

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

IN THE MATTER OF:)	
)	
JAMES CHELMOWSKI)	
Complainant)	FILE NO. EB-14-MD-016
)	Docket No. 14-260
v.)	
)	
AT&T MOBILITY LLC)	
Defendant)	
)	
For FCC Violations)	
47 CFR 1.717)	
47 CFR 52.35)	
47 CFR 52.36 &)	
Fraudulent Concealment Scheme)	

Motion to Reconsider

Date: August 10, 2015

Case James Chelmowski “Chelmowski” v AT&T Mobility, LCC. “AT&T”¹ filed on December 12, 2014 and FCC order was dated July 10, 2015 (sent only by mail and received on July 16, 2015).

- 1) FCC² required by law to enforce the Provisions of the Communications Act of 1934 (“ACT”) with knowledge of the inability to port a phone number 847-768-0400 complaint dated March 23, 2011. (See AT&T Answer Exhibit 2 and 3).
- 2) FCC’s Consumer and Government Bureau³ 47 CFR 0.111 primary responsibility “informally resolving individual informal complaints” could not provide its apparently because AT&T “misleading, deceptive or otherwise contrived action’ to conceal information material to Chelmowski’s claim”⁴ April 11, 2011 Response to Notice of Informal Complaint (NOIC). AT&T is required by law to be truthful and honest to the FCC 47 CFR § 1.17 and 18 USC 1001.
- 3) FCC in 2011 saw no apparent FCC law violation using the same set alleged facts and/or facts as Chelmowski had in his possession (see AT&T Answer dated January 16, 2015 Exhibit 2 & 3, March 23, 2011 complaint and Exhibit 4 & 5, August 2011 complaint filed by someone other

¹ December 11, 2014 Complaint “Complaint”, December 16, 2014 FCC Rules for the Chelmowski v AT&T “Rules”, January 16, 2015 AT&T Answer “Answer”, January 26, 2015 Chelmowski Reply “Reply”,

² Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

Legal and Constitutional Functions of Federal Communications Commission 47 CFR § 0.111

Serve as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules... Resolve complaints, including complaints filed under section 208 of the Communications Act, regarding acts or omissions of common carriers... The Consumer and Governmental Affairs Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services...

³ Id.

⁴ Chief Justice Ginsburg ruled in *Sprint Communications Co. v. F.C.C.*, 76 F.3d 1221, 1226 (D.C. Cir 1996) (“In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took ‘some misleading, deceptive or otherwise contrived action’ to conceal information material to the plaintiff’s claim.”) (quoting *Hobson v. Wilson*, 737 F.2d 1, 34 (D.C. Cir. 1984))... “Silence does toll the statute of limitations, however, if defendant has an affirmative duty to disclose the relevant information to the plaintiff. See *Smith v. Nixon*, 606 F.2d 1183, 1190 (D.C.Cir.1979); see also *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248, 250 (9th Cir.1978).”)

than Chelmowski see January 26, 2015 Chelmowski's sworn affidavit required by FCC rules). FCC is required by law to "informal resolve informal complaints"⁵ 47 CFR § 0.111 and enforcement of the "ACT" in the "ACT TITLE I SEC 1". It appears AT&T correspondence was intentional designed to mislead FCC (AT&T violating of 47 CFR § 1.17) on performing the FCC's legal duty in AT&T scheme to fraudulent conceal the facts of the basis of these FCC violations.⁶ FCC saw no FCC violations and the FCC is required by law to enforce the "ACT" because AT&T fraudulent concealed the material facts how could anyone believe Chelmowski be aware of the FCC violations?

4) AT&T January 16, 2015 Answer paragraph 8 states:

"In March and April of 2011, AT&T received multiple porting requests from Choice One, on behalf of its wholesale customer, Ooma, and Ooma's retail customer, James Chelmowski, to port 4 telephone numbers (including the 0400 number) from AT&T Mobility to Choice One.⁷ While the other three numbers were ported successfully, the 0400 number was not ported, first due to an incorrect account number on the Choice One LSR, then, after that was corrected, because of the pending LSR submitted by XO Communications the year before, which had never been modified or cancelled by XO.

