitment shortfall.

As noted in AT&T's letter accompanying the transmittal,³ the filing was made in response to a Customer's announced intent to transfer substantially all its locations (without the associated term plans) to a third

(footnote continued from previous page)

probability the tariff would be found unlawful after investigation; (2) that the suspension would not substantially harm other interested parties; (3) that irreparable injury will result if the tariff filing is not suspended; and (4) that the suspension would not otherwise be contrary to the public interest. Section 1.773(a)(iv) of the Commission's Rules, 47 C.F.R. § 1.773(a)(iv). None of Petitioners has made either showing.

- ³ Letter from Richard R. Meade, Senior Attorney, AT&T to David Nall, Deputy Chief of the Commission's Common Carrier Bureau, Tariff Division dated February 16, 1995, at 1 ("Feb. 16 Letter").

party, after its initial effort to transfer the plans themselves to a different customer (which had no established credit history) resulted in a deposit request that was not honored.

CCI notes (CCI Petition at 3-6) that it is the Customer that declined to post the deposit, and that Petitioner Winback & Conserve (along with two other loosely-affiliated resellers, One Stop Financial, Inc. and Group Discounts, Inc.) are the current customers of the term plans. CCI further identifies still a third Petitioner, PSE, as the intended ultimate recipient of the accounts being transferred.⁴ While these points are correct, other parts of CCI's rendition of facts are both inaccurate and misleading.

This is not the first time Winback & Conserve's management has attempted to use corporate forms to avoid

⁴ In an unrelated transaction, the corporate affiliate of yet a fourth Petitioner had sought to transfer to that Petitioner all the accounts (except one) under an existing CSTP II while the affiliate retained legal liability for the plan commitment. The plan is in a critical commitment shortfall situation, with a multi-million dollar shortfall liability likely to come due imminently. Had the requested transfer been completed, the affiliate would have stripped itself of substantial future accounts payable, leaving AT&T to collect the liability from a company with a significantly diminished capacity to pay. After this Petitioner filed its Petition, the affiliate instead transferred the entire plan to the Petitioner.

legal obligations. AT&T has had an unusually litigious relationship with both Winback & Conserve and its corporate predecessor, One Stop Financial, Inc. ("OSF").⁵ By April, 1992, AT&T had become aware of OSF's massive sales effort to take unfair advantage of AT&T's brand name and marketplace reputation by misrepresenting itself as affiliated with AT&T in calls on potential customers. AT&T then applied for an injunction under the Lanham Act in the United States District Court for the District of New Jersey. In apparent compliance and contrition, OSF agreed to the entry of a Consent Injunction in May 1992.

But OSF's management did not cease its deceptive marketing tactics. Instead, OSF's principal formed a new corporation, Petitioner Winback & Conserve, and renewed the misrepresentation campaign under that different -- and supposedly separate -- corporate identity. By late 1993, AT&T had gathered sufficient evidence of Winback & Conserve's new Lanham Act violations to obtain a Temporary Restraining Order from the same District Court.⁶ When, however, AT&T sought to convert the TRO to a Preliminary

⁵ At times, collectively referred to as "Inga's companies," after Winback & Conserve's principal, Al Inga.

⁶ Because OSF and Winback & Conserve had identical management, AT&T has also sought a contempt citation against OSF for this transparent violation of the earlier Consent Injunction. That matter is still pending.

Injunction, the District Court accepted Winback & Conserve's argument that it should not be held liable because the individuals who made the misrepresentations were not employees of Winback & Conserve but "independent contractors." AT&T appealed this ruling to the Third Circuit, which reversed and remanded the District Court's denial of AT&T's request for a Preliminary Injunction.⁷

In mid-December, 1994, with its management aware that the "easy money" gained by deceptive marketing practices and corporate identity subterfuges had just about run its course, Winback & Conserve attempted to cash in on its customer base by selling off the customer list and transferring its existing plans to another reseller. When AT&T received the Transfer of Service Agreement ("TSA") forms required for such plan transfers, it was perfectly willing to complete with the transfers.

However, the transferee (CCI) was a newly formed corporation, without an established payment history with AT&T. What's more, CCI simultaneously submitted to AT&T another set of TSAs which would have transferred substantially all of the end users (i.e., 99.92% of the 10,000 or so end-users) on those CSTP II plans -- but not the lead accounts which create the plan structure -- to PSE.

⁷ See American Telephone & Telegraph Company v. Winback & Conserve Program, Inc., 42 F.3d 1421 (1994).

Clearly, CCI was just a strawman through which the real transaction between the Inga companies and PSE would pass. Given this lack of prior financial history, the size of the plans (approximately \$54 million in annual revenue commitment), and CCI's announced intent to dispose of the traffic (thereby putting itself in imminent default of the tariffed commitments), AT&T invoked its tariff right to seek a three-months' deposit from CCI -- in the amount of \$13,540,000 -- before establishing service.

To avoid posting a deposit, CCI furnished AT&T a January 31, 1995 letter of agency purporting to appoint CCI as agent for Inga's companies, instead. CCI then attempted to accomplish the transfer to PSE by leaving the plan structure with Inga's companies and sending the traffic directly to PSE. Apparently, it would now be Inga's companies (instead of CCI) that would default, be disconnected and declare bankruptcy.⁵ AT&T would not honor this appointment for a number of reasons. First, Winback & Conserve had already appointed an agent, and AT&T's tariffs do not permit a customer to appoint multiple agents for services under the same tariff. Second, the agency

⁵ This is not speculation. Mr. Inga has already indicated to a number of AT&T personnel his desire to leave the aggregation business and close his offices, as well as his willingness to allow his companies to go bankrupt instead of paying AT&T.

arrangement was developed to permit resellers to "outsource" the day-to-day management of certain of their plans, and not to provide a vehicle for frustrating AT&T's tariffs. Finally, the true intentions of the participants had been expressed to AT&T through their own previously submitted documents.

Since that time, moreover, AT&T has learned that Mr. Inga contacted AT&T's billing office in Pittsburgh (instead of his AT&T representatives in the Minneapolis aggregation center), and falsely told AT&T's billing clerks that a number of these plans had undergone a simple "name change" to CCI. When the Minneapolis center learned that AT&T's billing records had been changed based on this new misrepresentation by Mr. Inga, the billing records change was reversed.

The Transmittal Properly Clarifies AT&T's Existing Tariff Right to Prevent Fraud

As explained in its Feb. 16 Letter, AT&T filed these revisions to clarify its existing tariff rights, not to change them. AT&T already has the right to protect itself when a customer seeks to transfer the locations (but not the commitment) associated with an AT&T term plan or Contract Tariff to a third party if, as a result, the customer's net value and ability to pay tariffed charges would be significantly diminished. Thus, the purpose of the filing is not to expand AT&T's existing rights or the

customer's obligations beyond what they now are; it is, rather, to inform customers specifically how AT&T will interpret and enforce the tariff so that customers cannot claim that they "innocently" developed business plans based on mistaken expectations of how the tariff would be enforced.

AT&T's right to protect itself against shams such as that being attempted here arises under two provisions of the General Regulations of Tariff F.C.C. Nos. 1 and 2: the prohibition against fraudulent means or schemes to avoid payment of tariffed charges,⁹ and the deposit requirement for a customer "whose financial responsibility is not a matter of record."¹⁰ Specifically, the fraud provisions prohibit the use of service "with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by ... [u]sing fraudulent means or devices, tricks [or] schemes"¹¹ AT&T may "temporarily restrict" the service of any customer engaged in such prohibited

⁹ See Tariff F.C.C. No. 1, Section 2.2.4.B.2. and Tariff F.C.C. No. 2, Section 2.2.4.A.2.

¹⁰ Tariff F.C.C. No. 1, Section 2.5.8.; Tariff F.C.C. No. 2, Section 2.5.8.A.

