EXHIBIT Q

January 16th, 2008

Dear FCC;

My name is Clara Roth. I received my BA degree in English from Newark State College (now called Kean University) and my MA in Educational Administration from Montclair State College (now called Montclair University). I was an educator with the Newark Public Schools for 42 years. I taught English in high school for 10 years, chaired the English department for 22 years, and served as Vice Principal of Academics for 10 years.

Regarding the following sentence quoted as it was presented to me:

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

The word "former" is an adjective modifying the noun "customer". To modify means to describe or make more definite the meaning of a word. Using an adjective results in pinpointing an attribute while eliminating other attributes. For example, a small customer is not a large customer. **A current customer is not a former customer.** In the sentence being discussed, the status of "customer" comes prior to the modified status of "former customer". The customer **becomes** the "former customer" on what is transferred because the sentence continues with a request, and the status of "former customer" **applies to the request**.

In the sentence being evaluated, the "Customer" is defined as a "former Customer" only for the WATS service being transferred to the new Customer.

Example: If the transferor indicated that it wanted to transfer only 300 of 1000 accounts, the Customer would then be a "former Customer" for the 300 transferred accounts. The transferor would not be a former Customer for the 700 accounts it does not transfer; it remains AT&T's customer on the 700 accounts not transferred. If the Customer always and for all situations became the former Customer, there would be no reason to introduce the "former Customer" phrase. The sentence could and should only be written as such:

> The Customer of record requests in writing that the company transfer or assign WATS to the new Customer.

Likewise, if the new customer was responsible for assuming all the obligations of the "former customer," the obligations would only pertain to the service transferred that defines the Customer as a "former customer".

I understand that AT&T has stated that 2.1.8 defines the "former customer" as being the "Customer." In actuality the "Customer" is being defined as a "former customer" for what is being transferred. AT&T's interpretation is faulty from an English language perspective, is illogical, and is contrary to the very definition of the AT&T WATS transfer section. The 2.1.8 tariff section governs the transfer of AT&T service. Obviously a "former AT&T customer" would no longer have any AT&T service to transfer to a new customer that would, according to AT&T, define a "former customer as the "customer". A transferor can not initially be defined as a "former" AT&T customer to transfer WATS service because a "former customer" by definition doesn't even have AT&T WATS service to begin with.

Sincerely,
/s/ Clara Roth
Clara Roth

EXHIBIT R

FCC Brief to D.C. Circuit

6 (JA ___); *see also Combined Companies, Inc. v. AT&T Corp*, Civil Action No. 95-908 (NHP) (D.N.J.), filed March 5, 1996, at 16 ("*Second District Court Op.*") (JA ___).[5]

AT&T appealed the district court's order to the Third Circuit, which, on May 31, 1996, vacated the lower court's March 5 decision as inconsistent with the district court's primary jurisdiction referral, and ordered the parties to bring the referred issue to the Commission. *Order*, para. 6 (JA ___); *Combined Co., Inc. v. AT&T*, No. 96-5185 (3d Cir. May 31, 1996) ("*Third Circuit Op.*") (JA ___, ___). The Third Circuit referred the following question to the FCC: "'Whether section 2.1.8 [of AT&T's Tariff F.C.C. No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.'" *Order*, para. 1 (citing *Third Circuit Op.* at 3, quoting *First District Court Op.* at 15) (JA ___).

D. Subsequent Developments Before The FCC

On July 15, 1996, the Inga Companies and CCI implemented the primary jurisdiction referral by filing a joint petition with the Commission seeking a declaratory ruling on four issues. *Order*, para. 7 (JA ___). AT&T filed opposition comments on August 26, 1996, and petitioners filed reply comments on September 23, 1996. *Id.*

On February 13, 2003, the Wireline Competition Bureau ("WCB") issued a Public Notice inviting comment on two discrete questions that were not squarely addressed by the parties on the existing agency record. First, the WCB asked the parties to "comment on the nature of the relationship, if any, between AT&T and the end-user customers of AT&T's customers, under AT&T's Tariff F.C.C. No. 2 generally, and specifically under the tariff provisions governing the

---

>>> [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 (JA __). <<<

EXHIBIT S

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

TARIFF F.C.C. NO. 2
12th Revised Page 61.17
Cancels 11th Revised Page 61.17
Effective: March 11, 1994

3.3.1.Q. AT&T 800 Customer Specific Term Plan II (continued)

- If the Customer terminates the CSTP II within the first year of the plan and concurrently establishes a new CSTP II of greater value, no additional one time 1/2% credit will apply.
- All other specific term plans and service discounts are excluded from the CSTP II with the exception of the $.01 per minute access line discount. The AT&T 800 Service-Domestic $.01 per minute access line discount is applied after the Term Plan discount but before the RVPP discount.
- The Customer must commit to an annual commitment for three years as shown in Sections 3.3.1.Q.1. and 3.3.1.Q.8., or two years as shown in Section 3.3.1.Q.7., or one year as shown in Section 3.3.1.Q.9, following.

Bullet 4

- The Customer may add or delete an AT&T 800 Service or AT&T Custom 800 Service covered under the plan.
- In the event the Customer converts from another AT&T Term Plan to a CSTP II, there will be no decrease in the percent discount received by the Customer. *
- The Customer will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.
- The Customer must also provide to AT&T, for each location participating in the above mentioned plan, written authorization for including the locations in the plan, billing account number and/or billed name, type of service, and address to which the bill is to be sent.
- In the event that a location is in default of payment, AT&T will seek payment from the Customer. If the Customer fails to make payment for the location in default, AT&T will: (1) reduce the discount by the amount of the billed charges not paid by that location, if any, and apportion the remaining discount, if any, to all locations not in default, and if payment is not fully collected by the above method, (2) terminate the RVPP/CSTP II for failure of the Customer to pay the defaulted payment.
- In the event of termination of the Customer's RVPP and/or Term Plan, the Customer being terminated must notify the individual locations that the RVPP and/or Term Plan has been discontinued and the individual locations not in default of their location billing charges will be converted to monthly rates as individual customers unless they notify AT&T otherwise.

