December 12, 2017

Commission’s Secretary

Marlene H. Dortch

Office of the Secretary

Federal Communications Commission

445 12th Street, SW

Room TW-A325

Washington, DC 20554

Deena Shetler: [Deena.shetler@fcc.gov](mailto:Deena.shetler@fcc.gov)

Pamela Arluk: [Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)

FCC Contractor: fcc@bcpiweb.com

Re: WC Docket No. 06-210

CCB/CPD 96-20

**Petitioners FCC Comments**

**AT&T Concedes the Outcome of Tr8179**

**will Resolve the Traffic Only Transfer Controversy**

AT&T states:

**“The proceeding in the FCC will Resolve that Issue, the Only Issue of Meaningful Controversy Open in these Transactions.”**

**TABLE OF CONTENTS**

Petitioners Reason for Declaratory Ruling Filings & Motion for Production of Evidence **PAGE 3**

Both AT&T 1995 Briefs Concede "Tr8179 proceeding will resolve case." “The only meaningful controversy open in these transactions” …………………………….. **PAGE 4**

The FCC Denied AT&T’s Ability to Subjective Deem the Tr8179 Conceded Traffic Only Transfer was a Plan Transfer, but AT&T Counsel Carpenter Misrepresented to DC Circuit it was a Plan Transfer………………………………………. **PAGE 13**

AT&T Counsels November 28, 1995 Misrepresentations to the NJFDC…………………... **PAGE 19**

AT&T’s January 23, 1996 Oral Argument Misrepresentations to NJFDC Judge PolitanAT&T Concedes Tr9229. AT&T Concedes:

“As a Matter of Law” it Can’t Prohibit the Traffic Transfers………………………………. **PAGE 24**

AT&T’s DECEMBER 20, 2004 OPPOSITION TO MOTION OF INGA INTERVENORS FOR LEAVE TO FILE SUPPLEMENTAL PLEADINGS OUT OF TIME **PAGE 28**

Tr8179 filing confirmed the NON-CONTROVERSY that 2.1.8 already allowed Traffic only transfers and Tariffed Revenue/Term Obligations Don’t Transfer………………. **PAGE 39**

AT&T’s 1996 Counsels Misrepresent it Could Assert Fraudulent Use & Concede the Merits of Judging Intent First Needed to be Determined………………………**PAGE 42**

AT&T’s Richard Meade's TR8179 & 2.8.2 Scam on FCC and NJFDC………………………. **PAGE 52**

DC Circuit Court Didn’t Address FCC’s 2.2.4 Fraudulent Use Denial as per 2.8.2 Illegal Remedy as DC Decided it was Not Fraudulent Use ………………………. **PAGE 62**

Filed Rate Doctrine Mandates Fraudulent Use 2.2.4 was Precluded Due to No Circumvention & As of January 13, 1995 when 2.8.2 was not Immediately Used to Suspend Phone Calls……………………………………………. **PAGE 66**

NJFDC STATES & AT&T Agreed: Complaint Includes Inga Companies to PSE Traffic Only Transfer……………………………………………………………………**PAGE 73**

The CCI, Inga Companies and 800 Services, Inc. Traffic Only Transfers Were Not Denied in Writing within 15 days As per 2.1.8 (c)…………………………………………… **PAGE 75**

FCC Commissioners Agreed with FCC 2007 Order, AT&T’s 1995 Counsels and NJFDC Position that the Outcome of TR8179 Resolved all Issues……………...**PAGE 79**

AT&T Doesn’t Want Any of the Shortfall Infliction Issues Resolved………………………… **PAGE 82**

Summary—AT&T’s Position to the NJFDC was that it Still Would Allow the 66% Discount Even If Petitioners Lost Tr8179!................................................................... **PAGE 85**

**Petitioners Reason for Declaratory Ruling Filings & Motion for Production of Evidence**

It is understood that all controversies have now been resolved against AT&T and the FCC Commissioners have removed the case from Circulation in January 2017. It is understood the FCC will close the proceeding down once the NJFDC understands that fact.

The information that is being provided within is to simply further update the record with additional evidence of the intentional fraud and coverups AT&T’s counsels engaged in. The Inga Company Petitioners and 800 Services, Inc., have decided to wait until ethics issues are all resolved before going back to the NJFDC.

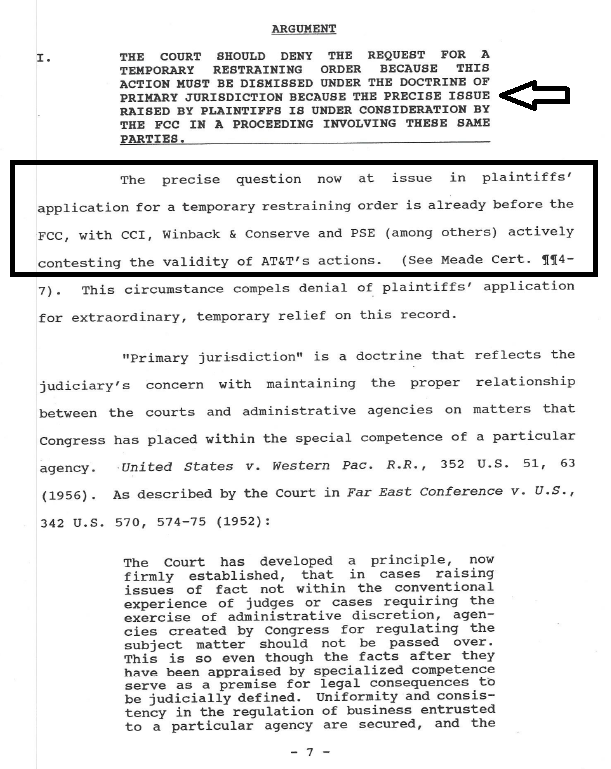
Petitioners recently filed additional declaratory Ruling Requests & a motion for production of evidence. It was not expected that the FCC act on these filings as AT&T itself in 1995 conceded the outcome of Tr8179 would resolve the traffic only transfer controversy.

The issue has now been reviewed by the FCC resolved against AT&T. Petitioners filings were simply made to serve as evidence that AT&T could not produce evidence--- **as no evidence exists** of AT&T’s intentional fraud on the NJFDC and FCC. The filings were also done to obtain additional AT&T counsels comments to the FCC. AT&T counsels are well aware the FCC knows AT&T is involved in an intentional fraud and has stopped commenting. AT&T counsels engaged in an intentional fraud, replete with cover-ups. Evidence showed AT&T’s general counsels and CEO’s were well aware of the fraud of both its in-house and outside counsels’ conspiracy.

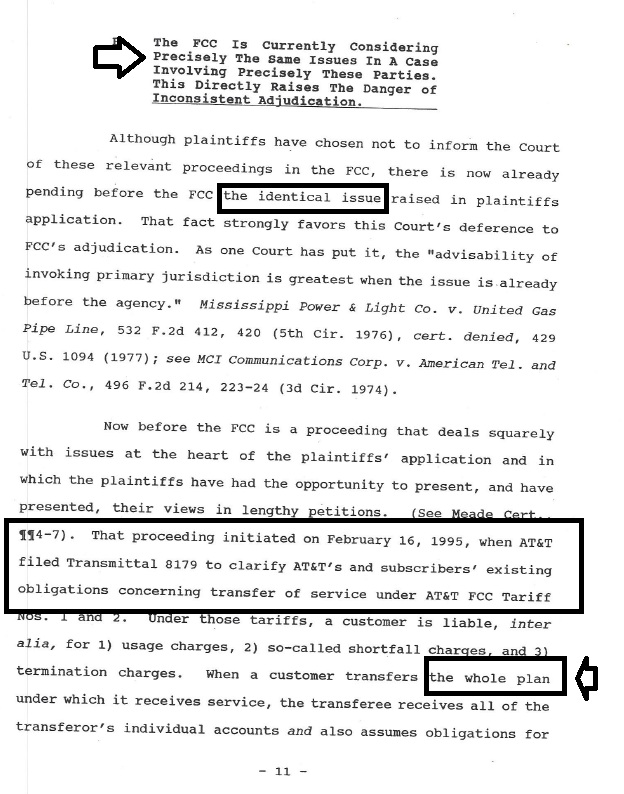
The below is additional evidence and will further detail why AT&T has no evidentiary support and was willing to violate Rule 11B. AT&T can’t address the evidence provided by petitioners to the FCC. It will also allow AT&T to address why it engaged in an intentional fraud on the NJFDC and FCC asserting **without evidentiary support:** that under the tariff traffic only transfers require that the non-transferred plans revenue and time commitments must transfer.

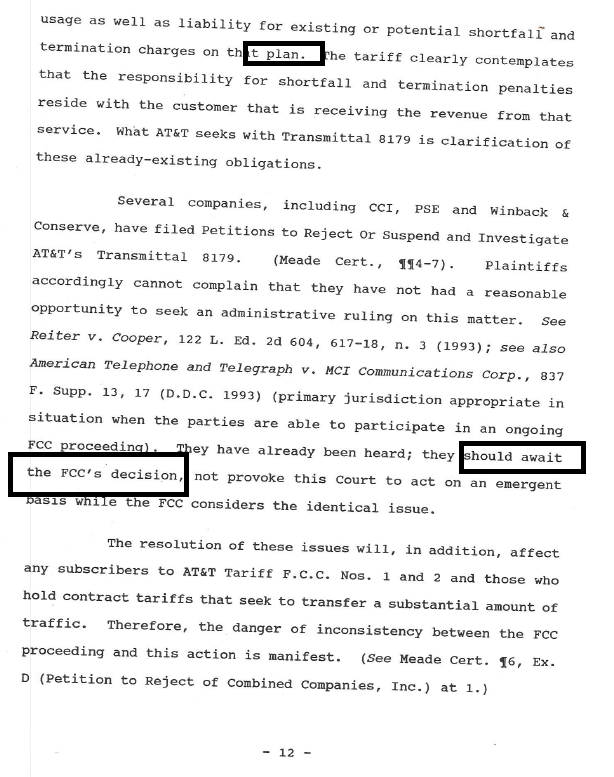
**Both AT&T 1995 Briefs Concede "Tr8179 proceeding will resolve case." “The only meaningful controversy open in these transactions”**

**See here as EXHIBIT Q** AT&T's Brief In opposition to Plaintiffs' Motion for Temporary Restraining Order page 7 regarding the FCC will determine Tr8179. AT&T’s position to NJFDC is the outcome of Tr8179 will resolve the case. The “precise issue” is “under consideration by the FCC”…

****

**When a Customer transfers “the whole plan” the obligations transfer**

****

****

**See here as AT&T’s Brief EXHIBIT J.**

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 THE GROUNDS OF PRIMARY JURSIDICATION.

AT&T Corp NJ: Edward Barillari; Sidley Austin Chicago IL.: Charles W. Douglas, Pitney Harden (Now Day Pitney) Fred L. Whitmer

**AT&T 1995 Brief Concedes "Tr8179 Proceeding Will Resolve Case."**

**“The Only Meaningful Controversy Open in These Transactions”**

AT&T Page 20

**The proceeding regarding tariff transmittal No. 8179, which is now before the FCC with the parties to this action participating, will, in fact, dispose of the critical issue in this case**: do the existing tariffs permit AT&T to protect itself by requiring security deposits or preventing subscribers from separating shortfall and termination liability from the accounts whose revenue secure such liabilities? The application of Tariff Transmittal No. 8179 would affect both issues in this case and thousands of subscribers to AT&T's Tariffs.

AT&T Page 21

The FCC proceeding regarding Tariff Transmittal 8179 deals squarely with issues at the heart of the plaintiff's application to force transfer of the service to PSE without transferring the underlined plans. [Footnote 15]

AT&T FOOTNOTE 15: Both Inga Companies January 30, 1995 traffic only transfer to PSE and CCI’s January 13, 1995 traffic only transfer to PSE **depend upon Tr8179,** but Inga to PSE traffic only transfer does not face the hurdle of the new customer security deposit that CCI was required:

The court should also recall that plaintiff attempted **two separate transactions** to achieve the same result. The first, involved CCI was to accept the plans but transfer the service, involved AT&T **requirement of security deposit from CCI** pursuant to the Tariff. The **second transaction** that Inga and Ship structured when **CCI was unable to make the required deposit**, involved AT&T's refusal to transfer service away from the plans, leaving them unable to meet service commitments. As to the first, there is no question of AT&T's right pursuant to tariff to act; **as to the second**, **tariff transmittal 8179 addresses that issue** to make explicit AT&T's implicit rights under the Tariff. Accordingly, **the proceeding in the FCC will resolve that issue**, the **only issue of meaningful controversy** open in **these** transactions.

Page 21-22 continued

By Plaintiff's own admission, **the FCC's Tariff Bureau is empowered** to examine "whether the Tariff Provisions being added or amended are just and reasonable, an unduly discriminatory; and/or whether the Tariff language is clear and unambiguous." (Plf. Supp. Brf.at 27.) That conceded authority creates the threat of any inconsistent judgments between this Court and the FCC on this same issue. For plaintiff to argue otherwise simply ignores the facts. Plaintiffs’ further argument that transmittal No. 8179 is “irrelevant” because, according to plaintiffs, the Tariff modifications have no retrospective effect utterly misreads the nature of the preceding at the FCC. Tariff Transmittal 8179 merely makes explicit what has been AT&T's implicit right under tariff to refuse to implement transfers whose ulterior purpose was to prevent AT&T from collecting on tariffed short-fall and termination obligations. Although tariff transmittal No. 8179 does propose that additional language be added to AT&T FCC Tariffs Nos. 1 and 2, AT&T is clearly seeking to clarify, not modify, the existing rights and liabilities under the tariff. Even if the FCC somehow deems the tariff transmittal to constitute a modification of AT&T existing tariffs, [Footnote 16] **the agency nevertheless has the clear power to make modifications retroactive.**

**AT&T conceded the FCC denied Tr8179 and thus AT&T withdrew it on June 2, 1995. Case over.**

Page 22 Footnote 16:

“Although AT&T does not intend for this transmittal to modify any existing tariffs, rights and obligations, AT&T satisfies the substantial cause test required for modifying tariff language. AT&T made precisely this argument to the FCC tariff transmittal No. 8179. See Meade letter of February 16, 1995. The Meade letter is attached as exhibit B to certification of Richard R. Meade filed in this matter on March 7, 1995**.)[[1]](#footnote-1)**

AT&T’s above reference to satisfying the substantial cause test was based upon additional defenses it argued under Tr8179. Besides Tr8179 defense (1) force a conceded traffic only transfer be deemed a plan transfer to force the revenue and time commitments to transfer. AT&T included also included 2 additional defenses (2) fraudulent use section 2.2.4 and (3) the “all obligations” language under 2.1.8 under the misrepresentation that all service was transferred. The FCC denied all AT&T’s defenses.

AT&T Corp NJ Edward Barillari, Sidley Chicago: Charles W. Douglas, Pitney Harden (Now Day Pitney) Fred Whitmer

**March 1995**: Statement of Facts Page 4:

AT&T’s counsels confirm revenue and term commitments remain unless the PLAN is transferred. The lunacy with the below statement is that petitioners would have SUBSTANTIALLY more money to pay any shortfall to AT&T if the traffic was transferred.

Plaintive Winback & Conserve, one of many Inga companies engaged in resale, attempted to transfer 8 CSTPII plans to plaintiff Combined Companies, Inc.(CCI). Simultaneously with that transaction, CCI try to transfer the overwhelming preponderance of end-user locations on those plans to Plaintiff Public Service Enterprises, Inc. ("PSE"). Plaintiffs admit that these transactions were structured so that PSE would not accept the **plans.** (Old. Supp.Brf. at 4.) The net effect of these maneuvers was to divorce the service, which produces the revenue stream to satisfy the revenue commitments Winback made, from the party liable for the failure to achieve those commitments. AT&T recognized that Winback's and CCI's simultaneous transactions **isolated the liability for shortfall and termination charges in CCI**, a newly-formed company with neither assets nor and establish credit history, while at the same time depriving CCI of the revenue stream **to satisfy the commitments** for which **CCI was now responsible**.

AT&T Corp NJ Edward Barillari, Sidley Chicago: Charles W. Douglas, Pitney Harden (Now Day Pitney) Fred Whitmer

March 1995: Statement of Facts Page 5-6:

Frustrated and carrying out their scheme, Inga and CCI concocted yet another plan to transfer all of the service **(with isolated exemptions)** to PSE. The transparent purpose of this transaction was to attempt to **avoid satisfying the tariffs obligation to post a security deposit** as a result of CCI’s demonstrated lack of credit history. AT&T recognize this effort to leave shortfall and termination liability for the right CSTP-II plans in an entity stripped of the revenue stream to satisfy those commitments. AT&T again declined to carry out this transaction as proposed by Inga and CCI.

Above AT&T’s counsels details the January 30, 1995 Inga to PSE direct transfer that did not require a “NEW CUSTOMER” Security Deposit as AT&T had requested of CCI. AT&T claims it denied the Inga to PSE direct traffic only transfer; however, provided no evidence of a denial.  The only correspondence from AT&T was the February 6, 1995 Fraudulent Use warning letter from AT&T counsel Fred Whitmer. After the plans were transferred on May 19, 1995 by District Court Order the same Fred Whitmer on November 28, 1995 represented to the NJFDC Judge Politan, that his 2.6.95 letter was a fraudulent use warning letter and it was in reference to the January 13, 1995 CCI to PSE traffic only transfer, not the January 30, 1995 Inga to PSE traffic only transfer. AT&T counsel Richard Brown represented to the FCC in September 2016 that the Whitmer 2.6.95 letter was a denial of the Inga to PSE transfer and it was due to PSE refusing to assume the revenue and term commitments. Mr Brown signed the Certificate of Service on the November 28, 1995 in which Whitmer explicitly stated that letter was in reference to CCI-to PSE and was a fraudulent use warning letter. Given the fact that section 2.1.8 (c) requires AT&T to provide a written denial within 15 days and AT&T counsel Whitmer is not only claiming that his February 6, 1995 letter was (A) only a fraudulent use warning letter and (B) in reference to the CCI to PSE traffic only transfer the FCC has no disputed facts before it and can find the Inga to PSE traffic only transfer should have been processed. Petitioners have already provided the FCC with statement from NJFDC Judge Politan that both the CCI to PSE and the Inga to PSE traffic only transfers are within the complaint.

AT&T counsel Whitmer acknowledged the Inga to PSE traffic only transfer was done “with isolated exemptions” of locations left with the non-transferred plans. This of course was done to maintain the transaction as a traffic only transfer so the revenue and term liabilities remain with the non-transferred plans.  AT&T counsel explained at Oral argument that “the shortfall and termination liabilities remain with Winback & Conserve” when the home lead accounts locations stay with the non-transferred plan.

---AT&T 3/21/1995 cross examination of Mr. Inga:

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **“lead account**” ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn’t that correct?**

Inga: Yes

AT&T Corp NJ Edward Barillari, Sidley Chicago: Charles W. Douglas Pitney Harden (Now Day Pitney) Fred Whitmer

Page 10

“It is no answer to this risk to say that these plans **may be discontinued without liability.** To discontinue a **pre June 1994** plan without liability a reseller **must make an equal or greater Revenue commitment** to AT&T for a new plan, thereby postponing liability for shortfall and termination; those promises thus **do not extinguish the liability**, they merely put off the day of reckoning.”

The reality is when a discontinuance is done the **revenue liability is extinguished.** Annual revenue commitments go down as AT&T’s obtains a longer-term commitment from its customers, no matter how much revenue is on the plan. Even when there is ZERO REVENUE on a plan the REVENUE COMMITMENT goes down each month when restructuring. So, if plaintiffs had a 3-year commitment for **$6 million** per year and restructured with 25 months left the math works as follows: There is 2 years + 1-month revenue commitment remaining ($12 million for the 2 years plus 1 month from the 1st year $500,000= $12,500,00 revenue remaining. The resulting 3-year restructured revenue commitment would simply be $12,500,00 divided by 3 years = **$4,166,666 per year.**

The annual revenue commitment goes down no matter how much revenue was generated within the first 11 months prior to restructuring the contract. The reseller could restructure the commitment to avoid shortfalls but was forced to extend the time commitment to AT&T.  Remember shortfall charges are charges for service that are not even rendered by AT&T. AT&T preferred not to charge for services not rendered in order to extend the term commitment to AT&T. AT&T counsel is absolutely wrong and that is why NJFDC Judge Politan whose background was in banking understood that revenue commitments on pre-June 17, 1994 plans were illusionary.

1. Judge Politan: “Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. Theonly “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T’s demand for fifteen million dollars’ security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)
2. Judge Politan: **“**Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T’s own tariff.” May 1995 NJFDC Decision pg. 11
3. Judge Politan: “In answer to the court’s questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T.” May 1995 NJFDC Decision pg. 2
4. The Court finds **nothing** in the Tariff F.C.C. No. 2 which prevents fractionalization, and contemplates a like finding by the F.C.C. Cleary, therefore, plaintiffs have established a strong likelihood of success on the merits. March 1996 Judge Politan Decision Page 16 para 1.

The key passages above are from AT&T’s March 1995 brief where NJFDC Judge Politan’s May 19, 1995 Decision determined **AT&T’s position that the outcome of Tr8179 will decide the case**. The FCC 2003 Order quotes Judge Politan’s May 1995 Order regarding AT&T’s concession that the outcome of Tr8179 will resolve the issue. Judges Bassler or Judge Wigenton **were not shown these passages**.

The following exhibit provides additional evidence that it was AT&T’s 1995 position to the NJFDC that **the transaction was a traffic only transfer not a plan transfer** and as per 2.1.8 the revenue and term commitments do not transfer. **See here as EXHIBIT H\_** March 1995 AT&T's concessions.