¹¹ See Tariff F.C.C. No. 1, Section 2.2.4.B.2. and Tariff F.C.C. No. 2, Section 2.2.4.A.2.

behavior.¹² Here a customer is employing a scheme to remain the plan customer of record while transferring all or substantially all of its assets (viz., substantially all of its revenue-producing locations) to a third party; it thus can render itself unable either to fulfill its commitments or to pay its shortfall or termination charges, and thus "avoid payment of charges." In such event, AT&T may "restrict" or "suspend" the customer's right to transfer service.¹³

Clearly, moreover, transfer to a third party of all or substantially all of the accounts under a single term plan or Contract Tariff may well constitute not just a significant reduction in assets (the continuing stream of accounts receivable), but a concomitant increase in liabilities, as well, given the increased likelihood of a substantial commitment shortfall charge. Thus, the transfer could well result in a significant reduction in the net value of the customer. Such a change in the customer's "financial record" would itself justify a deposit requirement. Under these circumstances, AT&T may refuse a

¹² Tariff F.C.C. No. 1, Section 2.9.2.; see Tariff F.C.C. No. 2, Section 2.8.2. ("temporarily suspend").

¹³ At least one Petitioner concedes this point. PSE Petition at 5.

transfer if the Customer refuses to pay a required deposit.¹⁴

Even though AT&T's Feb. 16 Letter demonstrated that the tariff revisions seek only to thwart schemes in which the transfer of locations without plans is done to avoid payment of charges or when the transfer would significantly change the financial "record" of the customer, some Petitioners argue that the tariff revisions are broader than necessary to address the problem identified.¹⁵ These arguments are based either on a misunderstanding of the

¹⁴ As noted in the Feb. 16 Letter, the existing Transfer or Assignment requirement that the new Customer assume "all obligations" of the former Customer affords AT&T additional protection. If the former Customer is transferring substantially all of the accounts associated with a plan it of necessity assumes the term plan obligation as well. In a classic reductio ad absurdum argument, TRA and CCI erroneously maintain that transfer of individual numbers or locations similarly should require assumption of plan commitments, too. AT&T does not argue that the transfer of only one, or a few, locations would require the receiving customer to assume any term plan obligations.

¹⁵ Conversely, PSE claims that the revisions fail even to correct the problem that gave rise to the filing. PSE observes that AT&T cannot stop an end user from switching carriers, with the result that the reseller could still be rendered assetless. While this observation is true, AT&T is not seeking to thwart legitimate end user-initiated activity. In rare circumstances, there might be such a pattern of legitimate end user flight from a particular reseller that its financial health could change significantly. In the event of such a major change in financial circumstances, though, existing tariff provisions would justify any necessary deposit.

effect of the pending revisions or a mischaracterization of the nature of some of the hypothetical examples.

Thus, PSE and TRA argue (PSE Petition at 6, TRA Petition at 14-15) that a customer may wish to transfer the 800 numbers or locations, but not the associated plan, because it will use other traffic to meet the commitment or will terminate the plan with or without liability. The tariff revisions would not apply under these conditions because the "anticipated result" of the transfer would not be a commitment shortfall, so long as the replacement traffic is added or the plan is terminated prior to (or concurrently with) the transfer of service.¹⁶

Others assert that the revisions should be rejected because AT&T did not obtain the prior consent of every Contract Tariff customer (Tel-Save Petition at 3; TFG Petition at 5). This is absurd. Typically, Contract

¹⁶ PSE, TRA and TFG also assert the customer may choose in good faith to pay the shortfall charge (or assume the risk of doing so if it is unable to bring in sufficient replacement traffic prior to the commitment attainment date. PSE Petition at 6, TRA Petition at 14-15; TFG Petition at 7, 11 & 14. The examples used by Petitioners for the most part deal with situations where a transfer would not likely result in a shortfall, and thus are unaffected by the tariff. Moreover, while some customers may wish to create "shell" plans with no underlying traffic, that is not what term plans or CTs are designed for, and the tariff requirement that the commitment be transferred along with the transfer of all or substantially all associated locations is perfectly reasonable.

Tariffs provide that the terms of AT&T's underlying tariffs apply "as amended from time to time."¹⁷ Thus, even assuming that the current transmittal represents a substantive change -- which it does not -- Contract Tariff customers have expressly agreed to be bound by changes to the underlying tariffs that can be made without the consent of the Contract Tariff customer.

Some Petitioners also argue that the revisions are vague in that the transfer of "all or substantially all" of the 800 numbers or locations in a plan requires a transfer of the plan, as well, if the "anticipated result of such a transfer ... (based on the past 12 months of usage)" is that

¹⁷ See, e.g., Contract Tariff No. 374, Section 5.D.:

"Except as otherwise provided, the rates and regulations as set forth in AT&T Tariff F.C.C. No. 1, pertaining to SDN and AT&T Tariff F.C.C. No. 2, pertaining to 800 Services will apply, as these tariffs may be amended from time to time."

See also, e.g., Contract Tariff No. 54, Section 6.A.:

"Except as otherwise provided in this Contract Tariff, the rates (subject to Section 7 following), regulations, terms and conditions of AT&T Tariff F.C.C. No. 1, as amended from time to time, pertaining to SDN, will apply."

The cross-reference here to "Section 7 following" reflects that amendments to the stabilized rates in Section 7 require the prior consent of the Contract Tariff customer. The Contract Tariff Customer has no special right, however, to block changes to rates, terms and conditions set forth in Tariff F.C.C. No. 1 itself.

the customer would fail to meet its commitment. The revisions refer to a transfer of "substantially all" of the accounts in a plan rather than specifying an arbitrary quantity or percentage of locations or usage to eliminate the potential for subterfuge that an arbitrary number would invite.¹⁸ Any "ambiguity" in this formulation, moreover, provides customers, at the least, better guidance than the current tariff, and falls short of mathematical precision only because AT&T cannot predict realistically the various artifices some customers may employ to avoid paying their bills.

Likewise meritless are Petitioners' quibbles about the term "anticipated result." It is quite reasonable to determine the "anticipated result" of a transfer based on the customer's actual "run rate" over the past 12 months¹⁹

¹⁸ CCI and TRA suggest AT&T should specify the precise percentage of locations or 800 numbers being transferred that would trigger the obligation to transfer the plan as well. CCI Petition at 14; TRA Petition at 18. Unfortunately, though, a customer seeking to abandon a commitment in an empty shell could create sufficient low-volume or no-volume accounts to meet the formality of a percentage requirement, and complete the transaction with impunity.

¹⁹ The 12 month period was used to negate the impact of seasonal variations and other anomalies. Some Petitioners have raised a concern about how this provision would apply in a plan that is less 12 months old. In this event, all of the actual usage would be considered since it is all within the past twelve months.

at the remaining locations only. Including projected growth through addition of new locations, as a number of Petitioners suggest,²⁰ would improperly compel AT&T to subsidize the customer's "bet" that wished-for growth will materialize to replace the transfer of virtually all its existing traffic.²¹

Substantial Cause Exists for Any Change

As noted, although the filing is not intended to (and does not)²² change the existing tariff rights of AT&T and its term plan customers, AT&T has shown substantial cause for the filing. Two Petitioners attack the substantial cause showing on the erroneous basis that AT&T failed to explain why these changes are necessary at this

²⁰ CCI Petition at 14; PSE Petition at 6; Tel-Save Petition at 7-8; TFG Petition at 13; TRA Petition at 18.

²¹ At the same time, if the historic usage at a given remaining location has shown significant growth over the past twelve months, the projection would emphasize the current higher usage level, not an average level.

²² TRA and CCI wrongly claim the revision to Tariff 2 established a restriction on the ability of customers to "port" 800 numbers to other carriers. TRA Petition at 9; CCI Petition at 8-9. The individual end-user customer's right to move to another 800 service provider is, however, unaffected by the revisions. In fact, the right to "port" a specific 800 number has never had anything to do with transferring the underlying service itself (such as AT&T 800 READYLINE Service). It has never been necessary for an end-user to change its 800 number if the AT&T service used by a reseller to provide service to that end user is transferred to another reseller.