Bullet 10

- Shortfall and/or termination liability are the responsibility of the Customer. Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan. For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.

* This condition applies only to Customers whose CSTP II was in effect or on order prior to July 1, 1993. This does not apply to existing CSTP II Customers that renew their term plan after June 30, 1993.

Issued on not less than one day's notice under authority of Special Permission No. 93-472.

EXHIBIT T

AT&T

December 10, 1990

One Stop Financial
19B Colonial Dr.
Little Falls, NJ 07424

Dear Sir:

AT&T is announcing procedural revisions in serving Aggregators that will take effect January 1, 1991. As the holder of a Multi-Location WATS (MLW) service plan, and/or 800 Revenue Volume Pricing Plan (RVPP)/Customer Specific Term (CSTP) you are the AT&T customer for all locations that you have designated for inclusion under your discount plan. The purpose of this package is to explain these changes and clarify your role in interacting with AT&T.

Once a location signs up for service under your plan, you have assumed responsibility to AT&T for that location. As a result, that end-user loses his status as a customer of AT&T, giving control of the aggregated BTN (Billing Telephone Number) to you, the Aggregator, including the authority to add, delete, or change service for that BTN. Accordingly, AT&T will honor all order activity related to a BTN included in your discount plan only from you --the service plan holder.

As part of these changes, AT&T has created a dedicated organization to process orders for you. Starting January 1, 1991, all requests for service under your plan should be directed through this organization. It is our belief that these changes will allow you to better serve the needs of your customers.

Add + Delete is under 3.3.1.Q bullet 4

change Service is 2.1.8.

NO CAP on how many can be transferred.

EXHIBIT U

One Stop Financial

55 Main Street, Little Falls, NJ 07424
Tel.: (800) 245-1826 Fax: (800) 338-0409

Date: 6/15/95

Page: 1 of 2

Facsimilie Cover Sheet

Attention: Joyce Snek

Phone #:

Fax#:

From: Al Inga

Comments: Please transfer all BIN's under Darren B. Swain Inc. to Al's plan, which only has a $1000/mo commitment; Al is not recall the plan and number

6/20/95 Al - Per our conversation yesterday Monday 6/19; an original TSA is now required for transfer activity. Additionally we no longer process partial TSA's, the TSA must be for the whole plan.

JSnek

EXHIBIT V

AT&T

Charles H. Fash
Senior Attorney

Room 2232B1
295 North Maple Avenue
Basking Ridge, NJ 07920-1001
908 221-8021
FAX 908 953-8350
ATTMAIL lcfash

July 7, 1995

Charles H. Helein, Esquire
Helein & Waysdorf, P.C.
1850 M Street, N.W., Suite 550
Washington, D.C. 20036

Re: US Communications, Inc. and Darren B. Swain, Inc.

Dear Mr. Helein:

Your letter of June 27, 1995 to Meric Bloch regarding your above-referenced clients has been referred to me for response. I understand the two concerns raised in your letter to be that AT&T has refused to process a Transfer of Service Authorization ("TSA") transferring substantially all of the locations associated with a CSTP II plan in the name of Darren B. Swain, Inc., to another reseller, and that AT&T has refused to extend the term commitment for the same plan pursuant to AT&T Tariff F.C.C. No. 2, Section 2.5.7. I have spoken to Sharon De Mills, the AT&T Account Manager referenced in your letter, about both of these issues.

With respect to the requested transfer, it is my understanding that Mr. Swain informed Ms. De Mills that his intention was to move all but two locations from the plan in question to another reseller, thus leaving the plan structure technically in place in the name of Darren B. Swain, Inc., but effectively rendering it an empty shell. Mr. Swain did not advise Ms. De Mills that he intended to add new locations to the plan to replace the traffic thus removed. With that background in mind, I will address the "partial TSA" issue first in general, and then with respect to your client's express and announced intentions.

2.1.8 The Transfer of Service provision of the tariff addresses the issue of transfer of service, "not" transfer of "traffic" by moving individual locations from one plan to another. The proper way to move "traffic" (i.e., a subset of locations on a plan) between plans is to submit service orders to delete the locations from one plan and add the locations to another. Your assertion that AT&T has somehow

EXHIBIT W

need to obtain approval from the many different product management groups affected by the changes.

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. (Relevant pages of Transmittal No. 9229 are attached hereto as Exhibit E.) Section 2.5.8.B (Shortfall Deposits) gives AT&T the right to demand a deposit to cover shortfall charges in the event: a) the term commitment is greater than one year; b) the customer has asked to remove locations (by transfer or otherwise) such that the remaining locations would generate charges less than 80% of the revenue commitment; and c) the customer's net assets are insufficient to secure against the risk of shortfall or the customer's financial responsibility is not a matter of record. Section 2.1.8 (Transfer of Service) of Transmittal No. 9229 specifies that AT&T has the right to reject a requested transfer if either party fails to pay a required deposit.

16. 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 concept 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.