Also see **EXHIBIT K.** Petitioners Declaratory Ruling Request to\_FCC\_7.15.96 that addresses Tr8179.

**The FCC Denied AT&T’s Ability to Subjective Deem the Tr8179 Conceded Traffic Only Transfer was a Plan Transfer, but AT&T Counsel Carpenter Misrepresented to DC Circuit it was a Plan Transfer**

David Carpenters position to the DCC Circuit was made after Tr8179 was already conceded by AT&T as FCC defeated/AT&T’s withdrawn on June 2, 1995. Carpenter is claiming to DC that AT&T deems the transaction is PLAN TRANSER says that’s AT&T’s only defense.

AT&T’s only defense as per the 2.1.8 traffic only transfer was putting into effect AT&T’s Tr8179 assertion that it was implicit to subjectively determine it was a PLAN transfer. The 2006+ AT&T counsels misrepresented that in 1995 it didn’t make a difference if it was a traffic only transfer or a plan transfer ---“all obligations (revenue and term commitments must transfer.”

If that was the case, it would not have been critical for David Carpenter to misrepresent to the DC Circuit that the AT&T Tr8179 conceded substantial traffic only transfer was a PLAN transfer. If it didn’t make a difference whether it was a traffic only or plan transfer AT&T counsel David Carpenter would not have needed to stress that it was a plan transfer if plan obligations transfer anyway.

DC Circuit Oral Argument: Page 17 line 1

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

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

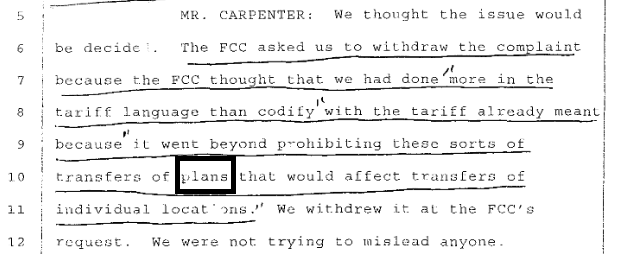
When AT&T filed Tr8179 on February 16, 1995 it conceded the CCI-PSE and Inga -PSE transactions were **traffic only** transfers, not plan transfers. The whole point of Tr8179 was to subjectively allow AT&T to deem a traffic only transfer was a plan transfer to force the revenue and term commitments to transfer.

David Carpenter himself conceded to the Third Circuit that the FCC denied AT&T’s Tr8179 implicit argument to deem it was a plan transfer

Third Circuit (Oral Pg. 43) the FCC Rejected Tr8179:

AT&T counsel Carpenter: We thought the issue would be decided. The FCC asked us to withdraw the complaint because the FCC thought we had done **more** in the tariff language **than codify** what the tariff already meant because it went beyond prohibiting these sorts of transfers of **plans** that would affect transfers of individual locations. **We withdrew it at the FCC’s request.**

**Third Circuit (Oral Pg. 43) the FCC Rejected Tr8179:**

****

If AT&T did not withdraw Tr8179 the FCC would have simply rejected it. To order to delay the legal process AT&T withdrew Tr8179 and replaced it with Tr9229 and knew in late February 1995 that Tr9229 would only be prospective.

David Carpenter after advising the Third Circuit that AT&T’s implicit argument under Tr8179 was FCC denied, and the Third Circuit Order stated Tr8179 was denied, David Carpenter acted as if the FCC Denial of Tr8179 and AT&T’s June 2, 1995 withdrawal and concession to NJFDC Politan that the outcome of Tr8179 would determine the issue **ALL MEANT NOTHING!!!**

Carpenter asserted to DC Circuit he couldn’t “concede away the only issue in this case.” The only issue was one Carpenter conceded was FCC denied as it did not “codify” what AT&T claimed was IMPLICIT under its tariff.

David Carpenter was stressing it was a **plan** transfer and **as a PLAN transfer** “they weren't transferring the obligations.” AT&T’s 2006 + counsels claimed the obligations transfer anyway –traffic only or plan transfer. AT&T’s position to the Commission and DC Circuit changed after the DC Circuit Decision. Arguing for the first time that revenue and term commitments transfer on either a traffic only or a plan transfer. At least the 1995 Meade “all obligations” assertion was based upon “close enough” to a plan transfer logic.

AT&T’s 1996 FCC Comments page 11 were also critical misrepresentation that the transaction was a PLAN TRANFER.  In 1995 AT&T’s Tr8179 substantial cause pleading conceded that the transaction was a traffic only transfer. AT&T’s IMPLICIT argument was it needed to deem the traffic only transfer was a PLAN transfer to force the revenue and term commitments to transfer. The FCC denied that nonsense and AT&T withdrew that “IMPLICIT” nonsense.

Having already conceded to the FCC the transaction was a traffic only transfer AT&T in 1996 simply misrepresented the facts and based upon its misrepresentation of the facts the transfer violated 2.1.8 AS A PLAN TRANSFER:

AT&T’s FCC 1996 Brief Page 11:

"Yet CCI explicitly amended the transfer of services form to read “Traffic Only."  By expressly declaring that it did not intend to effectuate a transfer of all obligations **under the plans** to PSE and by PSE expressly noting and its transmittal letter that "[t]his order is solely to move the locations associated with these plans" and not intended to in any way discontinue **the plans**" thereby declining to assume all obligations of the former customer at the time of transfer, the proposed transfer, on its face violated the terms of section 2.1.8. "

DC Oral argument shows page 17 and 38 David Carpenter is misrepresenting the transfer was a PLAN Transfer. That misrepresentation of the facts then led to the DC Circuit Court quote of AT&T in deciding whether 2.1.8 allowed traffic only transfers or only plan transfers. AT&T’s position to the FCC was that if it was a plan transfer it would violate 2.1.8. That goes without saying as petitioners agreed with AT&T that **IF** it were a plan transfer then the revenue and term commitments must transfer**.[[2]](#footnote-2)**

“**In this case** the relevant WATS services are the CSTPII **plans** not traffic only. **(**DC Circuit page 7-8)

“There, AT&T noted in passing that “**in this case** the relevant WATS services are **the CSTP II Plans.**”....[Section 2.1.8], by its terms, **allows a transfer of CCI’s service** to PSE only if PSE agreed to assume **all obligations under those plans.** *Yet CCI explicitly amended the transfer* *of services form to read “Traffic Only.”* By expressly declaring that it did not intend to effectuate a transfer of all obligations under the **plans** to PSE . . . *the proposed transfer, on its face, violated the terms of Section 2.1.8.***”**

AT&T’s misrepresentation of the ALREADY CONCEDED FACTS was the cause of the issue in the DC Circuit.  Despite Tr8179 having already been FCC denied and AT&T withdrawn AT&T invoked Tr8179 BY SUBJECTIVELY DEEMING that the transaction was a PLAN Transfer.

It an ethics issue as an intentional misrepresentation of the facts. AT&T’s counsel Whitmer stressed in 1995 that as long as the home lead account remained it was a traffic only transfer and obligations stayed with CCI:

---AT&T 3/21/1995 cross examination of Mr. Inga:

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **“lead account**” ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn’t that correct?**

Inga: Yes

The 1996 counsels and David Carpenter in DC intentionally misrepresented the transaction was a plan transfer when AT&T had already conceded under TR8179 that it was a traffic only transfer.

Third Circuit representation: April 25, 1996

Pitney: Frederick L. Whitmer, Richard H. Brown,

Sidley: David W. Carpenter, D. Cameron Findlay

AT&T Corp: Edward R. Barillari

**See here as EXHIBIT D** pages 17 and 33 of AT&T’s assertions to the Third Circuit:

AT&T to Third Circuit page 17:

“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 & n13. CCI then, incongruously, seeks to defend the District Court by citing “record evidence” that addressed transfers **individual end user locations (not entire plan 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 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 to Third Circuit page 33:

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 CSTPII 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 the end users directly to AT&T**, but also for the 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 2nd Supp. Cert para 5 (AA1261). Moreover, plaintiffs' proposed transfer would greatly increase the probability that plaintiffs would in fact become responsible for shortfall charges.

The above passages clearly assert AT&T’s position was in agreement with petitioners regarding revenue and term commitments must stay with the non-transferred plans on a traffic only transfer. It also agreed that shortfall charges can only be paid by plaintiffs. Post DC Circuit AT&T changed its assertion claiming that revenue and term commitments transfer on both traffic only transfers and plan transfers, whereas up through the DC Circuit AT&T’s position was the plan must transfer for the revenue and term commitments to transfer.

**Sample See here EXHIBIT E** AT&T Counsel Richard Brown 5.22.06 Brief to NJFDC. Richard H. Brown **unless otherwise denied wants the FCC to treat his NJFDC comments as if they were represented to the FCC.**

Richard H. Brown was one of the authors of AT&T’s 1996 Third Circuit Brief and after AT&T lost the DC Circuit Decision created the brand-new defense: it doesn’t matter how much traffic is transferred 2.1.8 mandates all obligations must transfer on a traffic only transfer and PSE refused to assume revenue and term commitments. In 1996 AT&T counsel was advising the Third Circuit PSE was not obligated to assume revenue and term commitments unless the plan was transferred.

In 2016 AT&T also changed its position as to the infliction of shortfall charges. In 1996 AT&T claimed shortfall “can only be paid by plaintiffs” -----then in 2016 facing illegal billing remedy AT&T counsels claimed it had “powerful inducement” capability to charge the end users.

AT&T Sept 1, 2016 FCC comments pg. 26 (AT&T counsels: James F. Bendernagel, Jr., Christi Shewman, Joseph R. Guerra, Gary L. Phillips, **Richard Brown**)

Because enforceable volume commitments were an essential *quid pro quo* for the discounts that resellers obtained (as the D.C. Circuit recognized) and used to attract their end-user customers, **billing shortfall charges to end-users** served as a **powerful inducement** for resellers like Petitioners to comply with their obligations.

AT&T agreed with petitioners and confirmed revenue and time commitments do not transfer on a traffic only transfer; however, the Third Circuit misrepresented that **ALL Accounts** were transferred. The con was to **misrepresent the facts of the case** as opposed to arguing over the tariff interpretation.

There was no controversy in 1995 between AT&T and plaintiffs regarding which obligations transfer depending upon whether a traffic only or a plan transfer was ordered. The only issue was due to the size of the transfer (Tr8179) and that AT&T conceded was FCC denied. The tariff required the same allocation of obligations no matter whether 1 location was transferred versus 10,000 locations. It’s not “close enough” horseshoe game. It’s either you’re pregnant or you’re not pregnant:

<https://www.urbandictionary.com/define.php?term=you%20can%27t%20be%20just%20a%20little%20bit%20pregnant>

**AT&T Counsels November 28, 1995 Misrepresentations to the NJFDC**

**See AT&T’s 11.28.95 Brief EXHIBIT M**

You must remember when reading this that the date of the brief to the NJFDC is **NOVEMBER 28, 1995.**  AT&T has already had Tr8179 FCC denied and AT&T’s withdrawn on **June 2, 1995.**  As of **October 26, 1995**, AT&T has already filed Tr9229. The Meade certification on the same date 11.28.95 conceded that the FCC denied Tr8179 and Tr9229 was prospective. Thus, Tr9229 could not prohibit the traffic only transfers of (A) CCI to PSE on January 13, 1995, (B) Inga Companies to PSE January 30, 1995 and (C) 800 Services, Inc., to PSE on April 26, 1995.

The FOIA notes show RL. Smith suggesting security deposits against potential shortfall to be effective March 1995. The FOIA notes were not obtained until December 1995 so AT&T believed in November 1995 that it could get away with the fraud that AT&T didn’t know back in MARCH 1995 that Tr8179 was dead and Tr9229 was going to be prospective.

If the FOIA Notes were disclosed to AT&T in November 1995 AT&T would not have attempted the following fraud on NJFDC Judge Politan.

Despite the FOIA notes not disclosed in November 1995 AT&T counsels below are referencing the Richard Meade brief in which he is conceded Tr8179 was dead and Tr9229 is prospective. Yet AT&T’s November 28, 1995 brief claims nothing has changed at the FCC. The following counsels are advising NJFDC Judge Politan that nothing has been determined at the FCC:

**INTENTIONAL FRAUD….ON NJFDC JUDGE POLITAN……**

AT&T Corp NJ Edward Barillari, Sidley Chicago: Charles W. Douglas, Pitney Harden (Now Day Pitney) Fred Whitmer, Richard H. Brown III signed the Certificate of Service

November 28, 1995 page 3:

As the court noted in its May 19, 1995 opinion (“Opinion”), the legal issue at the heart of this dispute is “whether a plan and its attendant obligations under a tariff may be separated from its traffic” (Opinion at 15).  The court then recognized that the question of what amount of fractionalizing, if any, of plans’ the relevant tariff provisions allow is not within the conventional experience of trial courts, but is “inherently within the realm of the communications act and its regulatory mechanisms” ( Id at 16.)  **That was true then and is true now**. The court acknowledged that the FCC, not a district court, has the expertise and experience required to construe and harmonized tariff provisions.  **That too remains true.** That correct assessment undermines a grant of preliminary injunctive relief.

AT&T Corp NJ Edward Barillari, Sidley Chicago: Charles W. Douglas, Pitney Harden (Now Day Pitney) Fred Whitmer, Richard H. Brown III signed the Certificate of Service

Below AT&T explicitly details tariffed obligations must stay with CCI and do not transfer on the AT&T TR8179 conceded traffic only transfer. This passage was quoted by NJFDC Judge Politan in his March 1995 Order:

November 28, 1995 page 5:

The harm resulting from an order for AT&T to execute the CCI-PSE transfer is two-fold. First a transfer of substantially all of the locations on the plans would have the result of increasing the potential shortfall to AT&T. Second the possibility that CCI will be unable to satisfy its **tariff obligations** because it is transferring its principal assets the end user accounts to PSE would leave CCI with no apparent revenue stream to meet its existing commitments and no apparent assets from which to satisfy potential shortfall liability. **These charges are all tariff obligations, for which CCI, not PSE (which would have the revenue stream to satisfy such charges, would be obligated.**

NJFDC Judge Politan March 1996 Decision page 17 fn 7 referenced AT&T’s position that revenue and term commitments do not transfer—

“Indeed, **AT&T's own counsel** focused the issue by indicating that the **tariffed** obligations “involved herein” are all tariffed obligations, for which **“CCI, not PSE”** would be obligated.

This is why AT&T after being FCC denied Tr8179 then prospectively enacted Tr9229 security deposits. All AT&T defenses were dead. The 3 defenses under Tr8179 were denied and Tr9229 was prospective.

AT&T Corp NJ Edward Barillari, Sidley Chicago: Charles W. Douglas, Pitney Harden (Now Day Pitney) Fred Whitmer, Richard H. Brown III signed the Certificate of Service

November 28, 1995 page 8-9:

CCI's proposed transfer of almost all of the locations on the CSTP-II plans ("Plans") PSE would have transferred most if not all of CCI's assets (i.e. the revenue stream from the traffic) to PSE without a concomitant transfer of the obligation to pay shortfall charges. (MEADE 2nd supplemental certification at paragraph 6.)  AT&T refused to execute the transfer of locations on the plans from CCI to PSE because AT&T believed that the second transfer was part of a scheme by Alfonse Inga to prevent AT&T from collecting potential shortfall charges under the Plans. (See Meade second supplemental certification at paragraph 4. Alfonse Inga has already represented that he desired to leave AT&T with a substantial financial loss and no remedy. (See certifications of Joseph Fitzpatrick and Thomas Umholtz at paragraph 4 and 4 respectively filed **March 7th 1995**) AT&T is concerned about the apparently fraudulent purpose of the Inga companies two-step transaction was memorialized in a letter from AT&T Counsel to counsel for the Inga companies whose traffic PSE was to receive **indirectly.**

We have reason to believe that **Mr Inga is attempting to transfer** end users from existing plans that have over $50 million on commitments. **Mr Inga’s efforts to transfer these end users and leave the plans intact with their commitments**, but without the ability to **satisfy those commitments**, appears to us to be an attempt to defraud AT&T by obtaining the benefits of a transfer of service and at the same time **deprive AT&T of the commitments** made to obtain that service. AT&T will not tolerate that conduct.

AT&T’s 1995 Counsels position is quite different than AT&T’s FCC September 2016 comments regarding the 2.6.95 Fred Whitmer letter. Richard Brown signed the Certificate of Service on this 11.28.95 brief. Richard Brown’s 2016 FCC Comments version of the 2.6.95 Fred Whitmer letter is completely different than the 3 AT&T 1995 counsels.

AT&T’s 2016 counsels claimed it was a denial of the Inga Companies to PSE transfer based upon PSE not assuming any plan commitments. They are saying it was about the CCI to PSE transfer and it was about fraudulent use not PSE refusing to assume the Inga Companies commitments.

AT&T counsels asserted to the FCC in September 2016 that the February 6, 1995 letter from Fred Whitmer to Inga Companies counsel Charles Helein was AT&T’s denial of the Inga to PSE January 30, 1995 traffic only transfer. Richard Brown misrepresented the Fred Whitmer letter was a denial based upon PSE refusing to assume the revenue and term commitments of the Inga Companies.

As of this November 28, 1995 date the plans have now been transferred as per the May 19, 1995 NJFDC Order. Fred Whitmer is now claiming on November 28, 1995 that his 2.6.95 letter was in reference to the CCI-PSE traffic only transfer.

Why would Whitmer call the Inga Companies attorney about the CCI to PSE traffic only transfer when CCI had counsel. AT&T claimed to the DC Circuit that AT&T denied the CCI-PSE transfer within 15 days as per 2.1.8 (c).

When AT&T was caught in a lie it said it made a mistake that a January 23, 1995 letter was the 15-day denial—but that wasn’t a denial at all. On November 28, 1995 Fred Whitmer is claiming his February 6, 1995 letter was in reference to the CCI -PSE traffic only transfer.

If that is the case, his February 6, 1995 letter was sent to the wrong attorney and was not sent within 15 days as the cutoff for the 15 days was January 28, 1995 –15 days after the January 13, 1995 CCI-PSE traffic only transfer.

Based upon Fred Whitmer’s November 28, 1995 assertion to the NJFDC position that his letter was in reference to CCI-PSE transfer ---that also means AT&T never denied within 15 days the Inga to PSE traffic only transfer at all.

Whitmer also decided to leave out of his November 28, 1995 NJFDC brief the remaining part of his February 6, 1995 letter as it conceded the letter was about Inga to PSE traffic only transfer not “indirectly” Inga’s traffic in the CCI to PSE traffic only transfer.

“AT&T **will seek** to enforce its rights **in the event shortfall and termination charges become due under the tariff** and will hold Mr. Inga personally liable **for his conduct** intended to deprive AT&T of its **tariffed charges**. **If** this strategy is intended by Mr. Inga to culminate in the bankruptcy of his affiliated companies, AT&T intends to object to these transfers as fraudulent under Section 523(a) (2) of the Bankruptcy Code and to pursue any available rights AT&T has.  Please **bring these matters to your client’s attention immediately and advise me of his response.”**

Obviously, Freddy Whitmer’s 2.6.95 letter was referring to the Inga to PSE January 30, 1995 transfer as he is referring to Inga’s conduct.  Inga’s conduct would impact the Inga to PSE traffic only transfer, as Inga’s conduct could not affect the CCI to PSE traffic only transfer. The 3 AT&T counsel authors of this brief as of 11.28.95 were simply scamming Judge Politan that the Whitmer 2.6.95 fraudulent use warning letter was **“INDIRECTLY”** about CCI-PSE transfer---as the CCI to PSE traffic only transfer was the first transaction AT&T had to defend before it defended the Inga to PSE traffic only transfer.

AT&T Corp NJ Edward Barillari, Sidley Chicago: Charles W. Douglas, Pitney Harden (Now Day Pitney) Fred Whitmer, Richard H. Brown III signed the Certificate of Service

What is also ridiculous is AT&T claiming as of **March 7th 1995** that bankruptcy comments ----which were never made -----would have an impact on AT&T as the plans were already transferred from Inga Companies to CCI on **December 16, 1994**.

How was Inga going out of business affecting plans owned by CCI ---where AT&T controlled the cash from end-users and paid the aggregators. Richard Brown is still making this fraudulent use claim as of November 28, 1995 when AT&T needed to temporarily suspend phone service on January 13, 1995 if it could show AT&T’s charges were being circumvented.

AT&T Corp NJ Edward Barillari, Sidley Chicago: Charles W. Douglas Pitney Harden (Now Day Pitney) Fred Whitmer, Richard H. Brown III signed the Certificate of Service

November 28, 1995 page 9-10:

CCI, a new company that had virtually no assets, would have assumed 54 million dollars in annual commitment without having any Revenue stream to enable it to pay shortfall charges to AT&T. That fact, combined with CCI's apparent role in Mr. Inga scheme lead AT&T to decline to carry out the transaction as proposed by CCI.

**AT&T’s January 23, 1996 Oral Argument Misrepresentations to NJFDC Judge Politan**

**AT&T Concedes “As a Matter of Law” it Can’t Prohibit the Traffic Transfers**

**See Oral Argument here as EXHIBIT I**

**January 23, 1996** NJFDC Oral Argument. AT&T counsels (Edward R. Barillari, Frederick Whitmer, **Richard H. Brown**)

Remember at this point AT&T has already filed as of **October 26, 1995** effective **November 9, 1995 TR9229** (security deposits against potential shortfall) and on November 28, 1995 AT&T counsel certification states that is NEW and will not be determinative as Meade advised it was prospective.

Yet AT&T counsel **3 months later** are still misrepresenting to NJFDC Judge Politan that Tr9229 is still **pending:**

PAGE 14 Line 10

The Court: When will it happen?