"particular time."²³ As initially described in the Feb. 16 Letter and amplified in the Factual Background above, the revisions have been made at this time because of Winback & Conserve's recent efforts to separate liabilities from assets in a way that could frustrate AT&T's ability to collect shortfall charges. Petitioners' argument that Winback & Conserve's recent misrepresentation was entirely "foreseeable" and should have been anticipated in earlier filings is, at best, disingenuous. While AT&T certainly would contest the claim that it should be able to foresee each and every fraudulent scheme unscrupulous customers might devise, this is irrelevant in any event for two reasons. First, the current transmittal leaves the existing provision on fraudulent schemes unchanged. Second, the substantial cause test does not require lack of foreseeability before permitting a carrier to change existing tariff terms.²⁴

²³ Tel-Save Petition at 5; TFG Petition at 10. See In the Matter of RCA American Communications Inc., 86 F.C.C.2d 1197, 1201-02 (1981). "[T]he reasonableness of a proposal to revise material provisions in the middle of a term hinge[s] to a great extent on the carrier's explanation of the factors necessitating the desired changes at that particular time." (Emphasis added).

²⁴ "Substantial cause" exists when "the carrier's business needs and objectives" outweigh "customers' legitimate expectations of stability." In the Matter of RCA American Communications Inc., 86 F.C.C.2d 1197, 1201-02 (1981). In Showtime Network, Inc. v. FCC, 932 F.2d 1 (D.C. Cir. 1991), the Court of Appeals upheld a tariff

(footnote continued on following page)

Some Petitioners also assert that AT&T has not shown how it would be financially affected if the revisions are not permitted to take effect. To the contrary, though, CCI's Petition itself acknowledges that Winback & Conserve's attempted evasion of the requirement alone would force AT&T to forego \$13 million of security deposits needed to protect itself against potential losses of shortfall revenues. Should Winback & Conserve isolate its \$54 million annual commitment in an assetless shell and AT&T be unable to collect shortfall charges over the term of these plans, AT&T would need to write-off, as bad debt, losses exceeding \$100 million.

(footnote continued from previous page)

revision made under the substantial cause test, noting that the tariff change was justified by certain "unforeseen" events, such as the rate of inflation from 1979-81 and the loss of a satellite). These events, while unforeseen at the time of contracting, were clearly foreseeable.

* * *

For all of the foregoing reasons, the Petitions to Reject or Alternatively Suspend and Investigate should be denied, and the pending tariff revisions should become effective, as scheduled.

* * *

Respectfully submitted,

AT&T CORP.

By: /s/Richard R. Meade

Daniel Stark
David J. Ritchie
Richard R. Meade

Its Attorneys

Room 3252H3
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-7297

Dated: February 27, 1995

CERTIFICATE OF SERVICE

I, Rita Foxwell, hereby certify that on this 27th day of February 1995, true and correct copies of the foregoing Reply of AT&T were served upon the following parties in the manner indicated:

Geraldine Matisse*
David Nall*
Debra Sabourin*
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Rita A. Foxwell

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EXHIBIT G

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AT&T CORPORATION,

Petitioner,

v.

No. 03-1431

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES
OF AMERICA,

Respondents.

Friday, November 12, 2004

Washington, D.C.

The above-entitled matter came on for oral
argument pursuant to notice.

BEFORE:

CHIEF JUDGE GINSBURG AND CIRCUIT JUDGES TATEL
AND ROBERTS

APPEARANCES:

ON BEHALF OF THE PETITIONER:

DAVID W. CARPENTER, ESQ.

ON BEHALF OF THE RESPONDENTS:

LAURENCE N. BOURNE, ESQ.

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C O N T E N T S

<u>ORAL ARGUMENT OF:</u>	<u>PAGE</u>
David W. Carpenter, Esq. On Behalf of the Petitioner	3
Laurence N. Bourne, Esq. On Behalf of the Respondents	19
David W. Carpenter, Esq. On Behalf of the Petitioner -- Rebuttal	37

P R O C E E D I N G S

THE CLERK: Case No. 03-1431, AT&T Corporation,
petitioner, versus Federal Communications Commission, et
al. Mr. Carpenter for the petitioner, Mr. Bourne for the
respondents.

ORAL ARGUMENT OF DAVID W. CARPENTER, ESQ.

ON BEHALF OF THE PETITIONER

MR. CARPENTER: May it please the Court. With
your permission, I'd like to save four minutes for
rebuttal.

AT&T is appealing from an FCC declaratory order that
didn't give effect to the plain terms of AT&T's tariff
that allowed the transfer or assignment of telephone
service only if certain conditions are met. A service
transfer assignment is simply a change in the customer of
record.

JUDGE GINSBURG: Mr. Carpenter, I'm sorry, there
are so many terminological ambiguities in this case, I'm
going to have to ask you, if I'm going to understand
anything you say, to explain a couple of the terms that
you've already used. What is a service in this tariff?

MR. CARPENTER: What is a service?

JUDGE GINSBURG: Yes. It says, 2.1.8 talks

1 about WATS, Wide Area Telephone Service, right?

2 MR. CARPENTER: Right.

3 JUDGE GINSBURG: May be transferred or assigned,
4 okay? And then there are, you just used the term
5 "service," I believe, in terms of increasing and
6 decreasing service, is that correct?

7 MR. CARPENTER: No, I used, I talked about, I
8 talk about what a transfer or assignment is. It's simply
9 changing the customer of record for a service.

10 JUDGE GINSBURG: Okay, but the transfer or
11 assignment of what?

12 MR. CARPENTER: Of WATS service.

13 JUDGE GINSBURG: Of service?

14 MR. CARPENTER: Yes.

15 JUDGE GINSBURG: What is a WATS service?

16 MR. CARPENTER: WATS service is an arrangement
17 that allows in the case of 800 service, that delivers a
18 call to your location when an 800 number is called.

19 JUDGE GINSBURG: Well, you just said in the case
20 of 800 service --

21 MR. CARPENTER: 800 service.

22 JUDGE GINSBURG: -- so there are other WATS?

23 MR. CARPENTER: There's an outbound WATS
24 service. It's simply another discounted long distance
25 service. This case involves inbound WATS service, which

1 we now refer to generally as 800 service.

2 JUDGE GINSBURG: All right, there is a place in
3 the tariff, I'm looking for it now, in which the -- we'll
4 give you some extra time.

5 MR. CARPENTER: Thank you, Your Honor, I
6 appreciate it.

7 JUDGE GINSBURG: In which it seemed to me that
8 services were itemized, were listed, 418 in the appendix.
9 Okay, it says -- actually, it's a little earlier. At 418,
10 this is 3.3.1.Q, I guess, of the customer-specific term
11 plan, CSTP II, okay? So this is a tariff, right? Tariff
12 No. 2. And if you go down to about the fourth bullet
13 point on 418, what you see is the customer may add or
14 delete an AT&T 800 service, correct?

15 MR. CARPENTER: That's right, Your Honor.

16 JUDGE GINSBURG: Okay. Now, if you go back two
17 pages to 416, what you see is what seems to me a list of
18 AT&T 800 services, namely, AT&T 800 Service Domestic, AT&T
19 800 Readyline, AT&T Megacom 800 Service, AT&T Validator,
20 AT&T 800 Gold Services, AT&T Readyline Canada, and there's
21 Mexico and so on.

