April 11th, 2015
Commission's Secretary
Marlene H. Dortch Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554
Deena Shetler:
deena.shetler@fcc.gov
FCC Contractor:
fcc@bcpiweb.com
Re: WC Docket No. 06-210
CCB/CPD 96-20

JUDGE BASSLER'S REFERRAL IS MOOT
PER FCC'S JAN 12TH 2007 ORDER
PLAINTIFF'S WILL ADVISE JUDGE WIGENTON

Below are emails between plaintiffs, AT&T and all FCC commissioners and many FCC staff regarding the revelation that the Jan 12th FCC Order has determined that all AT&T defenses under 2.1.8 are eliminated and the **case is moot.** The FCC staff has confirmed the FCC case is moot per the Jan 12th 2007 Order and this is the reason why the FCC has not issued a declaratory ruling as per the Administrative Procedures Act. AT&T was asked to comment and did not. AT&T chose not to confirm receipt to all parties in the email as it understood the case was moot and Mr. Brown did not want to show the FCC staff that he had no answer.

EMAIL SIX

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, April 10, 2015 7:34 PM
To: 'Deena Shetler'; 'Pamela Arluk'; randolph.smith@fcc.gov; 'Frank Arleo'; 'Ajit Pai'; 'Robert McDowell'; 'Kay Richman'; 'Patrick Carney'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; 'KJMWEB@fcc.gov'; 'Sharon Gillett'; 'MeredithAttwell.Baker@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Matthew Berry'; 'Mignon Clyburn'; 'Jonathan.Adelstein@fcc.gov'; 'Eddie.Lazarus@fcc.gov'; 'Zachary Katz'; 'thomas.wheeler@fcc.gov'; 'Tom.Wheeler@fcc.gov'; 'michael.orielly@fcc.gov'; "Jessica Rosenworcel"; 'robert.ratcliffe@fcc.gov'; 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com); Neil Ende (nende@tlgdc.com)
Cc: Brown, Richard
Subject: RE: Richard Brown-- Please comment on this as well….

Thank you Richard for confirming receipt.

Hope to hear AT&T's comments Monday regarding moot case issue and why AT&T did not present evidence. Sanctions have been filed due to violation of 11b.

EMAIL FIVE

-----Original Message-----
From: Brown, Richard H. [mailto:rbrown@daypitney.com]
Sent: Friday, April 10, 2015 6:47 PM
To: Al
Cc: Frank Arleo
Subject: RE: Richard Brown-- Not confirming receipt of your emails makes it look even worse than confirming receipt.

Received.

Sent with Good (www.good.com)

EMAIL FOUR

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, April 10, 2015 12:48 PM
To: 'Deena Shetler'; 'Pamela Arluk'; randolph.smith@fcc.gov; 'Frank Arleo'; 'Ajit Pai'; 'Robert McDowell'; 'Kay Richman'; 'Patrick Carney'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; 'KJMWEB@fcc.gov'; 'Sharon Gillett'; 'MeredithAttwell.Baker@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Matthew Berry'; 'Mignon Clyburn'; 'Jonathan.Adelstein@fcc.gov'; 'Eddie.Lazarus@fcc.gov'; 'Zachary Katz'; 'thomas.wheeler@fcc.gov'; 'Tom.Wheeler@fcc.gov'; 'michael.orielly@fcc.gov'; "Jessica Rosenworcel"; 'robert.ratcliffe@fcc.gov'; 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com); Neil Ende (nende@tlgdc.com)
Cc: Brown, Richard
Subject: FW: Richard Brown-- Please comment on this as well….

Mr. Brown –**Please confirm receipt.**

Can AT&T also please address these below issues when you address the MOOT CASE issue? Not that it matters. It's just to show the Judge Wigenton the scam job you did on her Court.

Mr. Brown on page 29 of AT&T's reply brief to Judge Wigenton AT&T claimed that it has "responded" to the FCC as to why it has zero evidence:

> "Again, they have also made these contentions to the FCC (see Brown Cert., Ex. O at 73-76 (discussing alleged ambiguity) and 174-178 (**raising alleged other transfers of transfers of service**), and **AT&T has responded to those arguments in that proceeding**."

However AT&T has not responded! In fact AT&T advised NJFDC that it stopped FCC comments in May of 2008. (AT&T pg.26 fn 15)

> "AT&T has made only 15 submissions to the FCC since 2006. (Brown Cert., 3, 8) Indeed, **AT&T stopped commenting altogether in May 2008"**

Obviously AT&T has not "responded to "alleged other transfers of service" in that proceeding. AT&T executive's statements contradicting its own Counsel were FCC public comments filed June **2014** and AT&T concedes it stopped responding May **2008!"**

In fact the FCC made note that AT&T doesn't have any evidence as the FCC quoted Judge Politan who also noted AT&T has zero evidence.