Whitmer: **If** the tariff submission that is before you which you describe as the explosion is in fact, put place, Your Honor, that will---by its being permitted to go into effect, in effect, your Honor is saying that AT&T’s position with respect to the transfer, that we refuse to give here, **was also correct**.

Freddie Whitmer already knows the Tr9299 is already prospectively in effect months prior and argues IF IT goes into effect it’s a WIN for AT&T!!!  **EVEN WHEN WE LOSE WE WIN!!! LOL!!!**

Page 16 page Line 13: AT&T counsel Freddie Whitmer at this point still has not disclosed to NJFDC Judge Politan that Tr9229 is already in effect PROSPECTIVELY and **by law** Tr9229 could not be used to prohibit any traffic only transfers. Below Witmer is incredibly trying to set Judge Politan up for an argument that even though by law AT&T can’t prohibit the transfers AT&T still wins!

AT&T’s Whitmer: **“If** the Commission permits AT&T to go forward with this tariff submission, **as I think they will**, that in and of itself means that the practices that are set forth in the expanded---in the expanded submission are reasonable practices or lawful practices, as the Commission has worked with them and has permitted them to go into effect. That means, your Honor—I think by analogy perhaps more so than-- **than absolutely as a matter of law**---but I think the Court can take from that reaction of the Communication Commission to the new submission that AT&T was appropriate ---was acting appropriately under the Communications Act when it refused to recognize the fractionalized transfer.”

Page 20 Line 1

Whitmer: **It is pending, as I understand**

The Court: Pending. I have 324 cases pending here., Some are ripe and will be determined very promptly, like the jury trial I’m doing today. Others may not be reached for another year and half or two years. Where does this end? I recognize you have been tabbed as the expert in this area. We’ll get to you. (Remark addressed to Inga Counsel Charles Helein)

Whitmer: The answer to your question **I don’t think can be given with the kind of precision that you want.**

Wait to you read the rest of Freddie Whitmer’s scam job on Politan. Later in the oral argument after continued pressure from Politan…

(PAGE 28 -29) Line 25 **---(Below Whitmer is referring to the MEADE November 28, 1995 certification. Remember this January 23, 1996!**

WHITMER: **If you look at paragraph 15**

THE COURT” Paragraph 15?

Whitmer: You can look at everything obviously

THE COURT: You say look at paragraph 15. “On October 26, 1995, AT&T Corp. filed Tariff Transmittal No 9229 with the FCC. Transmittal No 9229 addresses the problem implicated in the CCI-PSE transfer---the segregation of assets (locations) from liabilities  (plan commitments) ---in the following manner…LONG PARAGRAPH HERE ……That’s it?

WHITMER: **Yes sir** ….

Freddie Whitmer finally gave up the **“TR 9229 is PENDING**” fraud.  Whitmer finally Whitmer pointed NJFDC Judge Politan to para 15 of the November 28, 1995 Meade certification. Whitmer **confirmed his knowledge that TR9229 is already in effect** on a prospective basis MONTHS EARLIER.

Politan later states that he had already circled that paragraph. Politan knew Freddie was scamming him and Politan was screwing around with Freddie Whitmer to see if Freddie would finally tell the truth and stop scamming his Court.

AT&T ‘s November 1, 1995 letter to Politan claimed the outcome of Tr9229 would resolve the issue after AT&T had told Politan the outcome of Tr8179 would resolve the issue. According to these AT&T counsels it doesn’t matter what the FCC says. AT&T is always right!!!

**See EXHIBIT C\_ CCI's Counsel \_11.30.95 Brf to NJFDC Addressing Tr8179 and the Meade 11.28.95 certification to the NJFDC.**

NJFDC Judge Politan March 1996 Decision Page 4-5

“For the purposes of the instant determination, it is uncontested that AT&T **withdrew** Transmittal 8179 on **June 2, 1995.** As such, the FCC ruling which the Opinion anticipated (**premised on the then-existing facts**) could not issue. However, in August of 1995, AT&T represented to the Court that it had withdrawn Transmittal 8179 **at the behest of the FCC**, and was in the process of revising the transmittal in preparation for its resubmission. In its August 28, 1995 letter to the Court AT&T stated:

“AT&T has since **revised** the Transmittal language that **would clarify existing rights and obligations** when a customer desirers to transfer a large portion of traffic of term plans available under Tariff No 2…..AT&T has also planned to include other proposed tariff revisions in this new **(and yet unnumbered**) Transmittal.”

In response, on **November 1, 1995,** AT&T denied plaintiff’s allegations stating that no deliberate delay had been orchestrated by AT&T, and that such allegations were now moot since AT&T had filed Transmittal **No 9229 on October 26, 1995.** Additionally, AT&T contested plaintiffs’ allegation that any tariff transmittal determined by the FCC could only have **prospective effect** --- contending that the tariffs in question had never permitted fractionalization of plans and service and that **the outcome of the Tariff Transmittal No. 9229 would establish that conclusion without question.**

AT&T’s counsel on November 1, 1995 asserted that the “**the outcome of the Tariff Transmittal No. 9229 would establish that conclusion without question**,” but knew back in March 1995 that the FCC advised Tr9229 would be prospective. When AT&T wrote its November 1, 1995 letter to NJFDC Judge Politan it knew that it had just PROSPECTIVELY filed Tr9229 a week earlier on October 26, 1995 and knew it was prospective, yet AT&T was still scamming Judge Politan on November 1, 1995. AT&T continued the scam on NJFDC Judge Politan at Oral Argument on January 23, 1996 but by that time Judge Politan had understood AT&T played him for a fool for many months and issued the injunction.

AT&T’s 11.1.95 letter concedes the remaining hope is Tr9229 (security deposits against potential shortfall). AT&T conceded the 3 other defenses under Tr8179 were all denied by the FCC and thus AT&T withdrew TR8179.

After AT&T loses all defenses under Tr8179 and Tr9229 is conclusive that revenue and time commitments do not transfer on a traffic only transfer as AT&T adds security deposits against potential shortfall and Tr9229 is prospective only……. AT&T changes from asserting “the outcome of the Tariff Transmittal No. TR9229 would establish that conclusion without question” to…. Tr9229 only matters if AT&T wins but if it loses then just ignore it…..

AT&T’s 3.21.16 brief to NJFDC Wigenton: page 34

Plaintiffs nevertheless base their contrary assumption on the fact that the Court was asking “about transferring obligations in reference to the CCI-PSE transfer.” Pls. Br. at 8. But Transmittal 9229 would have had prospective effect only, **and so would not have governed the CCI/PSE transfer at all**.

AT&T first represented to Judge Politan that Tr8179 would resolve the controversy. When the FCC denied Tr8179 AT&T replaced it with Tr9229. On November 1, 1995 represented to Judge Politan that the outcome of Tr9229 would resolve the issue. When AT&T lost that issue it did not want to disclose to Judge Wigenton that it had no defenses left, so AT&T simply chose to mislead her Court by not addressing the fact that it advised Judge Politan that the outcome of Tr9229 would resolve the traffic only transfer issue.

**AT&T’s DECEMBER 20, 2004 OPPOSITION TO MOTION OF INGA INTERVENORS FOR LEAVE TO FILE SUPPLEMENTAL PLEADINGS OUT OF TIME**

**See EXHIBIT L**

AT&T Counsels: AT&T NJ counsel: (Lawrence J Lafaro, Peter H Jacoby,) Sidley: (Chicago Illinois: David W. Carpenter) Sidley (Washington DC: James F Bendernagel Jr., C. John Buresh, Michael J. Hunseder)

The comical AT&T position to DC Circuit was PSE didn’t assume the revenue commitment, PSE only assumed the two obligations listed within 2.1.8. but AT&T also represented to the DC Circuit that the second obligations **was the revenue commitment**—so PSE did assume the revenue commitment. Why then did AT&T not process the transfer?

AT&T page 2:

The Inga intervenors primary argument is that AT&T purportedly misstated the terms of section 2.1.8 of the Tariff when AT&T Council stated at oral argument that the Tariff requires the assumption of **unexpired portions of volume commitments** that comprise the CSTP II **plans.**  However, this point was not raised for the first time at oral argument but was expressly made in a AT&T's briefs. See e.g. AT&T petitioner's brief page 18. Nor did AT&T here "misstate" the terms of the Tariff. The Tariff expressly conditions transfers of service on the new customers assumption of "all obligations of the former customer at the time of transfer" and the **unexpired portions of volume commitments** is such an obligation. That is why the FCC recognized that PSE's failure to assume the volume commitments would violate section 2.1.8 if the provisioned governed the transfers at issue and rested its decision on its belief that transfers of traffic are not governed by this provision of the Tariff.

Mr. Carpenter: “The tariff says you have to assume both the outstanding indebtedness and the un-expired part of the volume commitments.”  (Tr.11, line 22, emphasis added.)

“Our tariff says you have to assume the obligations for the indebtedness and the un-expired portion of the volume commitments.”  (Tr.13, line 3, emphasis added.)

There is no such language in 2.1.8 of unexpired portions of volume commitments. AT&T counsel knew it would have an issue in DC because revenue and term commitments are not enumerated within 2.1.8.  So, AT&T decided it needed to misrepresent that the second commitment: **“(2) the unexpired portion of any applicable minimum payment period(s**).” which is a time period commitment defined in the tariff as 1 day--**-was the revenue commitment.** AT&T’s obvious strategy was not to talk about the term commitment----because AT&T was trying to scam the DC Circuit into believing the second commitment was the revenue commitment and if it brought up the term commitment as an issue---AT&T didn’t have a way to shoehorn the TERM Commitment into 2.1.8!!! AT&T believed it could only get away with misrepresenting the revenue commitment was enumerated in 2.1.8.

AT&T also scams DC Circuit that the revenue commitment must transfer based upon the misrepresentation that the transaction is a **PLAN transfer**, in essence arguing the withdrawn Tr8179 nonsense –AT&T can deem its plan transfer. AT&T then misrepresents what the FCC Order stated. The FCC 2003 Order did not say anything about PSE failing to assume the revenue and time commitment if 2.1.8 applied. Just the opposite the FCC said the termination obligations were not an issue citing AT&T’s own brief that the plans and their commitments were not being terminated. The FCC 2003 Order explicitly agreed with the obligation allocation agreed upon by all parties before Judge Politan that stated that CCI would need to maintain the revenue commitment. AT&T’s attempt to again misrepresent the second obligation at oral argument and then in writing backfired as the DC Circuit Decision at FN 11 explicitly noted that the second obligation was not the revenue commitment and thus the revenue and term commitments were not enumerated within 2.1.8.

AT&T page 4:

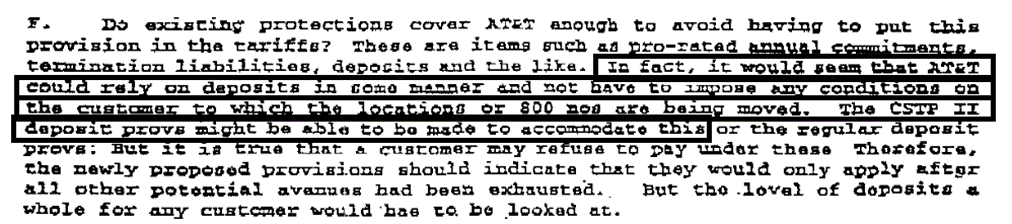
“Second the Inga intervenors made claims regarding the retroactive affect of a tariff transmittal number 8179 that was intended to do no more than codify existing requirements and that **was withdrawn** by AT&T before it took effect. These claims have **no conceivable relevance to any issue in this proceeding** and the **FCC expressly declined to address these arguments** in the order under review.”

No Relevance? AT&T is before the DC Circuit arguing it’s a plan transfer when AT&T has already conceded to the Third Circuit that the FCC denied all substantial cause defenses under Tr8179. AT&T had no right to assert the TR8179 defense that it could “deem a conceded traffic only transfer is a plan transfer” as that defense was already FCC denied and thus AT&T withdrawn. Tr8179 included all 3 AT&T defenses that were FCC denied and thus AT&T withdrawn.

The FCC Order did not “decline to address these arguments in the order under review,” as once AT&T withdrew its “deem it’s a plan defense” there was no longer a controversy for the FCC to interpret. AT&T’s counsels Meade and Carpenter had already conceded the FCC denied AT&T’s subjective ability to determine fraudulent use intent.

The FOIA Notes show that the FCC rejected Tr8179 because it gave AT&T the subjective capability to judge intent of its customers to avoid paying shortfall. The FCC’s Randolph Smith’s in February 1995 denied Tr8179 and suggested to AT&T to make the former customer that maintains the revenue and term commitment put up security deposits against potential shortfall and that prospectively became Tr9229 on October 26, 1995: **FCC’s R.L. Smith:**

**“rely on deposits in some manner and not have to impose any conditions on the customer to which the locations or 800 numbers are being moved.”**



AT&T Meade certification conceded Tr8179 was denied because of the subjective ability to determine INTENT:

All of these revisions were circulated among the many affected product management groups within AT&T for approval. The time between the **withdrawal of Transmittal No. 8179 in June** and the filing of transmittal No. 9229 in October was a result of AT&T's desire to solicit and respond to input from resellers and the FCC, and the need to obtain approval from the many different product management groups affected by the changes.

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

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

Tr9229 security deposits against potential shortfall was a mathematical formula that every customer would need to meet so AT&T could not subjectively choose which customer it would force the plan to transfer to force the revenue and term commitments to transfer. Under Tr9229 a substantial traffic only transfer could still be done. The former customer of the traffic that kept its plan and commitments had to put up a security deposit against potential shortfall. The deposit calculation compared the revenue that remained on the non-transferred plan with the tariffed customer of record revenue commitment that must stay with the non-transferred plan—and obviously does not transfer. The FCC required a non-biased mathematical formula as opposed to the subjective Tr8179 so called implicit defense that AT&T can subjectively deem a traffic only transfer is a plan transfer to force the plan commitments to transfer.

FCC 2003 Order page 11 addressing AT&T’s Tr8179 defenses withdrawn on June 2, 1995:

“After AT&T refused to permit petitioners to move the traffic, it filed Transmittal 8179 with the Commission in February 1995, which sought to amend Tariff No. 2.  The district court’s May 1995 primary jurisdiction referral to the Commission **was based, in part, upon AT&T’s contention that the Commission’s consideration of Transmittal No. 8179 would clarify whether CCI was entitled, under the tariff, to move the traffic without the plans to PSE.** (FOOTNOTE 73 BELOW) According to the record, however, AT&T ultimately **withdrew** Transmittal 8179 on **June 2, 1995.[[3]](#footnote-3)[**2]  Thus, Transmittal 8179 **never became effective**.”

FCC 2003 Order FN 73:

*“See First District Court Opinion* at 12, 16-17; *Second District Court Opinion* at 3-4, 13; *see also* Petition at 14-16 & n.7 (**quoting AT&T’s Brief filed in 1995** with the district court **(“Transmittal 8179 … make[s] explicit AT&T’s implicit rights under the tariff.  Accordingly, the proceeding in the FCC will resolve that issue ….”).**

AT&T page 5:

“Finally, the Inga intervenors make a series of arguments to the effect that the CCI to PSE transfer would not have adversely affected AT&T is ability to obtain payment for any services. Here too, the Inga intervenors claims are **irrelevant** for the FCC order did not address these issues but expressly assumed that the transfers would result in the fraudulent evasion of tariff charges.”

The above AT&T comments concede the commitments do not transfer. The claims are relevant because the FCC was arguing fraudulent use and AT&T must substantiate that there would be circumvention of charges as per 2.8.2[[4]](#footnote-4). The FCC did in fact did address in great depth that CCI would keep its commitments and AT&T’s only remedy was to temporarily and immediately suspend service. AT&T’s brief also provides a totally different connotation on what the FCC said about fraudulent use. AT&T’s connotation was the FCC assumed these were fraudulent transfers. That is an entirely different connotation than what the Commission actually said:

FCC 2003 Order page 8 para 11:

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

The FCC had to first **ASSUME** AT&T had the merits to rely upon fraudulent use in the first place. The FCC Order explicitly states: **“which we do not decide”** whether the defense can be used ----as that is a NJFDC judgement call—which has already been made as the injunction was ordered. AT&T counsels made it appear as if the FCC decided it was a fraudulent transaction.

AT&T page 5:

While Inga appears to **admit that PSE would have had no liability for shortfall charges under the proposed transfers of traffic without the plans the Inga intervenors assert that liabilities for outstanding indebtedness were transferred to PSE.** The Inga intervenors miss the point. **Under the FCC's interpretation of section 2.1.8 of AT&T tariff transfers of traffic alone are not governed by this tariff provision**, and thus are not subject to any preconditions. Accordingly transfers of traffic could be affected without the transferee’s assumption of *either* the outstanding indebtedness or the shortfall liabilities.

Above AT&T admits petitioners adhered to the terms and conditions of section 2.1.8. AT&T then tried to distract the DC Circuit from that admission by focusing on the FCC’s 2003 position that 2.1.8 didn’t allow traffic only transfers.

However, the FCC January 12, 2007 Order **now agrees** that in addition to 3.3.1Q Bullet 4 ( Delete and ADD)-----the FCC erred in not also recognizing that 2.1.8, **also allows traffic only transfers** -----and AT&T’s counsels (Meade, Whitmer, Barillari, Richard Brown, pointed out to the Third Circuit, and Carpenter to the Third Circuit and DC Circuit) and Inga’s, CCI’s, PSE’s, 800 Services, Inc.,  and the FCC’s position in 1995 under TR8179 and Tr9229 and in FCC 2003 Order ALL agreed revenue and time commitments do not transfer to PSE on the traffic only transfer only when a plan transfers do all commitments transfer there is no controversy left.

The above AT&T passage concedes that PSE would not have liability for shortfall charges agreeing the two obligations listed within 2.1.8 were assumed. It was also AT&T’s position before the DC Circuit that the second obligation (minimum payment period) was the revenue commitment. Thus, under AT&T’s misrepresentation that the second obligation was the revenue commitment ---that would mean PSE assumed the revenue commitment!!!

AT&T misrepresented the FCC 2003 Order said the traffic only transfer can be done with or without indebtedness. Of course, AT&T makes no reference to the FCC 2003 Order where the FCC made such a statement as the 2003 Order made no such statement. Also, the FCC did not say that 2.1.8 didn’t apply at all to the CCI-PSE transfer. The FCC agreed with the obligation allocation under 2.1.8 that was a non-controversy between the parties before NJFDC Judge Politan. The FCC 2003 Order explicitly references the District Court decision and also agreed with the parties. There was no issue as to which obligations transferred the only issue was based upon the size of the transfer. Nor was it relevant as the Inga Post Oral Argument brief explicitly advised the DC Circuit page 6 para 8:

“For example, the intended transferee of Intervenors accounts, PSE, in fact assumed the obligation for past indebtedness and the un-expired portion of any applicable minimum payment periods.”

AT&T’s position before the DC Circuit was the same as Inga Companies and the FCC that revenue and time commitments do not transfer on a traffic only transfer only on a plan transfer.

---AT&T reply brief to DC Circuit pg 9:

“Section 2.1.8 “addresses” the transfer of end-user traffic ***without*** the associated liabilities.”

FCC 2003 Order pg 8 -9 para 11 is agreeing with the obligation allocation all parties understood was in accordance with the tariff.

Further, CCI (as well as the Inga companies) but not PSE, would continue to have been responsible for any shortfall obligations under the CSTP II/RVPP plans **(Also *See First District Court Opinion* at 9.)**

FCC 2003 Order pg 7 n.51. agrees with the NJFDC’s obligation allocation.

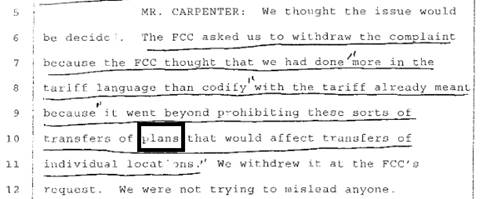
***See First District Court Opinion* at 5**.  Exhibit G to the Petition, a letter agreement between **CCI and PSE** dated January 16, 1995, explains that, once the traffic was moved:  (1) CCI’s end-users (formerly the Inga Companies’ end-users) would “be billed by AT&T at the prevailing AT&T Tariff 2 CSTP rates, less twenty three percent (23%) Customer Specific Term Plan (CSTP) discount, and 5.5% Revenue Volume Pricing Plan (RVPP) discount”; (2) CCI would get 80 percent “earned credit” for this traffic from PSE; **(3) CCI would continue to be responsible to AT&T for any commitment associated with the CSTP II Plans (which would not be discontinued);** and **(4) PSE would assist in moving accounts back to CCI upon written notice from CCI that AT&T required CCI to meet its commitments.**  *See* Exhibit G to the Petition.  Thus, the traffic would be discounted 66 percent instead of 28 percent and the end-users would receive a discount off AT&T’s standard tariffed rates greater than the portion of the 28 percent they had received when their traffic was associated with the CSTP II plan.  *See First District Court Opinion* at 3-5.  The discount differential would be apportioned between CCI and PSE according to their letter agreement.  *See also* n.66, *infra*.

As David Carpenter stated on page 17 of the Oral Argument AT&T only hope was to assert the TR8179 defense. AT&T was subjectively deeming that the conceded substantial traffic only transfer was a PLAN TRANSER. Despite David W. Carpenter having already conceded to the Third Circuit that the FCC denied AT&T’s ability to subjectively determine a traffic only transfer was a plan transfer David Carpenter continued with the misrepresentation:

Third Circuit (Oral Pg. 43) the FCC Rejected Tr8179: Carpenter conceded the FCC did not find it was IMPLICIT within 2.1.8 that AT&T can deem the AT&T conceded traffic only transfer was a plan transfer but continued to misrepresent it was a plan transfer:

AT&T counsel Carpenter:

We thought the issue would be decided. **The FCC asked us to withdraw the complaint** because the FCC thought we had done **more** in the tariff language **than codify** what the tariff already meant because it went beyond prohibiting these sorts of transfers of **PLANS** that would affect transfers of individual locations. We withdrew it at the FCC’s request.