22 MR. CARPENTER: Well, the tariffs, well, as I
23 think these --

24 JUDGE GINSBURG: So isn't that what can be added
25 and deleted?

1 MR. CARPENTER: No, oh, no, no, no, Your Honor.
2 JUDGE GINSBURG: No. Okay.
3 MR. CARPENTER: No, no, no, Your Honor. I mean,
4 service is used --
5 JUDGE GINSBURG: All right, well, then I'm
6 totally lost.
7 MR. CARPENTER: No, I mean service is used, I
8 think, in two terms in the tariff. You know, one sort
9 of --
10 JUDGE GINSBURG: All right, well, show me
11 another place where it's used differently.
12 MR. CARPENTER: Well, I just, I'll focus on your
13 example. The customer may add or delete an AT&T service.
14 JUDGE GINSBURG: Right.
15 MR. CARPENTER: And then earlier it talks about
16 how the service is provided to particular locations.
17 JUDGE GINSBURG: Yes.
18 MR. CARPENTER: And what you're talking about is
19 adding or deleting a service to a location, which gets
20 back --
21 JUDGE GINSBURG: Well, that's adding or deleting
22 a location.
23 MR. CARPENTER: No, no, no, it's, that's what it
24 means to add or delete an AT&T service covered by the
25 plan. You can discontinue service to a particular

1 location anytime you want. You can add service to
2 additional locations anytime you want.

3 JUDGE GINSBURG: I understand that. But you do
4 it by adding or deleting the location, right, from the
5 list of BTMs?

6 MR. CARPENTER: Yes, and that's the way you add
7 or delete the 800 service from the plan. So the service
8 is the, you know, it's the, you know, the right to receive
9 a call.

10 JUDGE GINSBURG: Okay. Can you show someplace
11 where it's used in that way, because I don't see, what I'm
12 looking at seems to use the service in the other of the
13 two fashions that you acknowledge there are. So where is
14 a place that talks about service being added or deleted
15 and what it means is at a location?

16 MR. CARPENTER: Well, you actually picked the
17 example that I was going to use if this question arose
18 with the add or delete an AT&T service covered under the
19 plan. A service covered under the plan is a service to a
20 location. So --

21 JUDGE GINSBURG: All right, well, we'll take
22 that on faith for now, that there's another sense that
23 somehow this is used somewhere --

24 MR. CARPENTER: Yes, this is obviously something
25 that wasn't raised --

1 JUDGE GINSBURG: But if you can find a place
2 where it's textually demonstrable on rebuttal, that would
3 be helpful.

4 MR. CARPENTER: I will try to do that. But, you
5 know, the ultimate issue here is what of course the term
6 means in the context of 2.1.8 of AT&T's tariff, and the
7 question is really whether it, this provision applies when
8 you have a customer with a plan, and it's moving all the
9 800 service that it receives under the plan without
10 assuming any of the liabilities.

11 JUDGE GINSBURG: So is it your understanding
12 that if the customer wanted to transfer or assign 1
13 percent --

14 MR. CARPENTER: Yes.

15 JUDGE GINSBURG: -- of the numbers involved,
16 right, to a different aggregator, that would be, that
17 would not run afoul of the tariff?

18 MR. CARPENTER: That would run afoul of the
19 tariff.

20 JUDGE GINSBURG: It would?

21 MR. CARPENTER: But that's not, of course not
22 this case. But yes, and when people move one or two
23 lines, they use our transfer-of-service forms. Remember,
24 the whole point of this is --

25 JUDGE ROBERTS: But you've allowed that in the

1 past without requiring any transfer of obligations.

2 MR. CARPENTER: That's a very much disputed
3 issue that the FCC didn't resolve.

4 JUDGE ROBERTS: Well, let me ask you, then, have
5 you never before allowed anyone to transfer as much as one
6 number without assuming any obligations? I thought the
7 record was pretty clear that that has been done.

8 MR. CARPENTER: There was allegations made that
9 we did that. We disputed that. The FCC did not reach
10 that issue.

11 JUDGE ROBERTS: You have never allowed the
12 transfer of any number without a concomitant transfer of
13 an obligation?

14 MR. CARPENTER: I am not, I can't sit here and
15 say never. I can tell you that when service is
16 transferred, customers routinely file these forms, and if
17 we'd allowed it without these forms being executed and
18 without the obligations being followed, then we didn't
19 adhere to our tariff. Remember, one of the obligations
20 that has to be assumed is the outstanding indebtedness on
21 that location. So if a customer in a plan, you know, Ajax
22 Plumbing, receives service and hasn't paid its bill,
23 that's an outstanding indebtedness that when the service
24 is transferred the new customer has to assume. So of
25 course when you're -- and the whole point of this thing is

1 to give us recourse against the customer who's ultimately
2 receiving the service with respect to all debts and
3 obligations that arise out of the pre-transfer conduct.

4 JUDGE TATEL: But in this case --

5 JUDGE GINSBURG: Customer here being an
6 aggregator, correct?

7 JUDGE TATEL: Right, but in this case --

8 MR. CARPENTER: We, under the tariff, we have
9 rights against the location.

10 JUDGE TATEL: But in this case, the transferor
11 did retain all obligations. Your worry is you might not
12 be able to collect them, right? But the transferor here
13 did retain --

14 MR. CARPENTER: Yes, the transferor retained the
15 obligations --

16 JUDGE TATEL: Okay.

17 MR. CARPENTER: -- but the tariff requires that
18 the transferee assume the obligations as well with respect
19 to all obligations existing at the time of the transfer.

20 JUDGE GINSBURG: Well, you said all obligations.

21 JUDGE TATEL: Well, that's only if the whole
22 plan is transferred.

23 MR. CARPENTER: Well, that's the question, Your
24 Honor.

25 JUDGE TATEL: Right. Exactly.

1 MR. CARPENTER: And that's what I'm trying --

2 JUDGE TATEL: I mean, you've assumed, yes,
3 right.

4 MR. CARPENTER: Well, but I was responding to a
5 different point about what happens when a single location
6 is transferred.

7 JUDGE TATEL: I see.

8 MR. CARPENTER: And the point there is there's
9 outstanding indebtedness associated with the location, and
10 we have recourse under the tariff against the location
11 when unpaid bills are not paid. That's without, that's at
12 JA 423 of the appendix are the tariff provisions that give
13 us recourse against the individual location. So of course
14 when a single number is transferred, single location is
15 transferred, you know, this provision applies, and AT&T
16 wants to have the recourse against the obligation for the
17 past due indebtedness. Now, here the principal focus is
18 obviously on the shortfall charges, but they didn't assume
19 any obligations. They didn't assume the obligation even
20 for past indebtedness on the locations, because all they
21 wanted transferred was the traffic on the plans without
22 the concomitant obligations, and the tariff says you have
23 to assume both the outstanding indebtedness and the
24 unexpired part of the volume commitments, and neither of
25 those things were transferred. So, and the --

1 JUDGE GINSBURG: Mr. Carpenter, stay with that
2 for a minute. You said here the focus is on the shortfall
3 obligations. In a situation where there's a transfer of a
4 single number or a small percentage of the numbers, would
5 there be an issue of the shortfall obligation?

6 MR. CARPENTER: No, we would not take the
7 position, then, that any shortfall obligation went with
8 the transfer of a single number. But remember --

9 JUDGE ROBERTS: Why not? The tariff says they
10 have to assume all the obligations.

11 MR. CARPENTER: That's what I was about to say.
12 But they still have to execute our form. The form says
13 you assume all outstanding indebtedness and all
14 obligations you have to assume. And if they don't execute
15 the form, we don't make the transfer. Now, what
16 obligations they're going to end up assuming will vary
17 depending on what service is being transferred. But that
18 doesn't mean that --

19 JUDGE GINSBURG: Well, is your --

20 JUDGE ROBERTS: That's not what the tariff says.
21 It says you've got to assume all the obligations.

22 MR. CARPENTER: Yes, but what it means to assume
23 all the obligations. What obligations apply may vary
24 depending on what's transferred. In some cases the only
25 obligation that may be transferred is going to be the

1 outstanding indebtedness. It some cases it may be the
2 shortfall. But the point here is they didn't assume any
3 of the obligations. Our tariff says you have to assume
4 the obligations for the indebtedness and the unexpired
5 portion of the volume commitments, and they didn't assume
6 anything. All they did is say that we want the traffic
7 transferred. They wanted the traffic without the
8 obligations.