The FCC cited Judge Politan's Decision that also noted no AT&T evidence. FCC to DC Circuit pg. 9 fn 5:

> The District Court noted in this regard that the record contained evidence that AT&T's past practice, "based on [AT&T's] own construction of its tariff language," had been to grant requests such as CCI's and PSE's, and that **AT&T had not "satisfactorily refute[d]" such evidence**. Second District Court op. at 15 & n.6

Please provide evidence of these traffic only transfers where the customer obligations transfer. No animal exists. Richard—Intentionally misleading federal Judges is not very nice. One day there will be a Judge that won't put up with AT&T counsels intentional fabrications.

Also AT&T advised the DC Circuit that it denied (without a letter) the CCI-PSE transfer on Jan 27th 1995 in order to be compliant with the statute of limitations within 2.1.8. However AT&T issued a warning letter after the alleged denial a week later on February 6th 1995. Is it typical for AT&T to first deny a transaction then a week later issue a warning? Can you send plaintiffs a copy of the Jan 27th 1995 denial that AT&T advised the DC Circuit Court AT&T did?

Mr. Brown--- Scamming Federal Appeals Courts is going to catch up with you.

Good for the FCC that it eliminated all AT&T's nonsensical defenses under 2.1.8. Wish plaintiff's realized it when the order was released.

Plaintiff's

EMAIL THREE

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, April 10, 2015 10:06 AM
To: Brown, Richard
Cc: 'Deena Shetler'; 'Pamela Arluk'; randolph.smith@fcc.gov; 'Frank Arleo'; 'Ajit Pai'; 'Robert McDowell'; 'Kay Richman'; 'Patrick Carney'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; 'KJMWEB@fcc.gov'; 'Sharon Gillett'; 'MeredithAttwell.Baker@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Matthew Berry'; 'Mignon Clyburn'; 'Jonathan.Adelstein@fcc.gov'; 'Eddie.Lazarus@fcc.gov'; 'Zachary Katz'; 'thomas.wheeler@fcc.gov'; 'Tom.Wheeler@fcc.gov'; 'michael.orielly@fcc.gov'; "Jessica Rosenworcel"; 'robert.ratcliffe@fcc.gov'; 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com); Neil Ende (nende@tlgdc.com)
Subject: Richard Brown-- FCC's Jan 12th 2007 Order confirms the case is moot and plaintiff's win….

Richard Brown ---PLEASE CONFIRM RECEIPT

Richard -- AT&T's response to the FCC is requested by Plaintiff's regarding this moot case……..

FCC 2003 Decision Pg. 10 para 13:

> "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."**

In preparing for writ of mandamus there were issues that came up that plaintiffs believed would be unfair to say the least to the DC Circuit and the FCC regarding writ of mandamus. Plaintiffs understood that if the FCC was to issue a decision **as per 2.1.8** it would be **moot** to this case as even if a future FCC decision stated that customer plan obligations transfer, it would be prospective 15 days and thus the CCI-PSE transaction would be grandfathered. Judge Politan said the same thing in 1996 decision regarding if AT&T wins it still will lose as a change in the terms and conditions of a tariff is "merely prospective."

Plaintiff's advised the FCC's Deena Shetler that Judge Wigenton said plaintiffs should seek a writ of mandamus to force the FCC to rule. Deena and I spoke about this and the issue arose was ---how does the DC Circuit force the FCC to issue a decision that under the Administrative Procedures Act, the FCC does not have to provide as it does not remove uncertainty or terminate a controversy because the case is totally **moot** per prospective tariff filings?

Additionally how can the FCC be ordered to issue a decision on an AT&T defense that was never even before the FCC in 1995 as the defenses were created 10+ years and more after the 1995 transaction? The FCC of course is correct that a decision on 2.1.8 would be prospective and thus the FCC case is **moot.**

Plaintiffs also realized that Judge Bassler's referral is actually totally **moot** as it addresses 2.1.8.,and 2.1.8 is outside the scope of what is before the FCC according to the FCC Jan 12th 2007 Order!

When the Jan 12th 2007 Order was released plaintiffs misunderstood it. A DC counsel that plaintiffs were looking to use for writ of mandamus reviewed all decisions and FCC orders to determine what issues were to be within the scope of the mandamus. When he read the Jan 12th 2007 Order he called me and said "you just spent the last 8 years commenting at the FCC about what obligations transfer when THAT's A 2.1.8 ISSUE WHICH WAS NEVER the original issue (2.2.4 fraudulent use was the issue) and therefore 2.1.8 isn't even within the scope of a future FCC Order!