AT&T’s con on the Third Circuit and later the FCC and DC Circuit was to agree with plaintiffs that revenue and time commitments only transfer on plan transfers not traffic only transfers. However, AT&T continued to misrepresent the transaction was a **PLAN TRANSFER** –despite having filed Tr8179 with the FCC on 2.16.95 and having CONCEDED the transaction was a traffic only transfer and stated to Judge Politan that the outcome of Tr8179 as to whether AT&T could retroactively apply the defenses under Tr8179 to existing customers would determine the CCI-PSE transfer. Intentional misrepresentation of the facts of the case—not a tariff interpretation.

Page 17 DC Circuit Oral Argument: David W. Carpenter misrepresents all the locations were transferred when the Transfer forms explicitly show the locations left that continued to classify the transaction as a traffic only transfer as Meade’s Tr8179 submission conceded.

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

MR. CARPENTER:  What we said, Your Honor, we did not construe 2.1.8 to apply only to plans.  What we said in the sentence they're quoting out of context is that the tariff requires the transfer of service only when the obligations are assumed.  We said that **in this case**, the relevant service **are the CSTP plans.**  That's because **in this case what they transferred was the plans**, **all** the locations, without the liabilities.  And we said in that very sentence, in that very paragraph repeatedly that what CCI wanted to do violated the tariff because they were transferring the traffic only and they weren't transferring the obligations.  There's no way on earth that we were **conceding away the only issue in this case** with that parenthetical phrase that they're lifting out of context.

Carpenter claims AT&T’s “only issue in this case” was based upon AT&T’s defense which Carpenter himself already conceded to the Third Circuit that was FCC denied and AT&T withdrawn on June 2, 1995. You can’t make this up if you tried!!! Carpenter also had another fraud up his sleeve. In addition to arguing it was a **plan** transfer Carpenter introduced for the first time in the case a brand-new scam.  The instructional notes on the form advising AT&T that it is a traffic only transfer not a plan transfer and indicated the locations to keep with the plan intact:

“Traffic only move all BTN’s except 181-000-0142-457, 131-134 0230-254 CSTP/Keep Plan # 3663 Intact.

Carpenter tried to pull off the new minted fraud on the DC Circuit:

Mr. Carpenter: “They didn't assume the obligation even for past indebtedness on the locations, because all they wanted transferred was the **traffic** on the plans without the concomitant obligations, and the tariff says you have to assume both the outstanding indebtedness and the unexpired part of the volume commitments, and neither of those things were transferred.”  (Tr.11, line 19.)

The DC Circuit properly dismissed the fraud as it noted in its decision the Inga Companies did transfer all the obligations listed on 2.1.8. Additionally, the DC Circuit made note that the second obligation was not a revenue commitment but a time commitment.

Despite the DC Circuit having understood the fraud Carpenter tried to pull on that Court the AT&T’s counsels in 2006 simply gave credit to Mr Carpenter for the fraud: Below AT&T’s 2006 FCC comments reference its co-counsel David Carpenters DC Circuit created fraud which led to the Post Oral Argument brief to correct the record.

AT&T to FCC December 20, 2006 pg. 17 FN9 (AT&T Counsels: Joseph R. Guerra, Richard H. Brown, Paul K. Mancini, Gary L. Phillips, **Peter H. Jacoby**, **Lawrence J. Lafaro**)

Contrary to petitioners' claim, Petn. 5-7, **AT&T does dispute that PSE assumed the two obligations listed in § 2.1.8.** Petitioners quote statements by AT&T that the shortfall and termination obligations were *not* assumed, but they quote no statements in which AT&T agreed that the other obligations were assumed. **In fact, AT&T counsel argued before the D.C. Circuit that PSE "didn't assume any obligations**." *See* Exh. 9. The phrase "traffic only" that petitioners wrote on each transfer form, *see* Exh. F (Attachments), could not simultaneously operate to assume enumerated obligations, yet exclude unenumerated obligations. In all events, the point is largely irrelevant-PSE indisputably did not agree to assume "all obligations," as § 2.1.8 required.

Obviously, AT&T counsels before the FCC could not reference any AT&T correspondence back in 1995 where AT&T argued none of the 4 obligations was being transferred. Note that Peter H. Jacoby and Lawrence J. LaFaro were also authors of AT&T’s post oral brief to the DC Circuit where AT&T agreed PSE assumed all the obligations listed within 2.1.8. AT&T DC Circuit brief: page 5: “While Inga **appears to admit** that PSE would have had no liability for shortfall charges under the proposed transfers of traffic without the plans the Inga intervenors assert that liabilities for outstanding indebtedness were transfer to PSE.”

Peter H. Jacoby and Lawrence J. LaFaro first argue to DC that PSE assumed the obligations listed and these counsels representation to the DC Circuit was the second obligation was the revenue commitment:

“The Tariff expressly conditions transfers of service on the new customers assumption of "all obligations of the former customer at the time of transfer" and the unexpired portions of volume commitments is such an obligation.”

Peter H. Jacoby and Lawrence J. LaFaro admit the obligations enumerated within 2.1.8 were assumed by PSE and were claiming to DC the second obligation was the revenue commitment. Since AT&T admitted PSE assumed the obligations listed and the second obligation was the “unexpired portions of volume commitments is such an obligation” why didn’t AT&T process the transfer!

Peter H. Jacoby and Lawrence J. LaFaro are “admitting” to DC that PSE assumed the listed obligations and then in 2006 agree with the Carpenter fraud that no obligations were transferred!!!

The 2006 AT&T statement was AFTER the DC Circuit Decision explicitly stated at FN11 that all the obligations enumerated within 2.1.8 were transferred!!! Based upon AT&T’s representation to the DC Circuit “The Tariff expressly conditions transfers of service on the new customers assumption of all obligations of the former customer at the time of transfer and the **unexpired portions of volume commitments** is such an obligation,” there was no reason to argue with Judge Bassler or the FCC that PSE was not assuming the revenue commitment.

David Carpenter when asserting the CCI to PSE transfer was a plan transfer stated to the DC Circuit: There's no way on earth that we were **conceding away the only issue in this case.**

The issue is AT&T’s counsel Richard Meade when filing Tr8179 conceded the transaction was a Traffic Only Transfer!!! AT&T advised MJFDC Judge Politan that the outcome of Tr8179 would resolve the issue. Carpenter already conceded to the Third Circuit that the FCC DENIED/and thus AT&T withdrew Tr8179 as the FCC determined it was NOT IMPLICIT within 2.1.8 that AT&T could subjectively DEEM that the Meade conceded traffic only transfer was a PLAN Transfer!!! That AT&T concession was already made by AT&T counsel Meade on February 16, 1995 under Tr8179. Meade’s proposed change said it all. AT&T wanted the subjective ability to deem when a traffic only transfer should be forced to transfer the plan, to force the revenue and time commitments to transfer---as Meade detailed the industry wide issue with substantial traffic only transfers ---which was “the segregation of assets and liabilities.” LOCATIONS= Assets and the Non-Transferred plan = Liabilities.

AT&T of course settled for Tr9229 on a prospective basis ---the mandate that security deposits against potential shortfall would be required of the former customer of the traffic that was required to keep as a continuing Customer of Record the revenue and time commitments. Of course, you and Joe Guerra scammed Judge Wigenton two years in a row on the CONCLUSIVE TARIFF evidence that even though Bassler’s referral was MOOT ----the Tr9229 answered Judge Bassler’s question.

FCC January 12, 2007:

“The district court's June 2006 order does not expand the scope of the issue previously presented. Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T's Tariff No.2, a matter already extensively briefed by the parties."

We are betting that now that the FCC Commissioners have properly removed the case from circulation in January 2017 and agreed with the determination it made on January 12, 2007 that there is no controversy presented by Judge Bassler that Judge Wigenton will now understand AT&T counsels intentionally scammed the FCC and all Judges. We have some other matters to address before we go back to Judge Wigenton.

Meade:

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

AT&T counsel Meade then explains within paragraph 15 that it added Security Deposits Against Potential Shortfall Requirements to 2.1.8

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

**Tr8179 filing Confirmed the NON-CONTROVERSY that 2.1.8 already allowed traffic only transfers and Tariffed Revenue/Term Obligations Don’t Transfer**

The Commission had 200 pages of petitions to reject Tr8179 outlining the terms and conditions of 2.1.8. that it had always allowed traffic only transfers.

AT&T’s Tr8179 quest was simply to force the plan to transfer when a substantial number of locations were transferred, to force the plan obligations to transfer. The question was not **if** 2.1.8 allowed traffic only transfers that was understood that yes 2.1.8 allowed traffic only transfers. Additionally, there was never a controversy regarding which obligations transfer under 2.1.8 as it was agreed and understood that: On a traffic only transfer the revenue and term commitment must stay with the non-transferred plan. Only when the entire plan transferred does the revenue and term commitment transfer with the plan.

The FCC in 1996 did not have to interpret anything as per the 2.1.8 traffic only transfer as there was no controversy. The Tr8179 covered all three AT&T defenses that were FCC denied under Tr8179 by February 1995 and AT&T finally withdrew Tr8179 on June 2, 1995.

The FOIA notes show by late February 1995 Tr8179 was dead as R.L Smith was already proposing to AT&T Tr9229 security deposits against potential shortfall and the FOIA revisions show that Tr9229 could have been prospectively effective by March 2, 1995. That was too soon for AT&T as it needed time to use the Inga Companies CPNI and call our customers as the 60 hours of audio tape shows.

**See EXHIBIT N  Page 3 and 4.** AT&T was callingall our customers and our own office phone bill was on our CSTPII plan. AT&T on August 21, 1995 offered my company 51.3% discount to leave the aggregator—my company! The commitment was a whopping $200! AT&T comically has advised the FCC that it was suspecting being deprived of charges for service not rendered i.e. shortfall. AT&T claimed the commitment was the quid pro quo for obtaining the 28% CSTPII/RVPP commitment. Petitioners were doing over $100 million in revenue in 1993 to get a 28% discount. AT&T offered a $200 user a 51.3% discount.

**See EXHIBIT O** CT516 that PSE and Tel-Save sued AT&T to receive was a 66% discount and the annual revenue commitment was only $4 million. See EXHIBIT

**See EXHIBIT N pages 1 and 2.** This was a contract dated November 21, 1994 between Inga Companies and Tel-Save that also had CT-516 discount of 66%. This was prior to the December 1994 plan transfers to CCI. AT&T advised Tel-Save president Dan Borislow that it refused to process the Inga to Tel-Save traffic transfer but gave no reason.

Judge Politan knew 2.1.8 allowed traffic only transfers and that the revenue and term commitments stayed with CCI or Inga in its January 13, 1995 and January 30, 1995 traffic transfers with PSE. It was all about the quantity. Politan was waiting on Tr8179 which included AT&T’s 2.2.4 fraudulent use defense:

See….**(1995 Decision pg. 10 para 2)**

“On January 13, 1995, PSE and CCI jointly executed and submitted written orders to AT&T to transfer the 800 traffic under the plans CCI had obtained from the Inga companies to the credit of PSE. 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 benefiting from the much larger discounts enjoyed by PSE under KT-516. AT&T refused to accept this second transfer on the ground that CCI was not the customer of record on the plans at issue, and thus could not transfer the traffic under those plans to PSE. **AT&T was further troubled** by the fact that if **only the traffic on the plans and not the plans themselves were transferred to PSE**, the liability for **shortfall and termination charges attendant thereto would then be vested in CCI**: an empty shell in AT&T's view.”

Once the CCI “new customer” security deposit issue was resolved and the plans transferred from Inga to CCI, the FCC then denied AT&T from all three defenses. If anyone of the three defenses were deemed by the FCC as implicit and AT&T had followed the proper remedy the traffic only transfer would have been prohibited. AT&T however advised that it would have allowed the 66% if the plans were transferred to PSE---but 2.1.8 allowed traffic only transfers and there was no reason for AT&T to deny the orders.

**Once Tr8179 was denied at that point there was nothing for the FCC in 1996 to decide.** The FCC should not have interpreted 2.2.4., as that was under the denied Tr8179 filing as AT&T’s Whitmer and Meade so advised Judge Politan.

The case was over when Tr8179 was over. Filing Tr8179 was done simply to stall as it had zero chance of ever passing retroactively.

AT&T’s 1996 FCC comments that fraudulent use was on the table to be determined was nonsense. The FCC 2003 Order reiterated **AT&T’s concession that the outcome of Tr8179 would resolve the traffic only transfer issue**.

The only reason why fraudulent use got into the FCC case was the FCC had not reviewed 2.2.4 as per the 3.3.1Q bullet 4 (Delete and ADD) account movement scenario that Judge Politan asked during Oral argument.

AT&T should not have been allowed to argue 2.2.4 as per the 2.1.8 traffic only transfer as that was dead with Tr8179. The issue of course was the FCC after being told by all parties that 2.1.8 allowed traffic only transfers under the Tr8179 filing, decided 2.1.8 did not allow traffic only transfers and only used 2.1.8’s language in agreeing with the parties over the non-controversy that revenue and term commitments do not transfer on a traffic only transfer. The FCC January 12, 2007 Order has now accepted that 2.1.8 as well as 3.3.1 Q Bullet 4 ( delete and add) also allows traffic only transfers.

Now we are aware that AT&T did not even qualify to assert fraudulent use as 2.1.8 and 3.3.1Q Bullet 4 were not conditioned on first satisfying 2.2.4.

(any rate or regulation must be referred to) 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item must be specifically referred to in connection with such item).

We now see that even if 2.2.4 was referred to it still did not qualify as there was no circumvention as per 2.8.2. as AT&T could have still charged for shortfall. If referred to and if there was circumvention then AT&T is only allowed to use 2.2.4 if AT&T takes immediate action to “temporarily suspend service” and that means phone calls on January 13, 1995. Not suspend transfers of service as AT&T’s 1996 counsels advised the FCC and what AT&T counsel Meade misrepresented to the NJFDC.

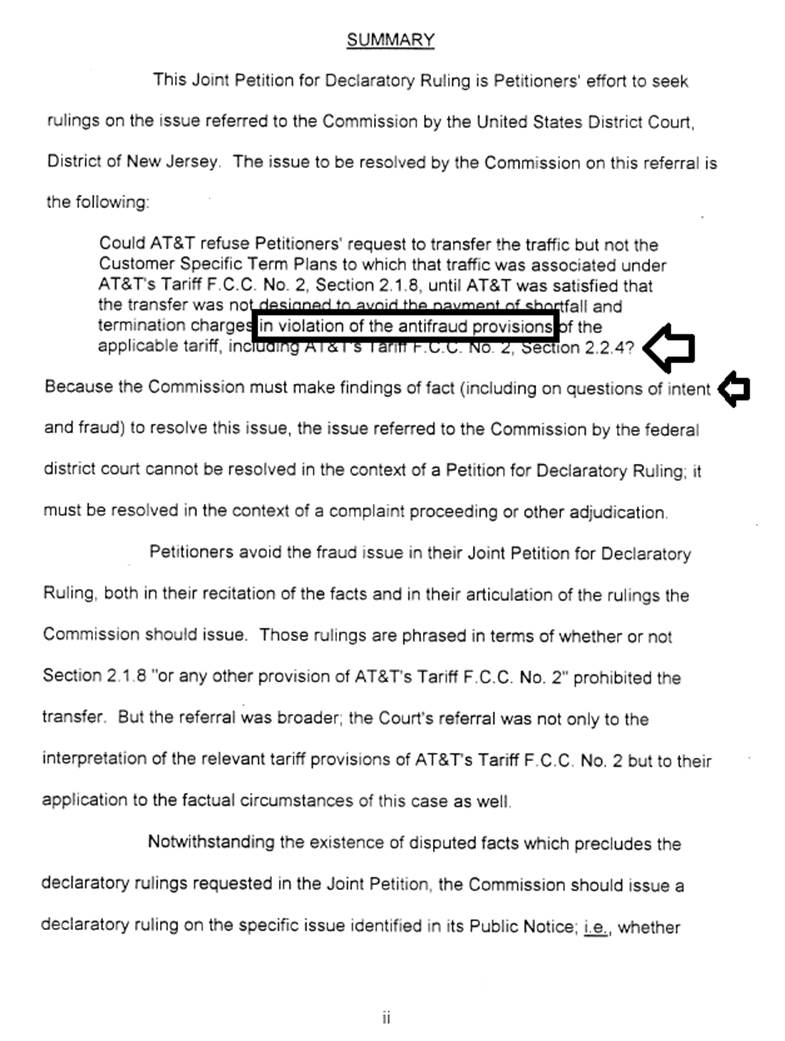
Then on top of all that the Commission waits from 1996 to 2003 to decide 2.1.8 doesn’t allow traffic only transfers only 3.3.1Q Bullet 4 ---when AT&T filed Tr8179 **telling the FCC that 2.1.8 did allow traffic only transfers.**

No doubt the Commission is now looking back and saying AT&T got over big time. The Commission took a non-controversy under 2.1.8 and made it a controversy. The Commission has now rectified the issue by correctly agreeing with its January 12, 2007 Order defining the scope of the case and determining the June 2006 Bassler Referral was moot. The FCC Commissioners in 2017 reviewed the FCC January 12, 2007 Order and correctly determined there were no open issues to resolve under the Administrative Procedure Act:

FCC 2007 Order:

As discussed in the 2003 Order on Primary Jurisdiction Referral, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to terminate a controversy or remove uncertainty. When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to assist the referring court by resolving issues arising under the Act. That is our goal here. **The district court's June 2006 order does not expand the scope of the issue previously presented.** Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T's Tariff No.2, a matter already **extensively briefed by the parties**."

**AT&T’s 1996 Counsels Misrepresent it Could Assert Fraudulent Use & Concede the Merits of Judging Intent First Needed to be Determined**



The above AT&T’s August 26, 1996 FCC comments state AT&T’s defense was fraudulent use—which is based upon the terms and conditions require the non-transferred plan to retain the revenue and time commitments as shown in Tr9229. That defense was under Tr8179 and was FCC denied and thus AT&T withdrawn on June 2, 1995. AT&T had no right to misrepresent it had a defense that was no longer tenable.

To prolong the legal process AT&T’s position to the Commission was it should not rule on fraudulent use until it was first decided whether AT&T had the merit to assert fraudulent use:

“because the Commission must make finding of fact **(including questions of intent and fraud)** to resolve this issue, the issue referred to the Commission by the federal district court cannot be resolved in the context of a Petition for Declaratory Ruling, it must be resolved in the context of a complaint proceeding or other adjudication.”

AT&T appealed the March 5, 1996 injunction after all defenses were FCC denied under TR8179 and Tr9229 was prospective. Then when the case was erroneously referred to the FCC, AT&T claimed that it had an already denied 2.2.4 defense, but first the question of intent needed to be determined.

Judge Politan had issued the injunction making the judgement call that AT&T’s defenses premised on speculation of shortfall charges “were not properly substantiated,” and stressed the plans were all pre-June 17, 1994 ordered. It has been our position that the entire FCC and DC Circuit proceeding meant nothing as Judge Politan had already made the judgement call and issued the injunction. The FCC’s R.L. Smith said it best:

FCC’s Randolph Smith:

“Two things to keep in mind about this one. First **it indicates intent to** and that is a **judgment call** which would have to be decided in a complaint case if the matter came up. What AT&T seems to propose in **new provisions** might well go beyond this situation in that **‘it does not even take intent into account but assumes it is there.** And, AT&T **may intend to apply this in a manner that it will not let locations or 800 numbers move** and that could unjustly interfere with the rights of the end users **or another customer**. Finally, the provisions noted by AT&T here do not seemingly restrict Transfer or Assignment per se but the **new regs do**, nor does it address Transfer or Assignment **explicitly**.”

What the FCC did was ASSUME AT&T already had the NJFDC judgement call in its favor:

FCC 2003 Order page 8 para 11:

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

The FCC in retrospect should have simply sent back the Third Circuit Referral and advised that it is not in the business of deciding whether AT&T had merit in the first place to raise the defense—especially given the fact that a judgement on AT&T’s defense had already been made and an injunction was already ordered, as the Judge claimed:

March 1996 Judge Politan Decision Page 16 para 1.

The Court finds **nothing** in the Tariff F.C.C. No. 2 which prevents fractionalization, and contemplates a like finding by the F.C.C. Cleary, therefore, plaintiffs have established a strong likelihood of success on the merits.

All AT&T’s defenses under Tr8179 and Tr9229 were **premised on being deprived of shortfall charges**.

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

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

AT&T agreed that a judgment call first needed to be made to decide if AT&T had the merits to raise the fraudulent use defense in the first place. Then a tariff interpretation needed to be as to whether AT&T had the right to use 2.2.4 and apply it as per 2.8.2 to prohibit a permissible 2.1.8 or 3.3.1Q Bullet 4 (Delete and Add) traffic only transaction.  Given the fact that Judge Politan’s May 1995 and March 1996 decisions both stressed that at the time of the January 1995 traffic only transfers shortfall charges are were illusionary as the plans were all pre June 17, 1994, the plans had already met their fiscal year revenue commitments and the traffic could be brought back within 30 days.

AT&T’s 1996 counsels did not argue that under 2.1.8 PSE was refusing to assume revenue and time commitments on a traffic only transfer. The 1996 counsels argued the FCC denied Tr8179 defense that---AT&T deems that the already conceded under Tr8179 traffic only transfer is a PLAN transfer, **and as a plan transfer** it violates 2.1.8 because the revenue and term commitments do not transfer.