5) Text of AT&T April 11, 2011 NOIC from AT&T Manager - FCC Appeals Bureau, Margaret Trammell (Answer Ex. 3)⁷:

⁵ 47 CFR § 0.111

⁶ TRW Inc. v. Andrews, 534 U.S. 19, 37 (2001) (Scalia, J., concurring) ("The injury-discovery rule . . . [is a] historical exception for suits based on fraud . . ." (emphasis added)); Holmberg v. Ambrecht, 327 U.S. 392, 397 (1946) ("[W]here a plaintiff has been injured by fraud . . . the bar of the statute does not begin to run until the fraud is discovered . . ." (emphasis added) (internal quotation marks omitted))

⁷ Why did AT&T April 11, 2011 NOIC from AT&T Manager - FCC Appeals Bureau, Margaret Trammell conceal all the 2011 March and April 2011 porting rejections in AT&T January 16, 2015 Answer (AT&T intentional waited past 2013, to disclose these March and April 2011 porting rejections which were also intentionally concealed in AT&T September 22, 2011 NOIC letter without an author). AT&T Answer exhibit proves that FCC had knowledge of the 2011 porting rejections and found no reason to proceed in its legal duty under 47 CFR 0.111 because AT&T deceitful (implying the reason why AT&T could not port the phone number was because Chelmowski would not return calls, this is an outright lie to the FCC, too see AT&T Answer paragraph 9 and 23) and fraudulent concealment letter. AT&T refused its legal obligation to provide copies of 47 CFR 1.717 NOIC responses, in the fraudulent concealment scheme.

“AT&T received a Federal Communications Commission (FCC) inquiry from James Chelmowski regarding the inability to port service. Margaret Trammell, AT&T Customer Advocacy, called Mr. Chelmowski left message acknowledging complaint and provided her contact information in the event of questions during the investigation.

AT&T made several attempts to reach Mr. Chelmowski to discuss the FCC inquiry, no response has been received. AT&T will close complaint and this time but will re-open if Mr. Chelmowski responds at a later date.”

- 6) Text from AT&T Answer Exhibit 2 – First porting rejection email dated March 22, 2011

(Answer Exhibit 2):

“We have recently received a rejection on your porting request for a work order on the account.”

- 7) FCC closed the informal case on or about April 12, 2011 that date AT&T received the electronic “wired” upload NOIC from AT&T. Apparently AT&T per 47 CFR §§ 1.717, 0.111 saw no FCC violation by AT&T in 2011. If FCC with the same information (Answer Exhibits 2 & 3) as Chelmowski and saw no FCC violations how could a consumer know FCC violations exist?

No consumer could have more knowledge of FCC law (or expected to have more knowledge or required by law) than the FCC and FCC’s Consumer and Government Bureau.

- 8) How could the FCC not perform it’s required by law primary responsibilities unless apparently as AT&T shown in its Exhibits 2 and 3, AT&T response by law 47 CFR §§ 1.717, 1.17 “misleading, deceptive or otherwise contrived action’ to conceal information material to AT&T’s 2011 March and April porting rejections compliant”⁸? This matter could have potentially been

⁸ Chief Justice Ginsburg ruled in *Sprint Communications Co. v. F.C.C.*, 76 F.3d 1221, 1226 (D.C. Cir 1996) (“In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took ‘some misleading, deceptive or otherwise contrived action’ to conceal information material to the plaintiff’s claim.”) (quoting *Hobson v. Wilson*, 737 F.2d 1, 34 (D.C. Cir. 1984))... “Silence does toll the statute of limitations, however, if defendant has

resolved in 2011 per 47 CFR §§ 0.111, 1.717 if AT&T did not intentionally “misleading, deceptive or otherwise contrived action’ to conceal information material to AT&T’s 2011 March and April porting rejections compliant”⁹. No consumer has more FCC violation knowledge than the FCC. No consumer based on the FCC’s legal responsibility to enforce the “ACT” and resolve informal complaints would be able know AT&T violated FCC laws.¹⁰