EXHIBIT X

2.5. Payments and Charges (continued) 2 Different TYPES

1

2.5.8. Deposits - The following deposit provisions are applicable to WATS. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. When a deposit is required, AT&T will provide a written notification of the amount of the deposit and an explanation of the reason(s) for the deposit requirement. When a deposit is required in connection with an order for new service or an AT&T Pricing Plan, the Customer shall pay the deposit within the period specified by the Company, which shall be a minimum of ten (10) days after the date of the deposit notification, except as provided in Section 2.5.10, following, in connection with a Contract Tariff order. AT&T may defer installation activity while a deposit demand is pending. When a deposit is required in connection with existing service, the deposit shall be paid within 30 days after the date of the deposit notification. If the Customer refuses to pay a deposit required under this Section, AT&T may refuse to provide new service, or restrict or deny existing service for which the deposit is required. If as a result of a Customer's refusal to pay such a deposit, the existing service is ultimately disconnected, the Customer shall be liable for all applicable termination charges. In lieu of a cash deposit, the Company will accept as a deposit or as a portion of the deposit amount, irrevocable and commercially sound Bank Letters of Credit, Surety Bonds, pledges of assets as security under the Uniform Commercial Code or similar statutes, or Guarantees, or any combination of cash and these instruments. C . . C

A. Deposit for Recurring Charges - The Company will require a deposit from a Customer (1) who has a proven history of late payments to AT&T or (2) whose financial responsibility is not a matter of record (determined in accordance with 1., following). AT&T will hold the deposit as security for the payment of charges. The amount of this deposit will not three times the sum of the estimated average monthly usage charges and/or the monthly service charges.

1. To determine the financial responsibility of a Customer and/or the specific amount of any deposit required, AT&T will rely upon commercially reasonable factors to access and manage the risk of non-payment. These factors may include, but are not limited to, payment history for telecommunications service, the number of years in business, history of service with AT&T, bankruptcy history, current account treatment status, financial statement analysis, and commercial credit bureau rating.

2

B. Deposit For Shortfall Charges - The Company will require a deposit from a Customer that meets each of the elements specified in 1. through 3., following, to be held as a **guarantee for the payment of any charge that may be incurred as a result of a failure to meet revenue or volume commitments** or monitoring conditions (Shortfall Charge) under an AT&T Pricing Plan (a term plan, flex plan, or other discount plan with revenue or volume commitments offered under this Tariff, or a Contract Tariff under which WATS is provided). The amount of this deposit will not exceed the **estimated Shortfall Charge**, to be determined in accordance with the applicable tariff provisions under which such Shortfall Charges would be assessed, based on the total annualized charges or usage calculated as specified in the applicable category under 2., following. A deposit will not be required under this Section if the amount of the estimated Shortfall Charge is less than $300,000. A deposit will be required when each of the three following requirements is met:

1. The Customer has subscribed to a Pricing Plan that includes a revenue or volume commitment based on charges or usage over a period of one year or longer.

2.5.6.B. Deposit for Shortfall Charges - (Continued)

2. The Customer is in one of the following categories (a) through (c). For purposes of these determinations, if any commitment under the Pricing Plan is based on charges or usage over a period of longer than one year, the commitment will be treated as an annual commitment equal to the amount of the commitment, divided by the number of months in the commitment period, multiplied by twelve. Mx .. .. Mx

(a) AT&T has accepted the Customer's order for service under the Pricing Plan and the Customer has identified at least one location or telephone number to be served under the Pricing Plan, but the total annualized charges or usage from all such identified locations and telephone numbers are less than 50% of the annual commitments applicable during the first year of the Pricing Plan. Such total annualized charges or usage will be twelve times the greater of (i) the past month's billed usage or (ii) the average monthly billed usage during the preceding twelve months, or if billed usage information is not available for the preceding twelve months, then during the number of preceding months for which such billed usage information is available. Mx Mx Cx .. Cx Mx .. .. Mx

(b) The Customer has been taking service under the Pricing Plan for at least six full billing months, and the total annualized charges or usage under the Pricing Plan are less than 85% of any currently applicable annual commitment under the Pricing Plan. Such total annualized charges or usage will be twelve times the greater of (i) the past month's billed charges or usage or (ii) the average monthly billed charges or usage during the preceding twelve months, or if billed usage information is not available for the preceding twelve months, then during the number of preceding months for which such billed usage information is available. Cx Cx Cx Cx

(c) The Customer has requested that **AT&T remove specified locations or telephone numbers from the Pricing Plan**, and the total annualized charges or usage from the locations or **telephone numbers that would remain under the Pricing Plan** are less than 50% (during the first six full billing months of the term of the Pricing Plan), or 85% (after the sixth full billing month of the term of the Pricing Plan), **of any currently applicable commitment under the Pricing Plan**. Such total annualized charges or usage will be determined using the same methodology as specified in (b), preceding. Cx Cx

3. The Customer's net assets (based on a review of an audited financial statement, if available, and other information available to AT&T) are less than three times the amount of its total commitments to AT&T under tariffed service arrangements, or the Customer's financial responsibility is not a matter of record (determined in accordance with A.1., preceding).

C. Interest on a Cash Deposit - Interest will be paid to a Customer for the period that a cash deposit is held by AT&T.

Plaintiffs note: Obligations remain on the former customers plan as end-user locations are removed. AT&T covered itself whether accounts were either transferred away via 2.1.8 or deleted from plan via 3.3.1.Q. This was the (Tr.9229) outcome of the AT&T Counsel Meade certification to Judge Politan as to what AT&T was going to do in the future for large traffic only transfers. Make the former customer that had to keep the customer plan commitments post deposits against shortfall. This did not affect plaintiff's CCI-PSE transfer because as normal it was a tariff change that of course was prospective.

Certain material on this page formerly appeared on Page 28.
Certain material previously found on this page can now be found on Page 28.1.1.
x Issued on not less than one day's notice under authority of Special Permission No. 96-0468.

2.1.8. Transfer or Assignment - WATS, including **any** associated telephone numbers, may be transferred or assigned to a New Customer, subject to each of the following provisions: Sx ..