9 JUDGE GINSBURG: Is your --

10 MR. CARPENTER: They didn't violate -- yes, Your
11 Honor.

12 JUDGE GINSBURG: Is the transfer form part of
13 the filed tariff?

14 MR. CARPENTER: No, the transfer form implements
15 the filed tariff.

16 JUDGE GINSBURG: Okay, so it's not really
17 authoritative as to whether it's, what the meaning of the
18 tariff is or whether it's even consistent with the tariff.

19 MR. CARPENTER: No, but the transfer form
20 happens here to say exactly what the tariff says, and the
21 only way you can satisfy the tariff is either use our form
22 or submit in writing something that says exactly what our
23 form says. So in this case, in this situation --

24 JUDGE TATEL: Well, the Commission's response to
25 that is that that simply means, that simply means that, it

1 proves their point that this tariff doesn't deal with
2 that, doesn't prohibit the transfer of just the numbers.

3 MR. CARPENTER: How do I respond to their point,
4 the fact that they changed the form?

5 JUDGE TATEL: Right. Yes.

6 MR. CARPENTER: Oh, you know, the question, Your
7 Honor, is --

8 JUDGE TATEL: Or even the form doesn't refer to
9 it, so the Commission says, look, the form doesn't say
10 anything about simply transferring the numbers, so
11 transferring the numbers is okay.

12 MR. CARPENTER: Yes, Your Honor, I, Your Honor,
13 we're not focusing here on the transfer of the numbers.
14 What we're focusing on is they transferred the traffic
15 without transferring --

16 JUDGE TATEL: I understand. I didn't mean to
17 use the word numbers. They transferred the traffic. It
18 doesn't apply to just to transfers of traffic.

19 MR. CARPENTER: Yes, and the question is, did
20 they comply with our tariff when they transferred the
21 traffic without the liabilities?

22 JUDGE TATEL: Okay, well, let's go back to that,
23 then. You rely heavily on the language, this phrase, in
24 associated, associated numbers, right?

25 MR. CARPENTER: I don't think we rely heavily on

1 that. We do mention that.

2 JUDGE TATEL: Well, yes, you do mention it. And
3 the Commission says that you didn't point to that language
4 before the Commission in your comments so that it's
5 waived.

6 MR. CARPENTER: I'll tell you, I regard that as
7 of so little significance in terms of our argument --

8 JUDGE TATEL: Okay.

9 MR. CARPENTER: -- that I don't really --

10 JUDGE TATEL: You don't even want to answer it?
11 All right.

12 MR. CARPENTER: I'm happy to answer it, but it
13 was before the Commission as part of the tariff.

14 JUDGE TATEL: So even if we think it was -- wait
15 a minute, what was before the Commission? Well, okay, so
16 if we --

17 JUDGE GINSBURG: The phrase was, you mean.

18 MR. CARPENTER: Yes, the phrase was.

19 JUDGE TATEL: If we believe it's waived, because
20 you don't seem to think it's important, you still think
21 you can win without us relying on that language?

22 MR. CARPENTER: Absolutely, Your Honor.

23 JUDGE TATEL: Why don't you make that case?

24 MR. CARPENTER: The critical term is the term
25 service, which is what the first question was, and the

1 critical question is whether the transfer of the traffic
2 is the transfer of the service. That's the only question
3 here you have to concern yourself with. And of course the
4 transfer of the traffic is the transfer of the service.
5 The traffic exists because there's underlying service.
6 Traffic is calls back and forth to a phone number. And
7 the service, you can't transfer the traffic without
8 transferring the service that gives rise to the traffic.

9 What they're asking for is the transfer of the right
10 to receive over AT&T network, over the AT&T network 800
11 calls delivered to these destinations when particular 800
12 numbers were dialed. That's what the service is. That's
13 what people receive when they subscribe to WATS service.
14 That's what they pay the tariff rates in exchange for
15 getting, and that's what they're trying to avoid here, the
16 obligations that are assumed in order to receive that
17 service, the delivery of 800 calls to a location when an
18 800 number is transferred. So the only question you have
19 to address is whether the transfer of traffic is transfer
20 of service. The FCC said it wasn't. That's preposterous.

21 JUDGE TATEL: Well, that's because they said you
22 described service as being CPT, ST plan.

23 MR. CARPENTER: Yes, and that's not correct.

24 JUDGE TATEL: What isn't correct?

25 MR. CARPENTER: That we --

1 JUDGE TATEL: That that's not what you said?

2 MR. CARPENTER: What we said, Your Honor, we did
3 not construe 2.1.8 to apply only to plans. What we said
4 in the sentence they're quoting out of context is that the
5 tariff requires the transfer of service only when the
6 obligations are assumed. We said that in this case, the
7 relevant service are the CSTP plans. That's because in
8 this case what they transferred was the plans, all the
9 locations, without the liabilities. And we said in that
10 very sentence, in that very paragraph repeatedly that what
11 CCI wanted to do violated the tariff because they were
12 transferring the traffic only and they weren't
13 transferring the obligations. There's no way on earth
14 that we were conceding away the only issue in this case
15 with that parenthetical phrase that they're lifting out of
16 context. In fact, the FCC order says in the very
17 paragraph, quote, AT&T's position throughout this
18 proceeding is, quote, 2.1.8 of the tariff did not
19 authorize the transfer of traffic without a plan unless
20 the transferee assumed the original customer's liability.
21 So the order says what our position was below. We did not
22 concede away the only issue in the case, and the argument
23 that they're making is based on a parenthetical that
24 they're lifting out of context and then misstating.

25 JUDGE GINSBURG: Mr. Carpenter --

1 MR. CARPENTER: I don't know how much time
2 you're going to give me for rebuttal, but I --

3 JUDGE GINSBURG: Well, I want to ask you
4 something yet. At 493 and other pages in the JA, there's
5 a transfer of service agreement and notification form.
6 Now, the use of the word service in that heading, transfer
7 of service, is clearly not the transfer of one, it's not a
8 change from 800 domestic to 800 Mexico, it exemplifies
9 what you said, a different meaning. But look at the
10 paragraph that begins services are not to be interrupted
11 or relocated at the time --

12 MR. CARPENTER: Yes.

13 JUDGE GINSBURG: -- transfer or assignment is
14 made. If a change of service is a change of location, how
15 can it say that services are not to be relocated?

16 MR. CARPENTER: A change of service is not a
17 change of location.

18 JUDGE GINSBURG: Well, I thought you were
19 telling me earlier --

20 MR. CARPENTER: A transfer of service is not a
21 transfer of location.

22 JUDGE GINSBURG: Okay.

23 MR. CARPENTER: A transfer of service is just
24 the change in the customer of record that's entitled to
25 have calls delivered to a location. That's all a

1 transfer, it's, you know, it says transfer or assignment.

2 JUDGE GINSBURG: Ah, okay, okay.

3 MR. CARPENTER: Okay?

4 JUDGE GINSBURG: All right. Okay. All right,
5 that makes sense. All right, did you have another point
6 you wanted to make?

7 MR. CARPENTER: Well, I had lots of points, but
8 I don't know how much time you're going to give me.

9 JUDGE GINSBURG: Well, it depends upon the
10 quality of the next point.

11 MR. CARPENTER: Well, you know, I think, I just,
12 I think I probably covered the basic points in the
13 response to the questions.

14 JUDGE GINSBURG: That's fine.

15 MR. CARPENTER: If you'll give me time on
16 rebuttal, that will, I think, be sufficient.

17 JUDGE GINSBURG: Yes, we will. Yes, we will.

18 Thank you, Mr. Carpenter.

19

20 ORAL ARGUMENT OF LAURENCE N. BOURNE, ESQ.

21 ON BEHALF OF THE RESPONDENTS

22

23 MR. BOURNE: May it please the Court. My name
24 is Nick Bourne, and I'm here representing the Federal
25 Communications Commission.