FCC “Rules” dated December 16, 2015 specific to Chelmowski v AT&T Mobility, LCC

9) FCC specific rules for the case Chelmowski vs AT&T Mobility LLC dated December 16, 2015, stated specifically “47 C.F.R. §§ 1.724(c) and 1.726(c) (requiring an answer and reply to contain proposed findings of fact and conclusions of law). Experience has shown that proposed findings of fact and conclusions of law are of limited value at this stage of the proceedings. The answer and reply still must include comprehensive factual support and a thorough legal analysis, as required by Commission rules 1.724(b)-(c) and 1.726(a), (c). 47 C.F.R. §§ 1.724(b)-(c), 1.726(a), (c).

10) FCC clearly stated rules governing this case, ANSWER and REPLY MUST INCLUDE COMPREHENSIVE FACTUAL SUPPORT.

11) No Factual Support was included in the AT&T Answer dispute the simplicity of the factual support required:

(i) Proof of delivery of 2011 Informal Complaint (part of AT&T fraudulent concealment scheme)

an affirmative duty to disclose the relevant information to the plaintiff. See *Smith v. Nixon*, 606 F.2d 1183, 1190 (D.C.Cir.1979); see also *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248, 250 (9th Cir.1978).”

⁹ *Id.*

¹⁰ 47 CFR § 0.111

(ii) Actual documentation of the March and April 2011 porting rejections of 847-768-0400

(iii) Author of AT&T's September 22, 2011 NOIC to the FCC

(iv) AT&T internal investigation files for 2011 informal complaint (proving why the March and April 2011 porting rejections were not part of any NOIC letter to the FCC in 2011). As AT&T stated was not part of the fraudulent concealment scheme.

(v) Simple Sworn Affidavit that AT&T did not file the August 2011 informal complaint or had anything to do with the filing of the 2011 complaint.

12) Instead AT&T provided over 170 pages of irrelevant documents to Answer exhibits and all AT&T statements in the arbitration transcripts about the 2011 porting rejections either hearsay or hearsay of hearsay see Reply paragraph 4 (AT&T would not allow any AT&T witness with firsthand or any knowledge including the porting¹¹ and authors of any letters to the FCC as AT&T witnesses), prohibited by 47 CFR § 1.724. AT&T knows that hearsay and hearsay of hearsay is not acceptable under the FCC and federal rules of evidence however AT&T attorneys tried to deceive the FCC instead of production of the required by law comprehensive factual support multiple times in the Answer. It appears the FCC accepted the AT&T deception hearsay and hearsay of hearsay as acceptable evidence instead of enforcing the requirement by the ACT the comprehensive factual support because again AT&T deceptive and continue fraudulent concealment of the basis of these claims.

13) A rules motion was filed by Chelmowski on March 3, 2015 because AT&T failed to provide a single document of required Factual Support, 47 CFR § 1.724 and 12/16/14 FCC rule

¹¹ Reply Paragraph 24

clarification, motion titled “Motion to Compel FCC Rules, Including but not limited to 47 CFR § 1.724 Answer and 47 CFR § 1.17 Truth and Accurate Statements to the Commission.” FCC

denied the Motion only to the extent it seeks to compel AT&T to respond to

interrogatories.” The motion paragraph 1 through 52 do not reference the Complaint interrogatories as did a motion to compel dated February 3, 2015 “Motion to Compel Interrogatories” which was denied as premature.

14) No ruling on AT&T on the March 3, 2015 motion for AT&T to follow the rules 47 CFR 1.724 and clearly accented on December 16, 2014 for Comprehensive Factual support of statements

15) Instead of requested the required Factual Support and, FCC apparently mislead Chelmowski in their December 16, 2014 rules for this informal case stating “47 C.F.R. §§ 1.724(c) and 1.726(c) (requiring an answer and reply to contain proposed findings of fact and conclusions of law).