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

D. The Current Customer will no longer be AT&T's Customer for **the service** as of the Effective Date of the transfer, which will be the earlier of the date on which AT&T provides to the New Customer a written acceptance of the transfer or assignment, or the fifteenth day after AT&T receives a fully executed original of the Transfer of Service form, except: Sx Sx Cy .. Cy

1. The transfer will not be effective if, within fifteen days after AT&T receives a fully executed original of the Transfer of Service form, **AT&T provides to the New Customer a written rejection** of the requested transfer. AT&T may not unreasonably reject a transfer or assignment of service. AT&T may, for example, reject a transfer or assignment of service if the Current Customer or New Customer fails to supply the executed original(s) of the Transfer of Service form, fails to adequately identify the Current Customer or the service being transferred, asks that the transfer or assignment be made subject to conditions, or fails to furnish a **deposit required in connection with the intended transfer pursuant to Section 2.5.8, following**. **AT&T will provide a written statement of its reason(s) for rejecting a transfer or assignment of service.** **Ny** .. .. Ny

Cy

* The requirement that the transfer or assignment be made using the standard AT&T Transfer of Service form shall apply to transfer or assignment requests made on or after July 1, 1996.
Certain material previously found on this page can now be found on Page 20.1.

x Effective date of material filed under Transmittal No. 9229 is advanced to May 10, 1996 under authority of Special Permission No. 96-0468.

y Issued on not less than one day's notice under authority of Special Permission No. 96-0468.

Security Deposits against shortfall when accounts are transferred was added via TR 9229 to section 2.1.8 in May 1996. This deposit is different than the new customer security deposit that was an issue in 1995 on the INBA to CCI PLAN transfer

EXHIBIT Y

explaining to Judge Robert's 2.1.8 's phrase "assuming all obligations," AT&T counsel admits locations can be transferred without the transferors volume obligation. (Tr. at 12, lines 1-18)

Mr. Carpenter: "Yes, but what it means to assume all the obligations. What obligations apply may vary **depending on what's transferred**. In some cases the **only obligation** that may be transferred is going to be the outstanding indebtedness." (Tr.12, lines 22-25 and 13, line 1) (Emphasis added.)

Exhibit Y

8. Another serious misstatement was made that Appellant was at risk of being unprotected in the event of nonpayment for services. **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.**

Exhibit Z

9. Mr. Carpenter made numerous statements during oral argument that PSE did not assume any of the obligations. 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.) This statement is incorrect because the TSA form shows that the two obligations to be assumed – indebtedness and unexpired time period were assumed by PSE. Appellant's argument is based on the notations on the AT&T transfer form and ignores the fact that the TSA form as signed results in the assumption of all obligations. The notations made on the TSA actually states "Traffic only move all BTN's except 181-000-0142-457, 131-134 0230-254 CSTP/Keep Plan # 3663 Intact. (J.A.at 175. Similar notations on other TSAs may be found at J.A. at 176 through 183). Appellant modified the actual notations to read "Traffic only…" then argued that the aggregator only wanted to move traffic and wasn't assuming the obligations. Appellant seeks to persuade the Court that these notations meant that the aggregator intended to separate the indebtedness on the accounts from the traffic revenue on the accounts.

The tariff doesn't offer the customer the option of separating the traffic revenue from potential indebtedness on the same account. What the notations mean is that Appellant was being asked to move all the traffic except for 2 accounts and leave the existing CSTP plans intact.

10. The supplemental brief will show that notations were necessitated due to the fact that this one TSA form is used by AT&T for multiple purposes because under section 2.1.8 different types of transactions were allowed using the same form.

11. The tariff is explicit that the indebtedness must go with the traffic for the accounts that were to be assigned to PSE. Indeed, whether the transactions were processed under the FCC's theory that locations were deleted and added under section 3.3.1.Q or the theory that the accounts were assigned under 2.1.8, the indebtedness follows the accounts.

12. The second requirement under 2.1.8 is for the time period, and this was met. The minimum time period is defined as one day, (J.A. at 187. *See*, AT&T's Tariff section 2.5.5 (1995)).

13. In addition, no mention was made of the fact that the Revenue Volume Pricing Plan (RVPP) credits applicable to PSE's plan would be used to cover any indebtedness created for PSE locations for which PSE may have become obligated for under the tariff. AT&T counsel argued in a manner that would create the erroneous impression that the RVPP credits had to come from the transferors' plans. (J.A. at 172).

14. In addition, it can be shown that AT&T was in no danger of suffering unremunerated shortfalls because none applied, a finding that was made by the United States District Court for New Jersey before the case was referred to the FCC by the Third Circuit and which appears therefore to be the law of the case. **All of the plans in question were Pre-June 17, 1994 plans.** By express tariff provisions, such plans were grandfathered as to shortfall

EXHIBIT Z

IN THIS EXHIBIT READ THE BELOW EMAILS CHRONOLOGIOCALLY FROM LAST EMAIL TO FIRST

From: Al [mailto:ajdmm@optonline.net]
Sent: Wednesday, June 03, 2015 2:50 PM
To: Brown, Richard; 'Deena Shetler'; jonathan.sallet@fcc.gov; Frank Arleo (Frank.Arleo@arleodonohue.com); 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com); Jo Ann Dobransky (JoAnn.Dobransky@arleodonohue.com); Neil Ende (nende@tlgdc.com); 'john.ingle@fcc.gov'
Subject: FW: Richard---FCC General Counsel says DC Circuit case NOT a remand....

Richard Brown

Your fellow AT&T counsel Joseph Guerra advised Judge Wigenton that the DC Circuit Decision was a remand.

However General Counsel Austin Schlick and FCC Counsel John Ingle advised the DC Circuit Decision was **NOT** a remand. In fact the Mr Schlick advised that if there is a need for clarity on this the Court can contact the FCC General Counsel and he would explain why the DC Circuit Decision was not a remand.