AT&T in 1996 was arguing the already FCC defeated and AT&T June 2, 1995 withdrawn Tr8179 “implicit argument” that AT&T had the implicit right to subjectively deem that the Tr8179 conceded traffic only transfer was a plan transfer, to force the revenue and time commitments to transfer. Post DC Circuit AT&T counsels created the brand new fraud that it didn’t matter whether a traffic only transfer or a plan transfer was ordered the revenue and term commitments must transfer.

If you look at the R.L. Smith FOIA notes below, R.L. advised that the first thing that needs to take place **is a judgement call** that there was **intent** to engage in fraudulent use. Judgement calls are made by the District Court.

R.L Smith:

“Two things to keep in mind about this one. First it indicates **INTENT TO** and that is **JUDGEMENT CALL** which would have to be decided in a complaint case if the matter came up. Secondly the usual punishment for violating those provisions is to **TEMPORARILY SUSPEND** SERVICE and/or not accept request for additional service.”

As we know Judge Politan obviously made the judgment call that there was no intent as he issued the injunction and said he found NOTHING…. FRAUDULENT USE DEFENSE IS OIVER RIGHT THERE AS JUDGE POLITAN DETERMINED AT&T HAD NO MERIT TO RAISE THE DEFENSE.

March 5, 1996 Judge Politan Decision in plaintiff’s initial motion Page 16 para 1:

The Court finds **nothing** in the Tariff F.C.C. No. 2 which prevents fractionalization, and contemplates a like finding by the F.C.C. Cleary, therefore, plaintiffs have established a strong likelihood of success on the merits.

So, AT&T is defeated at road block ONE. But let’s assume AT&T did have INTENT ruled in its favor.

AT&T can only use 2.2.4 if it is based upon a situation where there would be a **circumvention** of charges as per 2.8.2.  There wasn’t a circumvention of charges as the remaining plan holder (CCI, Inga 800, Services) were still there collecting a lot more money for AT&T to charge shortfall.

If AT&T got past the hurdle which it obviously can’t ----AT&T must have provided a written denial within 15 days as per 2.1.8 (c)—which AT&T did not as AT&T filed Tr8179 on February 16, 1995 which was more than 15 days after the January 13, 1995 and Jan 30, 1995 traffic only transfers to PSE by CCI and Inga Companies. AT&T concedes that it lied to the DC Circuit that it made up a date of January 27, 1995 to be within 15 days of the January 13, 1995 CCI-PSE traffic transfer. AT&T counsel Whitmer conceded to the NJFDC that it did not deny within 15 days the Inga to PSE traffic only transfer. Whitmer conceded in March 1995 to NJFDC that AT&T did not deny the Inga to PSE traffic only transfer in writing within 15 days.

Another Hurdle:

Sections 2.1.8 and 3.3.1 Q Bullet 4 were not conditioned on first meeting 2.2.4 fraudulent use if it did apply. Rule 61.54(j) required that “[a] special rule, regulation, exception or condition affecting a particular item or rate must be specifically referred to in connection with such item or rate.”  47 C.F.R. § 61.54 (1994)

Assume AT&T gets by the above hurdles the PENALTY is to TEMPORARILY SUSPEND service. As you are aware AT&T used an illegal remedy by permanently denying the transfer as opposed to the tariffed remedy of  TEMPORARILY SUSPENDING SERVCICE.

LET’S ASSUME AT&T adhered to its tariffed and did TEMPORARILY SUSPEND service. HOW LONG IS TEMPORARY? Under the tariff AT&T had to **suspend phone service** to all the end-user locations. How long do you think that would have lasted? You see what happened when AT&T put the shortfall charges on the bills. Can you imagine having 10,000 businesses toll free service suspended. Toll free service back then PRIOR TO THE INTERNET was the SALES AND CUSTOMER SERVICE LINES!!!  Temporary would have been VERY TEMPORARY.  Maybe 1 day!

Next Hurdle: AT&T’s post DC Circuit Court fraud is the parties REMAIN JOINTLY AND SEVERALLY LIABLE. Also know as the FRAUD THAT DEFEATS THE FRAUD. Under this scam job on the FCC the parties PSE and CCI or Inga and PSE remain jointly and several liable. Thus by law AT&T can continue to pursue either the new or former customer for all charges—so according to AT&T’s own fraud there would be no reason to be deprived of collecting charges on services not rendered (shortfall) as according to AT&T it could have pursued either of the parties. You also have to remember AT&T’s POWERFUL INDUCEMENT fraud where somewhere in the tariff it gives AT&T the ability to charge the locations for shortfall and termination charges. We have not been able to locate the all mighty powerful INDUCEMENT CLAUSE AT&T claims is in the tariff somewhere but assume it is in there. AT&T would then be able to charge not only the new and FORMER customers but all the locations!!! The fraud that kills the fraud.  Richard, you apparently missed the class at Dartmouth regarding making sure you do not create a fraud on the FCC that actually defeats your own argument ----as AT&T would have no reason to assert 2.2.4 fraudulent use for being deprived of collecting charges for non-rendered service as AT&T could collect from everyone under the FOREVER Remaining jointly and severally liable provision that AT&T created instead of “at the time of the transfer” and the POWERFUL INDUCEMENT tariff section.

So, AT&T now clears all these hurdles and it still loses as it could **only temporarily suspend service**. So, if it held up the traffic only transfer for 1 day that would be about it.

All this intentional fraud on federal courts and a government agency in order to temporarily suspend service as the ultimate penalty!!!

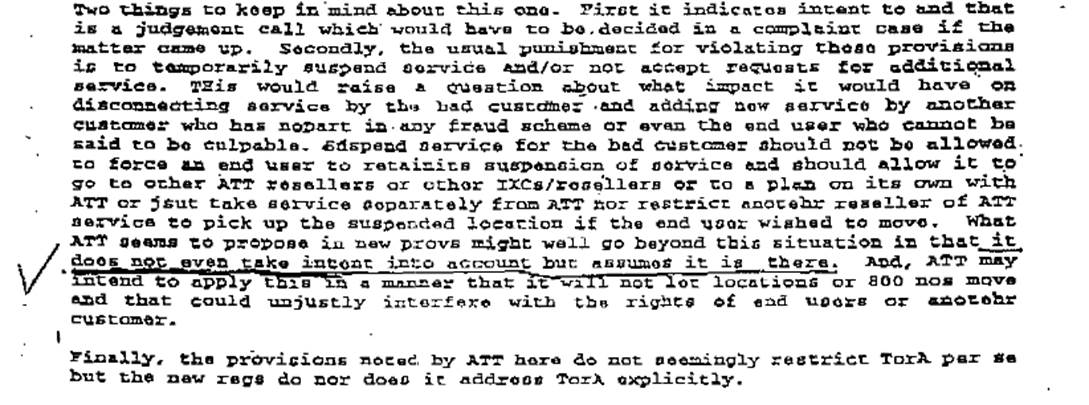
ENGAGING in dozens of intentional frauds on the NJFDC & FCC with numerous comical cover-ups--- all done to achieve what? **TEMPORARILY SUSPEND SERVICE** as the final victory!!!! I’m not even an attorney and showed how AT&T counsels engaged in a conspiracy to intentionally defraud the NJFDC AND FCC.

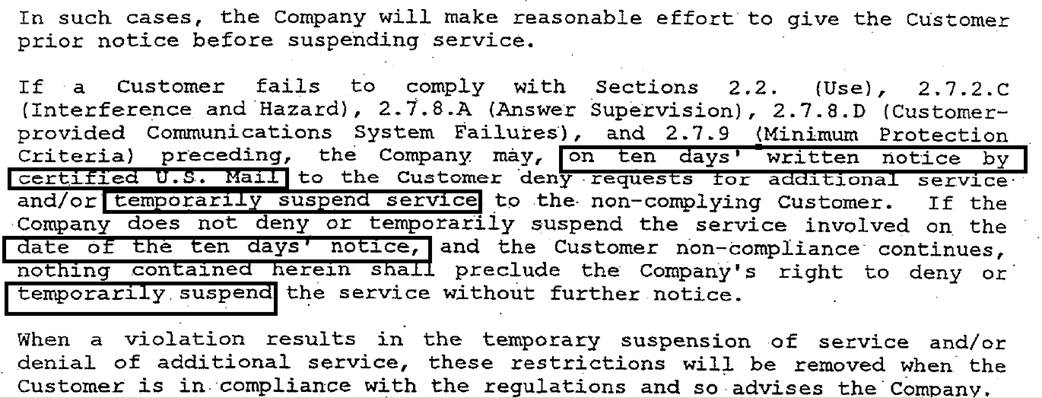
Additionally, AT&T concedes that it did not within 10 days written notice provide by certified mail any notice as per 2.8.2. If it did then it would be able to again only TEMPORARILY SUSPEND service but without notice. So AT&T could not even continue to temporarily suspend service again as the accounts would have been transferred. **ALL THIS INTENTIONAL FRAUD & COVER-UPS DONE KNOWING AT&T HAD ZERO EVIDENCE TO SUPPORT THE FRAUD ---WHEN IT CONCEDED IT DID THOUSANDS OF TRANSFERS AMONG AGGREGATORS -----all to TEMPORARILY SUSPEND SERVICE!!!!**

**NJFDC March 8, Oral Argument pg. 53**

MR. WHITMER: “But there are literally - - my guess is hundreds, if not thousands, of transfers that have happened among aggregators and aggregations plans.”

R.L. SMITH FOIA…





**There is No 2.8.2 Remedy for Suspecting Shortfall as there was No Circumvention**

We filed Additional comments and additional requests for Declaratory Rulings.

We have received no response from AT&T as to petitioners to motion to obtain the evidence from AT&T to correct the record. If AT&T is not opposing the motion the FCC can issue an Order requesting AT&T to produce the revised versions of 2.2.4 and 2.8.2 just to correct the record. Also, AT&T has never provided any Court or the FCC of traffic only transfers in which the revenue and time commitments transfer.

Given the fact that the DC Circuit has already ruled against AT&T on the fraudulent use issue these Declaratory Ruling Requests will only come into play if Judge Wigenton does not understand what the FCC was trying to tell the District Court regarding the Bassler Referral being MOOT!!! We think Judge Wigenton did not address the FCC 2007 Order in her last decision because she was more focused upon the fact that AT THAT TIME the case was under FCC Commissioner Circulation. As you are aware in January 2017 the FCC Commissioners properly took the case OFF CIRCULATION agreeing with the FCC January 12, 2007 FCC Order that defined the SCOPE OF THE CASE.

FCC 2007 Order:

As discussed in the 2003 Order on Primary Jurisdiction Referral, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to terminate a controversy or remove uncertainty. When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to assist the referring court by resolving issues arising under the Act. That is our goal here. **The district court's June 2006 order does not expand the scope of the issue previously presented.** Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T's Tariff No.2, a matter already **extensively briefed by the parties**."

The Commission properly determined that AT&T engaged in a fraud on Judge Bassler to obtain the June 2006 Referral, as there was never a controversy or uncertainly as per which obligations go whether under 2.1.8 OR 3.3.1.Q Bullet 4 (Delete and ADD). The only issue was due to the size of the traffic only transfer and all three AT&T defenses were asserted by AT&T counsel Meade under Tr8179.

As Meade and Carpenter conceded and the Third Circuit stated the FCC denied Tr8179 determining that NONE of the 3 moronic defenses that AT&T submitted with no evidence was IMPLICIT--It was just a delay strategy. So AT&T withdrew Tr8179 on June 2, 1995. Judge Wigenton is not aware of the FCC removing the case from circulation and it was never pointed out to her Court the FCC 2003 Order quoting the non-vacated District Court Decision about the outcome of Tr8179 and which quoted AT&T claiming the outcome will decide the traffic transfer issue. Also Judge Wigenton was not shown the November 1, 1995 letter that AT&T claimed the OUTCOME OF TR9229 would then determine the issue after Tr8179 was FCC denied. As you are aware AT&T lost that issue too as the Tr9229 went into effect prospectively--of course, you misled Wigenton on Tr9229.  Hopefully her Court will not get scammed for the THIRD TIME on Tr9229 as although it is a MOOT issue it did explicitly answer Judge Bassler’s moot referral that revenue and time commitments do not transfer on a traffic only transfer as the security deposits against potential shortfall are the obligation **where the revenue commitment remains.**

As you are aware you have 60 hours of audio tape and it shows that during 1995 AT&T violated our CPNI and gave the database to your Florida telemarketing company and offered our customers 53% to get off the plans. So, we were doing $54 Million in Billing at 28% discount and AT&T was advising our locations doing $100 a month that AT&T will give them 53% to get off our plans. You have the tapes!!! Listen to them.

We just discovered that 2.8.2 does not even contain any remedy as per 3.3.1Q Bullet 4 (Delete and ADD). Also, it does not pertain to 2.2.4.  Under 2.8.2 the remedy depends upon whether **the AT&T charges are being circumvented.** There was no circumvention of charges as AT&T could continue applying shortfall and termination charges to CCI, INGA Companies and 800 Services, Inc in each of the 3 traffic only transfers to PSE.   Jan 13, 1995, Jan 30, 1995 and April 26, 1995 respectively.

The attached FCC comments uploaded today point out AT&T had no remedy and if you don’t have a circumvention issue remedy under 2.8.2 the 2.2.4 section can’t be used.

I also uploaded a case dealing with fraudulent use that the FCC ruled against AT&T. The FCC ruled against AT&T and the REVISED VERSION of 2.2.4 was much stricter than the revision that controlled my plans and 800 Services, Inc. This case also involved actual CHARGES being deprived. Not –In the future AT&T will be deprived of collecting charges on services it doesn’t even render (shortfall). If ever there was a 201-unreasonable violation this would be it—especially when the plans are all pre June 17, 1994 and the fiscal year revenue commitments were already met and the accounts could be returned within 30 days.

Attached is a fraudulent use case: Even if Audio Text’s use of auto dialers to call PNS numbers could be considered a “fraudulent trick or device,” AT&T has not established that it had reason to believe that Audio Text was “**using or attempting to use**” AT&T’s long-distance services “**with the intent to avoid the payment** . . . of any of [AT&T’s] tariffed charges,”

These were REAL COSTS!!! Not monopoly money shortfall charges in which you claim were the quid pro quo for obtaining the sensational 28% discount on $54 million of traffic when AT&T was giving my $100 a month users, 53% to get them off my plans.

Judge Wigenton currently believes the FCC staff are incompetent and lazy and believes that it’s incredible that the FCC doesn’t believe the DC Circuit Court Decision was a remand—even though DC Circuit legal director Martha Tomich said it was not.

Judge Wigenton believes the FCC staff has just been **too busy** since 2006!!!!!!!!The FCC staff is laughing that a District Court Judge would believe that it be “acceptable, rational and normal” that the FCC would not address a DC Circuit Court REMAND in **almost 13 years!!!!!**

Judge Wigenton believed the way to get the FCC in gear would be to file a WRIT OF MANDAMUS with the DC Circuit Court forcing those incompetent lazy ass no good bastards at the FCC to address the fictional REMAND. AT&T counsels did some incredible scam job on Judge Susan Wigenton. You proverbially raped her Courts integrity.

Judge Wigenton will eventually understand you intentionally scammed her and the case was over in 1995 when the FCC denied all 3 defenses under Tr8179. Mr Meade simply wasted time by asserting those 3 defenses were IMPLICIT. He needed a YEAR OF CONSULTING WITH OUTSIDE STAFF AND TRA to DECIDE WHAT WAS ALREADY IMPLICT while my customers were being tele-marketed by AT&T.

Judge Wigenton will eventually understand the FCC staff are not incompetent and lazy and Judge Wigenton is the Cookie Thief woman—<https://www.youtube.com/watch?v=_ASlyZwgLXU>

Judge Wigenton will eventually understand YOU and Joseph Guerra INTENTIONALLY SCAMMED HER!!!

**AT&T’s Richard Meade's TR8179 & 2.8.2 Scam on FCC and NJFDC**

Meade Page 1 para 3 of TR8179

“The Transmittal adds a paragraph to the existing sections of Tariff, F.C.C. Nos 1 and Nos. 2 governing Transfer or Assignment of service to clarify that transfer **of all or substantially all** of the locations or 800 numbers associated with 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”

All or Substantially all is a big difference as in order to maintain a traffic only transfer the Main Billed Account also knows as the Home or Lead Account must remain with the non-transferred plan.

---AT&T 3/21/1995 cross examination of Mr. Inga:

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **“lead account**” ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn’t that correct?**

Inga: Yes

Meade then raises his 3 IMPLICIT DEFENSES –none of which were ever done by AT&T so no evidence was ever provided and then Meade spent many months with AT&T staff the TRA and other trying to figure out what was already IMPLICIT. We are talking serious delay of the legal process here.

Moreover, 2 of the defenses represent that the tariff terms and conditions of 2.1.8 dictate that on a traffic only transfer mandates the revenue and term commitment must stay with the non-transferred plan whether all or substantially all locations are transferred:

1. Subjectively **deem** that the conceded traffic only transfer is a **PLAN** transfer to force the revenue and term commitment to transfer
2. Fraudulent Use –Assert the non-transferred revenue commitment will not be met. Meade of course leaves out the facts that the fiscal year revenue commitment had already been met at the time of the traffic only transfers and the plans were all pre June, 1994 ordered and he had access to all this information.

Meade’s 3rd defense **he argues against himself** stating all obligations must transfer under 2.1.8. Meade now misrepresents the FACTS asserting **all service** was transferred.

Page 2 para 3:

“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 the 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 the plan to another customer, the new customer must assume the existing customer's obligations respecting that service. **Of necessity it includes the obligations to fulfill the revenue or volume commitments of the underlying plan.”**

Meade’s position to the Commission is pure moronic and intentional misrepresentation. Meade claims the CCI-PSE traffic only transfer was it’s a traffic only transfer but AT&T **wants to deem it as a plan transfer** to force the commitments to transfer. Then simultaneously argue the obligations must transfer under the tariff even if AT&T is not allowed to deem the transaction is a plan transfer to meet the substantial cause test. This is not a tariff interpretation issue. You take a position that covers yourself if all or substantially all are transferred. There is a difference between all and substantially all as all means you are transferring the MAIN BILLED Home lead account. That is when the Transfer forms explicitly advise which accounts to remain with the non-transferred plan.

More Meade:

“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**.”

Meade raises an argument about CCI not posting security deposit on the Inga to CCI plan transfer. On the Inga to CCI plan transfer 2.1.8 was not conditioned upon first needing to post security deposit as the FCC 2003 Order stated and thus the propriety of the transfer was December 1994 as opposed to the May 19, 1995 First District Court Order.  Meade leaves out of his pleading that the security deposit was over $13 Million dollars. Meade preferred just to state CCI “chose not to honor.”  AT&T referred to CCI as a new company with no assets and as Inga’s strawman with no assets and then asked CCI for $13 Million security deposit.

Remember, Meade is writing this letter on **February 16, 1995** but the Inga Companies direct traffic only transfer to PSE had already been ordered as of **January 30, 1995** and Fred Whitmer Fraudulent Use **warning letter** was **February 6, 1995** acknowledging the Inga to PSE traffic only transfer. Meade understood the Inga to PSE traffic only transfer did not involve “a new customer security deposit” as the Inga Companies and PSE were long standing AT&T customers. If you look at AT&T’s own Revenue at Risk Report submitted in petitioners initial FCC filing in September 2006, the Inga Companies not only had by far the most traffic than any other aggregator----- but were also the most OVER REVENUE COMMITMENT. Meade **simply chose to mislead the FCC by ignoring the January 30, 1995 Inga to PSE traffic only transfer.** This “security deposit” issue was already solved with the Inga to PSE traffic only transfer.

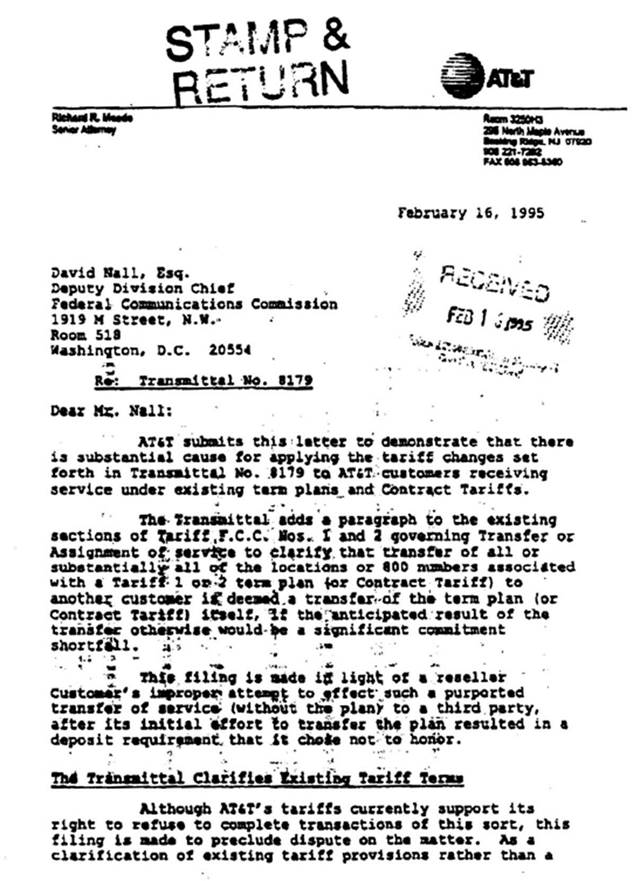
Meade was “making weight” as he knew his argument was all nonsense. Meade also claims Mr Inga told AT&T he was going out of business and going to bankrupt his companies. MORONIC!!!! AT&T billed the locations. Locations payed AT&T!!!! AT&T paid us. AT&T controlled the cash!!! Why would I tell AT&T I was going out of business? If that was true AT&T would be THE LAST PEOPLE I WOULD TELL. INTENTIONAL DECEIT!!!