Experience has shown that proposed findings of fact and conclusions of law are of limited value at this stage of the proceedings.” Chelmowski was misinformed and did not provide “proposed findings of fact and conclusions of law” such as ones included in this “Motion to Reconsider” but not limited to:

(I) Chief Justice Ginsburg ruled in *Sprint Communications Co. v. F.C.C.*, 76 F.3d 1221, 1226 (D.C. Cir 1996) (“In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took ‘some misleading, deceptive or otherwise contrived action’ to conceal information material to the plaintiff’s claim.”) (Quoting *Hobson v. Wilson*, 737 F.2d 1, 34 (D.C. Cir. 1984))... “Silence does toll the statute of limitations, however, if defendant has an affirmative duty to disclose the relevant information to the plaintiff. See *Smith v. Nixon*, 606 F.2d 1183, 1190 (D.C.Cir.1979); see also *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248, 250 (9th Cir.1978).”),

(II) *TRW Inc. v. Andrews*, 534 U.S. 19, 37 (2001) (Scalia, J., concurring) (“The

injury-discovery rule . . . [is a] historical exception for suits based on fraud” (emphasis added)); *Holmberg v. Ambrecht*, 327 U.S. 392, 397 (1946) (“[W]here a plaintiff has been injured by fraud . . . the bar of the statute does not begin to run until the fraud is discovered” (emphasis added) (internal quotation marks omitted))

(III) Under fraudulent concealment, the running of the statute of limitations is tolled when a defendant engages in some misleading, deceptive or otherwise contrived action or scheme, in the course of committing the wrong, that is designed to mask the existence of a cause of action. *Riddell v. Riddell Washington Corp.*, 866 F.2d 1480, 1491 (D.C. Cir. 1989).

(IV) *William J. Davis, Inc. v. Young*, 412 A.2d 1187, 1191-92 (D.C.1980) (“[Defendant] must have done something of an affirmative nature designed to prevent discovery of the cause of action.... [A]ny statement, word or act which tends to suppress the truth raises the suppression to that level”).

(V) Cited by both parties in the Complainant and Answer: FCC case, *Valenti v. AT&T*, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s], there can be no tolling of the statute of limitations.”). Emphasis FCC statute of limitations should be tolled with “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]”

(VI) *Operator Communications, Inc v Contel of the South*, File no. EB-05-MD-0009, “indeed the Commission [FCC] has identified only one circumstance that warrants equitable tolling of Section 415 p- fraudulent concealment by the defendant of the facts giving rise to the claim.”

(VII) More would have also been available if not for December 16, 2014 Rule Letter determination provide “proposed findings of fact and conclusions of law” were not

required during the Complaint, Answer and Reply process of this FCC formal complaint “ONLY COMPREHENSIVE FACTUAL SUPPORT.” Chelmowski comprehensive factual support included sworn third party subpoena responses not received by Chelmowski until after December 2013, AT&T actual documents from 2011 through 2014, etc. See Complaint and Reply Exhibits which the Table of Contents of these Exhibits bates labeled EX-0001 to EX-0545. Note ALL exhibits are AT&T actual documents, third party proof these claims and AT&T’s Fraudulent Concealment scheme.