It was not a remand because the only issue that was requested of the FCC was decided against AT&T as indicated in the FCC's 2007 Order. This is why the FCC's 2007 Order said in reference to Judge Bassler's referral **Rather** the Court is now being asked to interpret 2.1.8. Because 2.1.8 was not asked to be interpreted in the Politan referral because AT&T conceded it had zero defenses per section 2.1.8. Thus this is why the FCC 200 Order bans any 2.1.8 issues as outside the scope. See below confirming the DC Circuit Decision is not a remand. Would you like Deena and Jonathan Sallet to further explain to AT&T why the DC Circuit Decision is not a remand?

Al Inga

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, April 15, 2005 6:09 PM
To: Austin Schlick
Cc: John Ingle
Subject: Re: Mr. Schlick & Mr. Ingle

Thank you

Al Inga

The Inga Companies

----- Original Message -----

From: Austin Schlick
To: Al
Cc: John Ingle
Sent: Friday, April 15, 2005 6:05 PM
Subject: RE: Mr. Schlick & Mr. Ingle

Yes.

*** Non-Public: For Internal Use Only ***

-----Original Message-----
From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, April 15, 2005 6:01 PM
To: Austin Schlick
Subject: Re: Mr. Schlick & Mr. Ingle

Mr Schlick

May I use the email below, as is, in a letter to Judge Bassler.

----- Original Message -----

From: Austin Schlick
To: Al
Cc: John Ingle

Sent: Friday, April 15, 2005 3:12 PM
Subject: RE: Mr. Schlick & Mr. Ingle

Any letter from the court to the FCC, or from a party in litigation to the FCC concerning the litigation, could be directed to me:

Austin C. Schlick
Acting General Counsel
Federal Communications Commission
Washington, D.C. 20554

*** Non-Public: For Internal Use Only ***

-----Original Message-----
From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, April 15, 2005 2:22 PM
To: Austin Schlick; John Ingle
Subject: Mr. Schlick & Mr. Ingle

Gentleman

Is there some time point where the FCC will put in writing that it is not treating the DC Courts decision as a remand?

Mr Arleo was told by John Ingle of this FCC position, but Judge Bassler in the NJ District Court may want to see something in writing. If the FCC will not declare in writing the FCC proceedings are over will the FCC respond to a letter from Judge Bassler? If the FCC will answer the Judge to whom at the FCC can the Judge address his question to? I hope you appreciate the situation that the Inga Companies are in. Generally Judges are not apt to act on verbal stances. I have not been able to retain Mr. Arleo as of yet and part is because he does not want to represent to the Judge the FCC's verbal position. Please understand my predicament.

Al Inga

Inga Companies

EXHIBIT AA

From: Al [mailto:ajdmm@optonline.net]
Sent: Tuesday, June 09, 2015 3:02 PM
To: Brown, Richard; 'Deena Shetler'; jonathan.sallet@fcc.gov; randolph.smith@fcc.gov
Cc: Frank Arleo (Frank.Arleo@arleodonohue.com); Jo Ann Dobransky (JoAnn.Dobransky@arleodonohue.com); Neil Ende (nende@tlgdc.com); 'Matt Friedman'; 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com); 'rbrosen@HLGSLAW.COM'
Subject: RE: Richard--EXPARTE REQUIREMENT--Case Over....D.C Circuit Decision by law is not a remand.

Thank you for confirming receipt.

Al Inga Pres

From: Brown, Richard H. [mailto:rbrown@daypitney.com]
Sent: Tuesday, June 09, 2015 2:32 PM
To: 'Al'
Cc: Frank Arleo; Jo Ann Dobransky
Subject: RE: Richard--EXPARTE REQUIREMENT--Case Over....D.C Circuit Decision by law is not a remand.

Received

From: Al [mailto:ajdmm@optonline.net]
Sent: Tuesday, June 09, 2015 2:22 PM
To: Brown, Richard; 'Deena Shetler'; jonathan.sallet@fcc.gov; randolph.smith@fcc.gov
Cc: Frank Arleo (Frank.Arleo@arleodonohue.com); Jo Ann Dobransky (JoAnn.Dobransky@arleodonohue.com); Neil Ende (nende@tlgdc.com); 'Matt Friedman'; 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com); 'rbrosen@HLGSLAW.COM'

Subject: FW: Richard--EXPARTE REQUIREMENT--Case Over....D.C Circuit Decision by law is not a remand.

Richard Brown (please confirm receipt)

The following information was derived from procedural questions requested of DC Circuit Counsel and staff members and applied to the facts of the DC Circuit Decision. In short by law the DC Circuit Decision is not a remand despite AT&T's assertions to Judge Bassler, as all issues referred by the Third Circuit have been decided against AT&T. As the FCC determined the Judge Bassler obligations allocation referral does not expand the scope of the original 2.2.4 issue and thus is moot.

The below detailed synopsis fulfills plaintiffs Exparte requirements.

From: Al [mailto:ajdmm@optonline.net]
Sent: Tuesday, June 09, 2015 10:10 AM
To: martha_tomich@cadc.uscourts.gov
Subject: Martha --Now we understand why D.C Circuit Decision by law is not a remand..

Ms. Tomich

Thank you for your time and other DC Circuit staff for their time. I now have the answers and understand explicitly as to why our DC Circuit case 03-1431, by Communications Act law, is **not a remand** and all open issues have been determined.

Agreed it was incumbent upon AT&T that if it didn't like the DC Circuit Decision that it wasn't a remand, it had the opportunity to appeal and chose not to. Agreed all the answers as to why it is not a remand and the case has been decided against AT&T are all right in the DC Circuits Decision.