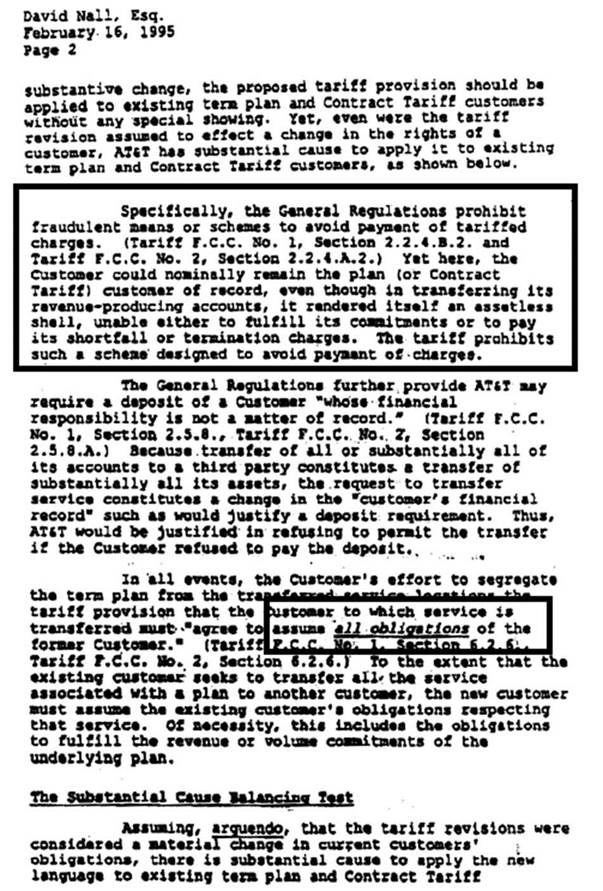
Under the CCI to PSE transfer how would the Inga Companies going out of business effect the CCI to PSE transfer anyway. The PLANS were transferred in December 1994 and in February 1995 Meades claiming the INGA IMPENDING BANKRUPTCY CAUSED ATT ALARM—when Inga doesn’t own the plans and AT&T controls the cash!!! Meade really believed the FCC staff were all total morons!!!

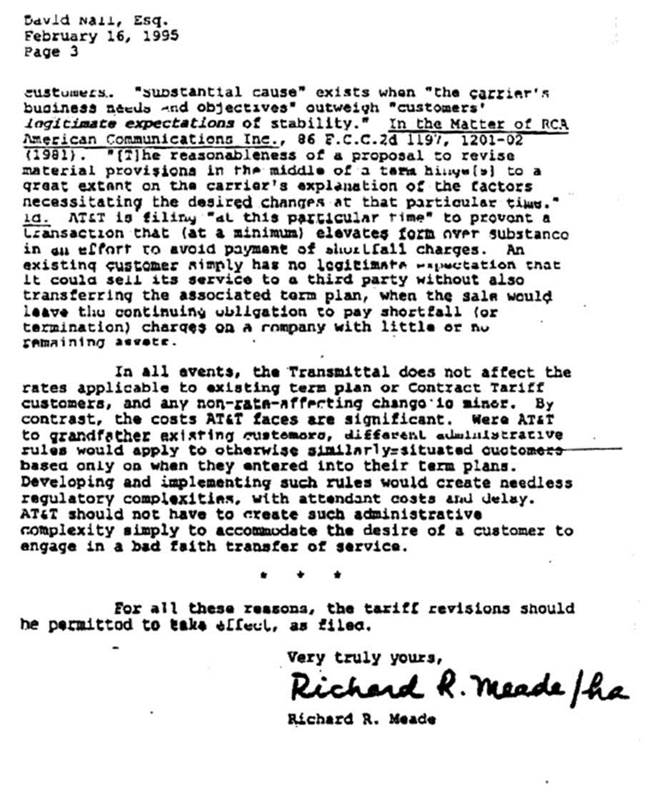
**MEADE** is writing this November 28, 1995 certification to the NJFDC already understanding that all 3 defenses under Tr8179 were FCC denied back in late February and Tr9229 was prospective.

All three defenses were covered by Meade under Tr8179 submitted to FCC on February 16, 1995

1. Deem the conceded traffic only transfer is a plan transfer to force the revenue and time commitments to transfer
2. Fraudulent Use under 2.2.4
3. All Obligations language under 2.1.8 based upon the misrepresentation all service transferred.







**Meade November 28, 1995 Certification to the NJFDC Judge Politan: Page 2**

I am an attorney-at-law of the state of New Jersey and am a Senior Attorney with defendant AT&T Corp. ("AT&T"). As such, **I have personal knowledge** of the facts and proceedings set forth herein. I submit this Second Supplemental Certification as part of AT&T's submission in connection with the Court' rehearing on the application for a Preliminary Injunction. **On February 16, 1995**, AT&T tiled Tariff Transmittal No. 8179 ("Transmittal No. 8179) with the Federal Communication Commission ("FCC"). A copy of that transmittal is attached hereto to as Exhibit A. A copy of my February 16, 1995 letter to David Nall, Deputy Chief of the Commission's Common Carrier Bureau, Tariff Division regarding the transmittal is attached hereto as Exhibit B.

In my letter to David Nall, I advised that **AT&T filed Transmittal No. 8179** in light of "a reseller Customer's improper attempt to effect • • • • a purported transfer of service (without the plan) to a third party."  I was referring to the proposed transfer of locations from Combined Companies, Inc. ("CCI") (**or Winback & Conserve, Inc. and the other Inga Companies**) to Public Services Enterprises of Pennsylvania, Inc. ("PSE"), by which virtually all of the locations, under the CSTP-II plans would have been moved to PSE, but the stripped-down plans would have remained with CCI. This effort to isolate the plans (with a potential of many millions dollars in shortfall charges) from the locations(i.e. the revenue-producing assets) was a **transparent attempt to avoid payment of shortfall charges**.

How was it avoiding paying? AT&T had the right to charge for shortfall and CCI or Inga had more money to pay!!!

Meade Continued page 3 of November 28, 1995 Certification to NJFDC:

“I understood that CCI was a new company with substantially no assets.

Meade knew that but told the FCC on February 16, 1995 that CCI chose not to pay $13 million!!!

That fact and Alfonse Inga's **announced intention to isolate the liabilities represented under the CSTP-II plans and have his companies file for bankruptcy caused AT&T to decline to carry out the CCI/PSE transfer**.

How would Inga company be going out of business effect the traffic only transfer, when CCI owned the plans at this point and AT&T still controlled all the cash? It is beyond lunacy!!! It is make up nonsense when you have no case.

Meade continued 11.28.95-page 3 para 4

“As stated in my letter, AT&T's position **was** that although its "**tariffs currently support its right to refuse to complete transactions of this sort**, this filing is made to preclude dispute on the matter." **The Tariff 2 General Regulations prohibit the use of fraudulent means or schemes to avoid payment of tariffed charges. (Tariff F.C.C. No.2, section 2.2.4.A.2.)** When a customer fails to comply with this section, **AT&T may temporarily suspend service for as long as the Customer is in non-compliance.** (Tariff FCC NO.2, Section 2.8.2.)”

Meade must be reading a different 2.8.2. tariff section. There was no circumvention to charge shortfall and if AT&T imposed 2.2.4 it had to immediately and temporarily suspend phone service and that meant turning off PHONE SERVICE ---not suspend the transfer as long as the customer was in non-compliance.

Meade 11.28.95 cert page 3 para 6:

“Under CCI's requested location transfer, CCI would have nominally **remained the customer of record** for the CSTP II's. But by transferring its revenue-producing accounts, CCI would apparently have 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 to avoid payment of charges and permits AT&T **to suspend the customer's right to transfer service** as part of such a scheme.”

Meade does advise NJFDC Judge Politan that the plan obligations don’t transfer in November 1995. He gave up the “all obligations” fraud he tried on the FCC on February 16, 1995.

Mr Meade misrepresents 2.8.2 gives AT&T the right “t**o suspend the customer’s right to transfer service** as part of such a scheme.” AT&T had no right to charge the locations for shortfall, so it is not relevant if the locations transferred. As per 2.8.2 **there was no circumvention.** AT&T still had the right to charge the remaining plan holder (CCI, Inga, 800 Services) for shortfall charges.

As per the Filed Rate Doctrine AT&T had to suspend phone service immediately on January 13, 1995 –the date of the Order IF it could prove circumvention of charging.  NOT “AVOID PAYMENT OF CHARGES” –Just charging. Charging and payment of charges are different. AT&T has no right to claim that if the locations remained it would be easier to get paid by many locations as shortfall charges are the responsibility of AT&T’s Customer ---i.e. the aggregator.  If the DC Circuit had ruled in AT&T’s favor on fraudulent use the next step would have been to interpret 2.8.2. As the DC Circuit Decision shows there was no review of 2.2.8 as the DC Circuit already decided against AT&T on 2.2.4 without having to review 2.8.2.

AT&T’s Counsels FCC Comments December 2006 page 7 footnote 4

“The D.C. Circuit did not reach the Commission's grounds for rejecting AT&T's alternative claims based on the antifraud provisions of the tariff.”

AT&T confirms “the DC Circuit did not reach the Commissions alternative claims based on the antifraud provisions of the tariff.” which the Commission stated were based upon 2.8.2. The reason why the DC Circuit didn’t need to get to the Commissions ground (2.8.2) was because DC rejected AT&T’s 2.2.4 fraudulent use assertion as per 2.1.8 traffic only transfers. It did not need to get to 2.8.2. It would only need to get to 2.8.2 if it found AT&T’s denial under 2.2.4 was a permissible tariff section to use.

The DC Circuit made an error is understanding the FCC’s position on what the obligation allocation would be if the transfer had been done using 3.3.1 Q Bullet 4 (Delete and ADD). For some reason the DC Circuit believed the FCC was advising that none of the 4 obligations would transfer:

See DC Circuit Court PAGE 10:

The **Commissions interpretation** eviscerates this very purpose, allowing PSE to take up essentially all of CCI’s resale business without assuming so much as **ONE** of CCI’s obligations to AT&T.

When it came to the 2.1.8 traffic only transfer the DC Circuit’s position was that the CCI-PSE transaction was “**within 2.1.8.,” “instead of dropping and adding traffic in separate transactions.”**

DC Circuit Page 9:

Be that as it may, proceeding by analogy does not change the fact that **CCI and PSE** did request a *transfer* — **a transaction on its face at least potentially within the reach of Section 2.1.8,** which governs “Transfer or Assignment” — **instead of dropping and adding traffic in separate transactions**, George Elliot has written that “the world is full of hopeful analogies,” Middlemarch83 (Penquin Classics 1994) ( 1872), and this must be one of them, but likening the transfer at issue to a different arrangement, and then analyzing how that arrangement would fare under 2.1.8., does not advance the FCC’s position very far.

DC Circuit page 4-5 AT&T is correctly advising that under 2.1.8 plan obligations don’t transfer:

**In addition**, AT&T argued that the proposed transfer violated the tariff’s **“fraudulent use”** provisions, as CCI almost certainly would fall short of **its volume commitments** once the traffic was moved to PSE’s account, and AT&T had reason to believe that CCI would not have sufficient assets to pay the **resulting penalties.**

AT&T’s reply brief to DC Circuit Court page 9 in 2005 in arguing against the FCC was in agreement with Inga Companies that 2.1.8 allowed traffic only transfers--- “without the plan and its associated obligations” which AT&T stressed were the revenue and term commitments:

“AT&T never stated below that Section 2.1.8 “applied only to the transfer of the CSTPII Plans’ themselves,” and that the provision is inapplicable to transfers of **traffic only**—**without the plan and its associated obligations.”**

Below the DC Circuit explicitly states we do not reach the remaining issues addressed by the Commission **which of course was (2.8.2.)** as DC Circuit did not need to address that issue because it found that if would only be fraudulent use under 2.2.4 if the new customer was not receiving **any of the obligations**. Prior to the DC Circuit Court’s deciding statement DC confirms we transferred all the obligations listed within 2.1.8.

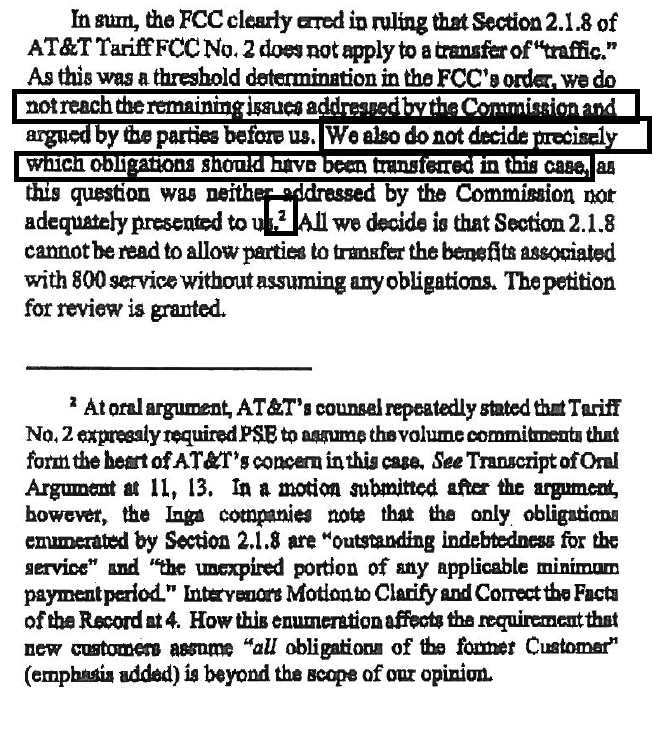
The DC Circuit stated it couldn’t review obligations allocation because the FCC did not interpret it. The DC Circuit by law can only review what the FCC interprets. The FCC did not interpret obligation allocation because it was not referred controversy. AT&T and petitioners were both on the same page on which obligations transfer under a plan or a traffic only transfer. Meade’s all obligations nonsense under Tr8179 was based upon misrepresentation of fact that all service was transferred.

**DC Circuit Court Didn’t Address FCC’s 2.2.4 Fraudulent Use Denial as per 2.8.2 Illegal Remedy as DC Decided it was Not Fraudulent Use**

The DC Circuit decided that it would be a violation of 2.1.8 if there weren’t ***any*** of the obligations transferred. Of course, petitioners and AT&T have always agreed that revenue and term commitments only transfer when the plan transfers—that was the very reason for filing Tr8179, so AT&T can decide when to force a plan transfer to force the revenue and term commitments to transfer.

DC Circuit could not have issued a decision in favor of AT&T on 2.2.4 on the 2.1.8 traffic only transfer without having addressed 2.8.2.  DC understood that petitioners did transfer all the obligations enumerated within 2.1.8. Obviously if DC believed it would be a violation of 2.1.8 unless all 4 obligations were transferred then **DC Circuit would have needed to reserve its review until after the FCC interpreted which obligations transfer under 2.1.8.**

If obligation allocation was a controversy in 1995 the FCC would have needed to interpret which obligations transfer under 2.1.8.Even if the FCC found that it would be fraudulent use the next FCC interpretation would be whether 2.1.8 or 3.3.Q.1 bullet 4 were conditioned upon first satisfying 2.2.4. Then the FCC would need to evaluate whether 2.2.4 was timely and properly applied. The DC Circuit didn’t need to address any of that as DC simply ruled against AT&T on 2.1.8.



Just based upon the DC Circuit decision explicitly stating it did not review what the FCC interpreted 2.2.4 and 2.8.2 the DC Circuit Order could not have been a fraudulent use decision in AT&T’s favor.

DC Decision reiterated what Inga Companies stated in its DC Circuit Post Oral Argument brief that the only 2 listed obligations within 2.1.8 were transferred and assumed by PSE. (Bad debt and unexpired portion of the minimum payment period).

Assume that DC Circuit believed **it would be fraudulent use unless all 4 obligations transferred.**

If that were the case the DC Circuit **would have needed to remand the case to the FCC** to determine if obligations 3 and 4 (revenue and term commitments) must also transfer on a traffic transfer **and then reserve, its review to decide fraudulent use.**

If DC Circuit believed revenue and term commitments may also need to transfer to be compliant with fraudulent use, then it could not decide anything as the DC Circuit explicitly stated it cannot review what the FCC did not interpret. It is thus conclusive that the DC Circuit reviewed the only controversy the FCC interpreted (2.2.4 fraudulent use without needing to interpret 2.8.2) and was able to determine it would only be fraudulent use if there wasn’t the assumption of any of the 4 obligations.

The DC Circuit was satisfied that 2 of the 4 obligations were transferred, to comply with 2.1.8 and 2.2.4 fraudulent use without needing to review 2.8.2. DC did not understand that transferring just the two obligations was all that was needed for a traffic only transfer –but that was not a reviewable issue as there was no obligation allocation controversy or uncertainty in 1995. All AT&T’s defenses were premised on the suspecting of shortfall as the revenue and time commitment do not transfer.

The DC Circuit seemed to believe that if accounts were deleted and added no obligations would transfer. The FCC 2003 Order agreed with the District Court, that PSE would be responsible for bad debt.

As we saw supra in AT&T’s opposition to Inga Companies post DC Circuit Oral Argument brief, AT&T claimed the second obligation was the revenue commitment.

Given the fact that the DC Circuit stated at FN 11 that petitioners did transfer the only 2 obligations listed within 2.1.8 and AT&T’s 1996 brief claimed, and the 2003 Order stated, that the termination charges were not a factor because the plans were not being terminated -----that apparently satisfied DC Circuit that at minimum all the obligations listed within 2.1.8 were transferred by CCI and assumed by PSE.

The FCC agrees with the NJFDC and the parties on the non-controversial obligation allocation and notes AT&T’s position that termination charges are not an issue because CCI controls the ability to avoid termination charges by simply not terminating the plans.

FCC 2003 Order page 8 para 10

It claims that the transfer from CCI to PSE “had both the purpose and the effect of avoiding the payment, in whole or in part, of tariffed shortfall … charges” **(FCC Footnote 56 below)**

because CCI’s entire revenue stream would transfer to PSE, but PSE would have no corresponding obligation to pay any shortfall charges under the CSTP II. (**FCC Footnote 57 below)**

Thus, AT&T argues “if only the traffic on the plans and not the plans themselves were transferred to PSE, *the liability for shortfall . . . charges attendant thereto would then be vested in CCI:* an empty shell.” (**FCC Footnote 58 below)**

1. FCC Footnote 56: Opposition at 5. Although AT&T also argues that the move also avoided the payment of tariffed *termination* charges, *id.*, it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is **not at issue here.** Opposition at 3 n.1. That is consistent with the facts of this matter; **petitioners never terminated their plans.** Accordingly, termination charges **are not at issue in this matter**.
2. FCC Footnote 57: Opposition at 5, 12.

FCC Footnote 58: *First District Court Opinion* at 10 (emphasis added); *see* Opposition at 12.

Under AT&T’s post DC Circuit intentional fraud on the FCC and NJFDC AT&T claimed that the termination charges transfer on a traffic only transfer and the former customer has **non-controllable** termination liability due to the joint and several liability provision of 2.1.8. In other words, under AT&T absurdity the termination obligation gets transferred to PSE and CCI is no longer in control of the termination liability. Under this AT&T fraud CCI remains liable for the termination charges due to the joint and several liability provisions.

So, AT&T misrepresents that too as instead of the former customer only remaining jointly and severally liable “**at the time of transfer**” AT&T needs to misrepresent that as **forever** remaining jointly and severally liable. Even more absurd is that under AT&T’s fraud if both parties remained jointly and severally liable AT&T could pursue either CCI or PSE and there would not be any issues of suspecting shortfall. AT&T’s intentional fraud ended up being a newly created defense that killed all there defenses.

The point here is AT&T before the DC Circuit took the position that the second obligation was the revenue commitment and that was assumed by PSE. Thus, none of AT&T’s defenses should have been argued based upon AT&T’s post DC Circuit absurd tariff interpretation.

**Filed Rate Doctrine Mandates Fraudulent Use 2.2.4 was Precluded Due to No Circumvention & As of January 13, 1995 when 2.8.2 was not Immediately Used to Suspend Phone Calls**

As the DC Circuit Decision states --by law the DC Circuit can only review what was interpreted by the FCC. The FCC only interpreted fraudulent use. **Even if the DC Circuit Court determined AT&T could use 2.2.4,** that does not address the fact AT&T chose **not** to use the tariffed remedy of temporarily suspending service on January 13, 1995.

AT&T’s counsels in 1996 misrepresented AT&T’s remedy as per 2.8.2 was to “suspend the transfer of service” page 11 fn 11 versus the tariffed remedy to “temporarily suspend service.”  When AT&T on January 13, 1995 received the traffic only transfer order, it was obligated to IMMEDIATELY temporarily suspend the receiving of phone calls on the toll free 800 Service.

AT&T used an illegal remedy of permanently denying the traffic only transfer and thus **as of January 13, 1995** was precluded from relying upon its 2.2.4 fraudulent use defense having decided to not use the 2.8.2 tariffed remedy.

The DC Circuit Determined it would not be a violation of 2.1.8 unless none of the 4 obligations were transferred. Based upon AT&T’s representation to the DC Circuit that the second obligation was the revenue commitment that means that PSE assumed all the obligations listed and according to AT&T’s DC Circuit Counsels that also included revenue commitment. However, the fraudulent use defense should never had been allowed by AT&T as the following indicates AT&T counsels misrepresented its tariffed obligations as per 2.2.4 Fraudulent Use and 2.8.2 (remedies section).