1 JUDGE TATEL: Would you begin by responding to
2 Mr. Carpenter's last point about the Commission reading,
3 that this was not in fact a concession about what this
4 transfer was, that their position has always been the
5 same?

6 MR. BOURNE: Well, Judge Tatel, the Commission
7 looked first at the language of Section 2.1.8 and found
8 the language to be ambiguous, and concluded that as the
9 district court had in asking for a primary jurisdiction
10 referral to the FCC, and the Commission found that the
11 language would best be construed as applying, the term
12 "WATS" including associated telephone numbers only when
13 the transferee steps entirely into the shoes of the
14 transferor, which only occurs when the transferee obtains
15 the contractual benefits of the transferor's plan. And
16 that does not occur under the transactions that CCI and
17 PSE were engaging in. The traffic would go to PSE, but
18 CCI's obligations under its plan would not transfer.
19 Neither would the benefits that AT&T owed to CCI under
20 CCI's plan.

21 JUDGE ROBERTS: What benefits are those?

22 MR. BOURNE: Well, the plan has a whole set of
23 reciprocal obligations. There are volume commitments.
24 There --

25 JUDGE ROBERTS: I'm looking for a benefit.

1 MR. BOURNE: Well --

2 JUDGE ROBERTS: It seems to me that the benefit
3 is that you provide the service, and the rest of it is
4 burden, obligations, volume requirements, and so on. And
5 so your argument, it seems to me, collapses if all the
6 benefits are being transferred but the burdens are not.

7 MR. BOURNE: Well, the obligation of AT&T is to
8 provide the service to --

9 JUDGE ROBERTS: Right.

10 MR. BOURNE: -- to the customer at the specified
11 prices, the specified package of services that are
12 contained within the plan. And PSE did not receive the
13 rights that CCI had under the CSTP II plan, when the
14 traffic, or would not have when the traffic was
15 transferred. And the Commission viewed the transfer
16 provision to apply when the transferee steps entirely into
17 the shoes of the transferor, which couldn't happen when
18 AT&T doesn't owe the obligations of the CSTP II plan to
19 PSE.

20 Now, granted, it, in cases where the transferee has a
21 plan that perhaps is considered better than the
22 transferor --

23 JUDGE GINSBURG: Such as 5.1.6.

24 MR. BOURNE: -- such as 5.1.6, the transferee
25 would not want to assume the obligations associated with

1 the transferor. But in other circumstances you can see,
2 can imagine the transferor, the transferee viewing,
3 getting the entire plan as a benefit, so.

4 JUDGE ROBERTS: What possible purpose could this
5 provision serve if it's read the way you read it?

6 MR. BOURNE: Well, it would apply, for instance,
7 in cases like the initial transfer of plans from the Inga
8 Companies to CCI, which were transfers and which CCI
9 assumed the liabilities and stepped into the shoes of the
10 Inga Companies.

11 JUDGE ROBERTS: And why did they do that?
12 Because they didn't have a better plan, is that? I'm
13 trying to see, I mean, presumably AT&T wanted this in
14 there for a reason, and I'm having trouble visualizing if
15 you're allowed to transfer all the traffic and leave the
16 obligations behind, what reason -- if that's what they
17 meant, what reason, what purpose does that serve?

18 MR. BOURNE: Well, it applies in the case where
19 the transferee completely steps into the shoes of the
20 transferor, and in that circumstance it's fair to, AT&T
21 wanted to make sure that the transferee assumed the
22 obligations of the transferor.

23 JUDGE GINSBURG: Well, but the inference the
24 Commission drew, as I recall it, though, is to say, well,
25 since that's what this means, there's nothing in the

1 tariff that deals with the transfer solely of the traffic,
2 right?

3 MR. BOURNE: Well, the Commission found that the
4 transfer of traffic was authorized as a reduction in
5 service in traffic by CCI, and an increase --

6 JUDGE GINSBURG: Why is a reduction, why is a
7 transfer the same as a decrease, I think is the term in
8 the tariff?

9 MR. BOURNE: What the Commission found was that
10 the parties had the right to receive that, to have that
11 transaction processed, but --

12 JUDGE TATEL: Under their existing tariffs.

13 MR. BOURNE: Under their existing tariffs. For
14 instance --

15 JUDGE TATEL: Is that the point?

16 MR. BOURNE: -- any reseller, for instance, when
17 that reseller loses a customer, reduces traffic. Any
18 reseller, when that reseller adds a customer adds traffic.

19 JUDGE GINSBURG: Right.

20 MR. BOURNE: And AT&T does not --

21 JUDGE GINSBURG: It's not assigning anything,
22 right?

23 MR. BOURNE: No, but --

24 JUDGE GINSBURG: It's just adding and deleting
25 BTMs.

1 MR. BOURNE: That's correct. But the parties
2 can act in tandem. They can ask for --

3 JUDGE ROBERTS: But the difference is that CCI
4 gets a benefit from the transfer. I mean, they're getting
5 paid something for that, right? It's not the same. When
6 you transfer the numbers, transfer the service to the
7 transferee, that's not the same as just reducing your own
8 volume, because if you just reduce it, you don't have that
9 income coming in and you don't have the volume coming in.

10 JUDGE GINSBURG: And you still have the
11 obligation.

12 JUDGE ROBERTS: And you still have the
13 obligation. There's a huge difference between a transfer
14 and a simultaneous reduction and increase.

15 MR. BOURNE: I'm sorry, I --

16 JUDGE ROBERTS: Your argument, what the
17 Commission said is there's no problem with Party A
18 transferring it to Party B, because Party A can reduce --

19 MR. BOURNE: Right.

20 JUDGE ROBERTS: -- and Party B can increase.

21 MR. BOURNE: Right.

22 JUDGE ROBERTS: Well, but there's a bilateral
23 transaction when they do a transfer, part of which is the
24 payment by Party B to Party A, so it's not at all the same
25 thing.

1 MR. BOURNE: Well, what the Commission was
2 talking about was what the parties had the right to
3 achieve under the tariff. In fact, under the proposed
4 transaction, there was a contract between CCI and PSE, and
5 under the proposed transaction, CCI would move its traffic
6 to PSE. PSE would pay for the traffic under the
7 discounted terms of its own tariff to AT&T. PSE would
8 then resell the traffic back to CCI, and CCI in turn would
9 then re-resell the traffic to its own end user customers.
10 Both resellers would benefit under the proposed
11 transaction by sharing some of the difference between
12 CCI's discount and PSE's.

13 JUDGE GINSBURG: Well, let me ask you this. If
14 CCI had an obligation of a million minutes --

15 MR. BOURNE: Right.

16 JUDGE GINSBURG: -- and it transfers a half a
17 million of the traffic to PSE --

18 MR. BOURNE: Right.

19 JUDGE GINSBURG: -- and it expects to benefit
20 from the arbitrage that you just described, if it did
21 nothing else, it would fall short 500,000 minutes on its
22 volume commitment.

23 MR. BOURNE: Well --

24 JUDGE GINSBURG: So how does it benefit from
25 this if it still has to go out and meet its million minute

1 quota?

2 MR. BOURNE: Well, under the transaction, PSE
3 would pay CCI part of the difference. It also obligated
4 itself to move the traffic back to CCI.

5 JUDGE GINSBURG: Well, can they both count the
6 minutes towards their volume obligations?

7 MR. BOURNE: No, not at the same time. While
8 it's in the PSE plan, it counts only towards the PSE
9 volume obligations.

10 JUDGE GINSBURG: Okay, okay.

11 MR. BOURNE: But the money that PSE paid to CCI
12 as part of the transactions would help possibly defray
13 shortfall charges. They still had the ability to get new
14 traffic on their own plan, and PSE promised to assist in
15 moving traffic back, if necessary. It's also --

16 JUDGE GINSBURG: I guess it's possible that the
17 discount, the incremental discount available under 5.1.6
18 is so much greater, so great that it would more than cover
19 the shortfall charges under CSTP II.