If it was a remand it would explicitly state it was a remand. If it does not state that it is a remand then it is not a remand. If there is no remand then the specific question referred has been determined as answered:

DC Circuit pg. 5 para 2.

> DC Circuit pg. 5 para 2: The specific question referred to the FCC was "whether section 2.1.8 permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction."

That question was reviewed by the DC Circuit so there were no open issues and there is no remand, as the FCC did not appeal the DC Circuit Decision.

AT&T believed that obligations were still open issues as it based its argument on this sentence:

> "We also do not decide precisely which obligations should have been transferred in this case, as this question was neither addressed by the Commission nor adequately presented to us."

It was not a remand because this obligations issue was **not addressed by the Commission** because simply the referral to the FCC did not request the FCC to address obligations allocation as it was not an issue. The referring District Court already had a handle on which obligations should have been transferred under 2.1.8. The only issue the FCC was to decide is 2.2.4 fraudulent use as AT&T conceded obligations allocation under 2.1.8 was never an issue.

The obvious fact that the FCC did not issue another decision tells you the FCC's position is that it's not a remand.

AT&T also believed that due to this sentence there were open issues DC Circuit on page 11 fn2

> "How this enumeration affects the requirement that new customer assume "*all* obligations of the former Customer" (emphasis added) is **beyond the scope of our opinion**."

Judge Roberts added emphasis on the wrong word "all" when the word "former" should have been emphasized. The DC Circuit decision states that this obligation allocation is **"beyond the scope of our opinion"** because DC was limited to reviewing **only what was referred to and interpreted by the FCC**. Therefore since it was not within DC's scope to review it, then certainly it was not within DC's scope to address it or remand it.

Since the Commission was not afforded the opportunity from the District Court referral to interpret obligations the DC Circuit is **precluded from addressing this issue** and thus can't remand it as it was never before the FCC as stated within DC Circuit Decision pg. 10 fn1.

> The Communications Act **precludes us from addressing only those issues which the Commission has been afforded no opportunity to pass."** 47 U.S.C. Section 405(a). It does not prevent us from considering "whether the **original question** was correctly decided," MCI v FCC, 10 F3d 842, 845 (D.C. Circ. 1993), or whether the FCC "relied upon faulty logic." Nat'l Ass'n for Better Broadcasting v. FCC 830 F2d 270, 275 D.C. Cir. 1987). The analysis recounted above speaks to the soundness of the Commission's ruling on **the question initially presented**, and not to any novel legal or factual claims."

The DC Circuit could only address the original 2.2.4 issue and whether 2.1.8 allows traffic only to transfer.

Where it states on page 11 last line: "The petition for review is granted." That simply means that only what was referred to the FCC 2.2.4 and can traffic only transfer without the plan was reviewed by the DC Circuit. The obligations allocation under 2.1.8 had already been stated by AT&T as customer plan obligations don't transfer in order to assert its 2.2.4 fraudulent use defense under 2.2.4. The DC Circuit did not review obligations allocation as it was not referred to the FCC and therefore not reviewed and therefore can't remand what the FCC was not afforded the opportunity to address and thus no remand.

The FCC also agrees that the DC Circuit was not a remand. The FCC in its 2007 Order determined the Judge Bassler obligation allocation referral 2.1.8 was not within the scope of the original case 2.2.4 and thus the FCC banned all of AT&T's 2.1.8 defenses and effectively the Judge Bassler 2006 referral is outside the scope of the case and makes the case moot.

Plaintiffs have been arguing about obligations allocation for 9 years before the FCC when if plaintiffs had just understood the case was not a remand that by definition means all open issues have been resolved. As they say better late than never!

AL Inga

EXHIBIT BB

RELEASE AND SETTLEMENT AGREEMENT

This Agreement is entered into as of the 1st day of July, 1997 ("Effective Date") between AT&T Corp., a New York Corporation having a place of business at 295 North Maple Avenue, Basking Ridge, New Jersey ("AT&T") and Combined Companies, Inc. ("CCI" or "CUSTOMER"), a Florida Corporation having a place of business at 7061 West Commercial Boulevard, Suite 5K, Tamarac, Florida ("CUSTOMER").

WHEREAS, CUSTOMER subscribes to certain telecommunications services (the "Services") pursuant to AT&T F.C.C. Tariff No. 2 ("Tariff 2"), under CSTP II Plan numbers 2430, 2829, 3124, 3524, and 3663 ("the Plans");

WHEREAS, a dispute has arisen concerning the provision of the Services under the Plans to CUSTOMER and the amounts allegedly owed to and by CUSTOMER in connection with CUSTOMER's use of the Services under the Plans (the "Payment Dispute");

WHEREAS, the Payment Dispute is, in part, the subject of litigation pending in the United States District Court for the District of New Jersey, styled Combined Companies, Inc. et al. v. AT&T Corp., Civil Action No. 95-908 (NHP), ("the New Jersey Action") and before the Federal Communications Commission ("F.C.C."), styled In the Matter of Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) without the Associated CSTPII Plans under Tariff F.C.C. No. 2 on Referral by the United States Court of Appeals for the Third Circuit, Docket No. CCB/CPD 96-20 (the "F.C.C. Action");

WHEREAS, a dispute has also arisen with regard to the Plans concerning an alleged practice of changing, without authorization, the 800 service provider of AT&T customers from AT&T to Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. (collectively, "Winback and Conserve") and/or CCI (the "Slamming Dispute");

WHEREAS, the Slamming Dispute is the subject of a formal complaint pending before the F.C.C., styled In the Matter of AT&T Corp. v. Combined Companies, Inc., and Winback & Conserve Program, Inc., File Number E-97-02 ("the F.C.C. Slamming Action"); and

WHEREAS, AT&T and CUSTOMER wish to settle all pending disputes with regard to the Plans and the Services provided thereunder, including but not limited to the Payment Dispute and the Slamming Dispute;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

EXHIBIT "B"

4.