FCC 2003 Order PAGE 9 AT&T’s action must be **IMMEDIATE!!!!**

Section 2.8.2 of the Tariff, titled “Interference, Impairment or Improper Use,” however, specified the remedy that AT&T could employ if it suspected fraudulent use under section 2.2.4.  That section provided that –

The Company may take **immediate action** to ***temporarily suspend service***when a Customer violation results in any of the following:     . .

-- **circumvents** the Company’s ability to charge for its services as specified in Section 2.2.4 (Fraudulent Use) preceding . . . .    . . . .

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

When a violation results in the temporary suspension of service … [this] restriction[] will be removed when the Customer is in compliance with the [tariffed] regulations and so advises the Company. “

When Meade filed Tr8179 on February 16, 1995 the 2.2.4 defense was already dead. Yes, the FCC also denied Tr8179 and AT&T withdrew it on June 2, 1995 but it was technically over on January 13, 1995 when AT&T did not temporarily suspend phone service.

DC Oral Argument page 3 AT&T counsel David Carpenter:

As AT&T’s counsel Carpenter explained in detail to the DC Circuit Court service a transfer of service is **“simply changing the customer of record for a service**.”

Carpenter again:

“WATS service is an arrangement that allows in the case of 800 service, **that delivers a call to your location when an 800 number is called**.”

Carpenter again:

“So the service is the, you know, it's the, you know, **the right to receive a call.”**

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 about WATS, Wide Area Telephone Service, right?

MR. CARPENTER:  Right.

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

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

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

MR. CARPENTER:  Of WATS service.

JUDGE GINSBURG:  Of service?

MR. CARPENTER:  Yes.

JUDGE GINSBURG:  What is a WATS service?

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

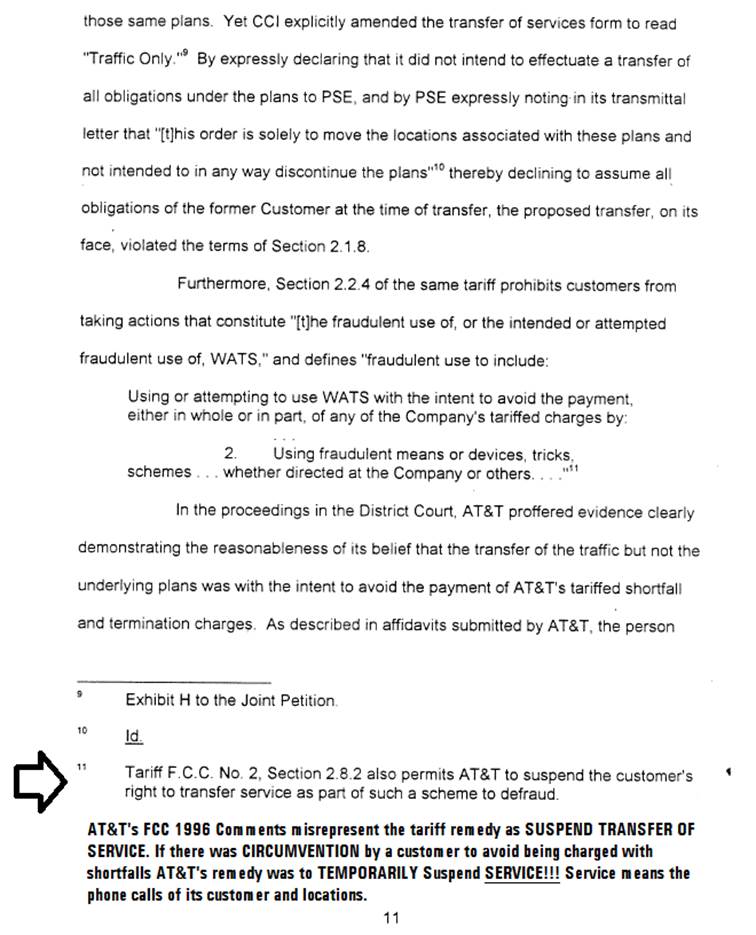
Carpenter Again..

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

Even if AT&T met all the other hurdles, AT&T intentionally chose not to use its temporary suspension of service remedy. AT&T must adhere to as the **Filed Rate Doctrine.** The “filed tariff doctrine” requires carriers, as well as their customers, to abide by the terms of the tariff and precludes carriers from acting outside. See AT&T v. Central Office Telephone, 524 U.S. 214, 222-23 (1998); MCI WorldCom v. FCC, 209 F.3d 760, 762 (D.C. Cir. 2000).  See, e.g., Central Office Telephone, 524 U.S. 214; ICOM, 238 F.3d at 221-23; Marco Supply Co. v. AT&T Communications, Inc., 875 F.2d 434, 436 (4th Cir. 1989).

Once AT&T chose not to use the temporary suspend phone calls the traffic should have been transferred. Fraudulent Use was never contemplated by AT&T to be used for suspecting shortfalls. Meade’s Tr8179 failed to show “implicit evidence” that 2.2.4 was ever used to suspect shortfall. Meade intentionally misused the substantial cause process as AT&T’s goal was to delay the legal process while AT&T was violating our CPNI by telemarketing our customers. There is no need to argue tariff interpretations. These are non-disputed facts. AT&T chose to bypass on the temporary suspension of service remedy. AT&T had to temporarily suspend phone calls. That is the law= **Filed Rate Doctrine.**

AT&T’s 1996 FCC Comments page **11 FN 11** “SUSPEND the customers right to transfer service.”



AT&T misrepresented 2.8.2 as enabling AT&T to “SUSPEND the customers right to transfer service.”   If AT&T could show, there was a circumvention of AT&T’s ability to charge shortfall –which was not the case as the plan holder would have even more money to pay shortfall---- AT&T’s only REMEDY was to **TEMPORARILY SUSPEND SERVICE**.

SERVICE MEANS TEMPORARILY **SHUTTING THE PHONE SERVICE OFF** OF NOT ONLY THE CUSTOMER BUT ALL THE LOCATIONS. There was no remedy to prohibit the transfer of EXISTING SERVICE.

Notice in the footnote how AT&T leaves the word TEMPORARY out of its tariff quote and changes the remedy from temporarily suspending service to suspend the transfer.

The fact that AT&T chose not to impose its 2.8.2 remedy is conclusive that it did not believe it was being harmed, so it bypassed on using the remedy and thus is precluded from using the remedy.

Furthermore, when AT&T misrepresented it had a “fraudulent use” defense after it chose to bypass on January 13, 1995 using that defense. AT&T was insisting upon a defense that was no longer tenable and without evidentiary support; which is sanctionable under Rule 11b. Meade’s February 16, 1995 TR8179 implicit argument without evidence is ethical misconduct. Fact: Meade provided zero evidence. If it was implicit he would and should have evidence. No interpretation needed. Meade misrepresented AT&T had a 2.2.4 defense on February 16, 1995 when AT&T had already was already precluded from using that defense when it did not suspend the phone calls on January 13, 1995.

If suspecting shortfalls in the future was a common, routine, implicit, acceptable scenario for fraudulent use AT&T’s counsel Meade was obligated to provide such evidence when he submitted AT&T’s substantial cause pleading on February 16, 1995.

Obviously if you are going to represent to the Commission that suspecting shortfall was an actionable occurrence, and meet the substantial cause test the Commission would expect evidence that AT&T frequently used 2.2.4 and 2.8.2. when it suspected in January 1995 that 18 months later it would be deprived in June of 1996 of charging petitioners for non-rendered service.

Furthermore that 18 months period was based upon AT&T’s controversial interpretation that even customers who are under 3-year commitments only get one post June 17, 1994 restructure without needing to meet pro-rated revenue commitments.

As the FCC 2003 Order noted there was no circumvention of AT&T’s ability to charge petitioners shortfall. As stated by the DC Circuit Court it was conceivable that the much greater revenue would cover the shortfall anyway. **DC Circuit Oral Argument Page 26 Line 11:**

MR. BOURNE:  But the money that PSE paid to CCI as part of the transactions would help possibly defray shortfall charges.  They still had the ability to get new traffic on their own plan, and PSE promised to assist in moving traffic back, if necessary.  It's also --JUDGE GINSBURG:  **I guess it's possible that the discount, the incremental discount available under 5.1.6 is so much greater, so great that it would more than cover the shortfall charges under CSTP II.** MR. BOURNE:  Well -- JUDGE GINSBURG: **It's conceivable.** MR. BOURNE:  **It's conceivable.**

If AT&T believed that the traffic transfer was an actionable fraudulent use occurrence and met all other hurdles AT&T simply did not act to temporarily suspend service on the January 13, 1995 date of the traffic only transfer.

AT&T chose to bypass taking action on its remedy to “temporary suspend service.” Having bypassed temporary suspension of service, AT&T could no longer rely upon fraudulent use and was obligated to process the traffic only transfer as of the order dates.

AT&T was FCC denied the 2.2.4 defense under Tr8179 in any event and withdrew it on June 2, 1995 but technically that 2.2.4 defense was history when AT&T did not use the remedy on January 13, 1995. Despite AT&T’s 1996 misrepresentation page 11 fn 11 that AT&T’s remedy under 2.8.2 was “Suspend the Transfer of Service” it was not. The same misrepresentation was made by Meade to the NJFDC in his November 28, 1995 certification.

FCC 2003 Order page 10:

AT&T, however, did not temporarily suspend service to CCI.  Instead, it simply refused, in perpetuity, to move the traffic to PSE. If AT&T suspected fraud, as it claims, it should have suspended CCI’s service. It did not do so.  AT&T’s refusal to move the traffic was not the tariffed remedy for fraudulent use.  Because AT&T did not act in accordance with the “fraudulent use” provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE.  **AT&T does not rely upon any other provisions of its tariff to justify its conduct.**

FCC 2003 Order FN 66:

If AT&T had suspended service as its tariff permitted, it would not have collected any revenue at all under these accounts, rather than, as it did, continue to collect under the CSTP II.  Although suspension was clearly a less attractive alternative than continuing to collect revenue at the CSTP II rates, **suspension was the only remedy available to AT&T under the terms of its tariff** for the type of “fraud” AT&T alleges it suspected.

Filed Rate Doctrine: The “filed tariff doctrine” requires carriers, as well as their customers, to abide by the terms of the tariff and precludes carriers from acting outside. So while NJFDC Judge Politan determined AT&T had no merit to raise a fraudulent use defense---even if the FCC and DC Circuit said AT&T had the tariffed ability to do so the non-disputed fact is AT&T did not take on January 13, 1995 IMMEDIATE ACTION TO SHUT OFF PHONE SERVICE.

The only reason why the FCC was evaluating 2.2.4 fraudulent use was due to the DELETE AND ADD declaratory ruling request. The FCC had already denied all three defenses including 2.2.4 as per the 2.1.8 traffic only transfer. The DC Circuit gave its ruling on 2.2.4 fraudulent use as per the 2.1.8 traffic only transfer claiming it would be fraudulent use if a new customer wasn’t receiving any of the obligations. DC Circuit noted CCI/Inga did transfer all the obligations enumerated within 2.1.8. and thus did not engage in fraudulent use. However EVEN IF THE DC CIRCUIT SAID the traffic only transfer to PSE would constitute fraudulent use—AT&T still needed as per the Filed Rate Doctrine to **IMMEDIATELY SUSPEND PHONE CALLS**. Having used an illegal remedy AT&T can’t rely upon the remedy.

FCC 2003 page 13:

“We agree that, when AT&T availed itself of a remedy not “specified” under its tariff, it violated section 203 of the Act.  As discussed in Section C above, pursuant to section 203, a carrier’s tariff controls the rights and obligations of the carrier, which, as a matter of law, is required to abide by the tariffed terms and is precluded from acting outside it. AT&T’s tariff did not prohibit the movement of traffic without plans.  **Thus, when AT&T availed itself of a remedy not “specified” in its tariff, that action violated subsection 203(c).**  Accordingly, we grant petitioner’s request for declaratory ruling that AT&T violated section 203.”

The DC Circuit Decision is not a remand and the case is over. The June 2006 Bassler Referral on 2.1.8 did not expand the scope of the Third Circuit Referral. The Third Circuit explicitly stated the FCC denied Tr8179 which contained all AT&T’s defenses. (A) force a plan to transfer, (B) Section 2.2.4 and (C) “all obligations” language under 2.1.8. in which Meade misrepresented all service was being transferred. AT&T itself in the non-vacated May 19, 1995 NJFDC decision claimed the outcome of Tr8179 would resolve the traffic only transfer issue. Mr Meade’s position under Tr8179 was based upon AT&T’s “horseshoe” position that all obligations must transfer because “all service” was transferred--but all service was not transferred—that was a lie.

**NJFDC STATES & AT&T Agreed: Complaint Includes Inga Companies to PSE Traffic Only Transfer**

The evidence contained in the emails sent this further confirms AT&T’s position and the NJFDC position that the FCC needs to address both the CCI to PSE and Inga to PSE traffic only transfers. Both were based on the same set of facts, but the difference with the Inga to PSE traffic only transfer is AT&T counsel Whitmer claimed he provided zero written evidence of denying in writing within 15 days the Inga to PSE traffic only transfer as per 2.1.8 (c)

The first scenario was the CCI to PSE traffic only transfer. Judge Politan then stated the second set of facts was when I gave CCI Letter of Agency to move the specified locations without the plans directly from Inga Plans to PSE.

Judge Politan: That was the first scenario, factually that you went through. The **second scenario** was CCI, as assignee or agent for **Winback, parked all the service with PSE, retained the plan commitment,** so to speak, and said: Approve that. **Those are the two sets of facts that have occurred.** No one has alleged in this case that you went to AT&T and said: Extend the window on the 516 contract to Winback so they could subscribe to it. So it’s not in the case.

When Politan made these statements he obviously understood that the Inga Plans were already transferred as of December 1994. Richard Brown stated that the February 6, 1995 letter from his co-counsel Fred Whitmer was a DENIAL within 15 days of the January 30, 1995 Inga to PSE traffic only transfer.

Evidence this week was discovered in which AT&T counsel in March of 1995 still recognized that the Inga to PSE traffic only transfer was included within the case complaint despite also understanding the Inga Plans were transferred in December 1994:

See AT&T’s Brief here as **EXHIBIT J** page 21 “two separate transactions”

The court should also recall that plaintiff attempted **two separate transactions** to achieve the same result. The first, involved CCI was to accept the plans but transfer the service, involved AT&T **requirement of security deposit from CCI** pursuant to the Tariff. The **second transaction** that Inga and Ship structured when **CCI was unable to make the required deposit**, involved AT&T's refusal to transfer service away from the plans, leaving them unable to meet service commitments. As to the first, there is no question of AT&T's right pursuant to tariff to act; **as to the second**, tariff transmittal **8179 addresses that issue** to make explicit AT&T's implicit rights under the Tariff. Accordingly, **the proceeding in the FCC will resolve that issue**, the **only issue of meaningful controversy** open in **these** transactions.

AT&T counsels in 2016 responding to the FCC 8.11.16 Public Notice that covered the Declaratory Ruling Requests----- which included the Inga to PSE traffic only transfer ------claimed the 2.6.95 letter from Fred Whitmer was a written denial based upon PSE refusing to assume revenue and time commitments.

However, the actual author of the 2.6.95 letter Mr Whitmer asserted to the NJFDC Judge Politan on November 28, 1995 that his letter was a fraudulent use warning letter---and claimed that his 2.6.95 letter pertained to the CCI-PSE traffic only transfer. Mr Brown provided the certificate of service on that November 28, 1995 NJFDC brief.

AT&T counsels asserted to the FCC in 2016 that

(A) it was a denial of the Inga to PSE transfer when the author himself Mr. Whitmer claimed it had to do with CCI to PSE!!! Who is making the misrepresentation the 1995 or 2016 AT&T counsels?

(B) Misrepresent to the FCC in 2016 that the letter had to do with PSE refusing to assume commitments when the author Mr Whitmer claimed it had to do with “fraudulent use” because of the fact that under the tariff CCI must keep the revenue and term commitment.

In any event despite AT&T’s 2016 misrepresentation to the FCC the fact is AT&T acknowledged that the Inga to PSE traffic only transfer was not precluded from being included within the complaint. That was after the fact that the plans were transferred in 1994.  If for some reason the CCI to PSE traffic only transfer was denied the reason why I decided to also do a direct transfer to PSE was to have a backup offense.

Just as AT&T can assert multiple defenses as it did under the FCC denied Tr8179 scam on the FCC---the Inga /CCI petitioners could initiate multiple offenses strategies. The fact is Judge Politan made his decision to include the 2 sets of facts already understanding at that time the Inga plans were transferred.

**The CCI, Inga Companies and 800 Services, Inc. Traffic Only Transfers Were Not Denied in Writing within 15 days As per 2.1.8 (c)**

Given the non-disputed fact that AT&T has provided ZERO EVIDENCE of a written denial within 15 days of the January 30, 1995 Inga to PSE traffic only transfer as per 2.1.8 (c)--------- this Commission has a clear non-disputed path to simply determine AT&T was precluded from raising any defenses for not having denied in writing within 15 days the Inga Companies traffic only transfer to PSE.

AT&T counsel Whitmer claimed the Inga-PSE traffic only transfer did not involve the new customer security deposit issue that CCI faced and thus was only based upon the so-called implicit Tr8179 “deem a conceded traffic only transfer is a plan transfer.” That defense was also denied and filed late. TR8179 was filed 2.16.95 and the Inga -PSE traffic only transfer was January 30, 1995.

Additionally, AT&T did not take immediate steps to temporarily suspend the phone service on January 30, 1995 Inga to PSE transfer—even if it could bogusly claim that there was “circumvention” as per 2.8.2 to charge Inga Companies. AT&T did not qualify to use 2.2.4 because the remedy required “circumvention to charge.”

The Inga plans were pre June 17, 1994 Ordered and thus grandfathered:

DC Circuit Oral Argument Pg. 27 Line 2):

FCC Counsel MR. BOURNE:  Well, **CCI still had the obligation to pay its shortfall charges**, and there's, there are **other aspects to this that the Commission didn't rule on**.  I mean, for instance --                                                                                                                            JUDGE GINSBURG:  **Whether they were grandfathered?**

MR. BOURNE:  **Right.**  So it could well be that there were little or **no shortfall charges**.

AT&T has argued to the FCC that 2.1.8 (c) is not a 15-day written denial. However, actions and law speak louder than AT&T cover-ups.

AT&T itself understood that it needed to misrepresent to the DC Circuit that it denied the CCI-PSE traffic only transfer within 15 days, so AT&T simply made up the date of January 27, 1995. If 2.1.8 (c) was not a statute of limitation requirement there was absolutely no reason for AT&T to intentionally lie to the DC Circuit Court!!!

As the Commission also knows that if tariffs are not explicit it is ruled against AT&T. If AT&T did not want 2.1.8 (c) to be construed as a 15 days denial or AT&T must process requirement it needed to explicitly state so. In actuality the 2.1.8 version that governed both Inga to PSE and CCI to PSE were hard 15 days written denial or AT&T must process the transfer. We know this also because when tariffs are changed symbols are used to denote whether it is a change in the terms and conditions. Because language changes were made between 1995 and the 2005 DC Circuit Court time period conclusively showing the 15 days required denial ---AT&T knew it better intentionally scam DC Circuit on the 15 days; otherwise the DC Circuit would understand that as per the Filed Tariff Doctrine all AT&T’s defenses are precluded.

If the DC Circuit was not lied to it would have simply mandated that the order must be processed. The FCC was not in a position in 2005 before the DC Circuit to question whether AT&T was scamming the DC Circuit on the fabricated denial of January 27, 1995! The FCC may have believed AT&T sent a written denial to PSE within 15 days—trusting AT&T’s word.

The AT&T fraud on the DC Circuit only came about in 2007 before the FCC after the Inga Companies confirmed with Frank Scardino the owner of PSE that they did not get a 15-day denial. AT&T of course tried a cover-up on the FCC by stating “it made a mistake” before the DC Circuit that the denial was January 23,1995. But the January 23, 1995 letter was not a denial of anything. If it was it would have been submitted by AT&T to the DC Circuit Court.

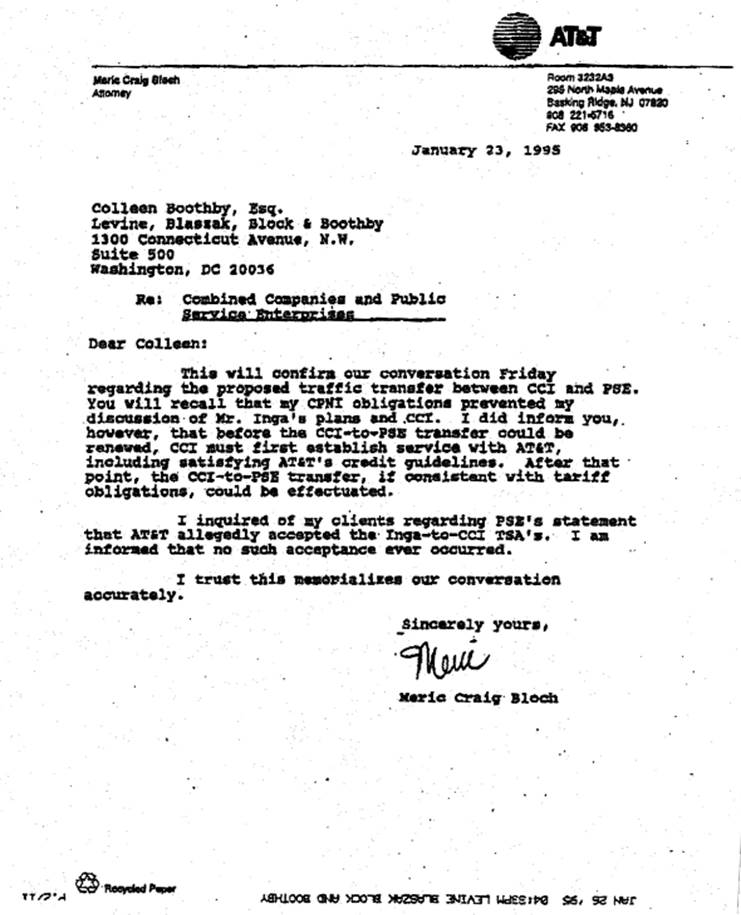
**In short AT&T has no evidence that it denied either the CCI to PSE or the Inga to PSE traffic only transfers within 15 days in writing as per 2.1.8 (c).**

According to AT&T’s fraud ---PSE was to assume revenue and time commitments on a traffic only transfer and refused—but the cover letter from PSE stated it was doing a **proper** traffic only transfer and not asking for any amendments. Amending terms and conditions were not allowed anyway despite what AT&T misrepresented to the FCC in 2006.