20 MR. BOURNE: Well --

21 JUDGE GINSBURG: It's conceivable.

22 MR. BOURNE: It's conceivable.

23 JUDGE GINSBURG: Is that what was going on here?
24 I'm looking for the scam here. They did this transaction
25 to benefit at AT&T's expense, and it may have been lawful

1 and it may not have, but I'd like to know what it was.

2 MR. BOURNE: Well, CCI still had the obligation
3 to pay its shortfall charges, and there's, there are other
4 aspects to this that the Commission didn't rule on. I
5 mean, for instance --

6 JUDGE GINSBURG: Whether they were
7 grandfathered?

8 MR. BOURNE: Right. So it could well be that
9 there were little or no shortfall charges. The Commission
10 didn't rule on that point, but if there were little or
11 no --

12 JUDGE GINSBURG: If that was the understanding
13 with which they went into this, then the nature of the
14 scheme was to move the obligation to a customer who, away
15 from a customer who would be able to shed its obligations
16 under the grandfather provision, right? Or pardon me, if
17 the Commission agreed that it was grandfathered under the
18 old tariff. That's the scheme, to move it from somebody
19 who's got the benefit of grandfathering and can get out of
20 its obligation that way to somebody who's got the benefit
21 of a larger discount.

22 MR. BOURNE: That's correct.

23 JUDGE GINSBURG: Okay.

24 MR. BOURNE: There's another possibility is that
25 if the transaction were to occur mid-year, for instance,

1 and a carrier had already met its minimum usage
2 obligations, then there wouldn't be any issue of -- now, I
3 don't know the answer to that, but there --

4 JUDGE GINSBURG: Okay, okay.

5 JUDGE TATEL: Wasn't, isn't another perspective
6 here that AT&T was worried that CCI was a sham or a shell
7 and wouldn't be able to afford, wouldn't be able to pay
8 its shortfall obligations?

9 MR. BOURNE: Well, they allege that --

10 JUDGE TATEL: Right.

11 MR. BOURNE: -- but CCI was continuing to get
12 money back from PSE under the transaction. And there's
13 no --

14 JUDGE TATEL: But that --

15 MR. BOURNE: -- PS --

16 JUDGE TATEL: But whether it's right or not,
17 that's at least what they allege was motivating. In fact,
18 they required, their original reaction to the Inga CCI
19 transfer was to require a pretty big deposit, right,
20 because they were worried about CCI's ability to fulfill
21 its obligations.

22 MR. BOURNE: Well, and the Court, the Court
23 indicated that they weren't entitled to do --

24 JUDGE TATEL: No, I understand that, but I'm
25 continuing Judge Ginsburg's effort to try to figure out

1 what's going on here, at least that's what AT&T's
2 perspective seems to be. Its concern was --

3 MR. BOURNE: They argued --

4 JUDGE TATEL: -- this traffic was being
5 transferred in a way that it would, that the CCI would be
6 unable to pay its obligations, because it wouldn't have
7 the traffic and therefore wouldn't have the revenue.

8 MR. BOURNE: Well, that's what they alleged.

9 JUDGE TATEL: Right.

10 MR. BOURNE: But the Commission found that even
11 if that were correct and even if that were, would violate
12 the fraudulent use provision of the tariff, they employed
13 a remedy of failing to transfer the traffic that was not
14 contained in the tariff, which provided only for, as
15 relevant here, temporary suspension of service, which is
16 an entirely different remedy. And the Commission's rules
17 require tariff provisions to be clear and explicit, and
18 this Court has declined to enforce tariff provisions
19 against customers in the past when they failed that rule.
20 And the Commission found that that was the case here.

21 JUDGE GINSBURG: Let me ask you to go back just
22 once more to the, where you began. What is the ambiguity
23 that the Commission found in 2.1.8?

24 MR. BOURNE: The ambiguity is whether WATS,
25 including any associated telephone numbers, refers to

1 traffic or the plan as a whole. And one other point about
2 this: This plan, this section is designed to ensure that
3 shortfall liability is not avoided, which suggests that it
4 applies to services for which shortfall liability is a
5 possibility, and the shortfall liability as relevant here
6 applied to shortfall under the entire plan, aggregate
7 purchases. It didn't apply, there was no such thing as
8 shortfall liability with respect to particular locations
9 under the plan as relevant here.

10 JUDGE GINSBURG: Well, you know, I wonder about
11 that, because if I can find where I was before, maybe it's
12 423. It says at 423, this is 3.3.1.M, revenue volume
13 pricing plan, it says in the last bullet point, any
14 penalty for shortfall will be apportioned according to
15 usage among all the individual locations designated by the
16 customer for inclusion under this plan. What do you make
17 of that?

18 MR. BOURNE: Well, but any penalty for shortfall
19 in terms of the aggregate commitments will then be
20 apportioned among the customers in that way, but it
21 doesn't --

22 JUDGE GINSBURG: No, it says actually among the
23 locations designated by the customer.

24 MR. BOURNE: Among the locations. But it --

25 JUDGE GINSBURG: So the locations are end users,

1 right?

2 MR. BOURNE: Right.

3 JUDGE GINSBURG: Okay.

4 MR. BOURNE: But the end user, each individual
5 end user doesn't have a particular level of commitment.

6 JUDGE GINSBURG: And what does this mean? I
7 would be surprised if they did, but what does it mean?

8 MR. BOURNE: Well, one of the ways, my
9 understanding, and maybe Mr. Carpenter can address this,
10 but the way this tariff worked, AT&T would act as billing
11 agent for the aggregator and would obtain payments
12 directly from the end users and then pass on to the
13 aggregator the difference between its, what it was --

14 JUDGE GINSBURG: They would true up with the
15 aggregator at the end, okay.

16 MR. BOURNE: Right. And I think maybe that this
17 refers to that process.

18 JUDGE GINSBURG: I mean, it's very hard to
19 understand if that's what it is, but maybe so. We'll ask
20 Mr. Carpenter.

21 JUDGE ROBERTS: Could I, just for my, just so I
22 understand, you think the critical difference is you read
23 WATS, what's being transferred or assigned, as the whole
24 plan?

25 MR. BOURNE: That's correct.

1 JUDGE ROBERTS: Your friend on the other side
2 reads it just as the service. So your reading is that the
3 whole plan may be transferred provided that the whole plan
4 is transferred, right? I mean, it's kind of a nonsensical
5 reading, isn't it?

6 MR. BOURNE: Well, provided that the --

7 JUDGE ROBERTS: Obligations which are part of
8 the plan are also transferred.

9 MR. BOURNE: Right.

10 JUDGE ROBERTS: But is that --

11 MR. BOURNE: And the transferor remains on the
12 hook as well for liabilities, but the transferee gets the
13 benefits and assumes all of the liabilities.

14 JUDGE ROBERTS: All the liabilities. And but
15 you say that's not what happens. You can transfer just
16 the benefits without the liabilities.

17 MR. BOURNE: Well, you can transfer --

18 JUDGE ROBERTS: The whole purpose of this is
19 obviously to make sure that the liabilities, the
20 obligations are transferred in some situation. You have a
21 debate about which situation, and what you say is, the way
22 you read it, you can transfer the benefits without the
23 obligations, which doesn't make any sense if the whole
24 purpose is to make sure the obligations go with the
25 benefits.

1 MR. BOURNE: Well --

2 JUDGE TATEL: I thought the Commission's view of
3 this was that this wasn't the transfer, that this was
4 simply a comparative request for increasing and decreasing
5 service.

6 MR. BOURNE: That's the way the Commission
7 viewed that 2.1.8 didn't apply to this --

8 JUDGE TATEL: Right.

9 MR. BOURNE: -- transaction and that in fact it
10 was authorized as parallel requests, or coordinated but
11 parallel requests to reduce traffic under one plan and add
12 traffic on --

13 JUDGE ROBERTS: But the reason that you think
14 that 2.1.8 doesn't apply here is because it only applies
15 to the transfer of the whole plan.