He explained and the FCC has confirmed that as per the Jan 12th 2007 order the FCC will not address AT&T's 2.1.8 "defenses" because AT&T had no 2.1.8 defenses in 1995 as the FCC 2003 Decision indicated. Why would the FCC allow AT&T to argue defenses that were never before it! The only defense was 2.2.4 fraudulent use defense which was denied and under the Law of the Case can't be changed by either the FCC or DC Circuit. Case is Moot!

So asking the DC Circuit to Order the FCC to release a decision on 2.1.8 WHICH ISN"T EVEN IN THE SCOPE OF THE CASE is comical. The case was actually decided by the FCC with the Jan 12th 2007 Order!

Here is the key to the Jan 12th 2007 FCC Order:

> "The district court's (JUDGE BASSLERS) 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 issue **"previously presented"** as per the FCC 2003 Decision was of course only 2.2.4 fraudulent use! What this order is saying is that the FCC will only entertain AT&T defenses that it **originally had** leading to the first case (fraudulent use 2.2.4). The FCC Jan 12th 2007 Order is saying Judge Bassler's new which obligations transfer issue is a **2.1.8 issue** and that issue was not and is not within the scope of the previously presented issue. Therefore the FCC is **not** entertaining AT&T's new 2.1.8 bogus defenses that "all obligations" transfer introduced in 2006 to Judge Bassler and the traffic only no obligations nonsense introduced to the DC Circuit in 2005.

The only defense that the FCC had before it was the 2.2.4 fraudulent use defense and that is no longer an issue due to the FCC and DC Circuit being bound by Law of the Case. Section 2.1.8 was never an issue before Judge Politan as AT&T's only defense in 1995 was 2.2.4 fraudulent use. AT&T's Counsel Meade certified to Judge Politan that Plaintiff's adhered to 2.1.8 in his statement that plaintiff's adhered to the "form" of 2.1.8 but it was the "substance" that was AT&T's issue i.e. fraudulent use.

The FCC's 2007 Order understood that it was conceded by AT&T to Judge Politan how the obligations were allocated as the FCC 2007 Order states: "**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." In other words…. **Rather** than interpret 2.2.4 as in the first issue resolved the FCC is now being asked to interpret 2.1.8 which it was not asked to interpret before.

The FCC's John Engle and Austin Schlick advised plaintiffs after the DC Circuit Decision that the FCC did not view the DC Circuit's Decision which raised a question over obligations under 2.1.8 as a remand. The FCC only needed to interpret fraudulent use 2.2.4., as there was no issues to interpret as to 2.1.8 as AT&T offered no defenses as to 2.1.8. to prevent the CCI-PSE transaction.

The FCC said it got that 2.2.4 fraudulent use answer correct as the DC Circuit did not find fault with the FCC's decision to deny the fraudulent use defense due to AT&T's use of the illegal remedy. AT&T's suspecting fraudulent use 2.2.4 in no way is negatively impacted because the FCC only used 2.1.8 to interpret obligations allocation but said accounts could move by deleting from CCI and adding to PSE.

So the bottom–line is AT&T's 2.1.8 defenses are **not even on the table** and AT&T's fraudulent use defense is also no longer an defense as it is denied as per law of the case, so the FCC case is moot as AT&T has no defenses left as per the scope of the Jan 12th 2007 Order.

Even ***if*** defenses were on the table per 2.1.8 it would still be moot as per changing the terms and conditions of tariffs ----as a change would be 15 days prospective and plaintiff's transaction grandfathered; however the Jan 12th 2007 order states that 2.1.8 is NOT EVEN IN THE SCOPE of what the FCC will entertain, precisely because AT&T had zero defenses in 1995 as per 2.1.8.

AT&T knows this and plaintiffs are not here to write this to give AT&T or the FCC a lesson that it doesn't already know. The reason for this email is to **include it within the reconsideration to Judge Wigenton** at the NJFDC. It will show Judge Wigenton that AT&T had the opportunity before the FCC to refute via public comments that AT&T's case is not moot and explain why it is not moot and AT&T **could not and did not.**

Due to the proclivity of AT&T's counsel to conveniently misinterpret language, plaintiffs believed it was best to allow AT&T to confront the FCC's position that any defense AT&T raises per 2.1.8 is **moot** and thus the FCC case is **moot**. Wasting the DC Circuits and FCC's time with writ of mandamus when the issue is **moot** for multiple reasons needs to be addressed by Judge Wigenton. This nonsense of forcing the FCC to rule and then allowing AT&T another year for DC review for a moot issue is nonsensical and a waste of the FCC's DC Circuit's and plaintiff's time and money.