- 16) AT&T Answer paragraph stated “Absent proof of fraudulent concealment, which cannot be demonstrated in this case, the statute may not be tolled”. AT&T also stated on FCC does toll statute of limitations citing FCC case, Valenti v. AT&T, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of “fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s],” there can be no tolling of the statute of limitations.)” .
- 17) Then why could AT&T not provide a single document required by law FCC 47 CFR § 1.724 and emphasized by Ms Saks on December 16, 2014. See Reply paragraphs with AT&T own documentation and third party subpoena responses proving virtually all statements in AT&T Answer as false. See March

Fraudulent Concealment of the September 22, 2011 NOIC and apparent FCC confirmation that Someone other than Chelmowski filed this informal complainant

- 18) The United States Supreme Court states the Bar if “the Statute of Limitations [47 CFR § 415(b)] does not begin to run until the FRAUD is DISCOVERED.”¹²

¹² TRW Inc. v. Andrews, 534 U.S. 19, 37 (2001) (Scalia, J., concurring) (“The injury-discovery rule . . . [is a] historical exception for suits based on fraud . . .” (emphasis added)); Holmberg v. Ambrecht, 327 U.S. 392, 397 (1946) (“[W]here a plaintiff has been injured by fraud . . . the bar of the statute does not begin to run until the fraud is discovered . . .” (emphasis added) (internal quotation marks omitted)).”

- 19) AT&T has not provided a single document to support any defense of these claims which was required by FCC 47 CFR § 1.724 and emphasized by Ms. Saks on December 16, 2014. AT&T was required by law multiple times from 2011 to 2015 and has not produced a single document.
- 20) Of course, where FCC had the same set of facts as Chelmowski and the FCC could not determine AT&T's FCC violations because AT&T fraud and fraudulent concealment scheme. It clearly was impossible for Chelmowski to know because of AT&T fraud and fraudulent concealment scheme for Chelmowski to have knowledge of the basis of these claims.
- 21) FCC confirms that Chelmowski had no knowledge of the fraudulent concealed September 22, 2011 letter prior October of 2013 (see ORDER paragraph 5). If Chelmowski, knew of this informal complaint he would have received it on May 24, 2013 when FCC confirmed faxing the April 11, 2011 NOIC to Chelmowski see Order paragraph 5. AT&T was required by 47 CFR 1.724 to produce proof of delivery of these letters to Chelmowski but could not because AT&T never sent the required by law copy to Chelmowski. Chelmowski sworn affidavit required by FCC Formal Complaint rules states someone other than Chelmowski.
- 22) AT&T arbitration attorney produced this September 22, 2011 letter to Chelmowski for the first time on October 18, 2013, stating that "These same complaints were raised with the Illinois Attorney General's Office and the Federal Communications Commission back in 2011, and neither agency found any basis to proceed against AT&T. I attach AT&T's response to the Illinois Attorney General's Office dated April 25, 2011 and its response to the FCC submitted on September 22, 2011." Note AT&T intentional tried concealing the April 11, 2011 NOIC letter and replace it with the September 22, 2011 NOIC which Chelmowski never filed¹³.

¹³ Affidavit dated January 26, 2015, Chelmowski never filed the August 2011 informal complaint

- 23) October of 2013 was the first time Chelmowski could have realized the willful fraud and/or fraudulent concealment of the basis of these claims to the FCC. AT&T provided response April 25, 2011 to the Illinois Attorney General appeared also to include fraud and/or fraudulent concealment as scheme to prevent arbitration on conversion of phone number 847-768-0400. AT&T was required on January 16, 2015 to produce factual support of the basis of the March and April 2011 porting rejections which could have determined if the IAG letter was also fraudulent or facts. AT&T refused to produce any required factual support per 47 CFR § 1.724 and December 16, 2014 rules for Chelmowski v AT&T Mobility.
- 24) Why to this date has AT&T provided NO factual proof of the 2011 porting rejections? How could a consumer believe AT&T would willfully lie to both the FCC and IAG in its fraudulent concealment scheme of the facts which are basis to this claims¹⁴? It appears AT&T non-disclosure of the September 22, 2011 NOIC is because FCC multiple cases state willful violations of 47 CFR § 1.17 are also criminal under 18 USC § 1001.
- 25) January 15, 2014, AT&T was required to produce arbitrator approved discovery which among other items included documentation of the 2011 porting denials. AT&T claimed these documents were AT&T attorney client privilege and would not produce these documents. AT&T discovery production included obstructed documents, documents white-outed, cut and pasted, etc. (see Complaint EX-0039 to EX-0041). This is relevant to this case as the AT&T's extensive Fraudulent Concealment of the Facts of basis of these claims.¹⁵