16 MR. BOURNE: That's correct.

17 JUDGE ROBERTS: And what I'm saying is if you
18 think it only applies to the transfer of the whole plan,
19 it's nonsensical, because the whole purpose is to make
20 sure that part of the plan is transferred, and if you're
21 saying this only applies when the whole plan is
22 transferred, it doesn't make any sense.

23 MR. BOURNE: Well, the --

24 JUDGE ROBERTS: You're allowing a transfer of
25 part of the plan without the obligations. The service.

1 MR. BOURNE: They're reducing traffic under one
2 plan and increasing traffic under the other, but --

3 JUDGE GINSBURG: Well, no, that was an analogy.
4 It's as though they were doing that, the Commission said,
5 isn't that right?

6 MR. BOURNE: Well, the Commission said in effect
7 that's what they were doing.

8 JUDGE GINSBURG: It says, yes, CCI and PSI
9 effectively made two requests, but of course they didn't.
10 This is to say it's as though they made two requests,
11 right? One by CCI to AT&T that decreases traffic, and
12 another by PSE to AT&T that increases traffic. It's just
13 saying that it's as though they had done that. At the end
14 of the day, that's what it will look like.

15 MR. BOURNE: Those transactions, the Commission
16 believed, would have been permissible under the standard
17 provisions in the tariff for signing up new customers and
18 reducing customers as well --

19 JUDGE GINSBURG: Right, right.

20 MR. BOURNE: -- and AT&T in its brief makes a
21 number of arguments about how they believe that would be
22 impractical and wouldn't get the same result, arguments
23 that were not presented to the Commission first, but --

24 JUDGE ROBERTS: But your analogy, I must be
25 missing something, but you're saying it's the same thing.

1 If I lose \$10 and the Chief Judge finds \$10, you're
2 saying, well, that's just as if I gave him \$10. But it's
3 not. In the former case, he thinks I'm a lucky guy, and
4 in this latter case he thinks I'm a nice guy. But it's
5 not at all the same thing. Just because they can reduce
6 and the other party can increase is not the same as them
7 transferring. There's a bilateral aspect to the latter
8 situation that's not present in the former.

9 MR. BOURNE: Well, the Commission read the
10 language and found that it was ambiguous and felt that it
11 applied when --

12 JUDGE TATEL: Let me ask you about that, go back
13 to my very first question, because as I read the
14 Commission's order, it was relying heavily on this so-
15 called concession by AT&T that WATS under the tariff meant
16 the CSTP II plan. And Mr. Carpenter said that's not the
17 case. They didn't make that concession at all.

18 MR. BOURNE: Well, the Commission --

19 JUDGE TATEL: And that was a pretty --

20 MR. BOURNE: -- relied on that to bolster its
21 analysis of the text. It is true, AT&T said that WATS in
22 this instance means the CSTP II plans. AT&T also went on
23 to say that 2.1.8 prohibited the proposed transaction. So
24 you can either view those two things together as the
25 Commission misconstrued the statement by AT&T that WATS

1 equals the plan, or you can view it, as I think the
2 Commission did, that AT&T made this statement and its
3 argument is inconsistent with it, and it shows that it's
4 weak.

5 JUDGE GINSBURG: Where's the source of that
6 statement?

7 MR. BOURNE: It's --

8 JUDGE GINSBURG: (Indiscernible) go back to it.

9 MR. BOURNE: -- AT&T's further --

10 JUDGE TATEL: It's their comment.

11 JUDGE GINSBURG: Because my recollection is they
12 said here, that here that WATS means CSTP. In other
13 words, that's what their customer's plan is in this case.

14 MR. BOURNE: It's at page 249 of the Joint
15 Appendix.

16 JUDGE GINSBURG: Yes. 2.1.8.B states that a
17 customer may transfer its WATS service, paren, in this
18 case, the relevant WATS services are the CSTP II plans,
19 because that's what the customer in this case takes.

20 MR. BOURNE: Right.

21 JUDGE GINSBURG: And the other was RVPP or
22 whatever it's called.

23 MR. BOURNE: Right.

24 JUDGE GINSBURG: So is that the same thing as
25 saying that in the tariff WATS means the CSTP plan when

1 all it's saying is in the tariff WATS, which, by the way,
2 this customer takes in the form of CSTP, etc., etc.?

3 MR. BOURNE: It refers to the, that the service,
4 it refers to the service that the customer is taking, and
5 in this instance the service that the customer is taking
6 is this package of obligations and rights, which was the
7 CSTP II plan. And the Commission said that it applies
8 only when the entire package is transferred. The rights
9 that the transferee has under the plan are transferred,
10 and when that happens the obligations go as well.

11 JUDGE GINSBURG: Further questions? Thank you,
12 Mr. Bourne.

13 MR. BOURNE: Thank you.

14 JUDGE GINSBURG: Mr. Carpenter?

15

16 REBUTTAL ARGUMENT OF DAVID W. CARPENTER, ESQ.

17 ON BEHALF OF THE PETITIONER

18

19 MR. CARPENTER: 2.1.8 on its face places a
20 condition on the transfer of WATS service. It can occur
21 only when the obligations are --

22 (Brief interruption in recording due to tape
23 change.)

24 MR. CARPENTER: -- Court of Appeals proceedings
25 and the FCC proceedings. Quite apart from the fact that

1 as I pointed out before, the FCC acknowledged in its order
2 what our position was, that you can't transfer this
3 service without transferring the obligations, they say
4 that in the very first sentence in paragraph 9. What
5 they're relying on on JA 249 is, I think has been
6 virtually conceded. You know, it isn't construing the
7 tariff in a different way than we are arguing that it be
8 construed in this Court. It's not like the Verizon case
9 that they cited in that letter, where we construed it one
10 way and, or where the petitioner construed the language
11 one way below and then in an inconsistent way here. We
12 considered it the same way here that we're construing it
13 now, and all we're pointing out that the relevant services
14 in this case are the CSTP **plans.**

15 I just want to also underscore that the only
16 explanation for the failure to comply with the explicit
17 conditions in this tariff is that they were trying to
18 evade or at least diminish our ability to collect these
19 shortfall charges. PSE, there's no problem at all with
20 resellers moving traffic from higher-priced plans to
21 lower-priced plans. Long distance prices have been going
22 down consistently since World War II, and resellers were
23 always moving from high-priced to lower-priced plans,
24 aggregating more and more traffic on lower-priced plans.
25 But to do that, the volume commitments that were the quid

1 pro quo for the discounts they received had to move, too.
2 The only explanation for this, and none was ever offered
3 other than this below, was that they wanted to diminish
4 our ability to evade, to collect the shortfall charges.

5 And the provisions of the tariff that you were
6 discussing with Mr. Bourne and also the provisions that
7 appear on JA 418 are provisions that give us recourse
8 against the location in the event that the tariff charges
9 aren't paid. And the one thing that we unequivocally
10 lost, I think the arguments that CCI was somehow better
11 off under this deal are just nonsense, because they had to
12 pay twice for the service, once to PSE, again to AT&T.

13 But all that aside, we gave up, we lost our bill, our
14 recourse against the end user locations as a result of
15 this transfer, and that's something that our tariff
16 explicitly protected against. The only reason for this
17 tariff was to condition service transfers on the
18 assumption of the very liabilities that weren't
19 transferred here.

20 So unless you have further questions, which
21 apparently you do --

22 JUDGE GINSBURG: No, but I do think that we're
23 starting to grasp why it took the Commission seven years
24 to resolve this problem. Thank you, Mr. Carpenter.

25 MR. CARPENTER: Thank you.

cls

1 JUDGE GINSBURG: Mr. Bourne, thank you. The
2 case is submitted.

3 (Recess.)
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CERTIFICATE

I certify that the foregoing is a correct transcription of the electronic sound recording of the proceedings in the above-entitled matter.

Carol Schlenker

Date

DEPOSITION SERVICES, INC.