Richard—If plaintiff's and the FCC do not receive a detailed explanation via public comments why AT&T believes the case is not moot by Monday evening then Plaintiffs will file for reconsideration with Judge Wigenton's knowledge that AT&T would not confront the moot issues. The FCC's Jan 12th 2007 order means the FCC case is moot and plaintiff's win. AT&T knows it and the FCC knows it and plaintiffs are not going to allow AT&T counsel to go back to Judge Wigenton and try and put a different spin on it. This email will be within plaintiff's exhibits to show Judge Wigenton that AT&T did not satisfactorily refute that the case is moot to the FCC. There can be no satisfactory response from AT&T as the Jan 12th 2007 justifiably denies any AT&T 2.1.8 defenses.

Sincerely
Plaintiff's

EMAIL TWO

From: Brown, Richard H. [mailto:rbrown@daypitney.com]
Sent: Thursday, April 09, 2015 8:36 AM
To: 'Al'; Frank Arleo; 'JoAnn Dobransky'
Subject: RE: Confusing Jan 12th 2007 FCC Order

Received.

EMAIL ONE

From: Al [mailto:ajdmm@optonline.net]
Sent: Thursday, April 09, 2015 6:38 AM
To: 'Deena Shetler'; Frank Arleo; 'JoAnn Dobransky'; 'Pamela Arluk'; randolph.smith@fcc.gov
Cc: Brown, Richard H.
Subject: RE: Confusing Jan 12th 2007 FCC Order

Mr. Brown please confirm receipt….

Deena, Pam and RL

Plaintiffs were initially confused by the Jan 12th 2007 FCC Order but plaintiffs now understand it and now it makes perfect sense. I am sure you will agree that it could have been written in a much more explicit manner. However I am sure AT&T understood it. The re-reading of this Jan 12th 2007 order confirms all issues concerning 2.1.8 are moot and the FCC and the DC Circuit by law must find AT&T in violation again on AT&T's sole defense 2.2.4 fraudulent use.

The FCC Jan 12th 2007 Order should have been written as follows and it would have saved 9 years of FCC Case "MOOTNESS"….

Dear Judge Bassler

The question that you have referred on obligation allocation raises a question under section 2.1.8. There were no issues concerning 2.1.8 raised by AT&T in 1995. The only issue raised by AT&T in 1995 was whether section 2.2.4 fraudulent use could have prevented the CCI-PSE transaction. Therefore any AT&T issues raises now as per allegedly not adhering to 2.1.8 would be newly minted defenses never presented by AT&T in 1995 and therefore will not be considered now. AT&T can't raise any defenses in 2006, as it did in this case, as the reason it denied the transaction in 1995.

Furthermore the FCC's 2003 Decision states that the one fraudulent defense AT&T asserted was under 2.2.4, and it was denied due to illegal remedy. Due to the fact that the D.C. Circuit did not overturn the FCC on this issue the FCC by law must again find that AT&T violated its tariff. Additionally the DC Circuit is also bound by the Law of the Case for having not overturned the FCC on the FCC's illegal remedy decision. Please see:

The Law of the Case designates that if an appellate court has not decided a legal question and the case goes to a lower court for further proceedings**, <u>the legal question, not determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain the same.</u>** *Allen v. Michigan Bell Tel. Co.*, 232 N.W.2d 302, 303. The Law of The Case also provides that an appellate court's determination on a legal issue is binding on both the trial court and FCC **<u>and an appellate court on a subsequent appeal</u>** given the same case and substantially the same facts. *Hinds v. McNair*, 413 N.E.2d 586, 607.

Additionally the issue of whether the fraudulent use defense had merit in the first place is a question that the NJFDC should have addressed before the case was ever sent to the FCC in 1996. After all the record shows the plans were ordered prior to pre June 17th 1994 and that date is prior to the Jan 1995 CCI-PSE transfer. Therefore if the plans are penalty immune as Judge Politan indicated (and did not need to refer to the FCC) then AT&T's defense of suspecting being deprived of shortfall and termination charges on CCI's remaining revenue and time commitments after traffic is transferred, is suspect in and of itself. Obviously AT&T had no ability to collect the charges if it adhered to its 6.17.94 tariff provision.

Finally the record shows that AT&T violated its tariff by not meeting the 15 days statute of limitations at 2.1.8C and therefore no defenses can be raised after the 15 days. The FCC did see that AT&T claimed to the D.C. Circuit that it denied the CCI-PSE transaction on Jan 27th in order to be within 15 days of the Jan 13th 1995 CCI-PSE order, but that statement by AT&T is an obvious fabrication as on February 6th 1995 AT&T only issued a warning letter to assert its meritless fraudulent use defense. The FCC finds that generally a warning letter comes prior to a denial (without a letter) and not the reverse as what AT&T contends here.

In summary the FCC case is moot as there are no other defenses before the FCC to have prevented the CCI-PSE transaction.

Sincerely,

FCC

Respectfully Submitted,
One Stop Financial, Inc
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc
/s/ Al Inga
Al Inga President