1. **Discontinuance with Liability of the Services**

The Plans shall be discontinued with liability pursuant to AT&T F.C.C . Tariff 2 on July 1, 1997 ("Termination Date"), and Customer acknowledges the conversion of the Plans to AT&T as of July 1, 1997. CCI shall not be liable for any charges incurred after that date. CUSTOMER understands that charges of up to $17.78 million will apply for the discontinuance with liability of the Plans pursuant to the provisions of Tariff 2 (the actual amount of which, once determined in accordance with the provisions of Tariff 2, are referred to as the "Termination Charges").

2. **Payments and Credits**

(a) The parties agree that the total unpaid shortfall charges (including billed and unbilled charges) allegedly owed by CUSTOMER to AT&T exceed $61 million as of July 1, 1997 (the "Shortfall Charges").

(b) The net amount of all other charges, discounts and credits due from or to CCI in connection with the Plans pursuant to any AT&T tariff is referred to as the "Other Charges".

(c) AT&T shall apply one or more credits to CUSTOMER's accounts on the Plans in the total combined amount equal to the sum of the Termination Charges, the Shortfall Charges, and the Other Charges.

(d) In addition, AT&T agrees to pay to CUSTOMER, by check, REDACTED the "Settlement Payment") within seven (7) days after the Effective Date.

(e) AT&T agrees that it will not further invoice CUSTOMER'S end users nor will AT&T attempt to collect from CUSTOMER'S end users any true-up charges relating to the Plans.

(f) If any CCI end user customer demonstrates that it has paid to AT&T any shortfall charges billed to the end user by AT&T in connection with the Plans, AT&T will reimburse to the end user the amount of such payment, after deduction for any unpaid usage charges.

3. **Mutual Releases**

(a) As of the date of clearance of the Settlement Payment, CUSTOMER, on behalf of itself and its subsidiaries, successors and assigns (the "CUSTOMER Releasors"), hereby discharges and releases AT&T and its past and present employees, officers, directors (in their individual and representative capacities), subsidiaries, successors and assigns (the "AT&T Releasees"), from any and all rights, claims, damages, actions or liabilities, at law or in equity, known or unknown, matured or unmatured, foreseeable or unforeseeable, including, but not limited to the Payment Dispute, the Slamming Dispute, the New Jersey Action, the F.C.C. Action and the

F.C.C. Slamming Action, which the CUSTOMER Releasors now have or ever had against the AT&T Releasees arising out of or related to the Plans or the Services provided thereunder.

(b) As of the date of clearance of the Settlement Payment, AT&T, on behalf of itself and its subsidiaries, successors and assigns (the "AT&T Releasors"), hereby discharges and releases CUSTOMER and its past and present employees, officers, directors (in their individual and representative capacities), subsidiaries, successors and assigns (the "CUSTOMER Releasees"), from any and all rights, claims, damages, actions or liabilities, at law or in equity, known or unknown, matured or unmatured, foreseeable or unforeseeable, including, but not limited to, the Payment Dispute, the Slamming Dispute, the New Jersey Action, the F.C.C. Action and the F.C.C. Slamming Action, which the AT&T Releasors now have or ever had against the CUSTOMER Releasees arising out of or related to the Plans or the Services provided thereunder. AT&T does not release any claims it has against Winback and Conserve or its past and present employees, officers, directors, shareholders, subsidiaries, successors or assigns (other than CUSTOMER).

4. Dismissal of Actions

Within 30 days after CCI's receipt of the Settlement Payment, AT&T and CCI will each seek dismissal with prejudice of their claims against the other in the New Jersey Action, the FCC Action, and the FCC Slamming Action.

5. Assignment of Claims

Effective as of the date CCI receives the Settlement Payment, CCI assigns to AT&T all claims it may have against its own current or former customers as a result of any non-payment of charges for services that AT&T provided to CCI under the Plans. CCI will promptly endorse and deliver to AT&T any payments received from CCI's customers in connection with service provided under the Plans.

6. Entire Agreement

This Agreement is the entire and complete agreement of the parties regarding the subject matter hereof. No statements, promises or representations have been made by any party to any party, or are relied upon, and no consideration has been or is offered, promised, expected or held out, other than as stated in this Agreement. There are no oral or written collateral agreements. All prior discussions and negotiations regarding the dispute have been, and are, merged and integrated into, and are superseded by, this Agreement. This Agreement is not intended to, and shall not, modify the terms of any applicable AT&T tariff.

4.

7. **Legal Counsel**

Each of the parties represents that in the execution of this Agreement, and the negotiations leading thereto, it had the opportunity to consult legal counsel of its own selection. Prior to the execution of this Agreement by each party, the party's attorney, if any, reviewed this Agreement and advised to the party with respect to making the settlement and release provided herein and of executing this Agreement.

8. **Administrative Proceedings**

AT&T agrees to cooperate reasonably with Customer with respect to the favorable resolution of any pending or threatened administrative proceedings relating to the Plans which refer or relate to the invoicing of true-up charges to end-users and/or alleged actions of the Customer regarding the change or attempted change of 800 service on or before May 19, 1995. AT&T shall not initiate or cause to be initiated any state or federal administrative proceedings against CCI with regard to the Plans or the Services provided thereunder.

9. **Applicable Law**

This Agreement shall be construed in accordance with and be governed by the laws of the State of Florida, not including its choice of law provisions.

10. **Enforcement of Agreement**

If any action at law or in equity, including an action for declaratory or injunctive relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to all of its costs in prosecuting or defending said action, including a reasonable amount of its attorneys' fees, which may be set by the court in which the action for enforcement if brought, or in a separate action for that purpose, in addition to any other relief to which the prevailing party may be entitled.

