

March 23rd, 2015  
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Re: WC Docket No. 06-210  
CCB/CPD 96-20

### Duration of Joint & Several Liability Is One Day So AT&T's Obligations Transferred Theory is Flawed

AT&T counsels in 1995 all asserted that CCI would remain liable for revenue and time commitments and thus this was AT&T's fraudulent use defense. This defense takes the position that customer plan obligations don't transfer.

So AT&T needed a way to cover-up for its original counsel in 1995 so AT&T asserted that the actual revenue and time commitment must get transferred to PSE. Therefore what its original counsels were referring to as commitments CCI would need to continue meeting were due to the joint and several liability clause in section 2.1.8.

AT&T's scam here:

AT&T page 30 of Dec 20<sup>th</sup> 2006

But there is nothing logically inconsistent about invoking both section 2.1.8 and 2.2.4 as bases for declining to process the proposed transfer. That transfer violated 2.1.8 because PSE refused to assume shortfall and termination obligations, and it violated 2.2.4 ( among other fraud provisions) because CCI, which would **remain liable for shortfall and termination obligations under the joint and several liability provision**, was shedding assets it needed to pay those charges. In any case, AT&T was entitled was entitled to rely on the fraudulent use provision in event the Commission concluded that 2.1.8 did not apply to traffic transfers at all. Such an alternative legal argument is obviously not a "concession" that the principle legal argument is invalid.

## Let's Analyze 2.1.8

The full text of section 2.1.8 is as follows –

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

- A. The Customer of record (former Customer) requests in writing that the Company transfer or assign WATS to the new Customer.
- B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).
- C. The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification.

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

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

Note above within 2.1.8 that the former customer remains **former Customer remains jointly and severally liable**. The 2<sup>nd</sup> obligation listed is the (2) the unexpired portion of any applicable minimum payment period(s). Below the minimum payment period is explicitly defined as 1 day:

2.5.4. Late Payment Charges - The late payment charge applicable to M intrastate services as specified in the Local Exchange Company's local exchange service tariff also applies to AT&T 800 Service and AT&T WATS.

2.5.5. Minimum Payment Period - The minimum payment period is the minimum period for which the Customer is required to make payment. **The minimum payment period for WATS is one day,** except as otherwise specified in Section 6. The charges applicable for that period include the recurring charge(s) plus any nonrecurring charge(s) and/or special construction charge(s) that may apply.

The minimum payment period is calculated from the date that billing started after (1) the initial installation, or (2) a reinstallation after a move or change.

2.5.6. Notice of Discontinuance - The Customer's order to discontinue WATS must be received by this Company no later than the day on which WATS is to be discontinued except as otherwise specified in Section 6. All usage incurred will be billed regardless of the Customer's requested disconnect date.

2.5.7. Extension of Term Commitments - The failure of a Customer to meet usage or revenue commitments during a term commitment shall be excused

The point here is AT&T's current bogus assertion is substantially flawed. AT&T tried to cover for the fact that all of its counsels claimed that CCI must keep its obligations under the traffic only transfer.

Current AT&T counsel comically asserted these remaining CCI obligations were not about actual obligations but that its 1995 counsel were referring to that CCI needed to maintain but JOINT and SEVERAL LIABILITY OBLIGATIONS.

However the SEVERAL LIABILITY OBLIGATIONS last but for 1 single day! So obviously what AT&T's original counsel were referring to as CCI needing to maintain its commitment were the actual obligations –not JOINT and SEVERAL LIABILITY OBLIGATIONS.

AT&T could have **only been arguing** before Politan in 1995 that the actual obligations remained with CCI.

Now that it is clear what AT&T's original counsels asserted to Judge Politan lets look at what AT&T is asserting today now that it has flip-flopped and asserts revenue and time commitments must transfer:

AT&T FCC brief: Found on page 7 footnote 4 of AT&T's Dec 20<sup>th</sup> 2006

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. The Commission did not defend this aspect of its decision on the merits, claiming only that had not had an opportunity to consider the language of the tariff that authorized AT&T to prevent fraud by refusing to provide PSE the new service that it was requesting through transfer. In the unlikely event that the Commission does not hold that AT&T's conduct was authorized by 2.1.8 of the tariff, **it can and should address the alternative claims based on the tariff's antifraud provisions.**

AT&T's fraudulent use defense takes the position that revenue and time commitments do not transfer. So above we have AT&T simultaneously asserting to the FCC that revenue and time commitments must transfer and don't transfer.

There is joint and several liability on a traffic transfer because the former and new customer are obligated for the phone bill ---but the former customer is only obligated for the minimum payment period –which is defined in the tariff as 1 DAY! In other words after the transfer the former customer is off the hook after 1 day!

The bottom-line is these tariffed facts support the fact that all AT&T counsels in 1995 were asserting revenue and time commitments don't transfer from CCI. AT&T's current cover-up is substantially flawed.

This also makes sense in real world market conditions. A former AT&T customer transferring its **plan** to a new AT&T customer can't be expected to remain liable forever for commitments the new company must meet for plan transfers.

Likewise when traffic only is transferred the former customer should not continue to be forever jointly and severally liable for paying bad debt on accounts transferred.

This is conclusive that AT&T's original position was that revenue and time commitments do not transfer on traffic only transfers.

Plaintiffs