¹⁴ Chief Justice Ginsburg ruled in *Sprint Communications Co. v. F.C.C.*, 76 F.3d 1221, 1226 (D.C. Cir 1996) ("In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took 'some misleading, deceptive or otherwise contrived action' to conceal information material to the plaintiff's claim.") (quoting *Hobson v. Wilson*, 737 F.2d 1, 34 (D.C. Cir. 1984))... "Silence does toll the statute of limitations, however, if defendant has an affirmative duty to disclose the relevant information to the plaintiff. See *Smith v. Nixon*, 606 F.2d 1183, 1190 (D.C.Cir.1979); see also *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248, 250 (9th Cir.1978).")

¹⁵ All exhibits especially Complaint EX-0022 to EX-0041

26) The United States Supreme Court states the Bar if “the Statute of Limitations [47 CFR § 415(b)] does not begin to run until the FRAUD is DISCOVERED.”¹⁶ The running of the 47 CFR § 415(b) 2 year statute of limitation clock could not have begun until October 18, 2013 at the absolute earliest. One could easily argue the 2 years statute of limitations started after that date October 18, 2013 with the ongoing fraudulent concealment scheme to this date. Not start on March 23, 2011 when even the FCC could not realize the basis of these FCC violation claims, yet only a consumer like Chelmowski because AT&T continue fraudulent concealment of the basis of these claims.

27) AT&T fraudulent concealment scheme went as far as apparently legally threatening Neustar, Inc. not disclose the March and April 2011 porting rejections in Neustar possession in subpoena request because AT&T owns that data in Neustar possession. See Reply EX-0182 to EX-0187.

Scrivener’s Error

28) The scrivener error noted in the July 10, 2015, where only the title page had the wrong statute and the body of the complaint was completely correct 47 CFR §§ 52.35, 52.36.

Arbitration Case

29) The AT&T mandated arbitration (AT&T strips consumers of right to a court hearing and/or trial) was really not part of scope of the simple however since AT&T and the FCC believes it is I must be given a chance to state the true facts with factual documentation of AT&T abuse of the mandated arbitration.

¹⁶ TRW Inc. v. Andrews, 534 U.S. 19, 37 (2001) (Scalia, J., concurring) (“The injury-discovery rule . . . [is a] historical exception for suits based on fraud . . .” (emphasis added)); Holmberg v. Ambrecht, 327 U.S. 392, 397 (1946) (“[W]here a plaintiff has been injured by fraud . . . the bar of the statute does not begin to run until the fraud is discovered . . .” (emphasis added) (internal quotation marks omitted)).”

- 30) Consumer's rights against Monopolistic Telecommunication companies like AT&T are strictly limited. AT&T knows ways to game these systems with little or no judicial review.
- 31) AT&T gamed and apparently skirted law and fair hearing because AT&T knew a private arbitration is not the same as a court hearing. Like it is impossible or nearly impossible to convict someone of perjury at a private hearing, rules of evidence¹⁷ and discovery are the not the same.
- 32) Like in the FCC case AT&T (apparently the FCC) believes consumers should have more knowledge than the FCC on FCC law. Despite the "ACT" of 1934 Article 1 Section 1, FCC requirements by law 47 CFR. § 0.111¹⁸, etc. and AT&T not required to Mandate private arbitration provide consumer
- 33) Statements AT&T knew were perjury under the US court system but not under AT&T mandated private arbitration as was obstruction of justice, fabrication of evidence, witness tampering, etc. If the Arbitration case is determined be relevant to this Formal Case for 6 counts of 47 CFR § 52.35, 52.36, 2 counts of 47 CFR § 1.717 (47 CFR § 1.17) and the AT&T Fraudulent Concealment Scheme, Chelmowski should be aware and be able to provide comprehensive fact support evidence of these AT&T acts.