AT&T claimed to DC Circuit that it denied the January 13, 1995 transfer on January 27, 1995—fabricated a date to be within 15 days. If PSE was really denying assuming revenue and term commitments why would AT&T wait 2 weeks from January 13, 1995 to January 27, 1995? It would and should have been denied **on arrival** as not adhering to 2.1.8. Makes no sense. Then again none of AT&T’s frauds make any sense. Where is the written AT&T denial within 15 days stating PSE is refusing to assume revenue and time commitment on a traffic only transfer? AT&T’s Tr8179 “all obligations” defense is based upon the misrepresentation that ALL SERVICE being transferred and it’s a plan transfer—basically same as Carpenter.

AT&T January 23, 1995 letter below ---you know the one you gave the FCC as the replacement for the fabricated January 27, 1995 denial letter you claimed to DC Circuit that never existed.

“**After that point the CCI-PSE transfer, IF consistent with tariff obligations, could be effectuated.**



“**After that point the CCI-PSE transfer, IF consistent with tariff obligations, could be effectuated.**

**AT&T doesn’t know what the tariff terms and conditions are?** The traffic only transfer was submitted 10 days prior on January 13, 1995 and simply asked for a traffic only transfer.  What AT&T was doing here was not denying anything. It just stated “obligations” because it wanted to simultaneously argue obligations **do not transfer** (fraudulent use) and **obligations do transfer** under the “all obligations of the OLD PLAN” fraud.

So, AT&T hedges its bet by just saying “obligations.” That is not a substantiated written denial. Hedging your bet ----**sitting on the fence** ----and pivoting is not a substantiated written denial.  It’s a ---let’s see which fraud ( all obligations or fraudulent use) has a better chance and then we will roll with that one!!!

The fraudulent use defense was history as per 2.8.2 on January 13,1995 (CCI to PSE) and January 30, 1995 (Inga Companies to PSE) and April 26, 1995 (800 Services, Inc. to PSE) when AT&T did not take immediate action to suspend phone service a non-disputed fact and AT&T was not allowed to even use 2.8.2 as it did not circumvent AT&T’s ability to charge. Politan already denied it as having no merit as the plans were all pre-June 17, 1994 ordered.

**FCC Commissioners Agreed with FCC 2007 Order, AT&T’s 1995 Counsels and NJFDC Position that the Outcome of TR8179 Resolved all Issues**

The FCC was asked if 2.1.8 allowed traffic only transfers and the FCC pointed to page 15 of the **May 19, 1995** NJFDC Order.

However, by March 5, 1996 Decision the referred question was already answered based upon evidence and Meade November 28, 1995 certification and the FCC denial and AT&T withdrawal of Tr8179. AT&T’s Meade conceded on November 28, 1995 that the Tr8179 defenses the judged “intent” were dead and the TR9229 would be prospective. The January 23, 1996 Oral argument AT&T counsel Whitmer also conceded by law Tr9229 was only prospective and AT&T had no more defenses.

AT&T’s November 1st letter to the NJFDC as stated in the March 1996 NJFDC March decision confirmed AT&T’s concession that the outcome of Tr9229 would resolve the issue ----as AT&T had already given up on all defenses under Tr8179. The fraudulent use defense by March 1996 was also rejected as having no merit---a judgement call as R.L. Smith stated.

March 1996 Judge Politan Decision Page 16 para 1.

The Court finds **nothing** in the Tariff F.C.C. No. 2 which prevents fractionalization, and contemplates a like finding by the F.C.C. Cleary, therefore, plaintiffs have established a strong likelihood of success on the merits.

Judge Politan Oral Argument November 15th, 1995:

The Court: **I have a simple question.** Whether you can split the thing in two pieces. **That is all the question I had.** I mean, you know.

AT&T counsel Mr La Fiura: I understand

The Third Circuit referred a non-controversial question as the June 2, 1995 withdrawal of all defenses came after the May 1995 Decision—BUT THE MAY 1995 Decision stated that AT&T conceded that the outcome of Tr8179 would resolve the traffic only transfer issue. Tr8179 included all three AT&T defenses. By March 1996 Politan said there was NOTHING left to decide and issued the injunction.

The FCC said no 2.1.8 didn’t allow traffic only transfers but the DC Circuit determined 2.1.8 did allow traffic only transfers. The DC Circuit legally could interpret fraudulent use 2.2.4 because the FCC interpreted 2.2.4. fraudulent use.

The FCC 2003 Order used the obligations language of 2.1.8 in its interpretation of fraudulent use **agreeing with all parties as to the obligation allocation—as that was not the controversy**. The parties all agreed that revenue and term commitments stayed with CCI. AT&T conceded the termination charges are not an issue because AT&T conceded the plans were not being terminated by petitioners.

The FCC determined even if AT&T had reason to suspect fraudulent use (2.2.4), AT&T did not use the tariffed remedy of immediately suspending phone service as per 2.8.2. Thus, AT&T could not rely upon fraudulent use. The FCC 2007 Order accepted the DC Circuit position that 2.1.8 also allowed traffic only transfers not just 3.3.1Q Bullet 4 (delete and add). The DC Circuit ruled against AT&T on fraudulent use. If the DC Circuit had ruled in favor of AT&T on fraudulent use the DC Circuit would have needed to interpret 2.8.2

The FCC 2007 Order makes the important point that the DC Circuit **“declined itself to further interpret section 2.1.8.”**

**Had the DC Circuit ruled in favor of AT&T on fraudulent use it would have then needed to address the Commissions position that AT&T can’t rely upon fraudulent use due to the 2.8.2 illegal remedy.**

As the FCC 2007 Order pointed out the DC Circuit didn’t need to further interpret 2.1.8 as per the illegal remedy as the DC Circuit Decision simply ruled it would be fraudulent use only if the transaction was done were the new customer was accepting traffic “without assuming any obligations.” There were 4 obligations.

All we decide is that Section 2.1.8 cannot be read to allow parties to transfer the benefits associated with 800 service **without assuming any obligations**. The petition for review is granted.

The DC Circuit Court explicitly shows PSE was accepting **all the obligations enumerated within 2.1.8** (bad debt and unexpired portion of the minimum payment period---and AT&T was asserting the second obligation was the revenue commitment.

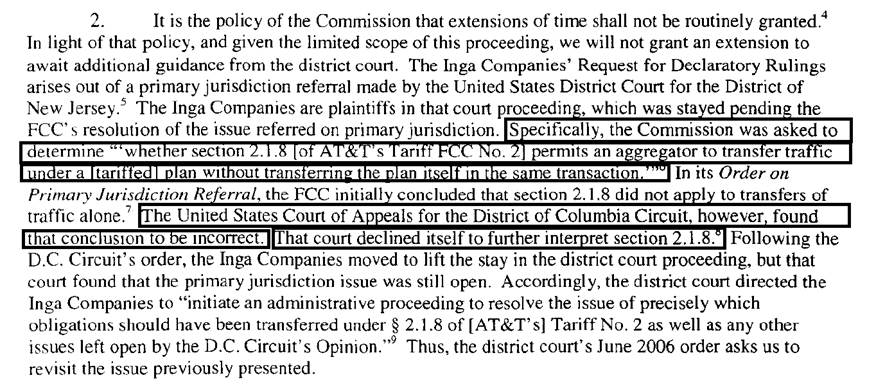
So obviously PSE was not involved in a traffic only transfer in which it wasn’t assuming any of the 4 obligations. The DC Circuit never needed to address the fact that 2.2.4 needed to be immediately enforced on January 13, 1995 as per 2.8.2

Additionally, the DC did not need to evaluate that there was no circumvention of AT&T’s ability to charge.

Furthermore, the DC Circuit was lied to by AT&T that it denied the 2.1.8 transfer on January 27, 1995 when AT&T has now conceded to the FCC that there was no January 27, 1995 written denial as per 2.1.8 (c). AT&T understood it needed to lie to the DC Circuit that it denied the 2.1.8 within 15 days so AT&T simply made up a date within 15 days!!!

AT&T conceded to the FCC that it lied to the DC Circuit that there was no such January 27, 1995 denial. AT&T incredibly tried to SCAM THE FCC with a different letter of January 23, 1995 but that wasn’t a substantiated written denial either!!! If AT&T really believed the January 23, 1995 letter was a proper written denial letter to comply with 2.1.8 (c) it would have exhibited the January 23, 1995 letter as evidence with the DC Circuit!!! AT&T knew that January 1995 letter did not deny the transaction; but AT&T knew it needed to defraud the DC Circuit. Between 1995 and 2005 in DC the tariff symbols indicated that that 1995 version was indeed a hard 15-day written denial. AT&T served up more nonsense to the FCC on the January 23, 1995 coverup.

AT&T loses the case simply under 2.1.8 (c) as it did not provide a written denial within 15 days. It’s fraudulent use defense was history on the day of the order as AT&T did not take immediate suspension of phone service action. Tr8179 was filed 2.16.95. over 15 days after BOTH the CCI to PSE and Inga to PSE traffic only transfers. While the CCI to PSE transfer was being held up due to AT&T requesting security deposit of CCI for acquiring the Inga plans—the Inga to PSE traffic only transfer was not denied at all. AT&T acknowledged the transfer on February 6, 1995 and issued a fraudulent use WARNING letter. However, the fraudulent use defense as per the Inga Companies traffic only transfer to PSE was DEAD on **January 30, 1995** when AT&T chose not to take immediate action against the Inga Companies. Fraudulent Use must be immediately acted upon or AT&T is precluded from relying upon it.



**AT&T Doesn’t Want Any of the Shortfall Infliction Issues Resolved**

The FCC issued Public Notice on 8.11.16 to address issues involving the pre-June 17, 1994 duration of the immunity under the Discontinuation without Liability Section and illegal billing remedy that deals with the imposition of shortfall and termination charges on CSTPII plans in June 1996 and in 800 Services, Inc. case October 1995.

The record shows that AT&T’s counsels Richard H. Brown **scammed** NJFDC Judge Politan. Despite the AT&T Network Services, Commitment Form explicitly showing 800 Services, Inc. UPGRADED its plan on July 22, 1994 AT&T counsel misrepresented to the NJFDC that 800 Services, subscribed to new service starting in August 1994 –so as to assert it was a post June 17, 1994 plan.

Having **scammed** Judge Politan there was no histrionics by AT&T’s counsel that the 800 Services, Inc issue had to be interpreted by the FCC. AT&T counsel was content with the SCAM JOB it pulled on the NJFDC.

AT&T counsel in 2016 misrepresented the FCC that 800 Services, Inc. never presented evidence to AT&T that its plan a pre-June 17, 1994 plan. But 800 Services, Inc. obviously did provide evidence---no better evidence could there be than the July 22, 1994 contract that indicated UPGRADE not NEW.

AT&T’s goal is simple. Use the outcome of the fraud it pulled on NJFDC Judge Politan against the Inga Companies. Therefore, AT&T has been fighting so hard not for the FCC to rule on the June 17, 1994 issue. AT&T counsels knows full well that the plans pre-June 17, 1994 terms and conditions are grandfathered for the life of the 3-year term.

If AT&T believed it was correct in its interpretation of the pre-June 17, 1994 issue and the illegal billing remedy issue it would have advised the FCC to go ahead and resolve that issue.

AT&T knows it scammed NJFDC Judge Politan and doesn’t want the FCC to address these issues. In the Inga Case it doesn’t make a difference because in January 1995 the plans were not even close to restructuring a second time until 1996.

AT&T’s own counsel Charles Fash letter of July 3,1996 conceded and agreed with Judge Politan that **AT&T had no merit raising its 2.2.4 fraudulent use defense** which speculated in January 1995 being deprived of collecting shortfall charges----- as the plans revenue commitment was not even due until March 31, 1996!

Furthermore, the plans were under 3-year commitments so the revenue commitment actually extended into at minimum 1998.

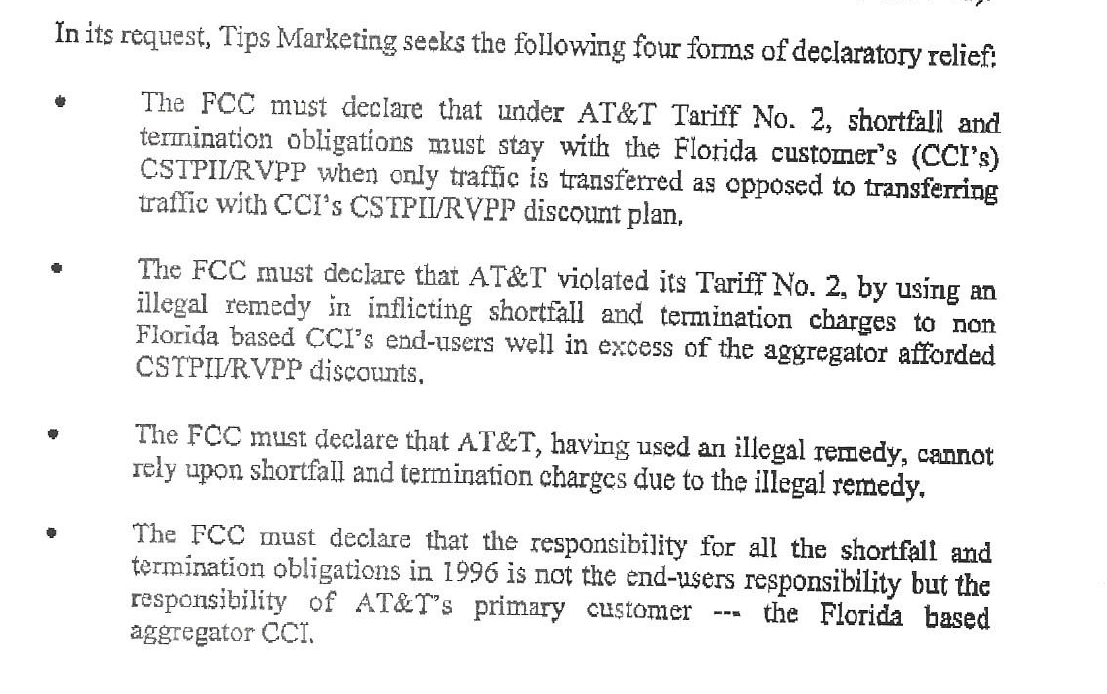
“You claim that AT&T, by placing tariffed shortfall charges on bills sent to CCI’s end-users, was somehow stepping outside the established forum for resolution of the collection dispute (supposedly, the pending lawsuit between the parties). In fact, however, this is a **new dispute** that **has nothing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

At the time of the January 1995 traffic only transfer ---even under AT&T interpretation of ONLY 1 POST June 17, 1994 RESTRUCTURE---shortfall wasn’t even on the near horizon.

**Here as EXHIBIT P\_is AT&T’s FCC Comments January 10, 2007.**

AT&T is fighting not to address the shortfall issues. AT&T wants to stay with the NON-FCC Decided fraud it pulled on the NJFDC.

Tips Marketing is also a company owned by the Inga Companies. The State of Florida is still waiting resolution of what may be construed as a taxable barter deal between CCI and AT&T as AT&T claimed it was fully compensated for the shortfall and termination charges as of July 1, 1997.

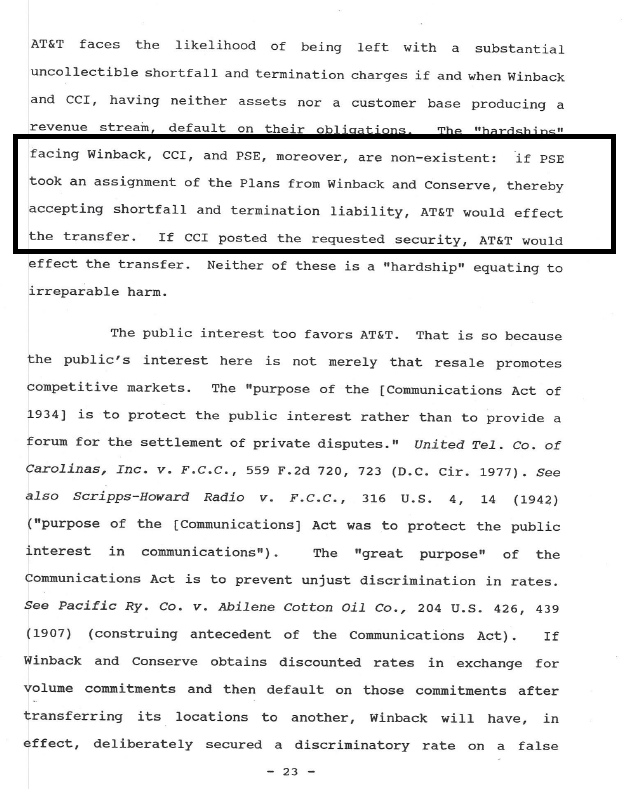
****

**Summary—AT&T’s Position to the NJFDC was that it Still Would Allow the 66% Discount Even If Petitioners Lost Tr8179!**

It is understood the traffic only transfer issue has been resolved against AT&T. These additional FCC comments serve to complete the record. They are also being done to show the NJFDC that AT&T will not respond with evidence of its Post DC Circuit intentional fraud on Judge Bassler that revenue and term commitments transfer on a traffic only transfer under 2.1.8. as AT&T’s misrepresented to Judge Bassler and Judge Wigenton.

Petitioners also want the record to be clear that it was AT&T’s position that even if Tr8179 was ruled in favor of AT&T, the 1995 AT&T position to Judge Politan was AT&T would still Allow Petitioners to Transfer the Plans to PSE and Obtain the 66% Discount on the Traffic.

**See below page 23** of Exhibit Q which is AT&T’s NJFDC Brief In Opposition to Plaintiffs' Motion for Temporary Restraining Order.

****

Thus, with that position even if petitioners lost the Tr8179 issue AT&T still would have allowed petitioners to obtain the 66%. Judge Bassler and Judge Wigenton were never presented with AT&T’s NJFDC position that even if AT&T won it would still allow the 66%. So why is AT&T fighting so hard when it has already advised NJFDC Judge Politan it would have still allowed the 66%!

The propriety of this AT&T concession means that even if the Inga Companies lost the traffic only transfer issue in January 1995, AT&T conceded it would have allowed the plans and their commitments to transfer to PSE and once the revenue and term commitments were under PSE’s name it would have allowed the locations to get 66%. So even if AT&T won the case it still claimed to the NJFDC that petitioners would still have that option of getting the 66% discount.

Possibly what AT&T really wanted was to tie up the case for an incredibly long period of time and then seek to provide miniscule hush money instead of what it promised Judge Politan. AT&T engaged in numerous intentional frauds on the NJFDC and FCC to win that delay game.

When Mr Brown called the Inga Companies counsel advised Mr Brown that it was not willing to take AT&T’s hush money if it meant that it would not pursue ethics violations. Counsel Brown attempted the hush money game the day after the Inga companies 2007 FCC Comments that fully deciphered section 2.1.8-- “former customer” analysis.

AT&T knew that all of its briefs had changed the word “former” to OLD PLAN and the “Transferor” in its attempt to pull off the fraud. AT&T should know that it’s typically the cover-up that solves the crime.

AT&T counsels crying and begging to take the hush money at this point after the fraud has been fully deciphered is pathetic. AT&T intentionally raped the integrity of Judge Bassler and Judge Wigenton and tried the intentional fraud on case Manager Deena Shetler---sending teams of counsel to plead to issue a decision.

Deena Shetler would not allow AT&T to create brand-new controversies over 10 years after the case started and assert defenses that AT&T conceded the FCC had already denied. When Deena wrote the FCC January 12, 2007 Order she was trying to tell the District Court the case was over.

Finally, the Commissioners Circulation ended in January 2017. The FCC Commissioners confirmed Deena Shelters January 12, 2007 Scope of the Case Order was accurate. Judge Bassler’s 2006 Referral was moot due to the scam AT&T pulled on his Court that it also pulled on Judge Wigenton and tried pulling on Deena Shetler.

**After several personal visits to the FCC, Deena Shetler let AT&T know that its fraud was not going fly at the FCC!!!**

Alfonse Inga President

Group Discounts, Inc.

Phillip Okin President

800 Services, Inc

1. The FCC has the November 28, 1995 Meade Certification to NJFDC, but I don’t think the following 2 files were uploaded into the case file: **AT&T to FCC** counsels Daniel Stark, David Ritchie, Richard R. Meade

   **Reply to Petitions** to Reject Tr8179 February 27, 1995 **See Exhibit F**

   Also **See Exhibit B\_ AT&T's Meade 3.6.95\_Cert to NJFDC** [↑](#footnote-ref-1)
2. See here as **Exhibit G\_**AT&T v FCC DC\_Oral\_Argument\_ 2005 [↑](#footnote-ref-2)
3. [2]  *Second District Court Opinion* at 4. [↑](#footnote-ref-3)
4. **Exhibit A:** Sections 2.2.4 and 2.8.2 that if applicable would have governed the transactions, but were not applicable. AT&T entered into the record revisions that did not govern the transactions. [↑](#footnote-ref-4)