11. **Miscellaneous**

(a) The delay or failure of a party to exercise any right, power or privilege hereunder or failure to strictly enforce any breach or default shall not constitute a waiver with respect thereto and no waiver of any such right, power, privilege, breach or default on any one occasion shall constitute a waiver thereof on any subsequent occasion unless clear and express notice thereof in writing is provided.

(b) If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

(c) Within sixty (60) days of the execution of this Agreement, AT&T Corp. shall arrange and provide for one round of guest playing privileges at Pine Valley Golf

Club in Pine Valley, New Jersey for Larry Shipp, Jeffrey Sarrow and an additional third person to be designated by them.

12. Confidentiality

This Agreement, and the terms and existence hereof, constitute the confidential and proprietary information of each party.

(a) The parties will use their best efforts to keep this Agreement and the terms hereof confidential. Both parties separately agree that the party, its counsel, and any other person who has acquired or may acquire knowledge of the matter through it or its counsel, will maintain the confidentiality of the terms of this Settlement Agreement and the terms and amount of the settlement and will not disclose the same except as may be required by law or under compulsion of a lawful order and will resist by all legitimate means any attempt of any kind whatever to compel disclosure or otherwise breach the confidentiality of the existence or terms of this Settlement Agreement or the amount of the settlement. Notwithstanding the foregoing, the existence but not the content of this Agreement may be disclosed to any party and their counsel in the New Jersey Action, the F.C.C. Action and the F.C.C. Slamming Action. If, as described above, it becomes necessary to disclose the existence of this Agreement, the disclosing party shall use its best efforts to notify the other party of this disclosure.

(b) Both parties further separately agree to give the other party timely notice and opportunity to oppose any such attempt to compel disclosure, and even as to disclosures required by law or under compulsion of a lawful order will give timely notice thereof to the other party and will cooperate with counsel for the other party in resisting any disclosure beyond the requirement of law. The notice required by the foregoing provision of this Paragraph shall be given in writing to:

For AT&T:

Richard R. Meade
Senior Attorney
AT&T
Room 3226B2
295 North Maple Avenue
Basking Ridge, New Jersey 07920.
Fax: 908-953-8360

For CCI:

Jeffrey A. Sarrow
300 South Pine Island Road
Suite 304

Plantation, Florida 33324
Fax: (954) 474-4416

(c) Both parties, in addition to their obligations pursuant to subparagraph (a) and (b) of this Paragraph 12, agree that they will limit disclosure of the terms of this Settlement Agreement or the amount of settlement to the officers, directors and such other employees of their companies who have a need to know such information in order to perform their corporate duties, and that the obligations of confidentiality hereunder shall extend to those to whom such disclosure under this subparagraph (c) is made.

13. Cooperation

(a) CUSTOMER agrees to reasonably cooperate to the fullest extent with AT&T in connection with AT&T's ongoing efforts to resolve its disputes with Winback and Conserve, including the New Jersey Action, the F.C.C. Action, and the F.C.C. Slamming Action. Such cooperation shall include, but not be limited to, the provision of non-privileged documents and other information in response to AT&T's reasonable requests, without the need for formal process. However, CCI shall not be required to produce any documents that were created for the purpose of communication between CCI and its attorneys and Winback and Conserve, Al Inga, and their attorneys in the absence of a duly issued subpoena. CCI agrees that it will not contest any such subpoena, but may give notice of such subpoena to any party affected thereby.

(b) CUSTOMER agrees to cooperate to the fullest extent with AT&T with respect to notifying CUSTOMER's end users of the impending discontinuance of the Plans and conversion of the end users' 800 service provider from CCI to AT&T as provided by AT&T Tariff 2. CCI agrees that AT&T may contact said end users for the purpose of marketing to them AT&T's 800 services. CUSTOMER and AT&T agree to use their best efforts to transition service in an uninterrupted manner for those end users who wish to replace the 800 Service which they currently purchase from CUSTOMER with AT&T 800 Service. As of the Effective Date, CCI shall not target marketing efforts to its end users and shall not initiate or participate in any communications whatsoever, with its end users without the prior written approval of AT&T, except as necessary to enable CCI to protect its interests in connection with any administrative proceeding. CCI shall provide to AT&T copies of all such communications made in connection with administrative proceedings. After the Termination Date, CCI shall not initiate or participate in any communication with its former end users relating to the Services or the Plans, except as provided for in this sub-paragraph.

(c) Upon CUSTOMER'S request, AT&T agrees to send one letter (in a form substantially similar to the attached letter) to any state regulatory body with responsibility for regulation of telecommunications common carriers and one letter

(in a form substantially similar to the attached letter) to any end user who contacts CCI or AT&T with inquires regarding the Plans.

14. Disparagement

The parties agree that it is in their mutual best interests to refrain from making disparaging remarks about each others' businesses. Therefore, the parties shall make their best efforts to avoid such conduct. In the event one party has evidence that the other party has engaged in such disparaging remarks, that party shall provide in writing to the other party, details of the alleged disparaging. The parties agree to take appropriate action to correct the alleged disparaging remarks.

15. Counterparts

This Agreement may be signed in counterparts, which together will constitute the original Agreement.

IN WITNESS WHEREOF, the parties have duly executed and agreed to be bound by this Agreement by the signatures of their authorized representatives below. Each party represents and warrants that the person executing this Agreement on its behalf is fully authorized to do so.

AT&T CORP.	**COMBINED COMPANIES, INC.**
By: Linda V Orum	By: [illegible]
(Signature)	(Signature)
Wholesale Customer Com Vice President	LARRY G. SHIPP, PRESIDENT
(Name and Title)	(Name and Title)
7-3-97	7/12/97
(Date Executed)	(Date Executed)