¹⁷ Only thing produced on the porting was hearsay of hearsay, which what AT&T produced is all AT&T would produce in this Formal complaint. Despite AT&T having documents required by law under FC Answer 47 CFR 1.724.

¹⁸ Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

Legal and Constitutional Functions of Federal Communications Commission 47 CFR § 0.111

Serve as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules... Resolve complaints, including complaints filed under section 208 of the Communications Act, regarding acts or omissions of common carriers... The Consumer and Governmental Affairs Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services...

Summary

- 34) It is clear that to date AT&T failed to produce a single document in defense of these claims.
- 35) AT&T was required by law to produce comprehensive factual supporting documents to Chelmowski and FCC however AT&T fraudulent concealed these documents.¹⁹
- 36) AT&T deceived and fraudulent concealed all material documents from the FCC with the intentions the FCC could not do the legal requirements of Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act and 47 CFR § 0.111 the

¹⁹ Chief Justice Ginsburg ruled in *Sprint Communications Co. v. F.C.C.*, 76 F.3d 1221, 1226 (D.C. Cir 1996) ("In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took 'some misleading, deceptive or otherwise contrived action' to conceal information material to the plaintiff's claim.") (quoting *Hobson v. Wilson*, 737 F.2d 1, 34 (D.C. Cir. 1984))... "Silence does toll the statute of limitations, however, if defendant has an affirmative duty to disclose the relevant information to the plaintiff. See *Smith v. Nixon*, 606 F.2d 1183, 1190 (D.C.Cir.1979); see also *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248, 250 (9th Cir.1978)."); Chief Justice Ginsburg ruled in *Sprint Communications Co. v. F.C.C.*, 76 F.3d 1221, 1226 (D.C. Cir 1996) ("In order to establish fraudulent concealment . . . the plaintiff must show that the defendant took 'some misleading, deceptive or otherwise contrived action' to conceal information material to the plaintiff's claim.") (Quoting *Hobson v. Wilson*, 737 F.2d 1, 34 (D.C. Cir. 1984))... "Silence does toll the statute of limitations, however, if defendant has an affirmative duty to disclose the relevant information to the plaintiff. See *Smith v. Nixon*, 606 F.2d 1183, 1190 (D.C.Cir.1979); see also *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248, 250 (9th Cir.1978)."); *TRW Inc. v. Andrews*, 534 U.S. 19, 37 (2001) (Scalia, J., concurring) ("The injury-discovery rule . . . [is a] historical exception for suits based on fraud . . ." (emphasis added)); *Holmberg v. Ambrecht*, 327 U.S. 392, 397 (1946) ("[W]here a plaintiff has been injured by fraud . . . the bar of the statute does not begin to run until the fraud is discovered . . ." (emphasis added) (internal quotation marks omitted)); Under fraudulent concealment, the running of the statute of limitations is tolled when a defendant engages in some misleading, deceptive or otherwise contrived action or scheme, in the course of committing the wrong, that is designed to mask the existence of a cause of action. *Riddell v. Riddell Washington Corp.*, 866 F.2d 1480, 1491 (D.C. Cir. 1989).; *William J. Davis, Inc. v. Young*, 412 A.2d 1187, 1191-92 (D.C.1980) ("[Defendant] must have done something of an affirmative nature designed to prevent discovery of the cause of action.... [A]ny statement, word or act which tends to suppress the truth raises the suppression to that level"); Cited by both parties in the Complainant and Answer: FCC case, *Valenti v. AT&T*, 12 FCC Rcd 2611. 2621-22 (1997) at ¶ 24 (Without proof of "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s], there can be no tolling of the statute of limitations."). Emphasis FCC statute of limitations should be tolled with "fraud or deceit having been practiced by the defendants upon complainant to prevent him from becoming aware of the facts which are the basis of [his] claim[s]"; *Operator Communications, Inc v Contel of the South*, File no. EB-05-MD-0009, "indeed the Commission [FCC] has identified only one circumstance that warrants equitable tolling of Section 415 p- fraudulent concealment by the defendant of the facts giving rise to the claim."

primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules... Resolve complaints, including complaints filed under section 208 of the Communications Act, regarding acts or omissions of common carriers... The Consumer and Governmental Affairs Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services.

- 37) December 16, 2014 rules specific for this case required Comprehensive Factual Support (not hearsay evidence) or sworn affidavits. AT&T produced absolute no factual support despite the simplicity of the factual support required by law Reply paragraphs 26 through 85.
- 38) Chelmowski was misguided in the December 16, 2014 which clearly stated the proposed findings of fact and conclusions of law were not required. Chelmowski provided FCC formal complaint cases, US Supreme Court rulings, District of Columbia Appellate court rules to support, fraudulent concealment and tolling the statute beyond the date of filing.
- 39) Chelmowski prays he should be able to present his findings of facts and conclusion of law.
- 40) Chelmowski prays AT&T should be required to follow the FCC law and federal law.
- 41) Chelmowski prays he should be able to prove the accrual date was not March 23, 2011 (Order paragraph 11) because he should be held to no greater knowledge than the FCC on FCC law and if the FCC whose legal responsibility is to enforce the ACT could not determine AT&T violated any FCC laws in 2011 then how could Chelmowski have known of AT&T FCC violations.
- 42) Chelmowski prays AT&T should finally be required since it is clearly in the FCC law and rules (instead of hearsay) to produce these simple items without more expense and further court

involvement (i.e. D.C. Circuit Court of Appeals and/or other courts) and end this fraudulent concealment scheme which AT&T is continuing since 2011.

(I) Proof of delivery of 2011 Informal Complaint (part of AT&T fraudulent concealment scheme)

(ii) Actual documentation of the March and April 2011 porting rejections of 847-768-0400

(iii) Author of AT&T's September 22, 2011 NOIC to the FCC

(iv) AT&T internal investigation files for 2011 informal complaint (proving why the March and April 2011 porting rejections were not part of any NOIC letter to the FCC in 2011). As AT&T stated was not part of the fraudulent concealment scheme.

(v) Simple Sworn Affidavit that AT&T did not file the August 2011 informal complaint or had anything to do with the filing of the 2011 complaint.

43) Chelmowski prays that he receives his rights under the US Constitution

44) Chelmowski prays that FCC reconsiders the July 10, 2015 order and continues the FCC formal complaint process with discovery required by FCC Formal Complaint Law 47 CFR §§ 1.720 to 1.729

45) Chelmowski prays that AT&T is required to follow the Telecommunication ACT and Chelmowski is given due process under the Telecommunication ACT and be enforced by the FCC.²⁰

²⁰ Communications Act of 1934 TITLE I- SEC. 1. "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.
Legal and Constitutional Functions of Federal Communications Commission 47 CFR § 0.111
Serve as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules... Resolve complaints, including complaints filed under section 208 of the Communications Act, regarding acts or omissions of common carriers... The Consumer and Governmental Affairs Bureau has primary responsibility for informally resolving individual informal complaints from consumers against common carriers (wireline, wireless and international) and against other wireless licensees, and informal consumer complaints involving access to telecommunications services...

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jim Chelkowski". The signature is fluid and cursive, with a long horizontal stroke at the end.

James Chelkowski
6650 N Northwest Hwy #300
Chicago, IL 60631
847-768-0000

August 10, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of August, 2015, a Motion to Reconsider FCC Formal Complaint against AT&T Mobility LLC, was electronically sent by email to AT&T Mobility LLC and the FCC's electronic filing system to Defendant.

August 10, 2015

Date

A handwritten signature in black ink, appearing to read "James Chelkowski", written over a horizontal line.

James Chelkowski

Complainant